

NepalUSA CHAMBER

NEWSLETTER

Volume 11, Issue 2

Sept/Oct 2005

INTELLECTUAL PROPERTY RIGHTS: A DEVELOPING COUNTRY'S PERSPECTIVE

By Betty Mould-Iddrisu, *Chief State Attorney,
International Law Division, Ministry of Justice, Ghana*

The administration and enforcement of intellectual property rights in developing countries must be seen in another dimension to the administration of intellectual property rights and their enforcement in developed countries.

In Europe and the United States, the system of intellectual property rights emanated as early as the 16th century. Britain's Statute of Queen Anne, the earliest copyright statute, was passed in 1709 not only to protect local printers after the advent of the Gutenberg

printing press but also to protect the foreign works (mainly books) that were being imported from Europe into England at that time.

Dennis de Freitas, former head of the British Copyright Council, has commented that "the copyright system as it now exists in virtually every civilized country is a vital part of modern society's infrastructure." This may be so because of the centrality of the copyright system in the communication and dissemination of information to the public through

newsprint, radio, television, films, broadcasting, and education.

In 1996, the International Intellectual Property Alliance estimated that copyright industries are one of America's largest and fastest growing economic assets, accounting for 3.7 percent of the country's gross domestic product — \$278,400 million. The core copyright industries produce and distribute computers and computer software, motion pictures, television programs, home videocassettes, music and sound recordings, textbooks, trade books, reference and professional publications, and journals.

In Britain, according to statistics released by the British Phonographic Industry in its 1995 report on the recording industry, the 1994 retail value of British music sales was 1,400 million pounds sterling, with exports and invisible earnings amounting to 800 million pounds. Apart from direct recording company employment, the British music industry provides a living for over 50,000 people in music retailing and music publishing.

Studies conducted in other developed countries by the European Commission and other organizations indicate that in Austria, Australia, Germany, and Sweden, among others, 3 to 5 percent of the gross national product is attributable to copyright industries. It has also been estimated that the total value of the worldwide audiovisual market in 1994 was approximately \$290,000 million.

What can be said of the situation in Africa? A survey of some countries such as Egypt, Ghana, Malawi, Mauritius, and Nigeria shows that, before the 1970s and 1980s, most of the laws regarding the protection of intellectual property were mere replicas of existing laws of their colonizing countries. These laws had been designed specifically to protect the rights of the colonizing nationals and their businesses and firms, and no account was

Continued on Page 2 ►

Accepting Responsibility:

Moving Beyond Political and Economic Dependence in Post Conflict Bosnia and Herzegovina

By Sanja Omanovic

Economically and politically Bosnia and Herzegovina (BiH) was the biggest victim of the break up of the former Yugoslavia in the early 1990s. Previously consisting of six federal republics, the former Yugoslavia broke apart in bloodshed, and the six republics became independent states. However, not all of them paid the same price for their newly gained independence. Whereas the war in Slovenia lasted for ten days, in Croatia a year, and there was no war involving the former JNA (Yugoslav National Army) at all in Macedonia, in BiH more than 200,000 human lives were lost. But the costs in BiH were not only in human lives. Three and a half years after the war (April 1992 - December 1995) the country inherited a completely destroyed economic and political system.

Background

While there are various reasons that Bosnia suffered so severely, the complex ethnic structure of the country, unlike other former Yugoslav republics, may be the most important reason. According to the 1991 census, BiH had a population of 4.1 million: 43.7 percent of Bosniaks (Muslims), 31 percent of Serbs (Orthodox), 17.3 percent of Croats (Catholics), and 7.6 percent of other ethnic groups (around 17 ethnic minorities).

Nationalistic forces had been strengthening in surrounding countries (Serbia and Montenegro, and Croatia) in the early 1990s. After BiH announced its independence as a state in early April of 1992, the Yugoslav National Army (predominantly Serbian), which attacked

Continued on Page 4 ►

INSIDE

Pan-African Conference....	3
New Products And Services From USA	7

INTELLECTUAL PROPERTY RIGHTS: A DEVELOPING

► *Continued from Page 1*

taken of the different conditions in the colonies and the developed countries.

Immediately after Africa's emergence from post-colonialism, African governments still did not attach much priority to the need to protect intellectual property rights. Many industries were in their infancy, and the domestic manufacturing base was virtually nonexistent. What was prevalent in Africa was a vibrant folklore tradition around which cultural industries clustered in areas such as music, textiles, jewelry, and the like.

A quick survey of the intellectual property system in Ghana up to the 1970s reveals that the Ghanaian Trade Mark Register had recorded approximately 17,000 trademarks, out of which 90 percent were owned by foreign companies and individuals. In 1996, there were 27,625 marks on the register, with Ghanaians owning 15 to 20 percent of those registered.

