

**KEYNOTE ADDRESS BY H E TUN DR MAHATHIR BIN MOHAMAD AT
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Promotion of Intellectual Property Rights

I would like to thank the organisers for this invitation to speak on Intellectual Property Rights. This is the second time I speak on the subject in Tokyo. I hope you appreciate that largely I am speaking from the point of view of people who do not have much to gain from IPR.

2. The concept of Intellectual Property and the protection afforded it by International and national Laws have admittedly contributed much to the rapidly increasing expenditure on research and development. Today new products are coming on the market at a fantastic rate. Shelf-life is getting shorter. There may be other causes for this phenomenon but protection of Intellectual Property is certainly one of the principle contributors.

3. There is no doubt that the quality of our life has improved tremendously from the new products invented because of the protection of intellectual property. We can now live longer, travel faster and communicate further than ever before. And still we can expect all these to be extended further, as men of ideas and science apply their minds to improvements and upgrading and the discovery of new things unheard of before. The new sciences such as genetics, biotech and nanotech would not have been discovered and developed but for the financial rewards guaranteed by IPR. Without protection for their discoveries, researchers would not expend time and money to discover and develop the products of their research. Without Protection for IP they would want to hide the results of their work. And if they hide them, then new efforts would not be made by others to expand on their findings in order to come up with more ideas, more products and more applications which would also be protected. These positive features of IPR we all understand and appreciate.

4. The concept of intellectual property was conceived and evolved at a time when plagiarism and duplication were very difficult. The products of old did not lend themselves to easy copying or reverse engineering. Enforcement of intellectual property rights was thus relatively easy and effective.

5. But today, breaching intellectual property is so easy that even laymen can do it perfectly. Thus anyone can duplicate the CDs and their derivatives containing music, motion pictures and software. Enforcement of intellectual property rights become extremely difficult and costly, as the copies flood the markets.

6. Governments may want to uphold intellectual property rights but may not be able to afford the money required for enforcing the law. In the case of computer software for example, the money, time and manpower needed to enforce the law are not commensurate with what the Governments earn by way of taxes etc, from the business in software. And very often all the efforts of the Governments may fail. And when there is failure the country may be accused of not upholding IPR.

7. But those who own the rights refuse to recognise the difficulties faced by the Government enforcers and demand that their rights be effectively protected. They would

appeal to their own Governments. And when their Governments are powerful there would be threats and even actual impositions of economic and other pressures.

8. When their Governments are not powerful the owners of IP rights can get no redress. Yet they are in more need of protection than the owners of rights from the rich countries.

9. With the advent of biotechnology the refusal to accept natural products and their derivatives as being eligible for protection must result in losses for those countries with these natural products but are unable to afford the costly researches and documentations of useful data which can contribute to the production of useful or valuable products. And so countries able to afford research facilities and researchers may gain from natural products being smuggled out of the country. The story of the African periwinkle is a case in point.

10. Rubber produced naturally by the tree *Hevea Brasilienses* is a natural product. It cannot be patented. Synthetic rubber is not exactly like natural rubber. But its property and behaviour enables it to replace natural rubber for many applications. And they can be patented and protected. The producers of natural rubber have lost their business. It also happens that these producers of natural rubber are from poor countries.

11. On the other hand, the producers of computer software are well protected. While the producers of natural products remain poor because of lack of protection, the producers of software are so strongly protected that individual software proprietors can actually become richer than whole countries.

12. Clearly the concept and the law protecting intellectual property favours the rich against the poor. In other words, the law is inequitable and therefore unjust. It may have been right and just when it was first conceived and promulgated. But as R&D really depends on the money expended on it and therefore is an instrument of the rich, the laws governing intellectual property have become inequitable and discriminatory.

13. A related side-effect is the brain-drain from the poor countries to the rich. Since poor countries cannot afford to have the costly research facilities and to pay the researchers well, there has been a continuous and accelerating drain of the best brains from the poor countries to the rich. Whatever intellectual property rights resulting from the R&D by these researchers accrue to the rich countries and corporations. Brain-gain by reversing the flow is till a dream. For a long time the best brains of the poor countries will be migrating to rich countries. And rich countries often deliberately entice them.

