

## Governmental Intellectual Property Strategies – from Rights-Based to Market-Based Approach

*Mikko Välimäki<sup>1</sup>*

**Abstract.** Many governments have recently chosen to develop and publish a governmental intellectual property strategy. For example World Intellectual Property Organization lists documents from over twenty governments that aim to communicate a coherent intellectual property strategy. This article studies some representative initiatives and compares them to historical ones in a business strategy context.

The article starts with a short historical overview of how governmental intellectual property strategies were used in the past. Anecdotal evidence shows how some governments chose to increase the level of intellectual property protection while others chose to strategically postpone or refuse intellectual property rights altogether. Governmental intellectual property strategies focused on the setting of policy goals and an analysis of the competitive situation.

Then, the article moves to an assessment of recently published governmental intellectual property strategies from the European Union, Japan and China. They all focus on the acquisition of rights, the level of protection and enforcement. This approach can be called a rights-based intellectual property strategy. In this context, the setting of long-term strategic policy goals is a side issue. A pre-set goal seems to be to strengthen the legal protection of listed intellectual property rights and increase their enforcement while making the acquisition formalities simpler.

At closer analysis, however, the documents additionally reveal some subtle strategic pondering. One can ask do the governments take into account the nation's comparative level of economic development? Do the governments emphasize only enforcement and existing industries, or also balance in the intellectual property system to foster new ventures and innovation? It is found that the discussed governmental intellectual property strategy documents do, after all, detect other issues than acquisition of rights, their level of protection and the execution of enforcement. But the other issues ranging from the use of rights to internal flexibilities in the system are not in the core of the documents.

Finally, it is argued that the now dominant rights-based intellectual property strategies may miss important components of strategy as described in the basic textbooks on strategy. The article proposes a market-based governmental intellectual property strategy as an alternative approach.

**Keywords:** intellectual property, governmental policy, strategy.

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<sup>1</sup> Ph.D., LL.M., Adjunct Professor, Helsinki University of Technology, Finland, and Fellow, University of Eastern Piedmont, Italy. This article is based on a presentation given at a Symposium on IPRs and Corporate Social Responsibility, Beijing, September 25, 2008.

## 1. Introduction

A long time ago, governments were free to choose an intellectual property strategy to fit their stage of development. Some chose to increase the number of rights and their strength, some chose to strategically postpone or refuse the introduction of intellectual property rights altogether. All this however changed when the international intellectual property treaty system was founded and during the 1900s grew to cover practically all over the world. Within the international treaty system, most notably now TRIPS agreement, the level-playing field for individual governmental intellectual property strategies is fundamentally narrower than it once was.

On this background, it is interesting to note how many governments have recently chosen to develop and publish new intellectual property strategies. The number is larger than it seems. Some of the “new” strategies are hiding as a part of a national innovation or science and technology strategy. For example World Intellectual Property Organization (WIPO) lists documents from over twenty governments that supposedly communicate a governmental intellectual property strategy.<sup>2</sup>

But what is a governmental intellectual property strategy?<sup>3</sup> WIPO’s definition goes as follows:<sup>4</sup>

“An IP Strategy is a set of measures formulated and implemented by a government to encourage and facilitate effective creation, development and management of intellectual property. It outlines how to develop infrastructures and capacities to support inventors of IP to protect, develop and exploit their inventions. An IP Strategy may also be defined as a comprehensive national document which outlines how all the policy developments and implementation take place in a coordinated manner within a national framework.”

This definition sounds quite broad but still misses something if read against how strategy textbooks define strategy. For example Robert M. Grant explains in his well-known textbook that strategy involves at least (1) the setting of long-term goals, (2) the analysis of competitive situation, (3) the assessment of resources, and (4) the execution of choices made.<sup>5</sup> WIPO’s definition sets as the goal (1) the “creation, development and management” of intellectual property. But then the definition leaves points (2) -- (4) quite open. In the following, this article tries to find out whether individual governmental strategies carry on from WIPO’s definition and how they in fact do it.