The Textiles Design Registration Decree of 1966, under which regime textile designs were registered, specifically excluded registration of all well-known Ghanaian designs such as "Kente" and "Adinkra" symbols. It is interesting to note that, between 1966 and 1997, 23,000 designs were registered under this law; some 66 percent (just over 15,000) are owned by foreign designers, and 7,592 are owned by local designers.

In respect of patents, Cap 179, which was the colonial Patent Registration Ordinance, merely extended the validity of all patents registered in the United Kingdom to the Gold Coast colony at that time. All patents so registered belonged to foreign individuals or firms. This ordinance, due to the difficulties in setting up a patent system, remained in force in Ghana until July 1, 1994, when a new patent law was enacted.

It must be noted, however, that most of the intellectual property laws enacted after the 1970s tended to have a different bias since they had to respond to new national environments and the varied global trade requirements of emerging nations struggling to level the playing fields in international commerce and investment activities.

Some of the advantages that developing countries acknowledge as having directly resulted from increased

enforcement of the intellectual property laws are:

Stimulation of creativity and inventiveness in society, thereby contributing to a country's development.

Provision and protection of the infrastructure necessary for the growth of production, manufacture, and distribution within the cultural, educational, and entertainment industries.

Creation of an environment conducive to attracting domestic and foreign private sector investment in the copyright industries.

Protection — in view of emerging technologies — of expressions of folklore and live performances through the enhanced legal protection of performers' rights.

On the African continent, the intellectual property system has also had to confront misguided individuals in society who believe and expound the theory that developing countries should feel free to copy works coming in from other countries, notably the more developed countries. These people cite Asian countries and others as examples that, because of limited intellectual law protection in the past, managed to develop local industries as a major force on world markets by copying, pirating, or counterfeiting the works and goods of other countries.

However, many of these countries now realize the impact that lack of enforcement of intellectual property rights has had on their economies, their local industries, and their culture. For example, it is well known in Asia that Malaysia's domestic motion picture industry suffered tremendous harm from competition in foreign films since, until recently, the country had neither copyright rights nor rental royalties for films. The Malaysian motion picture industry and its performers had to exert an enormous amount of pressure, demanding that the government effectively enforce the copyright laws. Malaysia now has a vigorous intellectual property enforcement program, worthy of emulation anywhere in the world.

Previously, we in Africa, especially those within the Anglo-Saxon legal tradition, have had a very basic problem with the philosophy of intellectual property rights, which have been enforced primarily through civil litigation. Only recently have African governments regarded the enforcement of intellectual property rights as their responsibility and those persons who infringe upon these rights as engaging

in acts inimical to the interest of the state.

The Experience of Ghana

The challenge now is for African governments to commit to the enforcement of strong intellectual property laws by strengthening the administration of their copyright systems. My own experiences in intellectual property administration in Africa have shown that the basic prerequisite for the development of a strong and effective copyright system involves the following minimum criteria:

- Passage of a strong copyright law.
- Adherence to international conventions.
- Establishment of effective administrative machinery that can collect royalties and undertake distributions at regular intervals to the deserving authors.
- Entering into a network of reciprocal representation agreements with sister societies worldwide.
- Establishment of an effective enforcement and monitoring mechanism to fight piracy.

I would like to illustrate these points by reference to Ghana in West Africa. Ghana passed a strong, modern, and vibrant copyright law, PNDCL 110, in 1985 to replace the obsolete Copyright Act of 1961 — one of the pieces of post-colonial legislation regulating the copyright industry. The criteria enumerated above — the framework within which copyright should be administered — were also adhered to in Ghana.

A collective body for the administration of authors' rights, known as the Copyright Society of Ghana (COSGA), was set up in 1986. Ghana adhered to the Berne Convention in 1991, and COSGA embarked on a program of concluding reciprocal representation agreements with other collective societies worldwide.

COSGA has achieved some measure of success in its operations; it has been collecting and distributing royalties for both domestic and international repertoire since its inception. The Confederation Internationale de Societes des Auteurs et Compositeurs (CISAC) views COSGA as one of the leading authors' societies in Anglophone Africa, since the strides made by the collective administration of authors' rights in Ghana are remarkable. In most other Anglophone countries, the efforts at

Continued on Page 3 ►

INTELLECTUAL PROPERTY RIGHTS: A DEVELOPING

► *Continued from Page 2*

collective administration of authors' rights have met with only limited success.

Even though Ghana enacted a modern copyright law in 1985, the music, literary, and film industries had suffered a severe decline prior to 1992, and the rights of performers, composers, and authors were being infringed upon at an alarming rate. I want to underscore the fact that mere passage of legislation is no guarantee that a law is being enforced, and if there is no enforcement, the passage of legislation is useless. This has been most apparent with regard to copyright legislation in Africa.

The successful administration of copyright in developing countries is inextricably linked to the problem of piracy, which in Ghana had reached an alarming rate of 90 percent in those intervening years. Obviously, the whole administration of copyright became problematic since, ultimately, there would be only insignificant royalty payments going to authors, illustrators, composers, arrangers, or performers or any of the creative people who contributed to the making of an original work.

