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From the Physical Secretary and Vice-President Professor JE Enderby CBE FRS
2 December 2002
Our ref: L2120211



Response to the Report by the Commission on Intellectual Property Rights

I was pleased to read the report by the Commission on Intellectual Property Rights (CIPR), which was launched on 12 September 2002. The report is thoroughly researched and contains interesting and constructive recommendations.

A working group set up by the Royal Society has been considering the impact of Intellectual property (IP) policy on the conduct of science with due regard to the needs and concerns of developing countries. The Royal Society's study, to be published early next year, will be much briefer than that of the Commission and the Working Group will send you a copy as soon as it is published. The CIPR's well-researched report has been a valuable resource for the Working Group, which has broadly endorsed the Commission's recommendations.

Much of the Commission's analysis and many of its recommendations bear on how intellectual property rights (IPRs) affect benefits that can be derived from science, and my comments focus on some of these.

IPRs can be effective in stimulating innovation and benefiting society but the advantages of IPRs may only outweigh the disadvantages, for a given sector in a country, when that country has reached a significant level of development. Furthermore, as the Commission's report states, the costs of introducing sophisticated IP systems are high. Developing countries should not be encouraged to introduce IP laws until the level of economic development is such that introduction of a given IPR is beneficial.

As the Commission's report shows, developing countries do not always use what flexibilities there are in TRIPS (the Agreement on Trade-Related Aspects of Intellectual Property Rights). The

TRIPS agreement, like others in the World Trade Organisation, is subject to periodic review and there are useful changes that could be made. In particular, the delay in the requirement to implement TRIPS (e.g. until January 2006 for the least developed countries) might have made agreement easier in the 1990s but it is of little benefit if the country concerned proves to be no better placed to benefit from TRIPS than it would have been in 1995. As indicated by the Commission's report, adoption of any particular standards should be based on a country's level of economic, social and technological development rather than being based on an arbitrary date. For developing countries facing food and water insecurity, pandemic diseases, lack of infrastructure and, in some cases, civil war, the introduction of TRIPS, which calls for rigorous IPR legislation, would be an absurd use of scarce economic, political and social resources. Adoption of standards such as TRIPS should not be encouraged unless it seems likely that the benefits will outweigh the costs. Developing countries are likely to reach that state sooner if their export trade is not constrained by tariff barriers in the developed countries.

Although, as suggested by the Commission, a *sui generis* right may not be appropriate, it is important that traditional knowledge brings benefit to its holders as well as others. This should involve informed consent on the part of the traditional knowledge holder to the use, development and sharing of benefits. Commercialisation of an appetite-suppressing element of the Hoodia cactus, cited by the Commission, may prove to be an example of benefit sharing, but there was no initial informed consent. This whole area of benefit sharing requires further work on the part of the World Intellectual Property Organisation and the United Nations Educational, Scientific and Cultural Organisation if there is to be any confidence that benefits will be shared, and shared fairly.

Despite some flexibilities in TRIPS, IPRs can limit health care in developing countries. The Commission has presented a valuable analysis of the needs and constraints on mechanisms such as tiered pricing and compulsory licensing. Tiered pricing of pharmaceuticals should be encouraged but it is important that backflow of cheap products to expensive markets is prevented. It is also important, as stated in the Commission's Report, that the infrastructure in the developing countries is adequate to ensure that the use of pharmaceuticals is effective; and that sub-optimal use does not accelerate the onset of any drug resistance.

Science is an important driver of economic and social benefit and it is important that IPRs, such as copyright, do not inhibit unnecessarily the sharing of knowledge. The Royal Society Working Group that is currently studying the impact of IP policy on science has concerns about limitations to access to scientific information for use for education and research, both in developed and developing countries. It is particularly important that access to fair dealing rights is not effectively lost through the use of physical means to prevent copying of digital information. I agree with the Commission's support of initiatives such as free on-line access to scientific journals for teachers, students and researchers in developing countries, where practicable, as is done by some learned societies, including the Royal Society.

I commend you for setting up such an authoritative Commission to advise on how intellectual property rights could be used for the greater benefit of developing nations. I hope that the Commission's report will help to accelerate the changes that are needed.

Yours sincerely

John Ender

cc Rt Hon Patricia Hewitt MP, Secretary of State for Trade and Industry