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<sup>2</sup> “National IP Strategies”, available at [http://www.wipo.int/ip-development/en/strategies/national\\_ip\\_strategies.html](http://www.wipo.int/ip-development/en/strategies/national_ip_strategies.html)

<sup>3</sup> This article uses the terms “governmental intellectual property strategy” and “national intellectual property strategy” interchangeably.

<sup>4</sup> Ibid.

<sup>5</sup> See e.g. Robert M. Grant (2007): *Contemporary Strategy Analysis*. Blackwell Publishers.

The article is structured as follows. In the first part the article discusses how governmental intellectual property strategies were used in the past. This historical part will build up a context towards which the modern strategy documents will be discussed. Even though intellectual property strategies have not been expressed with detailed documents before, strategic decision-making has been central in governmental intellectual property policy-making from the beginning. This was more evident at the time before the international intellectual property system was tightly regulated through a number of treaties.

Then, the article discusses current intellectual property strategies based on examples from the European Union, Japan, and China. The aim is to find out if they match with the textbook strategy formation. Compared historically, the modern strategies are fundamentally on a different basis. The question is no more whether intellectual property should be given or not. The dominant approach seems to be to build an intellectual property strategy that makes rights more accessible, stronger, and enforceable. Strategic market-driven goals are taken into account only limitedly and indirectly when the actual use of intellectual property is discussed.

Finally, the article looks at the future suggesting how present-day intellectual property strategies could be constructed to have a more market-based approach. The article proposes a market-based governmental intellectual property strategy as an alternative approach.

## **2. Past: Focus on Economic Development**

### *2.1 Alternative Intellectual Property Strategies*

The history knows many examples of unique governmental intellectual property strategies. While some “leading” intellectual property nations such as France were from early on demanding broad international coverage in the developed world in all fields of intellectual property, some governments persistently resisted the pressure for decades. Arguments were based mainly on the level of economic development: weaker intellectual property system was considered to benefit less developed economies.

In the field of patents, there was notably serious questioning on the merits of the patent law in Europe in the late 1800s. Many countries considered *either repealing or not introducing patent laws* at all. In the end, the Netherlands repealed their law, and Switzerland fundamentally limited the availability of patents.<sup>6</sup> At the time, commentators advocated for the benefits of such national

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<sup>6</sup> For the European patent controversy at the time see e.g. Fritz Machlup and Edith Penrose (1950): “The patent controversy in the nineteenth century”, *Journal of Economic History*, pp. 1-29 and Eric Schiff (1971): *Industrialization without National Patents*. Princeton University Press.

intellectual property policies based on the comparative economic development between the nations. To quote an example, it was stated in Switzerland:<sup>7</sup>

“It cannot be denied that the beginnings of some industries in particular drew considerable benefits from the lack of patent laws. The silk ribbon and silk fabric industry, for instance, had a period when it routinely imitated patterns received from abroad. Meanwhile, strengthened by improved distribution channels, they are now completely self-sufficient even in terms of patterns.”

And it was further claimed:<sup>8</sup>

“With no patent protection whatsoever Switzerland has become, relative to the size of its population, the world’s most industrialized country and has successfully conquered the global marketplace despite its unfavorable geographical location, its lack of coal and iron, and the fact that it is surrounded by nations with prohibitive and protective tariffs.”

In other words, “piracy” was thought to be a meaningful intellectual property strategy for a developing nation. It must be emphasized that the intellectual property policy decisions of the 1800s had little to do with ideological or moral choices; the word “piracy” did not have a meaning in the context of intellectual property rights yet. It was all about constructing a sound economic policy.

In the field of copyright, similar kinds of trends were present. For example the United States had a well-known governmental strategy fitted with the country’s stage of economic development. In essence, copyright was granted to United States citizens but *foreign copyrights were not recognized*. This worked for the benefit of the emerging national publishing industry. As one commentator has argued:<sup>9</sup>

“Assisted by these copyright and trade policies ... indigenous publishing began to take off in the decades after Independence.”

