

# World IT Forum 2009

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*At the World IT Forum, Pranesh Prakash made a brief presentation on intellectual property rights, how ill-suited they are to be considered “property” rights, and how they have been foisted upon the developing world.*

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At the recently-concluded World IT Forum, 2009, the Commission on Social, Ethical, and Legal Issues organized three sessions. One on 'Digital Intellectual Property Rights and Digitisation of Divides', a second on 'Employment of ICTs Toward Effective Realization of Millenium Development Goals' and a third on 'E-Governance and Biometrics: Evaluating Opportunities and Threats'. The individual sessions had K.M. Gopakumar of Third World Network ("Digital Technology and Access to Knowledge: Policy Space for the Third World), Naveen Thayyil ("Digital IPRs: Implications for Divides in New and Emerging Biotechnologies"), Anita Gurumurthy of IT for Change, ("Reimagining the Digital Opportunity" ), Chat Garcia Ramilo of APC Women's Networking Support Programme ("Gender Dimensions of ICT Development"), Ajit Narayanan of AUT ("What Does Your Passport Say About You?"), Sohel Iqbal of Korea University ("Obligation and SWOT of E-Governance in Developing Countries") and Dinh Ngoc Vuong of the Institute of Lexicography and Encyclopedia of Vietnam ("Legal Aspects and Role of E-Governance in Vietnamese Reforms") speaking. As part of the first session, I spoke on how IPR as a property regime leads to mischaracterisation, and how IPR is a foreign system for developing countries.

Amongst the many reasons that IPR should not be regarded in the same light as property (even though that conceptual framework is supported by the likes of Eugene Volokh) are to be found in David Levine's rejoinder to Volokh that IPR are analogous to property, along with the two rejoinders by Larry Solum. Volokh's main point is that not only control of use and excludability, but incentives to create are also part of property law, for both tangible property and intangible "property". This is questioned not only by David Levine and Larry Solum, but by Mark Lemley, Wendy Gordon, and a host of other scholars. Three simple points to note: (1) IP deals with internalisation of positive externalities, which is not something we normally associate with property law – thus, IP actually does not give me control over my 'property', but over yours; (2) IP deals with a truly non-exhaustable, non-rivalrous good – ideas – which, as shown in the articles linked above, are not suited to being governed by property regimes; (3) IP goes much beyond what property law does with tangible property, since

it not only governs the sale of IP and exclusion of others from my IP, but also governs the subsequent usage of IP.

Another relevant consideration is the way that IP law has been spread through the globe through means like colonisation and modern-day unbalanced trade treaties.&nbsp; India got its first copyright law in 1914 and signed the Berne Convention in 1928, much before its independence. The TRIPS Agreement of 1995 mandated things like product patents for pharma products for all countries, even though an industrialised Western country like Spain only started recognizing them in 1992, and even though Italy, which was then the fifth largest manufacturer of pharmaceutical products, was forced to introduce product patents by a petition of foreign pharma companies in 1978. The benefits of product patents for pharma products have not been empirically proved, but the harms caused by patents to production of newer medicines have been well documented. Given these, it is imperative that developing countries push back against IP expansionism that is knocking on their doors through instruments like Free Trade Agreements.