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Perspective on Trademarks. Rebuilding
Post Conflict Zones in Sierra Leone and
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**A New Institutional Economics Perspective on Trademarks.
Rebuilding Post Conflict Zones in Sierra Leone and Croatia**

- UNPUBLISHED WORKING DRAFT

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ABSTRACT

This paper evaluates the role of collective trademarks in enhancing the ability of tourism clusters to stimulate economic growth, local ownership and innovative governance. Illustrating how intellectual property (IP) law can be leveraged to achieve this, we offer a new economic rationale for trademarks in the context of tourism. Two post-conflict case studies of Sierra Leone and Croatia provide a crash test for this approach. By emphasizing the role of law, institutions and infrastructure in stimulating tourism in post-conflict zones, this paper echoes new institutional economics perspectives that highlight the impact of legal structure on development. Despite widespread acknowledgement of the cluster attributes of tourism, the role of tourism and clustering in regional development policy is seldom addressed. To our knowledge, the role of collective trademarks in strengthening tourism clusters has not been investigated.

Keywords: collective trademarks, intellectual property, clusters, new institutional economics, tourism management, governance

THE NEW INSTITUTIONAL ECONOMICS OF TOURISM CLUSTERS

New institutional economics (NIE) conceptualizes the economy as a dynamic system constituted by institutional and legal frameworks (North 1995: 2; Mercurio 1989: 10). Recognizing that ‘different kinds of goods and services cause different kinds of human interdependence or opportunities for one person to affect another,’ (Mercurio 1989: 63) NIE is a valuable paradigm to analyze the diverse experiences of tourism development worldwide. Tourism is a bundle of goods and services combining geographical characteristics with various local services (Jones et al. 2003). Consequently, increasing tourism’s value depends on cooperation between independent agents (Novelli et al. 2006).

Consumption of tourism services implies extensive interaction with a local region and hence promotes joint initiatives by inter-related businesses seeking to increase the appeal of a destination. The interdependence of actors providing complementary services, the integration of local culture, heritage and institutions are all fundamental characteristics of tourism. Tourism services thus have enormous cluster potential.

Cluster theory (Capone 2004; Simmie 2004; Glaeser et al. 1992) suggests that functional spillovers across interconnected businesses operating in geographically concentrated areas will generate substantial efficiency gains that boost a region’s competitive advantage in global tourism markets. Recent tourism studies argue that tourism, due to its product characteristics, is particularly suited to benefit from cluster analysis (Monfort 2000; Jackson and Murphy 2002; Cunha and Cunha 2005). Adopting the perspective of tourism as a cluster service, we propose that collective trademarks are a useful governance mechanism for both developing countries to generate greater value from tourism activities.

Collective trademarks are conceptualized here as a mechanism for fostering community entrepreneurship. This process, which stimulates local economic growth, may prompt normative acceptance of IP and legitimize institutions typically criticized in developing nations. While the reinforcement of the cooperative nature of tourism through the institutional setting of a cluster has been extensively discussed in the literature (Porter, 1998; Jackson

2006; Hall, 2005; Konosolas, 2002; Ham and Hill, 1995; Rhodes, 1997), it has so far gone unnoticed that the positive externalities associated with clusters can be reinforced through the assignment of trademarks. This paper does not outline the application of collective trademarks to tourism in practice because it is not an ex-post assessment of their utility. It is too early for an impact analysis because too few initiatives in the developing world exist. Instead, the potential value of collective trademarks to tourism is outlined by reference to two post-conflict cases: Sierra Leone and Croatia.

First, cluster analysis and tourism are interpreted according to new institutional economic approaches. Collective trademarks are then defined and conventional rationales for trademark protection reviewed. Linking collective trademarks and cluster theory, we offer a new rationale for collective trademarks in the context of tourism that conceptualizes intellectual property (IP) as an enabling mechanism, rather than a defensive right. The two cases, Sierra Leone and Croatia, are then discussed with reference to the role of proprietary infrastructure, both tangible and intangible, in stimulating economic development.

THE LAW AND ECONOMICS OF TOURISM CLUSTERS

Despite the lack of a consensual definition, two features of clusters are widely recognized: agglomeration – ‘the geographical concentration of a specific industry and related activities’ – and inter-connection, where the mix of competitive-cooperative relationships between local actors generates better performance in terms of employment, productivity, and knowledge transfer (Santos et al. 2008: 4-5). That tourism services are only consumed at geographically specific locations augments the concentration aspect of tourist clusters. Cooperation among local actors minimizes costs and increases the value extracted per tourist, bolsters the region’s competitive advantage, fosters spillovers increasing the efficiency of various enterprises and enables the sharing of infrastructure and marketing. Pooling resources can enhance a region’s attractiveness and increase the quality of services and products delivered. Many definitions of tourism clusters highlight the routine interaction of institutional policies and economic actors (Capone 2004; Monfort 2000). Cluster analysis thus coincides with approaches highlighting the role of law in structuring economic exchange since it underlines the systematic relationship existing between economic life and legal institutions (Mercurio 1989: 10).

Property and contract law – frequently taken for granted in classical economics – rely on legal institutions. Legal systems constitute the market environment. The mix of competition and cooperation between actors in a cluster resonates with institutional perspectives conceptualizing society as both a cooperative venture for mutual advantage and an arena of conflict where interests are often mutually interdependent (Mercurio 1989: 2). Though law constrains individuals in order to foster trade, it simultaneously acts as an enabling mechanism. Tourism clusters, for example, need IP law to leverage collective trademarks to increase service value.

A *value chain* describes the process where the output of one industry becomes the input of another in a long chain that yields a consumer product (Porter 1985). Andersson highlights the need to incorporate consumers into this chain, suggesting that ‘the experience is the ultimate output of goods and services. Tourism goods and services are produced to yield experiences’ (2007: 47). The purpose and value of goods for consumers are not simply their consumption but rather the experience generated in the moment consumption takes place. This premise is particularly salient to tourism because tourism services are defined as a ‘travel experience’ (Porter 1998: 77). Drawing parallels between firms and tourists, Andersson argues that tourists ‘choose, test and buy inputs and then use labour, knowledge and creativity in a

consumption set to realize a consumption project in order to generate an experience... Holiday planning could be considered as a truly economic activity. The overall criterion for a planning tourist is usually 'value for money' (2007: 48). Extracting more value for money requires tourists with well-paid but time-consuming jobs to rely on tourism services to render their 'holiday experience efficient' (Andersson 2007: 56). Collective trademarks demonstrate a region's superior value and ensure consumers about product quality. Consequently, they can reduce consumer uncertainty and increase a destination's appeal by diminishing the time and skills required to organize a holiday.

THE ECONOMIC RATIONALE FOR COLLECTIVE TRADEMARKS – STANDARD ARGUMENT

Collective marks must be 'indicative of the source of goods and services and consumers must be able to distinguish it from other marks' (WIPO 2005). They facilitate price increases due to service/product differentiation that in turn creates further incentives to invest in quality and reputation. Essentially, they are an organizational principle of economic activity that allow a community to promote its market position, build its reputation, protect itself against unfair competition and adopt a governance structure for its collective economic activities. Collective marks contrast to traditional interpretations of individual, corporate ownership of IP because they foster collaboration among communities. Moreover, they are a form of IP that can be leveraged by developing countries because they enable proactive engagement in creating and maintaining the reputation of a community while not requiring the level of administrative and technological sophistication of patents.