14. We know that today's research is often based on serial investigations. In pharmaceutical research, drugs are modified again and again until the correct structures with the properties that are desired at are found. This kind of research requires a large number of highly paid researchers and access to a vast array of costly equipment. From the huge number of products perhaps one or two will find application and become commercially marketable.

15. It is perhaps legitimate for the very few which gives a return to be sold at very high prices in order to earn enough to cover the cost of those research results which have no commercial value during past, present and even future researches.

16. But look again at the cost of producing the brain by the poor countries. To produce one good research brain, tens or even hundreds of thousands of children and young people must be provided with education for very many years. Before the universities are able to identify the “brains”, huge sums of money would have to be spent by the nations concerned educating very many of its citizens. This is the cost of producing the good brain.

17. The process of identifying the brain is not unlike that of identifying the right product in serial research or indeed any kind of research. If the owner of the research facilities believe they have the right to earn from the right product sufficient profit to cover the cost of their research and the future research that they have to do, then the countries which had trained tens or hundreds of thousands of their children and youths in order to produce one or two brains should also be entitled to earn sufficiently from the exceptional brain they produce to get back their costs and future training costs.

18. But the present practice is for the rich in the rich countries to entice away the best that a poor country produces and pay nothing to the poor country. Indeed, far from being paid for contributing for the research the poor countries have to pay for the intellectual products of the brains they had produced.

19. This may sound like irrational thinking. But think again. The principle is the same. Unfortunately, the same people who had conceived intellectual property rights and protection seem unable to recognise the logic of protecting the producers of the brain. They refuse to see the parallel between the two. And so poor countries will continue to spend large sums of money for the benefit of the rich.

20. Today the laws protecting intellectual property seem not to make any distinction between the different kinds of intellectual properties. All are afforded the same kind of protection. This has resulted in untold misery, sufferings and even deaths.

21. Copyrights involving the writings by the authors of books are not likely to do much harm. But when the rights are applied to life-saving drugs, the results can be tragic.

22. Today the world is faced with many new diseases. Of these AIDS is perhaps the most serious. First discovered among homosexuals in the US, today AIDS is suffered by millions in Africa and Asia. The disease is spreading fast, as sufferers marry and reproduce, infecting their partners and their offsprings'. Nations face the prospect of large proportions of their people being wiped out or rendered unproductive. And looking after those who survive costs huge sums of money.

23. But in America and Europe the disease has been contained. Education has prevented the disease from spreading and drugs have reduced fatalities and render sufferers less incapacitated. There is even a case reported of a cure from AIDS using combinations of certain proprietary drugs.

24. We cannot halt the spread of AIDS or reduce its debilitating effects in poor countries because drugs for the treatment or the alleviation of the effects of AIDS are too costly due to the protection of intellectual property. Somehow we have got our priorities wrong. The rights of the rich and the healthy are being upheld at the expense of the poor, the sick and the dying.

25. The rich may have found a way of protecting themselves from AIDS. But we are seeing the appearance of many new diseases such as Ebola, SARS, JE, Avian Flu, new strains of tuberculosis and syphilis, malaria and other animal-borne diseases etc. The likelihood is that there will be more. Denying drugs in order to protect intellectual property may result in a galloping pandemic which can wipe out some of the rich also. It is important to remember that people are today very mobile. A carrier can easily travel thousands of miles in hours before any signs or symptoms can be detected. By the time they are, and he becomes infectious, he would be mingling with people in some population centres far from his homeland. And the people he infected there may similarly travel to other places to carry and spread the disease. A pandemic may result involving the rich countries as well.

26. In such a situation do we uphold intellectual property rights of a few or the health of the world's population. We can kill and incinerate the birds exposed to avian flu, or the pigs and cattle, but we cannot kill infected people and incinerate them. They will spread the animal-borne diseases, far and wide .

27. All these things that I have mentioned require that we reconsider the concept of intellectual property and the protection we should give it. We need to look not just at the rights of the owners of intellectual property and the cost of R&D but also the social consequences and cost of upholding intellectual property rights.

