

# The role of IP in a new post crisis world

## FIDE /TIPSA IP GLOBAL DIGITAL ENCOUNTERS

### Report Encounter n°2

## From West to East: Trade, IP and Investment after the Crisis

May 28<sup>th</sup>, 2020

### Speakers:

**Prof. Claudio DORDI (Bocconi University, USAID Trade Facilitation Program Director in Vietnam)**

**Prof. Ysolde GENDREAU (University of Montreal)**

**Antony TAUBMAN (Director, IP Division, WTO)**

### Moderator

**Prof. Xavier SEUBA HERNÁNDEZ (Catalonian Open University)**

**Objective of the session:** To provide a broad picture of the changing role of the IP system in a deeply transformed post-crisis Trade and Investment environment, also marked by the central role and complexity of the new West-East economic relations.

**Moderator: Prof. SEUBA** laid the foundation by stating the importance of innovation and culture in mitigating the forces outside and the forces inside. As innovation is the cure for the present crisis, culture becomes the essential cure to heal our souls. Intellectual Property thus provides a kaleidoscopic vision of technological, cultural and social interactions.

### Speaker 1: Antony TAUBMAN (WTO)

1. Mr. Taubman highlighting the emergence of multilateralism stated that multilateralism is not a *utopian* idea but a pragmatic response in the time of crisis. Speaking about the birth of multilateral institutions in 1930s and 1940s, he supported that multilateralism was a pragmatic and sober solution adopted to inoculate oneself at a time of crisis. TRIPS again was a pragmatic response to resolving trade issues by constituting a common framework within which all parties could work. The challenge, according to Mr. Taubman, is the *marrying of pragmatism with a workable multilateral system*.
2. Moving to the post COVID world, Mr. Taubman highlighted the importance of creators and individual innovators and indispensability of providing them with an international platform, given the digital inequities prevalent in the present system.

3. Mr. Taubman then spoke about how the learnings from past experiences (during the HIV's outbreak) have enabled a slew of measures by WIPO (COVID IP Policy Tracker), access to tool accelerators, establishment of medicine pools, etc. demonstrating the effect of collective efforts without prejudicing private interests.
4. Mr. Taubman concluded stating the importance of innovation (as envisaged in sustainable development goals (SDG) 7) and the importance of partnership and sharing (as envisaged SDG 17) in mitigating the present crisis and the need to use IP as a dynamic tool rather than just limiting it to being a restricting tool.

### **Speaker 2: Prof. Ysolde GENDREAU (University of Montreal)**

1. Prof. Gendreau focused on means of providing equitable compensation for creators of artistic works in the post crisis world. Prof. Gendreau criticized the system where creators were asked to fend for themselves with adopting or coming up with new business models (more concerts, merchandising), which all seem shallow in the present situation.
2. Presently, where people might be used to free content and regarding arts as charity remuneration is needed more so today. Copyright hence became the foundations to legitimize remuneration payment contracts. Prof. Gendreau stressed on the need that remuneration should not just be paid, but *seem to be paid*, just as the judiciary should be *seen to be independent*.
3. Prof. Gendreau later moved on to enforcement issues, stating that the present physical judiciary being geographically localized calling on state resources are ill equipped to deal with supra national infringements and copyright violations. Prof. suggested that a supra national copyright enforcement system similar to Uniform Domain-Name Dispute-Resolution Policy (UDRP) might be needed to address the post crisis scenario. This supra national institutions should have proper channels of communication with national courts and to prevent from privatization, the courts decisions should all be published to create a reliable jurisprudential evolution.

### **Speaker 3: Prof. Claudio DORDI (Bocconi University)**

1. Prof. Dordi focused on how certain unilateral actions can give rise to second order multilateral avenues opening up channels for communication and negotiation. Prof. Dordi spoke about US actions against China and post response of China to these measures.
2. As to the Post US Unilateral sanctions against China, he stated that China though being a party to WTO had a not so welcoming policy towards accessing Chinese markets by foreign enterprises with its lengthy clearance procedures, judicial uncertainty etc.
3. However, Post US Unilateral sanctions to force China to remove obstacles to trade, China agreed on providing direct access to Chinese markets with a host of

measures such as, amendment of trademark law in 2018, legislating of anti-unfair competition laws and improved IP enforcement mechanisms. Further, Dr. Drodi, stated that the transshipment measures adopted by China, that is, moving Chinese products to Vietnam and other countries and then routing them to the destination countries (US) to avoid tariffs, along with illegal transshipment movement have reduced since US sanctions. These US measures have forced China to negotiate and discuss custom issues with other countries such as Vietnam, Malaysia and Thailand, which was not seen earlier in the pre- sanction world.

4. Prof. Drodi concluded saying that, Unilateral actions can result in multi-lateral effects and reaffirmed the statements of the other two speakers of there being a necessity for a more collaborative, sharing, multi-lateral world to overcome the present crisis.

**Girish MAGRAJ**  
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