The common function of trademark law is 'to afford rights to those who use words, names, symbols or devices to identify their goods or services' on the basis that 'if the law does not prevent free-riding it will destroy the information capital and accordingly eliminate incentive to develop a valuable trademark' (Bhagwan 2,5). The level of trademark protection necessary is discussed in the literature according to two major doctrines: *confusion* of source for competing goods and *dilution* (especially in non-competing goods). Both doctrines are predicated on the belief that trademark protection augments the efficiency of free markets by inhibiting unfair trade practices and increasing the amount of available information in the marketplace (Pattishall 1974). The *confusion* of source doctrine has historically dominated trademark cases while the relatively recent emergence of the *dilution* doctrine parallels the growth of global trade across multiple industrial sectors and growing awareness of the power of brand identity and marketing.

The *confusion* doctrine asserts that likelihood of mark confusion by consumers is the 'universal judicial touchstone in trade name cases' (Brown 1948). Trademark protection not only enhances market efficiency by allowing consumers to better relate certain information to precise goods or services, but also helps consumers express preferences about product/service quality, price and features. This means *expressed demand* (pricing signals) received by producers more accurately reflect *actual demand* (consumer's tastes and preferences) in the market (McKenna 2007). Consequently, trademark protection creates incentives for firms to invest in and maintain product/service quality in the hopes of building consumer confidence in their mark (Carter 1990). The US Supreme Court proposes that "trademarks foster competition and the maintenance of quality by securing to the producer the benefits of a good reputation' (Carter 1990). This reputation is often identified as a business's *goodwill*, a nebulous concept whose precise source is difficult to trace but whose importance should not be underestimated.

The *dilution* doctrine holds that the owner of a trademark should receive the same protection for investments in advertising a mark that he would be entitled to receive for investment in tangible assets (Schechter 1927). This rationale is termed the *dilution* doctrine because ‘when use of the same or similar marks by others has caused a mark to become less distinctive than before, it has been diluted’ (Pattishall 1984). The more widespread a symbol is, the less effective it will be for any one user. Schechter’s analysis suggests that, while trademarks historically indicated the origin or ownership of goods, their primary function today in the context of international trade is ‘to identify a product as satisfactory and thereby stimulate further purchases by the consuming public’ (Schechter 1927) Critics of the *dilution* doctrine argue protection invites abuse by monopoly-inclined interests by exposing small businesses to harassment in the claim of protection against trademark infringement (Pattishall 1977). Application of the *dilution* concept also greatly diminishes the free use of language in the market and may yield wasteful expenditures on advertising. These criticisms are significant but are not elaborated here.

A NEW INSTITUTIONAL ECONOMIC RATIONALE FOR TRADEMARK PROTECTION

A collective trademark, viewed through an NIE lens, can be conceived as a means to establish a legal structure for cluster creation because it engenders a specific set of economic relationships: a collective mark is a sign owned by a collective entity, such as an association, a cooperative or a union. In principle, it can be used only by members of the collective entity, while others are excluded from using it. Serving similar functions as conventional trademarks, collective marks establish a collective ownership structure that prompts cooperation among economic actors and enables the syndication of economic activity. The governing authority of the mark defines quality standards and rules that must be followed by participants in exchange for use of the mark on products and services. Collective marks thus establish an institutional setting that directs the commercial operations of firms operating within a cluster.

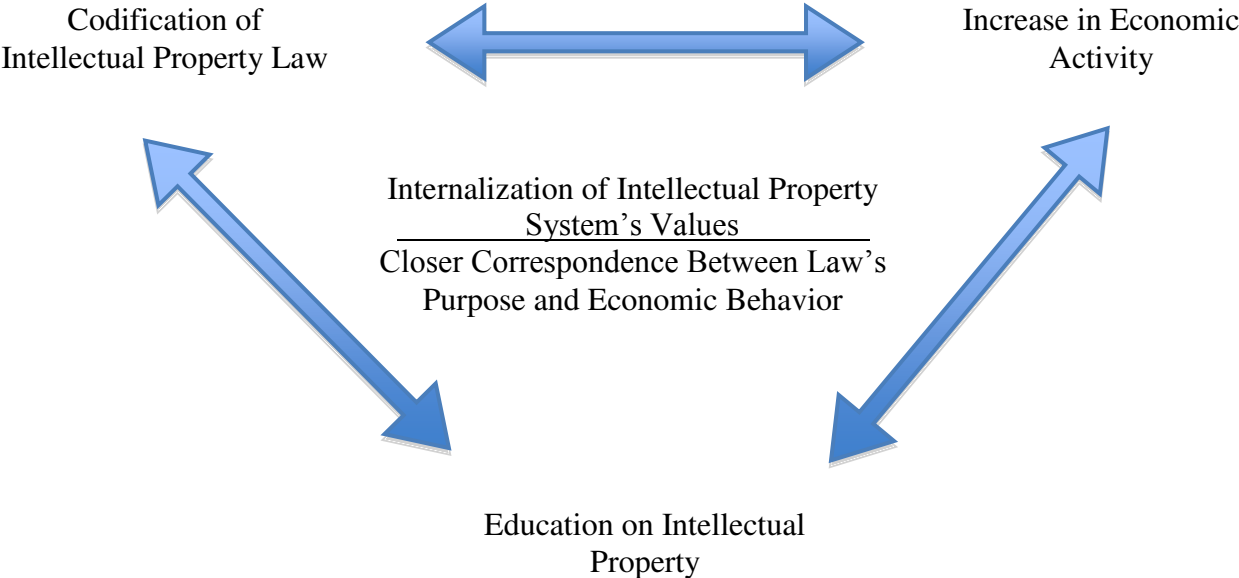
The *cluster* rationale proposed for collective trademark protection combines both *confusion* and *dilution* doctrines as well as extending beyond them. It echoes *confusion* by admitting that an important function of trademarks is reducing consumer search costs by enabling selection on the basis of past experience or recommendation; collective trademarks in tourism improves the quality of information available to tourists choosing a holiday destination and protects regional clusters of tourism businesses from illegitimate attempts to divert trade. It borrows from *dilution* an awareness of brand identity and accepts that a mark may operate across a variety of economic sectors. Collective trademarks allow tourism clusters to capitalize on advertising investments by protecting the vital intangible assets of a region: business *goodwill* and *reputation*. The *cluster* argument extends beyond both rationales by suggesting that the enforcement of collective trademarks precipitates a regional governance structure that stimulates local entrepreneurship in tourism. As the positive externalities of tourism cluster development - possible due to collective trademarks - are recognized by relevant actors, they should internalize the values supporting the framework specifically and IP law more generally. This is important if developing countries with relatively new IP institutional architectures wish to leverage the system for their own benefit.

Since institutions are formed to reduce uncertainties in human exchange (Harris et al. 1995), established trademark law allows individuals to maximize the value of a tourist destination by permitting the legal protection of a tourism service under a collective trademark. Yet, IP is not merely a defensive tool. It is an enabling mechanism. The concept of bounded rationality

implies individuals make choices based on their mental models (Harris et al. 1995). Instead of neo-classical economic agents with perfect information selecting the most efficient means of maximizing rationally chosen ends based on values that are given and constant, NIE recognizes individuals have limited mental capacity and information to make decisions (Harris et al. 1995). Collective trademarks allow local actors to communicate the value and quality of their tourism service to consumers with limited time and information. Stable institutions need the support of organizations with an interest in their perpetuation. Envisioning trademarks as enabling mechanisms for local communities helps evolve norms that support trademark law. Law and economics are mutually supportive: law facilitates beneficial economic interactions that then legitimize the law.

