



UNITED STATES SWITZERLAND

EMPHASIZING SHARED VALUES: AN ECONOMIC SUCCESS STORY



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The Institute of Intellectual Property

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What are the main tasks of the Swiss Federal Institute of Intellectual Property?

The Swiss Federal Institute of Intellectual Property (IPI) is the lead federal agency for all intellectual property matters. It was created by Parliament as a one-stop shop within the federal administration for all questions relating to intellectual property (IP). The quintessence of its official mandate lies in providing domestic and foreign businesses with an appropriate, effective, dependable and easy-to-use national IP system. To this end, it's tasked with reg-

istering intellectual property rights, as well as promoting and explaining the intellectual property system in Switzerland. It is further charged with defining IP policy, advising the Federal Council and Parliament, preparing relevant legislation, and representing Switzerland in international fora and bilateral and international negotiations. Last but not least, the IPI offers services in the areas of trademark research and patent information to make Switzerland's IP system even more accessible to all users.

How would you describe the value of intellectual property to a country like Switzerland?

Switzerland is in the fortunate position of being ranked first in most international innovation indices, such as the WIPO's Global Innovation Index and the World Economic Forum's Global Competitiveness Report. A high innovation efficiency ratio and a strong intellectual property protection system are two of the key assets that allow Switzerland to translate its robust innovation capabilities into high-level innovation output. For instance, pharmaceutical companies, which make up a key Swiss industry, are heavy users of the domestic and international patent and trademark systems. In addition, the large number of innovative exported SMEs, be they in machinery, watchmaking, medical technology or biotechnology to name a few, rely on secure international patent rights. Given the substantial role that such companies play in the overall economy, it's not surprising that Switzerland has the highest patenting rate per capita worldwide.

While the country certainly has a reputation for being inventive, it would be misleading just to look at patents. This is because trademarks are at least as important contributors to Swiss economic prosperity as patents are. We are home to some very valuable brands like ABB, Rolex, and Zurich Insurance to name just a few – not to mention that the value of “Swiss Made”, along with the distinctive Swiss cross, command a market premium equal to about one percent of our GDP, as a recent study revealed. This is why we vigorously defend the “Swiss” label, both at home and abroad.

As you can see, adequate and effective IP protection is a key component of the Swiss innovation machine. However, in order for a country to realize its full innovation potential, an IP system has to be accompanied by other policies, like a stable economic environment, a predictable legal system, and excellent education, among others.

Where are Swiss companies particularly competitive when it comes to intellectual property?

Due to the fact that Switzerland has a small domestic market – every second franc we earn comes from abroad – Swiss companies have to compete internationally. Since the Swiss franc has gotten ever stronger since the '80s, the

economy has been forced to move up the value chain to where much of the added value comes directly from intellectual property.

Nestlé is a case in point for this thesis: It is the single biggest IP user in the country and has essentially turned a number of commodity businesses, like coffee and chocolate, into ones that create enormous value for consumers in terms of consistency and quality, and it earns a substantial return on equity for shareholders. Without an IP system protecting its intangible assets such as Toll House Chocolate Chips or Nespresso, the firm would have little chance of competing on price alone.

Through companies such as Novartis and Roche, Switzerland has become known as an important “pharma country”, but that image should be put in the context of an even stronger industrial base in fundamental chemistry. Clariant, EMS-Chemie, and Syngenta may not be the biggest companies in terms of production volumes, but they all boast specialty products that command a premium. This cluster of innovation is one reason why America's DuPont, for example, has its European research headquarters in Switzerland.

High performance chemistry isn't our only innovative IP-based industry. The *cliché* about Switzerland being the land of watchmakers is true thanks to the IP system, too. Companies like Swatch, Omega, and Richemont derive much of their value-added from IP, be it in the form of designs, patents or trademarks. This fact is reflected in the statistics on design and trademark filings, whereby jewelry and watches typify the IP usage of Swiss entities - not forgetting, of course, the “Swiss Made” indication, which is the key and most valuable attribute of a genuine Swiss watch.

But businesses aren't the only ones using the IP system to create added value. Swiss universities have stolen a page from America's playbook by making more of an effort to both promote and commercialize technology using intellectual property agreements. Both of the world-class federal institutes of technology in Lausanne and Zurich, for example, have specialized offices that negotiate royalties and licenses for their intellectual property. This approach has permitted a dense network of spin-offs and private-public partnerships to flourish in their vicinity. The IPI assists university research-

ers with prior patent art in order to find either potential legal obstacles or simply to make use of the free knowledge embodied therein.

Because the IPI has witnessed the value-creation potential of a good IP strategy first hand, it specifically reaches out to small and medium-sized enterprises through its various programs - like affordable assisted patent searches - and offers an array of courses on IP topics to make the system more accessible, which in turn enables SMEs to better compete internationally.

Some critics argue that the welfare or economic development of developing countries is slowed down by the over-zealous protection of intellectual property. What would you tell them?

Finding the right balance between IP protection and access to the protected ideas is probably the key challenge facing any national or international IP system. The needs and interests of the different stakeholders - that is to say, not only of the IP rights holders but also of other users of the IP system, as well as of the public at large - must be taken into account appropriately. That's why IP protection is not an end in itself. After all, the goals of IP protection should be the promotion of innovation and creation for the sake of economic growth and humanity's progress. Patents, for example, aim to promote the search for and development of new solutions to technical problems; they do this by making the patented inventions known and providing new knowledge through patent databases so that scientists and engineers can build on the state of the art, thereby accelerating technological progress.