Since the publishers had basically free access to the back catalogue of English-language material originating from Britain, it was all about competition among local printing presses that fueled the developed a new industry.

## 2.2 The End of National Alternatives

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<sup>7</sup> Statement credited to Prof. Bolley and Prof. J.H. Kronauer, Zurich, 1862. Quoted in François Meienberg (2005): “The Relationship Between Patents and Development - the View of the Swiss Industry”. Berne Declaration.

<sup>8</sup> Statement credited to Prof. Victor Böhmert, Berlin 1869. Quoted in François Meienberg (2005): “The Relationship Between Patents and Development - the View of the Swiss Industry”. Berne Declaration.

<sup>9</sup> See Paul Starr (2004) *The Creation of the Media*. Basic Books. In p. 122, notes that British reprints accounted in the late 1820s over 70% of all titles published in the United States.

The anecdotal examples above show how in the 1800s governmental intellectual property strategies focused on the “business goal” of economic development. Intellectual property rights were either used as a catalyst, or rejected as a potential burden. Some countries saw that it did not make economic sense to grant a monopoly to a given individual or firm in emerging industries.

The skeptical governmental strategies of the 1800s can be explained with the textbook strategy analysis. The long-term goal was typically national economic development. Competitive situation was a fundamental part of the strategy: some countries chose to “pirate” the work of others for their own private benefit. And the assessment of resources was also a relevant: if a national industry was unable to compete with intellectual property rights, they were not introduced. In other words, governmental intellectual property strategies of the 1800s can be explained with rational decision-making and careful strategy formation.

Time however played against alternative governmental intellectual property strategies. With the increase in trade between nations, international intellectual property treaties pushed by the leading nations of the time gradually took over national alternatives. According to WIPO, the key event in the area of patents was International Exhibition of Inventions in Vienna, 1873, when “foreign exhibitors refused to attend ... because they were afraid their ideas would be stolen and exploited commercially in other countries.”<sup>10</sup> Thus, Paris Convention that gave foreign inventors the right to file for patents in other members of the treaty was signed in 1883.

Regarding copyright, French Association Littéraire et Artistique Internationale worked towards what finally became signed as the Berne Convention in 1886. The key motivation was to stop the piracy of foreign copyrights. National policies were option for only those who did not join the treaty immediately. For example the United States, only after it became a net exporter of copyrighted products after the Second World War, and had to take a leading role in enforcing copyrights all over the world, finally joined Berne Convention in 1988.<sup>11</sup> That was over 100 years after its introduction.

### **3. Present day: Rights-Based Approaches with Some Adjustments**

#### *3.1 Straightforward Rights-Based Strategy: European Union*

As noted, many governments have recently chosen to develop and publish a governmental intellectual property strategy. Most of these present-day strategy documents are rather focused on the acquisition of rights, the level of protection and enforcement. A good example is the recent *European Union Industrial*

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<sup>10</sup> See “WIPO Treaties - General Information”, available at <http://www.wipo.int/treaties/en/general/>

<sup>11</sup> Already before joining Berne Convention, the United States had joined the Universal Copyright Convention, a somewhat weaker and now obsolete international copyright treaty.

*Property Rights Strategy* published in July 2008.<sup>12</sup> It sets the strong and comprehensive intellectual property protection as a given goal and states the following on the document's focus:

“The Communication does not intend to discuss the relative merits of formal industrial property rights and alternative business models such as open source software or trade secrets, but focuses on the industrial property rights themselves.”

This is understandable if one takes as a background the fact that many European multinationals are also leading holders of industrial property rights such as patents and trade marks. These are traditionally classified as “strong” intellectual property rights, although for example the use of patents may differ fundamentally from industry to industry. In the field of pharmaceuticals, patents are often used to exclude, while in telecommunications sector, patents are licensed through cartel-like pools.