Since we are concerned with the law’s practical effect on economic behavior, it is worth noting that awareness of IP laws – particularly the benefits that can be leveraged from them by local communities - is a pivotal element of this complex equation. Economic actors cannot be expected to leverage a legal system they know nothing about. Promoting awareness of collective trademark law specifically, and IP law more generally, is crucial to fully leverage the positive development effects they can engender. The implication of this model is that the careful implementation of a legal IP architecture can initiate a cycle that leads to increased economic activity, internalization of values, and support for law and the institutions. A significant corollary effect will be closer correspondence between the intended function of trademark protection and the actual behavior of economic actors operating within the system established.

Figure 1: Intellectual Property as an Enabling Mechanism



Evaluating the viability of this model requires comparing the potential of collective trademarks to leverage tourism clusters in various cases. Understanding the progress (or lack thereof) of tourism development in relevant cases should yield better understanding of the

interplay between intellectual property laws, institutions, values and economic activity in tourism services.

ASSESSING THE ENABLING POTENTIAL OF COLLECTIVE MARKS – THE CASES OF SIERRA LEONE AND CROATIA

Case selection methodology

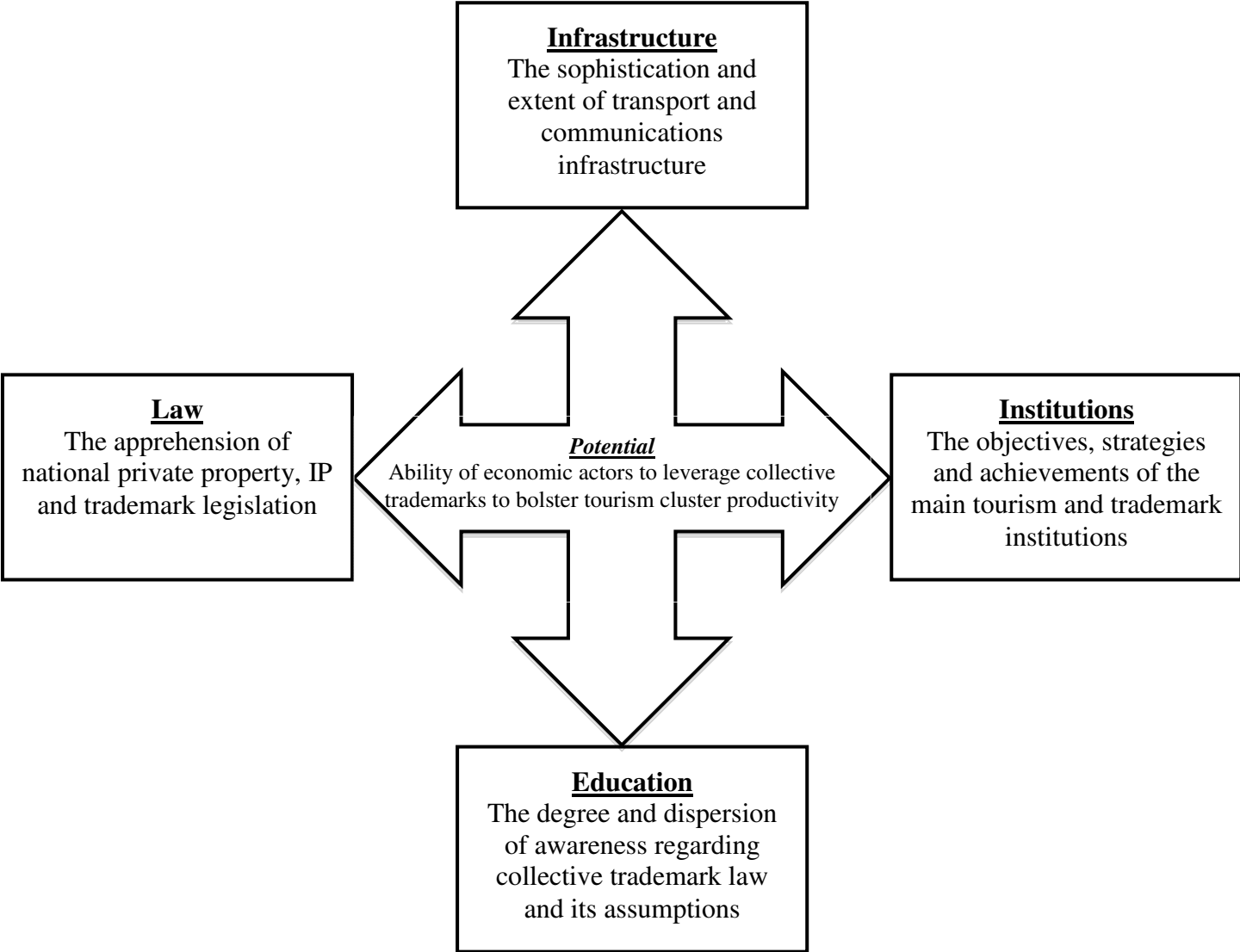
The enforcement of property rights provides security and incentive for production by clarifying the parameters of exchange and establishing institutional constraints that mitigate the risks of information asymmetry, cheating and free-riding. It is thus reasonable to assume that well-established, clearly codified legal systems - supported by widely held socio-cultural values - stimulate economic growth. Being primarily concerned with the law's practical effect on economic behavior rather than its mere statutory existence, it seems logical that laws that are widely understood, firmly established and have developed organically – i.e. rooted in the social relations and cultural values of the society in which they are implemented - are more likely to affect economic activity in a free market. The two post-conflict cases of Croatia and Sierra Leone exhibit few of these characteristics. Not only have their IP systems been imported from developed countries and harmonized under TRIPS, but their political and legal structures, as well as the main institutions involved in IP administration, are relatively new. Both cases constitute an extreme context; they are a demanding crash test for the model proposed. If IP law has the potential to be an enabling mechanism to create clusters in these cases where understanding of IP is minimal, the values it promotes not yet internalized and the institutions it requires still in their infancy, it is highly likely to work in other nations with more firmly established IP laws, institutions, and values. We have thus attempted to minimize conventional verification biases in case selection by presenting atypical or extreme cases that most challenge the model we propose. Additionally, these two cases demonstrate the need for institutional architecture, law, property rights, and transport infrastructure to stimulate tourism specifically and economic development more generally. Awareness of this complex amalgam of mutually reinforcing conditions coincides with NIE perspectives and renders these particular cases highly relevant to the approach adopted.

