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How Developing Countries can Benefit from Intellectual Property: The role of Collective Marks in Tourism

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Abstract

While tourism has been praised by a variety of international organizations as a means to promote the local economy in developing countries, tourism led growth has never been seen to be supported by a developing countries' intellectual property regimes. Intellectual property rights, particularly if owned collectively, accelerate cluster creation, an organizational form particularly beneficial for tourism. The positive externalities associated with clusters can be reinforced through the assignment of collective marks. A region's intangible assets, its social cohesion, can be fostered through the introduction of collective marks, since it is an intellectual property rights that can be owned collectively by a given community. This paper is one of the first of its kind to flesh out a more differentiated economic value proposition of collective marks, while at the same time illustrating the economic opportunities that the intellectual property system provides to developing countries' economies.

Introduction

While tourism has been praised by a variety of international organizations (see for example Word Bank 2006 a, b, 2001, UNDP 2006, World Tourism Organization 2006 a, b) as a means to promote the local economy in developing countries, tourism led growth has never been put in correlation with developing countries' intellectual property regimes. In spite of the fact that the Doha Ministerial Declaration of the 4th Ministerial Conference of the World Trade Organization lends support to developing countries seeking forms of IP based innovation other than high technology, the debate on the enabling role of collective marks in tourism, a sector where many developing countries have a comparative advantage, is nil. IP is still primarily viewed as a negative right, a right to exclude, and its enabling opportunities for many developing countries are widely ignored.

The impact of tourism on local economic, cultural and social development depends on many factors, such as the degree of openness or the overall level of development of an economy. Apparently, medium-developed countries seem to be in a better position to extract value from tourism than least developed countries. (Martin, Morales and Scarpa, 2004) Countries that struggle with issues such as the provision of basic infrastructure, functioning transportation or safety questions related to violence or disease (Wagner, 1998) seem not to be in the best position to use tourism as a development strategy.

While collective marks can do little to assure the provision of these elementary requirements that make tourism work, they play a major role in marketing a tourist destination and promoting community-based tourism. Rather than attracting tourists through the construction of internationally renown hotel chains, collective marks path the way for tourist clusters composed of small and medium sized enterprises. Matching collective marks with tourist

clusters is therefore a suitable formula to promote or enhance regional development since it unlashes the collective character of tourism, supports the creation of tourist clusters and the marketing of a tourist destination. Collective marks give way to a form of tourism that can be understood as a social endeavor, a collective cultural undertaking, where a region, a place, a cluster, a network – in short a community- enters in some sort of interaction with foreigners.

The notion of tourism shifts therefore from “tourism as an industry” to “tourism as a community enterprise.” Issues, such as mass tourism and its accompanying negative side effects are therefore eliminated from the start. The success of tourism depends on local economic and social endowments that may take the form of natural and cultural capital, such as beautiful lakes, traditional folklore or the remainders of old civilizations, rather than big hotel chains, mass transportation and subsequent environmental degradation or the risk of not keeping the value created within the country.

Tourism – A Collective Undertaking

The widely spread understanding of tourism as an industry overshadows other conceptualizations of tourism. In particular, it dismisses an understanding of tourism as a cooperative engagement, which ultimately may act as a means to promote a dialogue between civilizations and raise an understanding of the “other”. (Higgins-Desbiolles, 2005) The term “tourism industry”, which dates back to the 1960s, offers an industrial image that lends itself well to various political usages, but ignores an understanding of tourism as a community activity.

It is therefore preferable to refer to tourism as a composite good, a bundle of goods and services that can be regarded as a single good. (Weiss & Sharir, 1978) Since tourism is composed of a combination of goods and services, the quality of the final outcome depends on the quality level of each factor or intermediate good and service. This notion reinforces the collective work of a community necessary to make tourism work. Cooperation and coordination among the various stakeholders are crucial. One single firm, say a hotel, will have little success, if the context in which it operates - the beaches, neighboring cafés, shops, restaurants, museums etc. - is of moderate quality. On the other side, the success of one particular firm, in this case the hotel, will also impact neighboring business.