The core principal in designing an IP system, whether it's national or international, in my view is striking a balance between the social costs and private benefits of the IP system so that it results in a net positive value to society in the long run. Accordingly, the implementation and enforcement of an appropriate and well-balanced IP system can be seen as a valuable investment in the future of a country, its growth, economic development, and global competitiveness. But let me be clear: The equation is not a simple one. More protection does not necessarily result in more innovation or economic development. On the contrary: There comes a point where additional protection can actually stifle innovation and creation.

That is why we're now having a debate about standard essential patents, for example. Striking the right balance and adapting the IP system to constantly changing external conditions is, in my view, the eternal - and elusive - challenge of every legislator! Not forgetting, of course, that the IP system doesn't always reach its goals. There still isn't a lot of R&D by private companies into drugs against neglected or against tropical diseases, for example. Hence, to me, it's the task of the international community to negotiate and offer alternatives or complements to private protective titles.

What role is the IPI/Swiss government playing in a case like the Indian government's refusal to grant patent protection to Novartis's Glivec medicine? What are the key principles Switzerland is looking to see upheld in a situation like this?

The Glivec case in India was a ruling by the Indian Supreme Court that applied Indian patent law. It is not a countries place to question the ruling of another national court - let alone a supreme court - in the interpretation of that other countries own law. But it's Switzerland's expectation, both of itself and other countries, that national laws conform to relevant international obligations, including the WTO/TRIPS Agreement, of course.

Given the importance of IP for Switzerland, it is just normal that we closely follow international developments in intellectual property affairs, both at the national and international level. If we have a concern, our general diplomatic preference is to tackle the issue bilaterally through informal and formal bilateral contacts and consultations in order to better understand and communicate the interests at stake, so as to ultimately reach a mutually satisfying solution.

Providing adequate protection for copyright in the Internet era is proving challenging for many countries, including Switzerland - what principles should guide policy makers in this area?

Again, I come back to Switzerland's balanced approach when it comes to intellectual property. Article 26 of our Constitution guarantees the right to property, and prevents expropriation both by the state and fellow citizens. Switzerland's position is and will remain that copyright

is a type of property, and thus protected from piracy by law with the authority of the state. In order to achieve this protection, more focus must be put on international cooperation with regard to enforcement as well as licensing.

The Internet knows no borders and intellectual property enforcement is extremely difficult on the web. It is full of infringing content and rights owners find themselves in a very frustrating position. What is needed is the possibility of reaching rogue sites and bringing them to justice. It is, in my view, counterproductive to extensively go after individual Internet users just because it's more convenient than going after the original pirate or the operator of a rogue site. It is also difficult to make consumers turn away from illegal offers if no legal alternative is available. A Swiss Internet user looking for that exact same legal content offered in the United States is often met with: "Sorry, currently our video library can only be watched from within the United States." This fragmentation has to do with copyright having been conceived in a territorial world that is becoming ever less meaningful due to societies integrating through trade, travel, and telecommunications.

Moreover, the law cannot fundamentally deviate from the values and beliefs of society otherwise it will not be accepted and prove to be unenforceable in the long run – just think of the prohibition era in the U.S. Policy makers must respect the different fundamental rights such as privacy and property enshrined in the Constitution. It is therefore important for policy makers to withstand excessive demands that vitiate privacy or abuse the police powers of the state. This is not a denial of the real and practical problem that threatens copyright holders' livelihoods, but a balanced application of the constitutional principle of proportionality in order to safeguard copyright's existence in the long run. What we more than ever truly need is therefore equitable copyright.

What are the main challenges to intellectual property rights these days for a small country like Switzerland?

In my view, the main challenges to intellectual property rights nowadays aren't specific to big or small countries. The challenges are more systemic, residing in the overall legal architecture of the IP system.

Firstly, as history shows, international negotiations have contributed to more holistic and transparent solutions than bilateral negotiations have. That's why I am skeptical that the ongoing negotiations on bilateral free trade agreements will ultimately result in a sustainable or even an understandable and enforceable network of rights and obligations. Thus, enhancing and facilitating international intellectual property protection through the World Intellectual Property Organization and the World Trade Organization should be a priority for every member state. That is why notwithstanding the impasses and stalemates at the international level, Switzerland remains committed to restoring an atmosphere of trust and creating a common ground on the basis of creative solutions that respond to the mutual interests and needs in a constantly evolving environment. It is, however, important, that other countries join us in these efforts!

Secondly, the law in general and intellectual property law, in particular, cannot and should not deviate from the values and beliefs of society at large lest they lose legitimacy and thus prove unacceptable and unenforceable in the long run. That's why we need to be careful about being over-zealous in enlarging the scope of and enforcing IPRs that could undermine their entire edifice of legitimacy in the eyes of society, and which in turn could end up throwing the baby out with the bathwater.

Lastly, the challenge is to ensure that the protection of intellectual property rights remains relevant and effective, and continues to create incentives for research and development in the future too. One example of where yesterday's legal framework might not be adequate for tomorrow's technology is 3D printing. Copyright, trademark, design, and patent protection were all conceived with a centralized model of production in mind. Yet these protections may be ill suited to dealing with the decentralized 3D printing of virtual objects in the future.

In order to accomplish these objectives, I am convinced that we need to carefully watch and make sure that the IP system strikes the right balance between providing an adequate substantive level of protection to incentivize innovators and creators, while not neglecting the general economic, social or ethical interests of the public at large.