Methodological Framework for the Case Studies

It is not possible to provide an ex-post assessment of the validity of the cluster rationale for collective trademarks due to insufficient empirical evidence regarding the implementation of collective trademarks in tourism. Consequently, the cases presented serve to outline the *potential* for collective trademarks to stimulate clustered economic activity. To assess this potential the critical elements necessary for the benefits of collective trademarks to be fully leveraged must be established. Staying in line with new institutional economics perspectives, four factors have been identified as crucial to constituting an environment where collective trademarks can be exploited to precipitate an increase in cluster productivity. These are the state of private property law in general and intellectual property legislation more specifically, the efficiency and legitimacy of the primary institutions involved in IP administration and tourism, adequate transport and communications infrastructure, and the degree of awareness about IP among local and national actors. These four factors, while certainly not a comprehensive list, are deemed the most essential for a number of reasons. Collective trademarks cannot hope to be leveraged if there is inadequate legislation for their protection and management. Even if clearly codified legislation exists, the ability for IP to stimulate

economic activity requires that the relevant institutions involved run efficiently and are perceived as legitimate actors. Both the degree of legal codification and institutional capacity are intimately bound up to broader awareness of the intellectual property system and the assumptions underpinning it. While specific mention has been made to law, it is vital to understand that the role of law in the context of collective trademarks is not so much dependent on national enforcement mechanisms but local apprehension of the law; the degree of informal acceptance of a legal mechanism to stimulate joint business activities. Local stakeholders must understand and accept the concept of tourism as a cluster service where the success of each business relies on the output of other firms. Finally, sufficient transport and communications infrastructure must exist for businesses to engage in efficient clustered economic activity. Accordingly, we can establish a clear framework to assess the potential for IP to serve as an enabling mechanism:

Figure 2: Establishing the necessary context for IP to serve as an enabling mechanism to stimulate clustered tourist activity – 4 factors



POTENTIAL IN SIERRA LEONE

Tourism in Sierra Leone is experiencing partial revival after disappearing during the 11-year civil war that began in 1991 (EIU, 2008: 19). While relying on the export of mineral

resources to generate income, the government has aspirations for tourism to be a key driver of economic development, backed by the Africa Governance Initiative (AGI). In April 2009 former UK Prime Minister Tony Blair brought attention to how tourism has “huge untapped potential” for Sierra Leone (Blair, 2009). Sierra Leone’s experience of the so-called ‘resource curse’, where diamonds have played a major role in initiating and prolonging the civil war, renders adopting new development strategies all the more important. Unlike the concentration of wealth (often to foreigners) resulting from mineral mining operations, promoting tourism clusters has the potential to stimulate truly disperse regional development and encourage local ownership. Travel and tourism presently contributes an estimated 4.3% of GDP (WTTC, 2009). In comparison, tourism in neighboring Gambia – the leader in Sub-Saharan Africa for visitors and tourism’s contribution to GDP – generates 17.8% of GDP (WTTC, 2009). Agriculture remains Sierra Leone’s biggest employer, comprising 46% of GDP and consisting primarily of subsistence farmers, while government services dominate the service sector (EIU, 2008: 4). The 2006 FIAS Report on ‘Competitiveness and Corporate Social Responsibility in Sierra Leone recommended the country focus on improving ‘viable tourism development clusters of services and infrastructure around the Western Peninsula, Bunce Island, Tiwai Island and Outamba Kilimi’ (IFC, 2006: 4). The New Tourism Development Act that is being implemented, modeled after the successful Gambian Tourism Development Act, foresees to provide hotel accommodation and develop the beaches. The Government’s establishment of a series of national parks to promote Sierra Leone as an eco-tourism destination, and entrepreneurs’ construction of new hotels and facilities in Freetown in anticipation of increased visitor numbers, are steps in the right direction (EIU 2008, Blair 2009). The legal framework should to a certain extent reduce uncertainty and trigger economic growth.

The civil war looms however large in national and international collective consciousness (Internal Displacement Monitoring Centre, 2004). Frequent collusion between the Sierra Leone Army (SLA) and the Revolutionary United Front (RUF) exerted heavy tolls on the civilian population (Bellows and Miguel, 2006: 394). Images of civilians with missing limbs still present a visual reminder of the terrible violence inflicted by the RUF on the population. These images perpetuate the association of Sierra Leone with turbulence and violence and thus contribute to economic stagnation; the amplified sensibility of the tourism sector towards socio-political instability, disasters, crises and wars translated into a strong loss of earnings (World Tourism Organization, 2003). Although the civil war ended in 2002, UN forces remained to ensure political stability until 2005. Following the end of the war there was an initial increase in tourists.

The Institutionalization of Intellectual Property Law in Sierra Leone

Sierra Leone is a member and signatory to a number of international IP treaties including the TRIPS Agreement, since July 1995. A new Copyright Law (Number 75, entered into effect on June 13, 1999) allows the protection of computer software, video films and all kinds of audio-visual works (Ministry of Economy and Trade). The Ministry of Economy and Trade indicates that the new law ‘provides stiffer penalties for offenders and better compensation to the person whose rights have been infringed.’ Sierra Leone is not only TRIPS compliant, but actively expanding its IP protections. It is accordingly over and above the level required to enable the use of collective trademarks.

The Sierra Leone Intellectual Property organization is located at the Department of Information and Communication in Freetown. The Intellectual Property Protection Office has 12 employees. The Office performs several tasks related to the registration of trademarks, industrial designs and patents. (www.economy.gov.lb). While there seems to be sufficient

information available to those desiring to register a trademark in Sierra Leone, the low number and inadequate training of those involved in trademarks specifically is cause for concern. This said, the ability to search for and register trademarks is believed advanced enough to enable clustered economic activity.

Awareness of the economic function of intellectual property in general and trademarks in particular vary according to social strata. While the higher public administration and academics acknowledge the economic effect of trademarks, at the regional and municipal level, caution prevails with regard to the implementation and management of trademarks. Despite private sector skepticism about the public sector's capacity to implement trademarks and related tourism policies, companies demonstrate a vested interest in implementing trademarks in conjunction with the public sector as a tourism promotion strategy. The use of logos among tourism institutions suggests a degree of understanding relating to trademarks. However, though the added commercial value trademarks can provide is known among entrepreneurs, it is unlikely that the wider population, particularly in rural areas, is aware of the benefits they can leverage from the use of collective trademarks. Further education is necessary to stimulate disperse local ownership in such tourism initiatives.

Since we are concerned with the use of collective trademarks by local entrepreneurs, Sierra Leone scores low here because it is only recently TRIPS compliant. Though the Intellectual Property Office is involved in promoting awareness, it is unlikely that the average resident will interact much with this institution. Awareness of trademarks in Sierra Leone is accordingly deemed too low to bolster cluster productivity. With few locals aware of the benefits of intellectual property and trademark law specifically, the degree to which the values underlying such a system have been internalized cannot be very high. It is reasonable to assume a time-lag between the implementation of IP laws and their gradual acceptance by populations in developing nations, if such acceptance materializes at all. Though IP is a recent addition to Sierra Leone's legal system, there seem to be no substantial philosophical traditions that would contradict the values such a system espouses.

The institutionalization of intellectual property rights in Sierra Leone needs to be seen however within the wider context of the institutionalization of private property. While a private property system is established throughout Sierra Leone, it still ranks relatively poorly in terms of economic freedoms. The Global Property Guide Economic Freedom Rating for the country is 47.85 out of 100 and falls under the 'repressed' category (<http://www.globalpropertyguide.com/Africa/Sierra-Leone/economic-freedom>). There is considerable government interference in the economy that may deter potential international investors and stifle the freedom of movement of local entrepreneurs. The first peaceful handover of power through democratic election was not until 2007 (EIU, 2008: 3). Sierra Leone is not even listed in the WEF Global Competitiveness Report. The security and incentive provided by private property is therefore not sufficiently institutionalized or widespread to engender productivity gains in relation to collective trademarks.