Clusters seem therefore to offer an optimal organizational structure for tourism. Indeed, the preliminary relevance of cluster theory in tourism has been extensively discussed in the literature (Porter, 1998, Jackson 2006, Hall, 2005, Konosolas, 2002, Ham and Hill, 1995, Rhodes, 1997), but so far no correlation has been made between clusters and the reinforcement of positive externalities within clusters through the assignment of collective marks. (For further discussion on the literature on clusters in tourism see: Novelli Schmitz and Spencer, 2006). A tourist cluster is an agglomeration of natural, historic and social resources. In a tourist cluster small and micro sized enterprises work in an industrial atmosphere, freely exchanging market information. The range of the local activities can be very large, spanning from arts, folklore and handicrafts, to tourist cultural itineraries, traditional healing services or drama and dance. These positive externalities can be reinforced by the assignment of collectively held property rights, as is the case with collective marks.

For the same token, the role of intellectual property rights, particularly if owned collectively, in branding a tourist destination has so far not been examined. While it is common wisdom that a community must emphasize on its unique value proposition in order to attract tourists, there has been no knowledge generated so far as to how a collective mark helps a community

to define its unique character and tailor its marketing strategy around that. While practical examples like that of Brisbane illustrate the de facto advantages of assuring the legal side of a tourist promotion strategy, scholarly thinking has not been at the same speed as empirical evidence.¹ (http://www.wipo.int/sme/en/case_studies/queensland.htm)

Collective Marks - a Suitable Formula in Tourism

A collective mark provides an incentive for local companies to create clusters, to revitalise processes of abandoned identities and to increase the quality of collective goods and services needed to make tourism work. Furthermore they spur further investment in a tourist destination's reputation.

A collective mark is a sign owned by a collective entity, such as an association, a cooperative or a union. A collective mark may only be used by members of the collective entity, while others are excluded from using it. It can be a service mark or a trademark, depending on the nature of the commercial interaction and the rightholders' need for protection. Collective marks may be used at the same time as individual marks at a given good or service. Like any other mark it allows to differentiate products and services from those of competitors increase consumer confidence and charge a premium for products or services protected as collective marks. For the same token, the collective mark must be indicative of the source of the goods and services and consumers must be able to distinguish it from other marks. (WIPO, 2005).

In particular, collective marks help to:

- Foster social, cultural and economic development of the cluster since they help improve the tourist cluster's position in the market (protection against unfair competition, illegal copying, enhancing the community's identity, building reputation);
- Enhance investor confidence since the establishment of collective marks helps to minimize risk and gain trust among the investors;
- Upgrade the know-how of local business (Relevance of collective marks at the various stages of the business cycle) (Know-how on managing collective marks and the community's institutions);
- Develop local participation and cooperation (reinforcing a community's institutions).
- Protect and enable a tourist cluster's marketing strategy

Collective marks differ from certification marks, where the owner of the mark is a third party not producing or owning the good or service. Certification marks are often granted by a governmental body or a body operating with governmental authority. While not registered as certification mark, in tourism the number of stars rating the quality of a hotel may be

¹ States the Manager of Queensland Tourist and Travel Corporation, "before 1992, we really did not understand the value of intellectual property protection. We had been running our "Beautiful One day, Perfect the Next" campaign for some time and developing other branding, before we came in touch with a trade mark specialist with a patent attorney firm here in Brisbane...Now we know that this valuable asset is our own." Thus, the aim to provide a legal monopoly over the logos and phrases which Australians and overseas tourists were increasingly associating with Queensland, was met.

considered a widely spread certification standard. An independent body evaluates the overall quality of a hotel and grants accordingly a specific number of stars to the hotel.

Under a collective mark however the rightsholder determine themselves the quality level of the protected good or service, underlining once more the cooperative nature of tourism. Participating firms have to comply with the quality standards and rules defined by the association itself. In exchange they receive a collective sign on their products and services, which allows consumers to associate their products with a particular set of standards, an important feature in tourism, where issues such as safety and hygiene can be decisive factors.

Collective marks also differ from geographical indications (GIs), which are source identifiers and protect the goods of a particular region: "A geographical indication may be used by all producers who make their products in the place designated by a geographical indication and whose products share typical qualities." (WIPO, 2005). Similarly, TRIPS article 22 (1) defines GIs as "indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin."

At the international level the relationship between collective marks and GIs is evolving. The first international agreement to refer to GIs is actually the TRIPS agreement, suggesting that the concept is rather recent. Under the TRIPS agreement a GI constitutes a negative right, a right to prevent misuse rather than a positive right. (Kireeva and Vergano, 2004) Also, protection pertains only to goods and not to services. Higher protection is provided to wines and spirits.