From textbook strategy perspective it can be noted that the European Union strategy document's goal is clearly set though it may not serve the overall European innovation policy strategy. There is no motivation, why the given goal would serve the business objectives of European companies. Instead, the European Union intellectual property strategy starts from some legal rights as given objectives, and not from the goals of companies and market participants. There is also no discussion why copyright is omitted from the document. In practice, companies for example in the information and communications technology sector use both patents and copyrights extensively.

The European Union strategy document is also notably absent of flexibility viewpoints what comes to the substance of rights. It does include a short section on competition, which identifies for example standard-setting as a potential area where strong patents may not be the ideal for the economy as a whole. But the document does not discuss solutions.

From national competitive perspective, the European Union strategy includes many elements to influence other countries to meet the same goals. It is stated, for example, that:<sup>13</sup>

“Actions with priority countries include strengthening cooperation with like-minded countries, establishing IPR dialogues, shifting technical assistance resources to enforcement and building awareness of IPR issues

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<sup>12</sup> An Industrial Property Rights Strategy for Europe, Communication from the Commission to the European Parliament, the Council, and the European Economic and Social Committee, Brussels, COM(2008) 465/3. p. 2-3.

<sup>13</sup> Ibid. p. 16. China is currently number one priority country in IPR issues. See [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/ipr\\_epc\\_countries\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/intell_property/ipr_epc_countries_en.htm) stating: “One country is clearly identified as the main priority for the EU. This country appears on top of virtually all indicators available, be it the value, the volume or the variety of infringements.”

in EU companies operating in these countries. At a bilateral level, all trade agreements under discussion include specific chapters on IPR”

This is very much in line with the rights-based approach. The all-encompassing importance of intellectual property is reflected in the notion that all trade agreements support explicitly the given intellectual property strategy. The document is also politically brave in a sense that it clearly contradicts traditional diplomatic approach. It may be very difficult in practice to suggest substituting foreign aid (“technical assistance”) with intellectual property enforcement.

Overall, one could conclude that the European Union’s approach to intellectual property strategy, at least based on the industrial property rights strategy document, is rather straightforward. Objectives are given, and there is no need for strategic pondering or decision-making. The actual use of intellectual property is not interesting, but legal protection is. In the end, it is all about (technical) execution. Therefore, it can be argued that the European Union’s intellectual property strategy, based on the discussed document, does not indicate unique strategic decision-making as explained in strategy textbooks.

### *3.2 Taking the Use of Rights into Account: Japan*

There are of course many other major intellectual property strategy documents that do take the actual use of intellectual property into account. A good example of these is the annually updated *Japanese Intellectual Property Strategic Program* which has since 2003 taken a more comprehensive view on governmental intellectual property strategy.<sup>14</sup>

The driver for the Japanese intellectual property strategy and the associated basic law on intellectual property, enacted in 2002, was the notion that Japan’s national economy had been struggling with recession.<sup>15</sup> It was found that more intellectual property was needed with the evident goal of using it for the Japanese economy’s strategic advantage.<sup>16</sup> While the Japanese strategy very much builds on top of the given idea that intellectual property rights are the key to success, the emphasis on use somewhat differs the Japanese strategy from a pure rights-based strategy discussed above.

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<sup>14</sup> Latest published version is Intellectual Property Strategic Program 2008, Intellectual Property Strategy Headquarters. Available at [http://www.kantei.go.jp/jp/singi/titeki2/keikaku2008\\_e.pdf](http://www.kantei.go.jp/jp/singi/titeki2/keikaku2008_e.pdf)

<sup>15</sup> For background see e.g. Toshiko Takenaka and Ichiro Nakayama (2004): “Will Intellectual Property Policy Save Japan from Recession? Japan’s Basic Intellectual Property Law and its Implementation Through the Strategic Program”, IIC, pp. 877-899.