Infrastructure in Sierra Leone

Physical Infrastructure

National infrastructure was seriously damaged during the war and hence transports, communication, water supply and electricity networks remain in a poor state (EIU, 2008: 3). With only 1 out of 9 airports in the country with a paved runway over 3 km to enable international commercial flights, Sierra Leone ranks 159th in the world in terms of airport

accessibility (CIA World Factbook 2010). There are only 8 airlines operating out of Freetown International Airport with just over 25 international flights a week and only 8 short-haul flights a week (<http://www.farecompare.com/flights/Freetown-FNA/city.html>).

The public road network in Sierra Leone totals over 11,000 km of classified roads and 3,000 km of local, unclassified roads and even the most essential parts of this network are deemed to be so deteriorated that they are unusable in the rainy season (Infrastructure Project: 6). Only 904 km of these are paved, ranking the nation at 131 in comparison to the world in terms of road network capability (CIA World Factbook). A comprehensive analysis of road transport quality in Sub-Saharan Africa done in 2006 ranks Sierra Leone at 36 out of 42 (Trans-Africa Network: 12). This low ranking in the context of a region with very poor transport links suggests Sierra Leone needs to invest heavily to stimulate trade within the nation and enable tourists to reach their destinations easily. Combined with the poor state of the road system, accessing anything outside of Freetown remains very difficult if not impossible for the average tourist.

Electricity, water supplies and ICT infrastructure

Most energy is produced and used within households where biomass energy (wood and charcoal) is used to cook and kerosene is used for lighting. These traditional forms of energy account for over 80% of total energy use in the country (Energy Policy: 5). The lack of established energy networks makes local initiatives to attract tourism difficult. Investors in the region continuously cite lack of stable electricity supplies as a main deterrent from investment (Investment climate report SL). The Ministry of Energy and Water resources has published strategic plans to push Sierra Leone into modern energy production and it does possess significant renewable energy resources, yet these have yet to be utilized efficiently at a national level. (http://www.eoearth.org/article/Water_profile_of_Sierra_Leone).

There is a ‘marginal telephone service with poor infrastructure’ (CIA World Factbook 2010). As of 2008 there were 31,500 main telephone lines in use, placing the nation at 176 in the world ranking (CIA Factbook 2010). The use of mobile phones is increasing but remains concentrated in urban areas. The country has 273 internet hosts and counts 13,900 internet users ranking it at 196 worldwide in terms of connectivity (CIA World Factbook). While some of the main tourism institutions have websites, the lack of widespread regional internet use (or other forms of communications such as telephones) suggests that local actors will have difficulty engaging with regional tourists, let alone international ones. There are frequently delays in telephone line connection and only 8.2 % of firms use the web when interacting with clients and suppliers (Investment Climate report SL). It is thus highly unlikely that adequate infrastructure exists for firms to trade effectively and efficiently coordinate their activities in the tourism sector.

Institutions in Sierra Leone

The tourism institutions in Sierra Leone are limited. The Ministry of Tourism and Culture is charged with “the responsibility to develop Policies and Programmes geared towards the Promotion of Tourism and Culture in Sierra Leone” (Sierra Leone Encyclopaedia, 2008). There is also the National Tourist Board, overseen by the Ministry of Tourism and Culture and the website ‘VisitSierraLeone.org’ that is endorsed by the National Tourist Board. While these institutions are still in their infancy, important steps are being taken in the right directions with relative tangible output so far, however.

The Ministry of Tourism and Culture was formed in 2007 and seeks to coordinate all tourism-related investment and services. It has already developed a national policy on tourism and is charged with the supervision of the National Tourist Board. It thus provides the necessary institutional architecture for tourism development nationally (Source: Information above submitted by the former Minister in June 2007, Sierra Leone Encyclopedia, 2008).



Source: The National Tourist Board of Sierra Leone

A National Tourism Board for Sierra Leone is charged with coordinating activities relating to tourism throughout the country. Part of the office is allocated to the Sierra Leone police force in order to collaborate on ensuring safety. Though more specifically involved with tourism activities than the Ministry, it does not have regional tourism boards at its disposal. These would be integral for establishing and promoting collective trademarks among tourism actors in rural areas. While this suggests an adequate institutional structure for the coordination of national tourism activities, the complete lack of regional tourism boards means development will be focused in urban or designated regions. The establishment of regional boards will go a long way to ensure disperse tourism development and strengthen the value-claim that collective trademarks can offer.

Though the Tourist board totally lacks any online presence, information regarding tourism is accessible via www.visitsierraleone.org. The website was launched in 2004 by a Sierra Leone resident as a “one-stop shop” to provide comprehensive information and guidance about travelling to Sierra Leone, accommodation and visitor attractions. It is officially endorsed by The National Tourist Board.



Source: VisitSierraLeone.org

Neither is the logo protected by trademark law and nor are the logo and slogan systematically applied across the various advertising campaigns. No slogans or logos exist at the regional level and the tourism promotional materials of various sites do not contain icons, slogans, or logos. Hence there is scope for a concerted effort to promote tourism in Sierra Leone through IP, emphasizing *one* specific campaign – which would be best centered on the “Visit Sierra Leone” logo and slogan rather than various campaigns. The extent to which guidebooks and destinations refer to Sierra Leone’s war-torn and turbulent history is regrettable. These events are currently fully eclipsed from the way tourism is promoted and perceived in Sierra Leone. The “denial communication” strategy pursued has not helped present a concerted approach towards tourism as much of its history is left in the dark.

Education in Sierra Leone

A 2007 ICTSD (International Centre for Trade and Sustainable Development) Report¹ identified the need for IP public awareness campaigns and training for IP staff. While many of the institutions and laws required for the efficient use of trademarks exist, there is inadequate use of institutional channels to educate the wider public on the benefits of trademark law for tourism services. It must be noted that quantifying degrees of internalization of IP values is tenuous at best. Moreover, the lack of available information regarding IP training programs in Sierra Leone makes accurate predictions difficult. According to ICTSD (2007 b, ‘Technical and Financial Cooperation Needs for Implementation of the WTO TRIPS Agreement in Sierra Leone’, (<http://ictsd.org/i/ip/11419/>) there is a need for a ‘gradual, patient level of sustained activity supported by the Government and its development partners over the programme period rather than a series of ad hoc events, peaks, troughs and interruptions’ (<http://ictsd.org/i/ip/11419/>). Furthermore, there is a need for training of IP staff. With only 12 employees at the Intellectual Property Office, Sierra Leone does not have the necessary human resources for a large expansion in trademark registration activity. Moreover, few government initiatives exist to improve this. Training of IP staff as well as training in collective trademark management is required for local actors to begin leveraging trademarks to their own advantage.

While the need for harmonized, predictable and transparent educational arrangements is recognized, Sierra Leone lacks established educational programs informing stakeholders on the use of trademarks. Engagement with informal trademark mechanisms remains thus poor considering their relative lack of use in tourism services. While it is likely that local stakeholders will begin to engage more with trademarks as they become aware of their benefits, Sierra Leone necessarily scores low in terms of engagement with informal mechanisms due to its recent adoption of formal legal mechanisms. This score is expected to increase as residents gain experience of the intellectual property system.