The piracy of copyrighted works in Africa, and in Ghana in particular, over the years contributed to:

- The exodus of many of our talented authors to Europe, the United States, and other developed countries. This drain has deprived Africa of a wealth of native creativity.
- Stultification of the development of all the copyright-associated industries and the subsidiary activities of those involved in the business of legitimate creativity.
- Considerable loss in revenue to the state through direct and indirect forms of taxation.
- Retardation of the cultural creativity of our local communities, which, for a developing country whose national identity and cultural roots are inextricably linked with its national economic development, may have far-reaching consequences.

Putting an End to Piracy

The music industry in all its ramifications forms a major part of cultural industries since it is one of the formats through which musical folklore is expressed. In Ghana, musicians have a vast reservoir of indigenous Ghanaian music from which they draw their inspiration; they are able to modify and arrange expressions of folklore to modern-day music.

In Ghana during the 1970s and 1980s, with the advent of tape recording machines and videocassette recorders, the

production of indigenous music was on the ascent and could be heard all over the country. Yet the musicians, artists, producers, and others involved in the legitimate production of music — and the music industry as a whole — had never been poorer due to the impact of these new recording technologies and their encouragement of piracy.

The government of Ghana and the Copyright Administration from 1985 to 1990 found themselves more or less helpless to fight the piracy that was rampant. Owing to increased costs in production of music and the relatively small number of “genuine” works being sold, artists, composers, and the producers of musical works lost the incentive to create new works. Thus, Ghana lost international respect and gained a reputation for being a safe haven for pirates and pirated works. At the same time, Ghanaian music suffered a reversal since the pirated foreign imported music was able to capture the market.

It became evident to the Ghanaian authorities that when one copies, one does not, in any way, encourage national authorship, national culture, or national creativity. This holds true for all the different strata of the intellectual property legal system, whether it be the copyright, patent, industrial design, or trademark system. If we in Africa pursue such a course of copying blindly all that comes from the

Continued on Page 6 ►

Pan-African Conference Tackles Corporate Governance Challenges

(Dakar, Denegal) The key elements of good corporate governance - transparency, accountability, fairness, access to information, and responsibility - are fundamental to a vibrant market economy and democracy. As is the case in many parts of the world, better corporate governance in Africa requires a strong commitment to improve the regulatory and legislative framework, the institutional capacity for its implementation and enforcement, value systems, and most importantly, private sector practices.

CIPF began working with a leader in these efforts, the Pan-African Consultative Forum on Corporate Governance (PACFCG), several years ago. Part of the International Finance Corporations (IFC) Global Corporate Governance Forum. PACFCG is a platform for an inclusive an open dialogue between the public and private sectors, international agencies, and civil society seeking to promote reform

across the African continent.

The Third Pan-African Consultative Forum on Corporate Governance was held in November 2005. Along with CIPE and the IFC, the event was supported by a number of leading international and continental organizations including the African Development Bank and the Centre for Corporate Governance. The meeting was also endorsed by the New Partnership for Africa's Development (NEPAD) Secretariat, the African Peer-Review Mechanism, and the Government of the Republic of Senegal. 160 participants representing approximately 30 African countries attended the event.

The event highlighted the problems and experiences gained from developing, implementing, and enhancing corporate governance in banks, small- and medium-sized enterprises and state owned enterprises. The forum also evaluated the measures taken thus far to ensure that

shareholders participate actively in promoting good corporate governance.

One of the most pressing issues identified at the forum was the need to encourage domestic and foreign investment in countries throughout Africa in order to establish an maintain sustained economic growth underpinned by healthy financial and corporate sectors. To address this need, participants focused on the desirability of mobilizing resources toward capacity building and training. Such programs should be directed at among others, boards of directors and company management operating in both the private and public sectors. Capacity building and training in related fields (auditing, judiciary, and academia) would further strengthen the infrastructure that supports the development of good governance practices. ■

Source: Centre for International Private Enterprise (CIPE), No 26 fall 2005.

Accepting Responsibility: Moving Beyond Political and ...

► *Continued from Page 1*

Slovenia and Croatia in 1991, under the nationalistic Serb policy led by Slobodan Milosevic, tried to gain some Bosnian territories. At the same time Croatian nationalists, led by the late Croatian president Franjo Tudjman, had a similar strategic idea - to include parts of Bosnia inhabited dominantly by Croats into the newly formed Croatian state.

Conditions in Post-war Bosnia

After years of fierce fighting and NATO air strikes on Serb positions in Bosnia, the war was finally brought to an end by the signing of the Dayton Peace Agreement in December 1995. Under enormous pressure from Western countries, led by the United States, one state with two entities was formed. The state Bosnia and Herzegovina consists of the BiH Federation, which is mainly populated by Bosniaks and Croats, and Republika Srpska (RS), mainly populated by Serbs.

