

Contents

1 Intellectual Property and Development	1
1.1 Overview	2
1.2 The Meaning of Development	3
1.2.1 The Meaning of Development Outside the Field of IP	3
1.2.2 The Meaning of Development Within the Field of IP	8
1.2.3 Relevance of the Internet to Developing Countries	20
1.2.4 The Meaning of 'Developing Countries'	23
1.2.5 Concluding Remarks	26
1.3 Scope and Structure of the Book	27
1.3.1 Scope	27
1.3.2 Structure	29
 Part I The Theory of Intellectual Property and Social and Economic Development	
 2 The History of International Intellectual Property and Development	35
2.1 Overview	36
2.2 The Evolution of the International IP System in the Nineteenth Century	36
2.2.1 The Paris Convention of 1883	37
2.2.2 Revisions of the Paris Convention	39
2.2.3 Berne Convention of 1886	43
2.2.4 Revisions of the Berne Convention	44
2.2.5 Concluding Remarks	48
2.3 The Establishment of WIPO as a Specialised UN Agency	49
2.3.1 Pre-establishment of WIPO and the Role of BIRPI	49
2.3.2 The Establishment of WIPO	50
2.3.3 WIPO and Developing Countries	52
2.3.4 Concluding Remarks	55

2.4	The Views of Developed and Developing Countries on IP and Development	55
2.4.1	The Views of Developed Countries	56
2.4.2	The United States	58
2.4.3	Europe	63
2.4.4	Japan	64
2.4.5	The Views of Developing Countries	66
2.4.6	India	68
2.4.7	Brazil	70
2.4.8	China	71
2.5	The General Agreement on Tariffs and Trade	72
2.6	The Trade-Related Intellectual Property Aspects Agreement (TRIPS)	75
2.6.1	Origin and Negotiations of the TRIPS Agreement	75
2.6.2	The TRIPS Agreement and Development	76
2.6.3	Impact of the TRIPS Agreement on Developing Countries	79
2.6.4	Flexible Implementation of the TRIPS Agreement at WTO	82
2.7	Post-TRIPS	85
2.7.1	New Treaties	86
2.7.2	Free Trade Agreements (FTAs)	87
2.7.3	The WTO Doha Fourth Ministerial Conference (The Development Round)	88
2.7.4	The WIPO Development Agenda	89
2.7.5	The Access to Knowledge Treaty (ATKT)	93
2.7.6	The Anti-Counterfeiting Trade Agreement (ACTA)	95
2.8	Conclusion	97
3	Intellectual Property and Economic Development	99
3.1	Overview	100
3.2	Examination of Theoretical Literature on IP and Economic Development	101
3.2.1	Introduction	101
3.2.2	The Meaning of IP from an Economic Perspective	103
3.3	The Views of Developed and Developing Countries on IP and Economic Development	106
3.3.1	Positive Effects of IP on Economic Development: The Views of Developed Countries	107
3.3.2	The Negative Effects of IP on Economic Development: The Views of Developing Countries	110
3.3.3	Rent Transfer	110
3.3.4	High Administrative Costs	111
3.3.5	Other Concerns of Developing Countries	113

3.4	The Views of Prominent Economists on IP and Economic Development	113
3.4.1	Joseph Schumpeter	114
3.4.2	Jagdish Bhagwati	116
3.4.3	Joseph Stiglitz	117
3.4.4	Ha Joon Chang	118
3.4.5	Summary of Views	119
3.5	Overall Assessment of Academic Literature	119
3.6	Examination of the Empirical Evidence on IP and Economic Development	121
3.6.1	IP and FDI	122
3.6.2	IP, FDI, and Developing Countries	123
3.6.3	IP and Technology Transfer	126
3.6.4	IP and Economic Growth	128
3.6.5	IP and R&D	131
3.6.6	IP and Domestic Innovation	133
3.6.7	Overall Assessment of Empirical Evidence	135
3.6.8	Concluding Remarks	136
3.7	Intellectual Property Laws and Economic Development in Jordan	138
3.7.1	History and Demographics of Jordan	138
3.7.2	The Economic Environment in Jordan	138
3.7.3	The Legal Environment in Jordan	141
3.7.4	The Role of IP in Accelerating Economic Development of the Pharmaceutical and IT Sectors in Jordan	142
3.7.5	Assessment of the Effect of IP on Economic Development of the Pharmaceutical Sector	144
3.7.6	Assessment of the Effect of IP on the Economic Development of the Information Technology Sector	148
3.7.7	Jordanian Case Study Concluding Remarks	150
3.8	Conclusion	151
4	Intellectual Property, Culture, and Development	153
4.1	Overview	154
4.2	Definitions of Culture and Its Relationship with Social and Economic Development	156
4.2.1	The Meanings of 'Culture'	156
4.2.2	The Meaning of 'Legal Culture'	158
4.2.3	Culture and Social and Economic Development	161
4.3	The Theory of IP and Culture	162
4.3.1	Culture in IP Scholarship	162
4.3.2	The Role of IP and International Conventions in the Protection of Culture	167
4.3.3	The Role of Social Norms in the IP Debate	172
4.4	The Cultural Architecture of IP in Developing Countries: A Case Study of the Islamic Arab World	174