POTENTIAL IN CROATIA

Overview

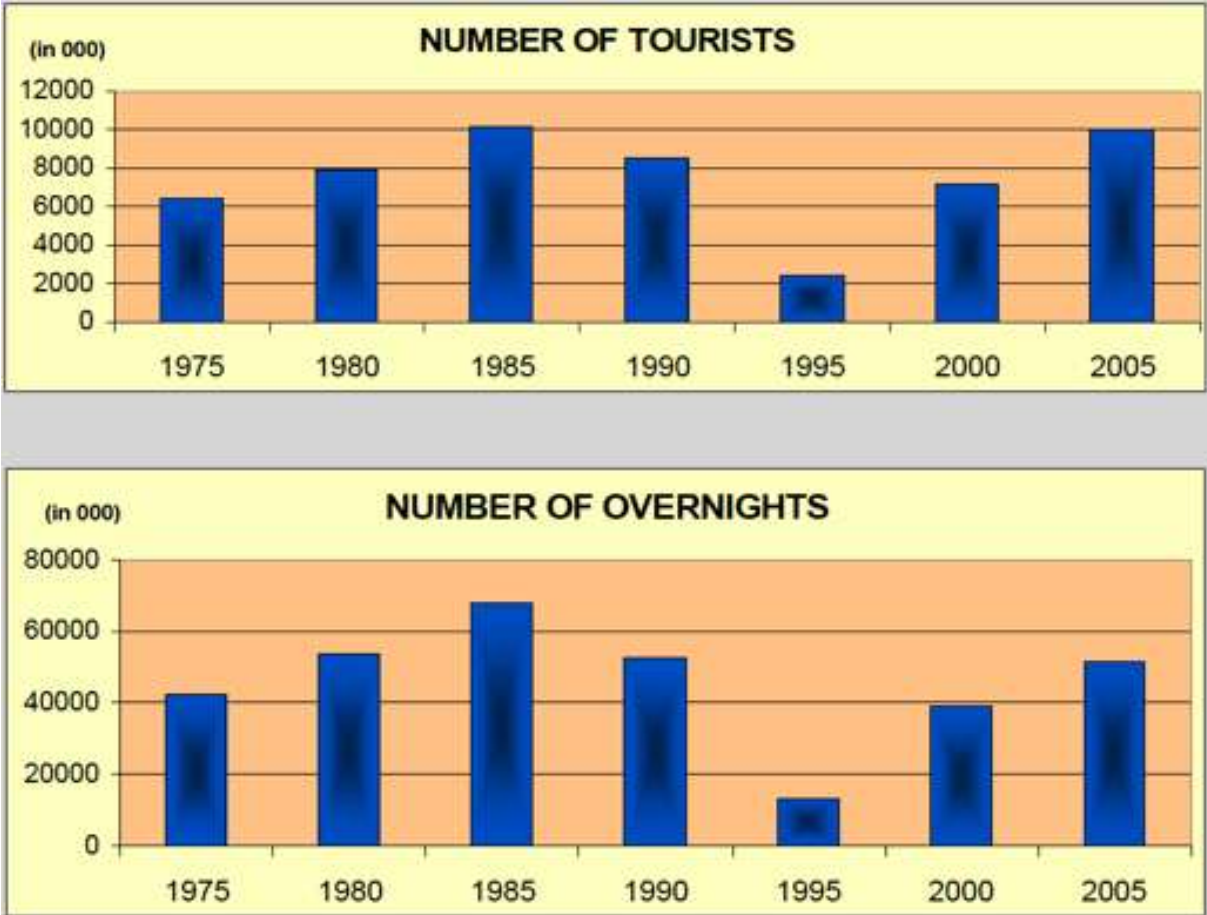
Croatia’s image as an attractive tourist spot suffered serious setbacks as a result of the war between 1991 and 1995. However, an aggressive marketing campaign by the Ministry of Tourism, lead by the slogan “The Mediterranean as it once was”, combined with Croatia’s geographic proximity to Western Europe, has since re-established it as a premier holiday destination for the lucrative European travel market. Its pristine environment, diverse flora and fauna, rich cultural heritage, high literacy rates and its citizens’ language skills (including widespread German and Italian) give it enormous potential. (Euromonitor, 2009) Croatia boasts nine national parks, six cultural UNESCO heritage sites and one natural one. In 2003 tourism accounted for approximately 22% of GDP and 40% of total exports. (Ministry of Tourism, Republic of Croatia 2003: 4).

Prior to the war Croatia was one of the richest regions of the Yugoslav republic (CIA Factbook, 2010). The war caused heavy damage to the economic and transport infrastructure of the country and GDP fell 40.5% from 1989 to 1993 (US Department of State). All accounts

¹ International Centre for Trade and Sustainable Development (2007) Final Report of Sierra Leone Intellectual Property Technical Assistance Diagnostic Study.

of pre- and post-war levels of tourism in Croatia demonstrate the massive extent to which war was detrimental to the industry (Currie 2004; Hall 2003). However, they also indicate how well Croatia has recuperated. Croatia reached its pre-war figure of 8.5 million guests in 2002 (Ministry of Tourism, Republic of Croatia 2003: 4).

Table 3: Tourist Arrivals and Overnights in Croatia



Source: Ministry of Tourism, Republic of Croatia, 'Tourism in Figures 2007' (www.mint.hr)

The country is now perceived as a relatively stable parliamentary democracy where violent crime is rare, day-to-day life safe, and foreigners are not targets for criminals (US Department of State). Although favorable publicity of Croatia in the press has led to better perceptions of the country, the trials of war criminals at the UN ICT in the Hague has kept the conflict in public memory (Hughes 2008: 64). With instability in the region affecting tourist propensity to travel to Croatia, the country has sought to distance itself from the pejorative notion of "Balkan-ness" (Hall 2003: 287). While the ethnic violence depicted in the international media surely damaged the nation's reputation and thus contributed to the drop in tourism, no estimates exist for the immaterial costs of the war. (Global Enabling Trade Report 2010: 2).

The Institutionalization of Intellectual Property Law in Croatia

Croatia is a member and signatory to a number of international IP treaties including the TRIPS Agreement. National focus has been on creating the legal institutional architecture necessary for economic exchange with developed markets; IP laws in Croatia have been harmonized with EU law since 2003 and are in accordance with TRIPS requirements

(Franklin & Matijevich 2006). The Trademark Act has been in force since January 1, 2004 and was amended on the 31 July, 2007. While legal institutions have reassured the business community and stimulated investment, both criminal and civilian court proceedings regarding infringement are longer in comparison to other EU states (Franklin & Matijevich 2006). This is further complicated by the lack of specialized IP courts and judges as well as limited awareness about IP among small, local tourism enterprises. Thus, inefficiencies in the judicial system and an opaque regulatory environment make it less than perfect in terms of compliance.

The State Intellectual Property Office of the Republic of Croatia (SIPO) is located in Zagreb and also contains the Information Centre for Intellectual Property (INCENTIV). The SIPO website provides all the relevant documents concerning legislation, application procedures, and intellectual property in general. INCENTIV is a public information service of SIPO that provides professional information assistance to anyone interested that wants to protect and exploit intellectual property. On top of this free education, INCENTIV also provides free search services of IP databases. (<http://www.dziv.hr/en/default.aspx?pArtID=92&selection=1>). This being said, the tourism slogan of Croatia itself does not enjoy trademark protection.