28. We talk a lot about human rights today. If we must uphold the rights of those with intellectual property, shouldn't we also think of upholding the rights of the very many more people who suffer and die because of the rights of a few intellectuals.

29. The rich and the powerful like to talk of level playing fields, about the unacceptability of any form of discrimination. Rich and poor must be treated in the same way. In trade for example, there should be no discrimination between the rich and poor countries and no handicaps given to anyone. The WTO was created in order to ensure free trade, free access to all countries, equal treatment between nationals and foreigners in poor countries and rich countries alike.

30. Freedom and equality may not always result in fairness. The unequally endowed will not be able to share equally in the end even if they get equal treatment at the beginning. That is why in golf handicaps are given. That is why in games there are classes and grades according to age or physical attributes, 'A League' team cannot play against 'B League' teams. We accept this and we think it is fair.

31. Yet we refuse to give handicaps in trade, in the application of intellectual property rights. It is time we rethink intellectual property rights. We need to have handicaps not just between rich and poor, between those with needs but poor and those who can afford, but also between the kind of products which we protect equally at present.

32. The rights to intellectual property for the writings of authors cannot be the same as the rights to life-saving drugs. Nor can the rights to software for those who are poor be priced at the same range as for the rich.

33. The right to biotechnological resources of the poor needs to be protected as much as the products of the research into these resources. And when these resources yield valuable products through R&D, the countries providing the basic material must be entitled to the pay-offs as well.

34. Then there is the brain drain from poor countries, They need to be compensated should their brains bring wealth for the rich. A formula has to be developed for this, that is fair to all.

35. There is a need to classify the articles or the products entitled to be protected by international property rights laws. The owners of the rights must help financially the poor countries in their efforts to provide protection for their intellectual property in accordance with international agreements.

36. We cannot deny that the protection of intellectual property has led to the rapid development of new products beneficial to the human race. Because of this the law must be retained. But the protection must benefit mankind more equitably.

37. There will be abuses when there is discrimination. But technology has advanced to enable us to tackle much of the abuses. Over time as technology improves there should be less and less abuses.

38. We know that Japan is afraid to export some products to some countries because these products will be reverse-engineered and reproduced. Malaysia is, I think, not one of these countries. Perhaps it is because we are incapable but I would like to think it is because we respect the law. It is a cost to us.

39. It would be better perhaps if there is greater willingness to transfer technology. Japan must remember the days when it had to copy from the European countries. It took a long time before it could master the technology. During that time Japan had to protect its market, to give its indigenous industries a chance to survive and upgrade its competitiveness. It was only after World War II that Japan finally attained the technology and the quality acceptable to the world market

40. Malaysia protects the intellectual property of Japan. But Malaysia would like to have at least some of the industrial capabilities of Japan. For this it needs to copy legally the technology of Japan and of other countries. But like Japan until recently, Malaysia needs to protect its fledgling industries. It has to do this much longer because of the low level of its industrial and technological development at present.

41. Recently Malaysia and Japan entered into a free-trade agreement. This is very good. But it worries me that in return for Japan's access to the Malaysian market for its industrial products, including motor vehicles. Japan has offered access of Malaysia's agricultural products into Japan.

42. Japan is a highly industrialised country with lots of manufactured products to export to Malaysia, but apart from producing palm oil and rubber Malaysia is not much of an agricultural country. And agricultural products are low-value products whereas manufactured goods have high value and high-added value. It would take huge quantities of agricultural products for Malaysia to balance industrial products like motor vehicles etc. from Japan.

43. My country has agreed to what seems to me to be an unfair exchange. I can do nothing to change it.

44. Perhaps Japan should consider more transfer of technology to Malaysia without too much compensation in terms of intellectual property rights in order to compensate for the unequal or even unfair free trade agreements.

45. Almost all the new ideas regarding international relations and international laws come from the rich powerful countries. Invariably they favour the rich. This is not healthy. International laws need to be equitable. The application of Intellectual Property Rights and laws are inequitable and unfair. It is time that we rethink and revise these laws for equity and a win-win equation.

Thank you.