The ethnic composition of the newly structured state has been dramatically changed due to war and ethnic cleansing. Although no census has been made since 1991, and there is no official data of present population ethnical composition, it is realistic to estimate that around 3.5 million people live in Bosnia at the moment, compared to approximately 4.4 million before the war. Besides casualties of war, hundreds of thousands of people were forced to leave their homes and become refugees, and with the exception of internally displaced persons, few returned to their places of origin - most living abroad now.

This demographic, political and economic “earthquake” in Bosnia resulted in enormous changes in the society overall. The country was left in need of absolutely everything at the end of the war – a peaceful environment, reconstruction of the infrastructure, reconciliation, re-establishment of the state and formation of new entities and governments, a revitalization of the economy and creation of new jobs, as well as movement towards European integration. The aim of the international community in 1995 was limited, however, to stopping the war, rather than creating a functional state and a self-sustaining economy. It is important to note that a peaceful environment in Bosnia and Herzegovina was secured

almost immediately by NATO-led forces, and that there have been no serious incidents since 1995.

Reconstruction Efforts and Political Dependence

As soon as the guns went silent, the international community established the Office of the High Representative of the International Community in BiH (HR). Although his role is to support and supervise political and economic progress in the country, many Bosnians will say that he is in fact a protector, and BiH is a protectorate of the international community. They support these claims with the fact that the High Representative has vast authorities that go far beyond governments’ and parliaments’ decisions. An example of this is the High Representative’s ability to remove any elected politician from his position, if he believes that particular politician jeopardizes the implementation of the peace agreement. As a result, if elected officials want to maintain the power gained through elections, local political parties have to obey the HR’s decisions, as well as the decisions of other international organizations such as the World Bank, IMF, and European Commission.

After the signing of the Dayton Peace Agreement, political and economic reconstruction of the country has been almost completely led by the international community, along with huge donor assistance. Some estimates indicate that BiH has received around 5 billion US dollars. Most of the money has been spent on the reconstruction of destroyed infrastructure, and ironically, on the international community itself, which has maintained a heavy presence in BiH since the end of the war.

It would be unfair to say that the international community and the High Representative are simply dictating decisions for implementation by local institutions. However, the international community involvement in BiH is so significant that one cannot discuss the resolution of crises and the post-war reconstruction of Bosnia without mentioning its role. Unfortunately, however, with their marginalized roles, local politicians base their election strategies and day-to-day behavior on nationalistic rhetoric instead of developing serious economic and reconstruction programs. This can be easily understood, though, since there is almost no need for them to think about economic issues: the World

Bank and IMF will do that for them at the macroeconomic level, and other international institutions will act at a lower, microeconomic level. Even if local politicians want to do something on their own, they have to ask these foreign institutions for approval. One example being that governments in BiH cannot increase or decrease pensions, or introduce a tax policy without the World Bank’s agreement.

This is just one aspect of the dependence mentality that has developed in BiH. In this particular case, it is about local politicians’ political dependency and unwillingness to accept responsibility because they are aware that the international community will make all important political and economic decisions for them if they fail to do so for any reason. Political parties use this as a tool with voters. While local politicians complain that the international community is not allowing them to do the job they were elected to do, when it comes to making difficult decisions, they try to avoid any responsibility by stalling until the international community steps in to make a final decision. If a decision is viewed positively afterwards, local political parties will try to take a credit for it, but if it is poorly received, they can blame the international community.

International Aid and Economic Dependence

Within the economic sphere, massive international donor assistance has brought about strong aid-dependency at all levels. In the Yugoslav socialist period, which lasted approximately fifty years, the Bosnian economy was led and planned by the state with private entrepreneurship limited to small businesses, such as crafts, and all larger companies were socially owned. Though the international community will refer to companies in pre-war BiH as being “state owned”, it is important to note that the companies were socially owned and not state owned.

Post-war governments in BiH, unfortunately, have not been given a chance to let local entrepreneurial spirit blossom. Economically passive, preoccupied by political issues, and focused on easing ethnic tensions, governments have not been able to focus attention on creating an environment in which entrepreneurial initiatives are rewarded. On the contrary, doing business is extremely complicated, since business-related legislation is often

Continued on Page 5 ►

Accepting Responsibility: Moving Beyond Political and ...

► *Continued from Page 4*

incomplete or confusing, and numerous administrative obstacles force many businessmen to turn to the gray market. At the same time, donor money for infrastructure reconstruction had been pouring into the country until recently, and local entrepreneurs were in a way put to sleep. Since reconstruction efforts have been comprehensive, local private companies could just wait for donors to come, decide what they wanted to reconstruct, and take the money for the job. Simultaneous with this phenomenon, war lords developed illegitimate businesses using money obtained through dubious methods during the war. Post-war, these businesses continued to run in a similar way, maintaining strong links with corrupt officials. But because these illegitimate businesses do employ people, there was an illusion that the Bosnian economy was recovering in the first few years after the war.