Source: <http://www.htz.hr>

Though the use of various regional tourism logos and slogans and the prevalence of the single marketing slogan internationally, demonstrate awareness of the benefits offered by strategic use of branding, the lack of international trademark protection suggests a lack of education on intellectual property throughout the country.

Infrastructure in Croatia

Physical Infrastructure

Although privatizing the Croatian hotel industry proved difficult due to its communist legacy, many of these issues were resolved in the early part of the decade. Institutions engendering security and respect for private property have since stimulated trade and investment as the perception of risk declines. Multiple tourism laws have been enacted to promote development of the tourism industry. (The Act on Provisions of Tourism Services, Hospitality and Catering Industry Act, the Sojourn Tax Act, Act on Tourist Board System, the Promotion of Croatian Tourism, the Tourist Board Membership Fee Act.) However, assessments continue to rank the Croatian regulatory environment unfavorably. The Global Enabling Trade Report 2010 ranks it 76 out of 125 for institutionalizing property rights, giving it a score of 3.8 out of 7. (Enabling Trade Report Croatia: 2) This suggests that while there is adequate respect for private property to leverage collective trademarks, there are still issues to resolve.

The damage to national transport, communications and tourist accommodation infrastructure during the war was substantial. Significant investments have slowly turned this situation around. The government has spent over \$2m a year since 1991 on the reconstruction of

Dubrovnik alone (Hotel Management 2007).

Table 4: Accommodation capacities – types of accommodation

	1975	1980	1985	1990	1995	2000	2005
Hotels and Apartment hotels	100,255	113,177	127,802	142,917	138,535	126,656	115,776
Tourist resorts	35,030	41,715	51,065	58,201	61,389	64,593	61,991
Camping sites	184,311	232,960	278,779	292,934	260,764	210,148	217,324
Private rooms	189,846	196,034	246,995	264,092	125,370	273,833	400,454
Spas	1,411	1,045	2,292	2,906	2,683	2,830	2,258
Vacation facilities	65,982	68,228	76,061	69,319	6,996	11,657	11,124
Youth hotels and hostels	26,677	25,742	27,397	19,853	3,321	6,192	4,667
Other	12,559	13,099	9,860	12,458	9,568	14,279	95,616
TOTAL	616,071	692,000	820,251	862,680	608,626	710,188	909,210

Source: Ministry of Tourism, Republic of Croatia, 'Tourism in Figures 2007' (www.mint.hr)

Air traffic routes between Croatia and its major tourist-generating markets in Europe have improved: there are now 10 international airports and the major airports Zadar, Split, Dubrovnik, and Zagreb continue to increase flights. Split airport, now the largest in the Adriatic, is directly connected to 74 European destinations, with regular flights to 46 cities in over 19 countries. The highest generating tourist markets are all from Europe. This is likely due to the proximity of Croatia to countries in the region, substantial increase in flights routes connecting Croatia to them, the perception of stability achieved in Croatia, and aggressive marketing campaigns by the Ministry for Tourism depicting Croatia as an untouched Mediterranean coastal paradise. That tourism levels kept growing, albeit modestly, after the 2007 financial crisis is most likely because Croatia offers relatively cheap vacations in comparison to other European tourist destinations.

Croatia's geographical position makes it an integral part of the Greater European Transport Network and it is thus likely to receive funding from the EU in the future (Republic of Croatia Ministry of the Sea, Tourism, Transport and Development 2007: 2). The Travel and Tourism Competitiveness report 2009 ranks the quality of Croatia's roads at 34 out of 133 and suggests it is at a competitive disadvantage globally (T&T Croatia 2009: 2). Moreover, Croatia's long, thin shape make effective road networks essential for travel within the country. Access to rural areas via paved roadways need to be however expanded in order to fully leverage the benefits of tourism clusters and avoid mass tourism along the coast.

Table 5. Tourist Arrivals and Overnights in Croatia

ZEMLJE	TOURIST ARRIVALS			INDEX		TOURIST OVERNIGHTS			INDEX		STRUCT. IN % 2009
	2007	2008	2009	2009/08	2009/07	2007	2008	2009	2009/08	2009/07	
GERMANY	1.554.794	1.545.735	1.579.610	102,19	101,60	10.848.939	10.982.654	11.450.766	104,26	105,55	22,7
SLOVENIA	1.015.379	1.042.666	1.012.743	97,13	99,74	5.689.746	5.802.277	5.635.477	97,13	99,05	11,2
ITALY	1.249.343	1.167.646	1.200.126	102,78	96,06	5.451.968	5.069.287	5.135.275	101,30	94,19	10,2
AUSTRIA	839.717	813.728	881.846	108,37	105,02	4.244.607	4.164.793	4.514.902	108,41	106,37	8,9
CZECH REPUBLIC	669.132	622.620	607.421	97,56	90,78	4.394.711	4.122.460	4.020.096	97,52	91,48	8,0
POLAND	322.890	417.211	454.407	108,92	140,73	1.833.961	2.511.568	2.737.609	109,00	149,27	5,4
NETHERLANDS	264.664	297.318	307.850	103,54	116,32	2.030.442	2.334.993	2.446.431	104,77	120,49	4,8
SLOVAKIA	280.586	299.318	306.741	102,48	109,32	1.831.655	1.927.093	2.000.420	103,81	109,21	4,0
HUNGARY	381.202	370.392	323.368	87,30	84,83	1.984.644	1.933.978	1.644.280	85,02	82,85	3,3
FRANCE	473.806	439.095	406.037	92,47	85,70	1.664.973	1.635.494	1.532.973	93,73	92,07	3,0
OTHER	2.255.178	2.399.376	2.254.673	93,97	99,98	9.598.984	10.140.925	9.382.388	92,52	97,74	18,6
TOTAL FOREIGN	9.306.691	9.415.105	9.334.822	99,15	100,30	49.574.630	50.625.522	50.500.617	99,75	101,87	100,0

Source: Avdic 2009: 2

Electricity, water supplies and ICT infrastructure

Unlike Sierra Leone, Croatia does not suffer from power blackouts and it has a stable water supply network that extends throughout the country. While not the most sophisticated in the world, Croatia's electricity and water supply is certainly sufficient to contribute to continued growth rates in the tourism sector.

Croatia ranks quite highly in terms of availability and use of Internet and communications technologies. It was 25 out of 133 in the world in terms of the number of telephone lines in 2008. With 133 mobile phone subscriptions per 100 of the population and following substantial investments made in communications infrastructure, The Global Information Technology Report 2009-2010 now ranks Croatia 51 out of 133 on their Networked Readiness index (ICT Report: 1). Though improvements can still be made, there is certainly more than enough communications infrastructure for tourism actors to stimulate cluster productivity.

Institutions in Croatia

The crisis of war seems to have permitted a shift from mass tourism policies, allowing innovative redevelopment by providing an opportunity to overcome institutional path dependency. The Croatian government has invested substantial resources in developing the legislative and commercial environment necessary for tourism. Investment in CNTB marketing campaigns (figures above) and its budget of roughly \$15 million a year demonstrate this commitment (Nathan Associates 2003: 15).