<sup>16</sup> Interestingly, one can find some parallels in the rhetoric if Japan’s position is compared to Microsoft some ten years earlier. In 1991 Bill Gates had famously written in the company memo, on the basis that Microsoft was inactive in the use of patents and was having problems with competitors, that “the solution to this is patent exchanges with large companies and patenting as much as we can. Amazingly we haven’t done any patent exchanges tha I am aware of. Amazingly we haven’t found a way to use our licensing position to avoid having our own customers cause patent problems for us.” Available e.g. at <http://www.std.com/obi/Bill.Gates/Challenges.and.Strategy>

Regarding flexibility, the strategy document has a separate section for “Promoting the Smooth and Fair Use of Intellectual Property”.<sup>17</sup> In addition, flexibility comes into light in other parts of the document discussing for example open innovation, commons and new kind of licensing policies. Thus one could conclude that the Japanese strategy document does not take the supremacy of intellectual property rights as granted.

The Japanese document includes two important chapters for “Exploitation of Intellectual Property” and “Efforts to Create Culture with the Use of Content.”<sup>18</sup> One could call these sections rather innovative as they tackle issues bottom-up, from the market perspective. For example on the creation of new copyrightable works on the Internet, the document explicitly supports contemplating free licensing options for Japanese companies as a way to use intellectual property strategically in practice:<sup>19</sup>

“In order to promote the production of high-quality content by increasing the scope of creation by creators, the GOJ will, from FY2008, encourage service providers, which provide opportunities for creators of such content as background music to display one’s works, to conclude blanket contracts with the copyright holders’ association in advance and to develop technology that would allow the establishment of an effective copyright procedure in order to support unrestricted creative activities by individuals.”

Japanese companies are today undoubtedly major holders of globally recognized intellectual property rights from patents to copyright, and from trademarks to registered designs. That said, the Japanese approach to external intellectual property enforcement is more “politically correct” compared to that found in the European document:<sup>20</sup>

“The GOJ will support developing countries in developing their intellectual property systems and strengthening the enforcement thereof according to the needs and priorities under individual aid projects...”

Overall, the Japanese strategy fits better in the textbook strategy framework if compared to the European Union’s industrial property rights strategy discussed above. Japanese strategy started from perceived problems in Japan’s competitive situation. The goal of the strategy is the overall competitiveness of Japan’s industry, not just the acquisition and “blind” enforcement of intellectual property rights as such. Also flexibility of the intellectual property system and alternative strategies to use intellectual property are explicitly discussed.

### *3.3 Chinese Double Standard*

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<sup>17</sup> Intellectual Property Strategic Program 2008. Chapter 3, I, 1. (5).

<sup>18</sup> Ibid. Chapter 3 and Chapter 4.

<sup>19</sup> Ibid. Chapter 4, I, 4. (3), [1].

<sup>20</sup> Ibid. Chapter 2, II, 1, (4), [1].

*Chinese Outline of the National Intellectual Property Strategy* is again a case on its own.<sup>21</sup> Published in June 2008, the Chinese strategy document follows to some degree along the Japanese lines. It is a comprehensive intellectual property strategy document covering all rights from patents to copyright and registered designs. Although the focus is very much on rights, and the idea of acquiring intellectual property to Chinese entities to reach leading nations in terms of intellectual property ownership, the document includes also various aspects about the exploitation of rights.

As for the goals, the document refers to China's rapid economic development in the past few years and states that China must improve "independent innovation", and "increase the market competitiveness of Chinese enterprises and strengthen the core competitiveness of the country".<sup>22</sup> The document specifically calls for more patent applications, both in China and abroad, by Chinese companies as well as the emergence of global Chinese brands.<sup>23</sup> All the goals fit well with textbook strategy formation as the competitive position of the nation is taken as the starting point. The focus is solely on Chinese economy and Chinese companies; the document does not even mention intellectual enforcement abroad – this can be thought to be strategic as long as Chinese companies do not hold that many global rights.