Physical reconstruction of the country was a “honeymoon” of sorts between BiH and the international community. But, the reconstruction is almost complete now, and we are all faced with the reality. Seen through some international organizations’ perspectives, the reality in BiH does not seem too bad: “Based on its impressive economic recovery and sustained social stability, supported by high levels of international assistance, the country (BiH) can be considered a post-conflict success story. Since 1995, GDP has tripled, merchandise exports are up tenfold, and price stability has been maintained with inflation rates below 1 percent in the past two years”, according to the World Bank regarding Bosnia and Herzegovina on its web site.

Is this a realistic picture, or is it a distortion by international donors and creditors in need of tangible results and a justification for their actions and expenditures? Examining data collected by various international institutions one finds conflicting information: the privatization process is not complete and has not been that successful up to this point (numerous strikes in recently privatized companies are demonstrating the employees’ discontent with their current status); there are very few foreign direct investments; local businesses struggle with massive and slow administration generated by

complicated political structures defined in the Dayton Peace Agreement; governments consume 54 percent of GDP, which is among the lowest in Europe (1540 \$ in 2003); the economy stands at only 70 percent of its pre-war level; poverty levels - at 20 percent - are still high; 30 percent of all citizens live just above the poverty line; the unemployment rate is close to 45 percent.

Privatization Efforts

Privatization of formerly socially owned companies, which started just before the war, has been seen as one of the key tools in the effort to recover Bosnia’s crippled economy. Average workers have expected a lot from the privatization process, believing that it would bring them regular salaries and stable jobs. However, those high hopes were not realized. Many pre-war companies never started production again after being privatized, since there was no healthy money to be invested into them.

In so called “small privatization,” the process was sometimes controlled by certain ethnic groups. In these cases, privatized companies ended up in the hands of the ethnic group which had the control in the municipality, and accordingly, only people of a certain ethnicity were hired in such companies. It should be mentioned, however, that this was not always intentional as company owners often did not have much choice with respect to the ethnicity of their employees. In “ethnically cleansed” areas of BiH with very low refugee return rates, available workers are mostly of the same ethnicity as the ethnic group which controls a municipality. It is also true though, that in some areas returnees experience problems while trying to get jobs if the new owners of privatized companies are from the other ethnic group.

In contrast, there is the notorious example of Aluminium, an extremely profitable company where the majority of workers are of the current ethnic group majority, which became a majority during the war. Ironically, this large company has not been privatized yet. The actual ownership structure of this particular company is so complex that it is the subject of arbitrage. However, such direct influence can not be realized in large companies for a simple reason - these companies are too expensive for local ethnic elites. Therefore, most are still waiting to be privatized by foreign investors. For the purpose of selling these “strategic” companies a special list, referred to as ‘List 56’ -where 56 is a number of companies, was made and a local privatization agency in conjunction with the international community’s

assistance is trying to find buyers through public tenders.

Another aspect of privatization in BiH is that most companies were not sold for real money but for vouchers given to the citizens by the state. However, these small shareholders have not experienced any benefits from their assets in privatized companies. Having authorized privatization-investment funds to buy and sell shares of the companies with their vouchers, the vast majority of small shareholders have no idea what actually happened with their vouchers. They just knew that it was necessary to spend their vouchers, otherwise they would become useless, and the only way they knew to do this was to give them to privatization-investment funds.

Where does the privatization process stand now? The International Privatization Group, consisting of the World Bank and other international institutions, has created a list of fifty-six strategic companies which are supposed to be privatized as soon as possible. The idea is to find international buyers mostly by engaging foreign consultants. However, many analysts point out that those foreign consultants are overpaid and have no obligation to actually find a buyer. Their obligation is to try to find a buyer - if they fail, local governments still have to pay them anyway. Although this is obviously not in the best interest of BiH citizens, the World Bank and local authorities support it.

Still, generally speaking, there is no serious resistance to the privatization process in BiH, though there has been a public debate on privatization of large public enterprises, such as telecom and electric energy production and supply companies. The international community is placing tremendous pressure on local governments to privatize these companies quickly. The opponents, mainly local economic experts and some business journalists, claim that the international community is behaving hypocritically in this instance given that in many European countries it is common for the state to own majority shares in such companies (electric power companies in France, Deutsche Telecom in Germany, etc.), and profits go to state budgets.

Those who oppose selling Bosnian state shares offer the following argument: if the Bosnian government allows foreign investors to buy resources such as electric energy (BiH is the only country in South

Continued on Page 8 ►

INTELLECTUAL PROPERTY RIGHTS: A DEVELOPING

► *Continued from Page 3*

developed countries, we would forever be trapped in a cultural negation of our own making that would undoubtedly retard both our economic and cultural progress.