GIs protect in a formal way the shared knowledge and practices of a specific region since they underpin the protected source. Collective marks in contrast say nothing about the territorial origin of a given product, but inform the consumer of the ownership structure of a mark. Contrary to collective marks, GIs may also not licensed to market participants outside the protected region. In some jurisdictions, like that of the United States, GIs are protected through collective marks or certification marks. Under U.S. law certification marks that originate in a specific region can most likely be viewed as GIs. Other countries again do not offer any protection for GIs or extinguish existing trademark rights in favor of later created GIs. (E.Meltzer, 2002)

For reasons like these GIs do currently not lend themselves to promote tourism. While a region producing GI protected goods may well attract tourists (the Champagne region in France for example), current levels of international protection do not enable the process of tourist activity in itself. Firstly, GIs only serve to protect goods, tourism is however composed of goods and services, thus it only provides for partial protection. Secondly, the managerial function of collective marks goes far beyond the concept of a negative right, which serves to exclude others, rather than create an enabling environment for cluster creation.

A region's intangible assets, its social cohesion, can be fostered through the introduction of collective marks, since it is an intellectual property rights that can be owned collectively by a given community. Collective marks protect the collective goodwill or reputation of a community and ultimately foster the identity of a society. GIs in contrast may promote a certain sense of cohesion by protecting a specific good of a region. The implicit becomes explicit and intangible assets materialize into tangible property rights. While collective marks may translate into an actively fostered image of a place, GIs leverage the pre-existing image of a territory to promote certain goods. By using collective marks the image of a tourist region

is not left to others, but stakeholders take an active part in defining the meaning of the place for themselves and for others. The concept of “competitive territoriality” is being replaced by a notion of “co-operative territoriality.” (Ray, 1998)

“Rather than portraying territories as fighting to create, maintain and improve their position in the market, this scenario imagines clusters of territories, overlapping in space and by product/service, in ad hoc or longer term arrangements, co-operating in selling each others products or creating overarching marketing strategies.” (Ray, 2000)

This has however little to do with “nation branding” as developed by Simon Anholt. While nation branding is based on the idea of actively creating a particular perception of a nation, “nation branding” makes it explicit that it does not want to be confused with branding tourist destinations. (Anholt, 2007) Also, the concept of nation branding operates without explicitly referring to intellectual property. The link between marketing and legal protection is not specifically elaborated. Furthermore, nation branding is more concerned with a country’s overall perception in the global community. The main flaw in this very recent concept, which is not firm in its methodology of valuing “nation brands”, is that nation-states are treated as if they were market participants. The international arena becomes reduced to a global agora, where states constantly fight over market share. By consequence, marketing the state is an essential survival strategy. The political economy of international affairs is however more complex than this reductionist analogy suggests.

Collective Marks in Tourism: In Practice they Work!

In practice, collective marks have been used successfully to promote tourism. However, their function of enhancing a cluster’s social capital has not been fully leveraged, to my knowledge. In the U.S.A. for example, the State of Virginia introduced the slogan “Virginia is for Lovers” more than thirty years ago. The logo, the writing and the slogan are fully IP protected. When the mark was introduced in 1969 total travelers’ expenditure in Virginia were 809 million USD. In 2005 they account for more than 11.6 billion USD. Research conducted in 1992 by an U.S. based opinion and marketing research institute suggested that three of every four U.S. citizens correctly identified the slogan. The mark has proven to be extremely durable, probably because of its simplicity. (www.vatc.org/pr/factslogan.htm)



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www.vatc.org (industry)

In Switzerland, the ski resort St. Moritz not only protected the logo, slogan and the design, but also the name St. Moritz itself, arguing that it is a brand in and by itself. The sun and the specific characteristics of the writing were used as early as 1930, the sun was added to the logo in 1937 and in 1987 the slogan “Top of the World” clearly positioning St. Moritz in the world of ski tourism was added. St. Moritz has protected its mark in over fifty countries. St. Moritz uses the mark on all its advertising campaigns, brochures and on the Internet. It licenses the mark to sponsors of cultural or sport events taking place in St. Moritz, as well as to various licensing partners abroad. St. Moritz considers a consistent marketing strategy as a major reason that it is currently one of the most well known ski resorts worldwide. Protecting and nurturing its image and keeping the promises its image communicates is –according to

local stakeholders – a major reason for its success. The mark “St. Moritz – TOP OF THE WORLD – aims to convey security, quality, trust, continuity, tradition, competence and credibility. St. Moritz provides significant funds on an annual basis to maintain the high standards of the mark and actively manage it. (www.suesskind.ch, www.stmoritz.ch)



So, What Strategic Options Do Developing Countries Have?

