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Contribution to the second colloquium on secured transactions security interests in intellectual property rights  
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As you are aware I gave a presentation on Default and Enforcement of Security. At the outset while explaining the provisions of the UNCITRAL Legislative Guide on Secured Transactions, I stated that power of enforcement of the secured creditors is the core provision of the Guide which provides the sanction behind secured transactions. It is the power of enforcement which provides the comfort to the lenders to lend and as a result more lenders are active in the market resulting in better credit growth in the economy. Since credit is the driving force of the economy such credit growth results in overall economic growth and thereby achieves the objective of the Legislative Guide.

After explaining the provisions of the Guide for default and enforcement I mentioned few issues relating to security interest over IP rights but I could not elaborate on account of paucity of time. The said points are mentioned below:

(a) On the one hand it needs to be recognised that intellectual property rights are valuable property rights and constitute a valid security for raising any debt. On the other hand it has to be accepted that IP rights are different from other tangible properties and therefore the law relating to security interest over such property rights will have to be tuned to the peculiarities of the property rights under the intellectual property law.

(b) The registration system relating to IP rights is the other issue which needs to be resolved. In most of the systems there is a dual registration required under the IP rights registry as well as the security interest registry if a loan is raised against the security of IP rights. Further the two registration systems operate on different principles. While the IP rights registry is a document based registration system, the security interest registry is based on notice filing. The security interest law will therefore have to be clearly clarified as to which registration system will prevail and if possible to modify the registration system under the IP right law to facilitate borrowing against the security of IP rights.

In regard to the suggestion at (b) above during the discussion on the various issues on the second day I elaborated the point further by stating that intellectual property right is a bundle of rights and each segment of that bundle is a distinct and independent right capable of being offered as a security for a lender. If the IP rights law is modified to clearly define each segment of the bundle of IP rights it will facilitate borrowing money against each segment (example: If there is a novel having a copy right there are distinct rights available for making a movie, staging a drama, making a TV serial, translation of the novel into different languages has separate distinct rights capable of being offered as security. Further the registration system can also be modified to facilitate registration of creation of interest/assignment of each segment so that there is public notice of such transfer / assignment.