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Challenges in Intellectual Property Governance: Providing the Right Incentives in the Quest for Global Innovation

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NOTES AND COMMENTS

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Abstract

The notion of governance is increasingly applied to the field of intellectual property. In this note, I explore how countries should make policy decisions in this key area, by keeping their focus on the promotion of domestic innovation while minimizing negative welfare impacts. The latter objective was well known when the TRIPS Agreement was negotiated in the 1990s, but the former, much less apparent. In this note, I consider recent research on innovation clusters and ways in which government, private capital and higher education institutions can work together, and specifically ways in which governments can “incentivize the quest” for innovation. I also discuss problems associated with the creation of incentives, including “patent trolls” and ways in which intellectual property might hinder full use of the internet as an innovation vector.

... IV. POST TRIPS RESEARCH: LESSONS LEARNT

Innovation is a complex mixture of people and capital. Innovation happens when people innovate and have the resources to do so. However, the resources necessarily vary tremendously from one industry to another. **For example, pharmaceutical research requires enormous investments in laboratories, clinical trials, and governmental approval processes.**¹³ A very different level of investment is required to code software, for example, for new videogames, websites, or apps for tablets or smart phones.¹⁴ Beyond capital investment and in particular, the need for venture capital and the entrepreneurial spirit that often drives this type of investment, it is obviously people—innovators who make the difference. There are very few Steve Jobs out there, but there are a number of people I would put in a high (though second-tier when compared to people like Jobs) level of innovation who create new business models, new technologies and other forms of innovation every day. Where are those people and how can intellectual property governance help them?

13 See Lawrence A. Kogan, *Commercial High Technology Innovations Face Uncertain Future Amid Emerging “BRICS” Compulsory Licensing And IT Interoperability Frameworks*, 13 SAN DIEGO INT’L L.J. 201 (2011).

¹⁴ See John R. Allison, Abe Dunn & Ronald J. Mann, Software Patents, Incumbents, and Entry, 85 TEX. L. REV. 1579 (2007). (pp. 389-390)