The government of Ghana, through the Copyright Office, was thus compelled to take the initiative in the fight against piracy. The Copyright Office, in close cooperation with the various organs of the music industry and with the technical cooperation of the International Federation of the Phonographic Industry (IFPI) in London and its national group in Ghana, the Association of Recording Industries of Ghana — ARIGH — instituted the “banderole” system. The system was modelled along the lines of the Portuguese system, because after Portugal introduced this system, it achieved a near-zero rate of piracy.

The affixing of an authentication stamp known as the “banderole” on all musical works became mandatory in Ghana beginning June 1, 1992. This stamp is a security device that is sequentially numbered; individual numbers are allocated only to genuine producers of musical works, and imports of all pre-recorded musical works have to be authenticated by the Copyright Office, in cooperation with the Customs Excise and Preventive Service (CEPS). The recording industry in Ghana agreed with the Internal Revenue Service (IRS) to use the banderoles as a source of direct prepaid income tax.

In Kenya when the banderole system was originally planned, it was proposed that the banderole be used as a value-added tax (VAT). Nigeria had no tax element built into the system. Unfortunately, the system never took off in Kenya, which now has an unacceptably high rate of piracy. And in Nigeria, it completely collapsed after less than one year due to internal problems. However, that country is now anxious to revive it since its piracy rate is over 80 percent.

The Benefits of Banderoles

Some of the benefits that the Ghanaian authorities and the music industry have seen during the past several years of successful operation of the banderole system are as follows:

- There has been a reduction in the rate of piracy from 90 percent to about 10 to 15 percent.

- The stamps have served to identify original musical works originating from an authentic music producer. The Copyright Office issues approvals only to applicants who are genuine members of the Association of Recording Industries of Ghana.
- The banderoles have provided adequate statistics about the number of musical works produced and imported into the country.
- The producers are being made strictly accountable to their artists since the Copyright Office insists on having recording contracts between the producer and the artist before approval for purchase of banderoles is given. So for the first time, Ghanaian artists and composers can know exactly how many of their works have been produced and can calculate and collect their royalties without encountering the difficulties of the past.
- The Internal Revenue Service — the agency actually responsible for the sale of the banderoles — has managed for the first time to collect revenue from a sector of business in the country from which it had hitherto received little or no revenue.

This system of authentication is, at present, being used for musical works. It is envisaged that the system will be extended to authenticate literary and video works sometime in the future.

The introduction of the banderole system has brought a complete reversal of the fortunes of the music industry. Ghana has now moved away from the situation in which only 2,000 to 3,000 pieces of a hit number are sold to a situation where a hit musical work may sell between 200,000 and 500,000 pieces. Over 27 million banderoles have been sold since the system was instituted. While this may not be much in the international arena, it has enabled Ghana, with a population of some 17 million people, to be ranked 47th in the world for musical sales.

There has been a dramatic growth in the music industry over the past five years — with a proliferation of recording studios, cassette manufacturing plants, and the like — bringing in both local and foreign investment. The major foreign licensees are all back in the country, and Ghana has now become a safe haven for the production of musical works for artists from neighboring countries. Ghana has become a model for the rest of Africa to emulate in terms of the enforcement of intellectual property rights.

The Evolving Role for Patents

In light of the success of the banderole system, one is tempted to ask why the patents regime has not proved so effective a stimulant in the economic development of developing countries.

It is, of course, well known that a patent system requires a relatively expensive infrastructure with experts in various technical fields. The patent law in Ghana is only a few years old, and the regulations to enable the law to be implemented were only recently enacted. The role the patent regime can play is only now evolving; however, with growing awareness of industrial property laws, this field is likely to be strengthened in the years to come. This situation is being repeated across most of the continent.

However, it cannot be denied that the trademark and design system and, to a lesser extent, the patent system have played an influential role through the licensing, distribution, and franchising of intellectual property rights in developing countries. They have assisted in the transfer of technology and the dissemination of new forms of know-how through minimum standards of licensing and usage of these rights.

It is hoped that when the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement comes into force in most African countries in the year 2000 (despite the unlevel playing fields), developing countries will be in a better position to benefit from the globalization of minimum intellectual property standards in world trade.

The example of Ghana I have given above, which I have experienced, has given me reason to be optimistic for the future of intellectual property rights in developing countries. We in the Third World should not see the observance and enforcement of intellectual property rights as merely protecting the interests of the developed world, but rather as a powerful tool to galvanize our domestic industry while retaining national culture, national inventiveness, and national creativity.

Betty Mould-Iddrisu is chief-state attorney at the International Law Division of the Ministry of Justice in Ghana. She is a specialist in intellectual property law and also lectures at the University of Ghana's Law Faculty in intellectual property. She is a gender rights activist and is the African regional director for the International Federation of Women Lawyers (FIDA). ■

New Products & Services from the USA

Products and services information published here are taken from Commercial News USA, March/April 2005. Volume 26, Number 4. Commercial News USA is published by the US Department of Commerce, Washington and publicized products and services of U. S. firms seeking agents, distributors, joint venture partners, or purchasers abroad. Firms supplying product information published in Commercial News USA attest that their products are available for immediate export. The U.S. Government does not endorse any product or company herein, and assumes no responsibility for the accuracy of this data or for the outcome of any business transaction resulting from publication.