Source: <http://www.mint.hr/>

The National Tourism Ministry was formed in 2008 as a separate, self-contained entity to streamline the governance of tourism in the country, which demonstrates the importance of tourism to the country, 'even in those areas where it was grossly marginalized in the past.' (Ministry of Tourism, Republic of Croatia 2003: 2). The Ministry is charged with coordinating the activities of national organizations and liaising with foreign countries and organizations to promote Croatian tourism abroad. This coordinated effort provides a national environment that is highly beneficial to regional actors wishing to stimulate tourism clusters.

The Croatian National Tourism Board (CNTB) sets the national tourism strategy and acts as a hub to coordinate the activities of 21 regional tourist boards, each with their own website. It is also central in conducting operational market research to achieve the renovation, protection

and comprehensive evaluation of tourism potential in the country. The CNTB's extensive promotional activities encompass an overall investment of 8.6m EUR, including 2.03m EUR in general advertising and 4.12m EUR in TV marketing in primary and secondary markets (Bulic 2006: 7). The CNTB acts as an online hub with links to all regional tourist boards, each of which has a logo and website. It is also responsible for representing Croatian tourism abroad. These efforts exhibit an awareness of the benefits of branding to destination management, though the extent of trademark protection is limited. Before the war most tourists were domestic so international presence online is certainly a driver and requirement for post-war tourism in Croatia. Easily accessible centralized information services reduce the time tourists must invest in researching a destination and thus contribute to making holidays more "experience efficient". The CNTB is a valuable starting point for identifying and nurturing tourism clusters in the country. Yet, despite the persistent presentation of Croatia's natural and cultural heritage, the CNTB website, as well as the regional boards, make little or no reference to the recent war. This "denial communication" strategy, like that used in Sierra Leone, does not help in creating a concerted approach to the treatment of Croatia's history.

The Association of Family and Small Hotels of Croatia is an indicator of the innovative approach to sustainable development of tourist infrastructure in Croatia that stresses small-scale, eco-friendly accommodation over massive hotel projects. In this sense it is a vital component of Croatia's attempt to stimulate local and rural development through tourism. However, the association has not yet embraced the role of trademarks. Such an initiative provides a perfect example of how collective trademarks could be exploited to create and sustain collective management structures in regional clusters of small hotels and related services. The association provides a valuable organizational framework by which local stakeholders could be educated on the benefits of intellectual property protection.



Source: <http://www.omh.hr/default.aspx?id=99>

Education in Croatia

Like Sierra Leone, awareness of the economic function of intellectual property, and trademarks more specifically, varies according to social strata. Despite establishing the legislative framework for IP, trademarks have not been leveraged to their full extent by the relevant tourism administrations. However, the information resources provided through the INCENTIV service of SIPO are likely to raise awareness of the value trademarks can provide. These services should be made as accessible as possible to raise awareness and engagement with trademarks in tourism services.

While central administration officials appreciate the role of trademarks in destination branding, this has not been replicated at a regional level. If regional tourism boards are not leveraging the benefits of collective trademarks then it is unlikely that smaller actors operating within their territories will be. Education is a necessary component of increasing engagement with informal trademark mechanisms. This said, the sporadic use of trademarks at both national and regional levels suggests an adequate level of engagement to stimulate tourism clusters. That trademarks have been used extensively by tourism boards, but not protected via trademark registration, suggests an awareness of the value of trademarks that is

limited in its understanding of the formal and informal mechanisms at the disposal of local actors.

It has been remarked that there are inadequate human resources in the judicial sector for the efficient running of the trademark system. However, Croatia is investing in educational resources to this end. A report assessing the human resources relating to tourism in the country ranks the quality of Croatia's education system at 66/133 (T&T Croatia report: 2). The local availability of research and training in tourism services are ranked at 47 while the extent of staff training is ranked 64 out of 133. In terms of information and communications technology education for business-related activities, Croatia ranks 54 for local availability of research and training, 89 for quality of its management schools and 107 for staff training. Thus, while many of the formal mechanisms are in place, the quality and regional dispersion must be improved in order to really foster gains in cluster productivity.

REBUILDING POTENTIAL TOURISM CLUSTERS IN SIERRA LEONE AND CROATIA

War and tourism are not incompatible. If managed appropriately, crisis may even present opportunities to reorganize established structures and thus reinvent established organizations, patterns and habits. While Sierra Leone has taken steps to market tourism and promote its image abroad, the poor state of its infrastructure and institutions stands in the way. Sierra Leone has not succeeded in reestablishing the image of a safe and beautiful tourism destination. Moreover, education concerning IP is limited at best and must be made more available to engender productive gains in tourism clusters via collective trademarks. Trademarks have not been employed in tourism. Raising efficiency through clustering and communicating product value via trademarks will attract more - especially high-income - tourists to holiday destinations. This should increase local ownership, innovation, reputation and self-esteem.

Croatia to the contrary has rebounded from the destruction wrought to its infrastructure and security by war very well. Having reinvented itself via extensive marketing campaigns both internally and abroad, the negative connotations associated with Croatia are being replaced by a vision of an untouched coastal paradise. Though infrastructure and the legal environment are certainly advanced enough to enable collective trademarks to stimulate tourism cluster development, there is room for improvement. The strength of Croatia's coordinated tourism development plan implemented through its institutions is likely to help overcome these difficulties. This positive image must be qualified by stressing the need for education to promote the values of the trademark system and to inform local actors of the benefits that can be derived from the use of collective trademarks. While there are certainly adequate institutional channels to this, training programs should be made more readily available to the wider public. As awareness of these benefits proliferates, regional tourism clusters should be in a better position to coordinate their activities and communicate the value of their destination to international tourists.

CONCLUSION

Trademarks are conventionally justified via their ability to stimulate efficient, free competition either by reference to *confusion* or *dilution* rationales. The rationale we propose for the protection of collective trademarks is entirely different: clearly codified collective trademark legislation enables and stimulates clustered economic activity and thereby induces the internalization of values and skills necessary to support a functioning intellectual property regime. Conceptualizing IP as enabling is particularly important for emerging economies

often considered victims of international IP harmonization. IP can be an instrument that empowers communities because collective trademarks increase the economic advantages derived from tourism clusters and precipitate a regional governance structure owned and operated by local individuals.

NIE's focus on institutional setting as the product of choice and its dynamic understanding of the role of institutions in economic development helps elucidate the interrelated phenomena of law, individual behavior and economic activity. North argues that change is a complex process resulting from the daily choices of individuals and organizations subjected to limited information, diverse mental models, and the influence of historically rooted norms and conventions (1995: 11). Because 'law both reflects and shapes preferences' (Mercurio 1989: 62), modified institutions may slowly induce normative change within a society, provided these arrangements are supported by organizations with an interest in their perpetuation. In a sense, law, economic activity and cultural values are not distinct and exclusive realms of social behavior but highly interrelated and mutually reinforcing phenomena. In the case of IP law, it is reasonable to assume that a legal architecture that enables economic activity by enforcing intellectual property rights, such as collective trademarks utilized in tourism services, will stimulate development. The benefits accrued to individuals and communities from this economic development are in turn likely to lead to the internalization of the values supporting such legal frameworks. Conceived in this manner, law, cultural values and economics are mutually supportive realms of human activity.

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