Many developing countries have a solid basis to develop tourism. However, for a variety of reasons this potential often remains unexploited. While there is some local economic activity going on (like a hotel or restaurant in a village at the seaside), little is done to gear this economic activity towards a cluster and create thus a more efficient way of investing, trading and marketing goods and services. Collective marks can serve as a vehicle for setting quality standards, increasing prices, generating income, and raising the rate of competitiveness of the potential tourist cluster. The critical element of an *effective* tourist cluster is its grounding in formal institutions that allocate a collective mark to a restricted area of production. In this sense, they protect and promote the social capital of a community and allow local producers to stay in business. The application of the following principles may help to establish tourist clusters based on collective marks:

1. Provide an adequate regulatory context for the introduction of collective marks in tourism

In order to observe a successful take-off of tourism through the introduction of collective marks certain prerequisites need to be met. The regional take-off of tourist clusters is strongly interwoven with any type of tourist or economic policy taken at the state level, or to put it otherwise, the success of regional areas depends to a great extent of the policy settings introduced at the central level. Developing countries may consider several strategic policy choices to anchor collective marks in tourism and in this way promote the sector as a whole.

2. Raise awareness on the role of collective marks in tourism

While stakeholders clearly recognize the preliminary role of concepts such as clusters or marketing in tourism, the role of intellectual property protection is less obvious to most operating in the sector. There is hence a need to raise the overall awareness on the economic relevance of IP in general and collective marks in tourism in general. University programs may in the long run train professionals who are not only aware of the legal dimension of IP, but also understand the economic scope of IP. In order to develop tourist professionals who are also aware about the role of collective marks in tourism, it may be considered to initiate interdisciplinary programs that teach IP from a tourism perspective. Possibly, these training efforts may be partnered with universities in other countries. This may help to promote knowledge spillover effects. For the same token training and awareness raising of stakeholders in a tourist cluster may be of benefit.

3. Setting up the collective mark & Managing it

The collective mark needs to be designed (ideally by an internationally recognized designer) and the mark needs to be protected at the international and national level. The local municipalities need to set up a committee that manages and attributes the logo to stakeholders. The committee may be seen as a self-regulatory body. Consisting of the respective industry representatives themselves the committee may be divided into various sub-committees, e.g. a hotels committee, a restaurants committee.

The value proposition of collective marks needs to be communicated to tourists. Tourists, tour operators, travel agencies, tourist promotion agencies need to be made aware of the new collective mark and need to understand what it stands for. Tourists need to be able to recognize the logo and associate it with quality and safety.

Conclusion

Tourism defined as a collective endeavor, rather than an industry may help to promote local socioeconomic systems in developing countries. Collective marks lend themselves well to reinforce the community character of tourism. They foster the notion of clusters, which have been proven to be beneficial in tourism. Collective marks increase the sense of collaboration, create a spirit of collaboration, rather than competition, introduce quality controls and give way to the external promotion of a region. The tourist experience depends on the collective engagement of the various stakeholders. Restaurants, hotels, cafes, tourist sights and local authorities need to collaborate to offer tourists a unique holiday experience. For developing countries, this may be a means to create local confidence and identify common features of how to position themselves. Rather than leaving the creation of their image to others, collective marks allow to actively create their reputation in the international arena.

Thus, the question of whether tourism fosters overall economic growth shifts to how an encounter with foreigners can be structured so to stimulate local social, cultural and economic development. Tourism breaks with many traditional notions. Foreign exchange for example is being earned by “importing” tourists, rather than exporting the tourist product abroad. A sector that puts many economic principles upside down deserves novel concepts to meet its requirements. This holds even more so in developing country contexts where issues such as rural poverty, unemployment and declining terms of trade in agriculture overshadow the economic take off. Introducing collective marks in tourism may therefore be a creative and innovative formula to overcome many of the traditional challenges developing countries are facing.

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