Eliminate Mosquitoes and No-See Ums



Introducing the Lentek Mosquito Trap, a revolutionary trapping system that silently and continuously eliminates mosquitoes and no-see-ums, without the need for sprays. The Mosquito Trap converts propane or L.P.G. into CO₂, what mosquitoes are attracted to. Continuous use of the Lentek Mosquito Trap in one area can literally collapse a mosquito population of up to 3/4 acre of property, says Lentek. Excellent for backyards, docks, and other outdoor activities. Contact: Daryl Davis Director of Int'l Sales, Lentek International, Dept. CN, 1629 Prime Court, Suite 800, Orlando, FL 32809 U.S.A. Email: ddavis@lentek.com WWW: www.lentek.com

Gas, Electric, and Oil-Powered Water Heaters



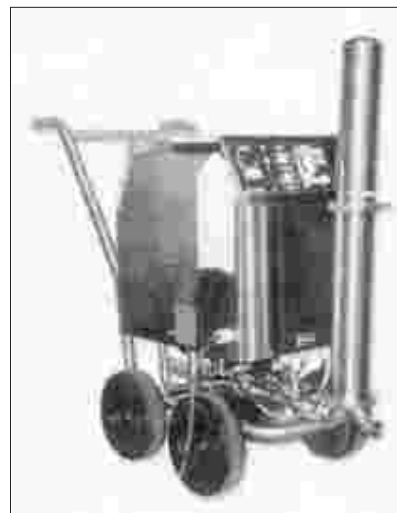
Bradford White is a major U.S. manufacturer of storage-type water heaters powered by gas, electric and oil and sold through wholesale distribution. The company has been in business since 1881 and has been involved in international markets for more than 25 years. Bradford White offers a complete line of water heaters for residential/domestic and commercial/industrial use. All models are manufactured in accordance with various international performance and energy efficiency standards, and Bradford White is certified to the high manufacturing quality standards of ISO 9001. Contact: Tony Maglione, International Sales Director, Bradford White Corporation, Dept. CN 725 Talamore Drive Ambler, PA 19002 USA. TEL: 215-6441-2105 FAX: 215-641-9750 Email: tmaglione@bradfordwhite.com WWW: www.bradfordwhite.com

Spotlight: Revolutionary Lighting Solutions

Golight's "RadioRay" has a programmable wireless handheld remote control that enables you to turn the spotlight on and off and rotate the light 370 degrees horizontally and 135 degrees vertically. This extremely versatile spotlight can be operated from a distance of 50 meters. There are three permanent mounted models and the portable units have three mounting options: suction cup, permanent mounting base, and magnetic base. It is the perfect lighting tool for electric companies, industrial service vehicles, marine use, fire brigades, etc. The spotlights are CE and BAPT certified, salt water-resistant and UV-enhanced. Contact: Ken Hazel, Sales Manager, Golight, Inc., Dept. CN Rt. 3, Box 37B Culbertson, NE 69024 USA. TEL: 308-278-3131 FAX: 308-278-2525 Email: kenhazel@golight.com WWW: www.golight.com



Portable Ozone System



Aqua Purification Systems offers a portable ozone system for surface disinfection. A rugged stainless steel package with one pound per day ozone-oxygen system, pump, compressor, and efficient ozone mass transfer. Disinfection applications include food processing, hatcheries and fish tanks, slaughterhouses, wine barrels, fruits and vegetables, bottling plants, and other applications. Contact: Alex Salman, Aqua Purification Systems, Dept. CN PO. Box 20856, San Jose, CA 95160 USA. TEL: 408-225-7972 FAX: 408-225-7974 Email: sales@aquapurification.com WWW: www.aquapurification.com

Premimu Plumbing Products



For over 80 years, "Oatey" has manufactured quality plumbing products for use in commercial and residential construction. From the do-it-yourself to the professional plumber, Oatey manufactures plastic pipe solvent cements, solder paste flux, solder, pipe thread sealants, plumbers putty, wax bowl rings, fitted brushes, shower drains, closet flanges and other specialty items. Contact: Richard Strauss, Director Int'l Div., Oatey Co., Dept. CN, 470 W. 160th Street, Cleveland, Ohio 44135 U.S.A. Fax: 216-267-6538, Email: rstrauss@oatey.com

Accepting Responsibility: Moving Beyond Political and ...

► *Continued from Page 5*

East Europe which has the capacity to export electric energy) and telecommunications, the state treasury will remain empty, while profits from these resources go abroad. Beyond that, ideologically it seems pointless to sell state-owned companies to companies owned by another state, but this is likely to happen if Deutsche Telecom, which is owned by the German state, succeeds in purchasing BiH Telecom.