4.4.1	The Influence of Islam on IP Protection	174
4.4.2	Some Basics about Islam and Culture	175
4.4.3	Perspectives from Pre-Islam and Islam Periods	176
4.4.4	Current Perspectives on the Protection of IP in Islam . . .	178
4.5	The Influence of Culture on IP Protection in the Islamic Arab World	184
4.5.1	Some Basics about Arabs and Culture	185
4.5.2	The Influence of Arabic Culture and Social Norms on IP Protection	185
4.5.3	A Case Study of the Music Industry in the Arab World	187
4.5.4	The Influence of Legal Culture on IP Protection in the Arab World	189
4.6	Developing a Cultural IP Policy in Arab Countries	190
4.7	Conclusion	194

Part II The Practice of Intellectual Property and Social and Economic Development

5 Rethinking the Jordanian Copyright Law in the Internet

Age: A Developmental Perspective	199
5.1 Overview	199
5.2 The Jordanian IP System	200
5.2.1 The United States–Jordan Free Trade Agreement (USJFTA)	201
5.2.2 Jordan–EU Association Agreement (JEUAA)	207
5.2.3 Overview of Internet Use in the Arab World	209
5.2.4 The Copyright Laws of Arab Countries	211
5.2.5 Introduction to the Jordanian Copyright Law	218
5.3 Fundamentals of the Jordanian Copyright Law	220
5.3.1 Copyright Subject Matter	220
5.3.2 Economic or Financial Rights	222
5.3.3 Moral Rights	223
5.3.4 Authors	225
5.3.5 Ownership and Duration/Term	226
5.3.6 Treatment of Foreign Copyright	227
5.3.7 Work for Hire	228
5.3.8 Limitations to Author's Exclusive Rights	228
5.3.9 Reproduction for Translation Purposes (Art 11(A)) . . .	229
5.3.10 Infringement and Remedies	233
5.3.11 Judicial and Administrative Decisions on Copyright in Jordanian Courts	234
5.4 Critique of the Copyright Law in Jordan	237
5.4.1 The Right of Reproduction	237
5.4.2 The Right of Communication to the Public	240

5.4.3	Protection of Technological Protection Measures (TPMs)	241
5.4.4	Limitations to Author's Exclusive Rights	247
5.4.5	Limitations for Teaching Purposes and Libraries	248
5.4.6	Limitations for Disabled Persons	249
5.4.7	Public Domain	249
5.4.8	Liability of Online Service Providers (OSPs)	251
5.4.9	Software Protection	254
5.4.10	Database Protection	256
5.5	What Needs to Be Done?	257
5.5.1	Integrate the Development Dimension into Jordanian Intellectual Property Laws	257
5.5.2	Consider Seriously Alternative Approaches to IP	258
5.5.3	Take Full Advantage of the Flexibilities of International Copyright Treaties	258
5.5.4	Conduct a Review of the Copyright Law in Jordan	259
5.5.5	Popularise and Promote A2K	259
5.5.6	Promote Open Access and Create Open Access Institutional Repositories	260
5.5.7	Expand the Range of Limitations and Exceptions for the Internet Environment	261
5.5.8	Give Particular Consideration to Copyright Misuse	261
5.6	Conclusion	263
6	Voluntary Mechanisms, Copyright and Development	265
6.1	Overview	266
6.2	Free and Open Source Software	270
6.2.1	Brief History of the Free Software and Open Source Software Movements	271
6.2.2	Philosophy of Free and Open Source Software	275
6.2.3	Free and Open Source Software as a Path for Social and Economic Development	277
6.2.4	Legal Challenges and Issues for Adoption of FOSS in Developing Countries	285
6.2.5	The Legality and Enforceability of Open Source Licenses	286
6.2.6	Legal Treatment of the GNU GPL under Jordanian Contract Law and Civil Code	288
6.2.7	The Legal Treatment of the GNU GPL under Copyright Law	304
6.2.8	The Enforceability of the GNU GPL in International and Local Courts	320
6.2.9	Final Remarks on FOSS and Developing Countries	325

6.3	Creative Commons	326
6.3.1	The History and Philosophy of Creative Commons	326
6.3.2	Criticism of CC	329
6.3.3	Creative Commons as a Path for Social and Economic Development	330
6.3.4	Creative Commons and Research and Education in Developing Countries	335
6.3.5	The Adoption of CC in Developing Countries: The Case of the Arab World	337
6.3.6	Examples of the Use of CC in the Arab World	338
6.3.7	The Legal Challenges and Issues for the Adoption of CC in Developing Countries	340
6.3.8	Final Remarks on CC and Developing Countries	344
6.4	Conclusion	345
7	Policy Road Map for Intellectual Property and Development	347
7.1	Overview	347
7.2	IP and Development Policies for Developing Countries	347
7.3	Practical Measures for Developing Countries for IP and Development	351
7.4	Other Suggested Practical Measures for Developing Countries for IP and Development	358
7.5	Conclusion	359
8	Conclusions	361
	Appendix	365
A	Universal Copyright Convention as Revised at Paris on 24 July 1971, with Appendix Declaration Relating to Article XVII and Resolution Concerning Article XI 1971	365
B	1971 Appendix to the Berne Convention, Special Provisions Regarding Developing Countries	383