From the goals on, the actual substantial areas of improvement are not that exciting read. The Chinese strategy document does not go into details in the same way as the European Union or the Japanese strategy documents. That said, the Chinese outline could be said to be very comprehensible. Basically all issues from acquisition to high-level of protection, from flexibilities to building awareness are mentioned. For example on the difficult issue of copyright and the Internet, the document states only the evident:<sup>24</sup>

"Adopt effective measures to address challenges brought about to copyright protection by the development of the Internet and other new technologies. Properly balance the need for copyright protection and the need for information dissemination"

On this basis, only reading the Chinese strategy document as such either satisfies or frustrates. There seems to be everything for everyone. On the other hand, one could say that no strategic choices or even emphasis to particular issues are taken. At the end of the document one can just wonder if the Chinese intellectual property strategy document is just another bureaucratic all-you-can-eat menu catered for everyone and no one.

Indeed, discussing Chinese governmental intellectual property strategy, and enforcement in particular, one cannot stop in the documents. Instead, the

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<sup>21</sup> Chinese Outline of the National Intellectual Property Strategy. Available at [http://www.gov.cn/english/2008-06/21/content\\_1023471.htm](http://www.gov.cn/english/2008-06/21/content_1023471.htm)

<sup>22</sup> Ibid. Section (4).

<sup>23</sup> Ibid. Section (7).

<sup>24</sup> Ibid. Section (28).

obvious gap between official texts and actual practice must be taken into account. Chinese intellectual property laws have for years been quite in par with those of advanced economies. However, as documented by numerous authors, bureaucratic layers and other filters that have produced polished laws and official documents, have also for years kept the intellectual property enforcement a rather low-key activity on the street-level.<sup>25</sup> Piracy in China has been, and still is, rampant from digital information to physical devices. This has obviously benefited the growth of the Chinese economy, as was the case years ago, discussed above, when developing economies of the time deliberately chose to “pirate” instead of literally enforce foreign intellectual property rights.

This time around it would be ill advised to explain piracy as a rational choice by the central government, though. China is a member of WTO and TRIPS. Chinese companies are looking overseas. More reasonable explanation to the Chinese piracy situations could be just the complexity of the governmental system. A complex adaptive bureaucratic nexus, made out of human beings, apparently resists top-down degrees that supposedly harm the system itself.<sup>26</sup> If claims of local officials being bribed at the local level are correct to any degree, and it is obviously a fact that local pirate industries benefit local economies, piracy is part of the “hard coded” Chinese governmental intellectual property strategy. One must only emphasize that the “piracy strategy” is a local, and unofficial one.

#### **4. Future: Towards Market-Based Approaches?**

##### *4.1 Despite Regulatory Limits Differentiation is Possible*

It is evident that the strategic level-playing field in governmental intellectual property policy has been compromised to a great deal in the last few decades. Within a carefully regulated international intellectual property regime national governments have little to differentiate themselves from other governments. It is difficult to choose other objectives than a high level of intellectual property protection with strict enforcement.

One can argue that many current governmental intellectual property strategies are subject to “executive thinking” as the term is used to criticize managers for missing to understand the real world. From policy perspective, it may feel logical to list different intellectual property rights and study them one-by-one and suggest specific areas of improvement. It may feel comfortable to manage somewhat clear issues such as counterfeiting and piracy. Means are easy to choose: stronger and broader protection, stricter enforcement and penalties, all over the world. This was roughly the main message from European Union’s industrial property rights strategy document.

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<sup>25</sup> See e.g. Andrew C. Mertha (2006): *The Politics of Piracy. Intellectual Property in Contemporary China*. Cornell University Press. pp. 225-231.

<sup>26</sup> The self-maximizing behavior of the local bureaucracy can be explained with the well-founded economic theory on public choice. See e.g. Nicholas Mercurio and Steven G. Medema (2006): *Economics and the Law*. Second Edition. pp. 186-190.