Increasing FDI in Bosnia and Herzegovina

BiH has seen little foreign direct investment in the last decade. Governments have not done enough to create a business friendly environment in the country, and administrative procedures are complicated and time consuming. Ironically, local investors are not treated equally to foreign ones, implying that foreign currency is considered more valuable than local currency. While foreign investors enjoy some benefits such as not having to pay a profit tax for the first five years, local investors are not given similar incentives to invest.

Despite incentives, administrative and legislative barriers cause foreign investors to redirect their capital to countries where the business environment is more easily navigated. Therefore there were no foreign greenfield investments in BiH at all during the past decade, and the successful investments in existing manufacturing companies, such as the dairy factory in Biha purchased by German Meggle and Kakanj Cement Plant purchased by German Heidelberg Zement, are an exception rather than a rule.

Even being an exception, Kakanj Cement Plant can be mentioned as a successful example of privatization that also demonstrates the importance of transparency in the process. The Federation Government announced a tender for selling the plant and chose the best offer, which came from Heidelberg Zement. This German company invested an additional 100 million KM (1 KM – 1.61\$) in environmental upgrades of the plant, which further stimulated employment. Then the owners of the plant announced a tender for buying the remainder of shares held by small shareholders. Share prices soared in the Sarajevo Stock Exchange, and small shareholders were able to profit from this

transaction. In the end, all parties came out winners: the government received money for its share in the part, small shareholders had the option to sell their shares for a good price, the citizens of Kakanj got better environmental protection, and the German investor got a majority of shares as well as high production rates and a good product and profit.

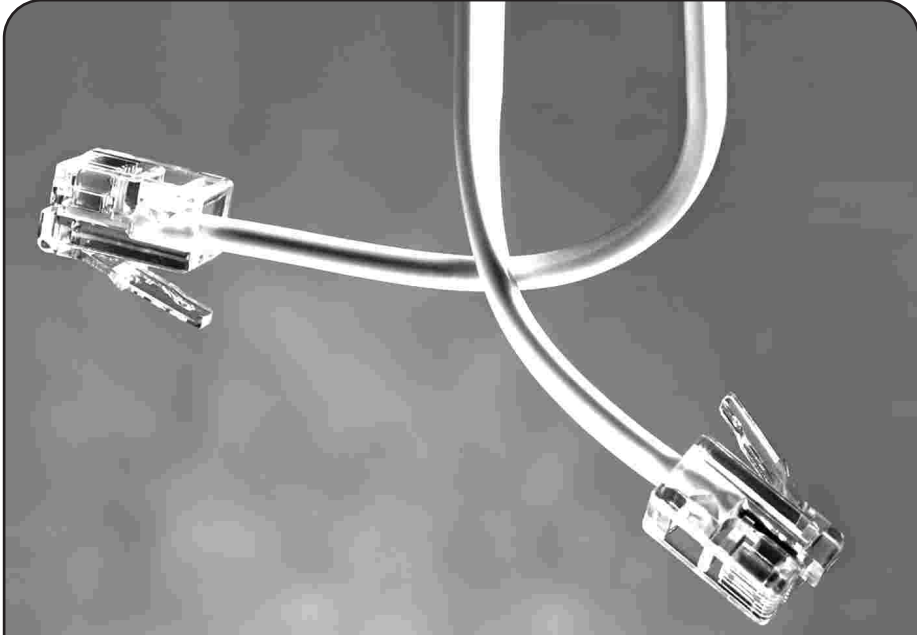
The majority of foreign investors, who come from the former Yugoslav republics of Slovenia and Croatia, saw an opportunity in the privatization process, and were able to buy many BiH companies for vouchers through privatization-investment funds. Interestingly, although

around 800,000 Bosnians live abroad, almost none of them have invested in BiH. This can likely be attributed to the fact they left the country relatively recently as refugees and are basically still struggling to survive in their new homelands.

Conversely, investments and privatization of the service sector is going quite well. BiH's entire banking sector has been privatized by different foreign banks. Local banks, not financially strong enough to survive foreign competition, were absorbed by foreign banks, most often from Austria and Germany.

Source: Centre for International Private Enterprise (CIPE), February 9, 2005.

Continued on volume 11, issue 3 on Page 7



Get Ahead
Use WorldLink's Cable Internet
More Speed. More Options. More Value

WORLDLINK
an ISO 9001:2000 certified company
Jawalakhel, Lalitpur, Phone: 5523050,
www.wlink.com.np

* Applicable in Kathmandu Valley only * Conditions apply. VAT applicable

Published by:

Nepal-USA Chamber of Commerce and Industry □

TNT Building, Tinkune, Koteshwor □

P. O. Box 21218, Kathmandu, Nepal, Tel: 4478020, Fax: +977-1-4468771 □

e-mail: nusacci@csl.com.np; Website: www.nusacci.com.np