The problem is that an intellectual property strategy should not stop there. This article has submitted that this kind of rights-based intellectual property strategy may miss important components of strategy as described in the most basic textbooks on strategy. Indeed, most governmental intellectual property strategy documents do, after all, detect other issues than the availability, protection-level and enforcement of rights. Unfortunately they overemphasize rights at the moment.

Perhaps one way to rethink governmental intellectual property strategies is to ask whose strategy one is exactly talking about. At worst, a government's strategy can be the end result of unclear political process or just executive thinking as noted. This can too easily be the case if the policy-making forum is limited to diplomats, politicians, civil servants and lobbyists. That end result rarely fits with a textbook definition of strategy, and may not benefit the national economy at large.

However, a governmental strategy can be also based on empirical studying of the strategies of individual entities from major companies to small innovative ones, and even individuals. What are their goals, what is their competitive position, what are their resources, and how do they execute their strategies? After these questions are asked, the result is evidently not that straightforward. The Japanese governmental strategy document was in this regard a more justified attempt at taking into account the various ways how intellectual property is actually strategically used in addition to already well-known exclusionary practices.

Finally, the Chinese example showed how strictly national goals, which may be against international obligations, can still be part of the overall governmental strategy. Even though developing economies can no longer use much more flexible intellectual property system than developed ones, they may still be able to use their old institutional structures to slow down the change process in order to be better able to adapt to it.

#### *4.2 Towards a Market-based Approach*

To contrast various rights based approaches to governmental intellectual property strategies, academic and industry representatives have for some time called for a more market-based approach that would build on innovation rather than rights. For example Nokia's Ilkka Rahnasto has suggested that a governmental intellectual property strategy should include the following key elements:<sup>27</sup>

“(1) encouraging the creation of new products and services, (2) enabling well-functioning licensing market, and (3) rethinking the structures that limit the adoption of new behavior”

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<sup>27</sup> Ilkka Rahnasto (2006): “IPR Strategies Determine the Future of European Businesses?”, IPR Info, September 2006. Rahnasto is Vice President, IPR, of Nokia Corporation. Available at <http://www.iprinfo.com/>.

Overall, the suggestions do not stress mere acquisition of intellectual property rights or the development of stronger and stricter intellectual property regimes. Instead, the goal of the strategy is to develop a system of intellectual property, which facilitates new ventures, innovation, licensing and other business actions. There are concerns that intellectual property rights as exclusive monopolistic rights create entry barriers and harm trade instead of advancing it.

In a similar vein, the Finnish National intellectual property strategy published in January 2009 places the firm in the center instead of a list of rights.<sup>28</sup> It does not begin with listing rights and discussing ways to improve the accessibility of acquiring rights, improve the protection granted to rights holders etc. In a firm-centric market based strategy, the government takes into account that all firms operate in the market with many other firms. A government that chooses to grant intellectual property rights to one company must then make sure that those rights are not misused in any way but put into productive use that benefits the economy at large and keeps it competitive.

It is however too early to predict that market-based intellectual property strategies would one day take over. There is currently no kind of framework one could use to compare and test the feasibility of different strategy documents. As most of them are simply not comparable, traditional rights-based strategy documents obviously continue to appear. For example the European Union has many different bureaucracies, many of them capable of building a European intellectual property rights strategy document from its own perspective, whatever it is. In addition, national governments within the European Union have formed their own strategy documents, often very different from each other. It can be only hoped that some kind of criteria will be developed – preferably empirical – that could help in the transformation of governmental intellectual property strategies from rights-based to market-based thinking.

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<sup>28</sup> *IPR tehokkaaseen käyttöön! Aineksia teollis- ja tekijänoikeuksien strategiaan* (“The efficient use of IPR – Constituents of the intellectual property rights strategy”). Publications of the Ministry of Employment and Economy 38/2009. Available in Finnish with an English summary at <http://www.tem.fi/>.