Dr Richard Woodward
CASE- Centre for Social and Economic Research, Warsaw

What level of IPR restrictiveness is appropriate for the Polish economy

I will briefly present an overview of the debate between advocates of rigorous protection of intellectual property rights (IPR) and their opponents, who argue that increased rigor in IPR protection serves only the interests of the richest countries and prevents poorer countries from developing technologically by imitation. I will also make a few remarks on the relevance of this debate for Poland.

Patents, of course, constitute an artificial monopoly granted to inventors. Though economists are usually opposed to any form of monopoly power, they make an exception in the case of patents due to the benefits accruing in the form of technological development, which outweigh the costs of monopoly power. They argue that the incentives created by the patent system for the development of new technologies are adversely affected when developing countries refuse to respect patent rights. They also argue that such practices harm developing countries themselves by making it more difficult for them to attract foreign investment.

The opposing view is supported by historical examples of very selective enforcement of patent rights by today's most highly developed economies in earlier stages of their development. One of the most frequently cited examples is that of the United States, which in its early years recognized only the patents of domestic inventors and in some areas did not enforce IPRs at all. Proponents of these views also point out that the most developed countries are not always models of compliance with IPR regulations. According to a 2002 report of the European Commission, the US is currently seventh in a ranking of countries which are

sources of pirated goods sold on EU markets, while 21% of pirated CDs, DVDs and cassettes on those markets are produced in Belgium, right under the nose of the Commission! IPR skeptics argue, therefore, that it is only natural for developing countries to apply the same practices that were applied by the rich countries in earlier phases of their development. China and Hong Kong are often cited as examples of how countries can develop by using forms of imitation which often violate patent rights.

Some other arguments for a more selective policy of IPR protection in developing countries are the following:

1. Patent protection sometimes significantly raises the costs of certain products which are of fundamental importance for the life and health of the citizens of poor countries (for example certain medicines). Since the lives of those people are of more value than the property rights of various multinational firms, certain limitations should be placed on the latter. Similarly, forcing citizens of Third World counties to pay the full costs of software further deteriorates the already weak economic position of those countries.
2. The costs an efficient national system of patent registration operating in accordance with international standards and the costs of enforcing the patents registered by them are often too high for low income countries.
3. The potential profits accruing to patent holders create incentives for inventors to limit their research and development activity to work on new, complicated and costly products and processes of great commercial potential, while neglecting the study of natural phenomena (having, for example, medical properties) as well as basic research (which

cannot be patented) or the development of products which are simple and cheap but therefore easily imitated.

4. Restrictive IPR regulations increasingly lead to the extension of patent protection to new areas (e.g., patents on seeds or microorganisms). This often blurs the border between invention and discovery: something which is actually the discovery of a natural phenomenon is treated as an invention of a new product or process. In such cases the usual economic arguments for patent rights are not applicable.
5. IPR protection systems often lead to attempts to patent products (e.g., pharmaceuticals) which have already been known in developing countries for hundreds or thousands of years. The usually very poorly functioning patent offices of developing countries are not able to document the country of origin of a given product. As a result, the citizens of those countries are sometimes forced to pay monopoly rents to the holders of patents on products or processes (e.g., medical treatments) which in fact constitute part of their historical heritage.

What does empirical research tell us about the role of IPR protection in developing countries, and what conclusions can we draw from that research for Poland?

In recent years the World Bank has sponsored research on the relationship between IPR protection and foreign investment. This has been studied in various industries, as the relations may vary according to the character of the technology dominating a given industry. The automobile industry is one in which weak IPR protection is of little value to potential

competitors from poor countries, as access to designs and production technology are of little use for an aspiring producer who lacks access to many very complex and costly components.

These studies show that a firm's market position can significantly influence its perceptions concerning IPR protection and that those perceptions can influence its investment decisions. Firms which are technological leaders perceive flaws in a country's IPR protection much more frequently and attach much more importance to this than firms which do not belong to the technological *avant garde*. Moreover, in certain industries, firms which perceive a country's IPR protection as too weak may refuse to invest in that country; or, if they do invest, they may engage in production using relatively outdated technologies, without any R&D activity. .

Some other studies show that strong IPR protection may in some cases have a *negative* effect on foreign direct investment (FDI), because it may make licensing agreements an attractive alternative to investment. We should, however, remember that for the learning and technology upgrading of firms in developing countries, such licensing may be as beneficial as the entry of an investor, since technology is gained without loss of autonomy.

It thus seems that on the one hand, strong IPR protection may be necessary for attracting FDI, while on the other hand weak protection may be necessary for an economy to benefit from knowledge spillovers from foreign firms to domestic firms. The Hungarian example shows, however, that spillover effects can be achieved without weakening of IPR protection. Hungarian IPR protection is considered to be the most stringent and best enforced among post-Communist countries, and this fact has played a significant role in making Hungary the

post-Communist country with the highest FDI per capita. Moreover, there is evidence that spillover effects are increasingly driving economic development in Hungary.

What does all of this mean for Poland?

First, it is clear that arguments against the increased rigor of IPR protection in developing countries concern the very poorest and least developed countries. However, these are not good arguments for weak protection in Poland, a middle-income country. In the case of a member country of the European Union, arguments that IPR protection is too costly are unconvincing. If Poland is to be serious about building a Knowledge-Built Economy, it should not give up the gains from strong patent protection (such as transfer of technology from abroad and incentives for domestic inventing), especially since in the areas in which Poland would seem to have a relatively strong position (life sciences), IPR protection gains in importance with practically each passing day.

And in fact, Polish legislation in the area of IPR protection has been brought into line with international standards. In 2000 the Agreement on Trade-Related Aspects of IPRs (TRIPs) became fully binding in Poland. Moreover, in accordance with its association agreement with the European Union, signed in 1991, Poland was obliged to harmonize its legislation with that of the European Union. The Industrial Property Act was passed in 2000 to harmonize Polish IPR legislation with relevant European law, and in 2002 extensive amendments to that law brought Polish IPR regulation fully in line with EU standards. Obviously, having recently become a member of the EU, Poland is obliged to meet EU standards in this area. Benefits

from EU membership in the area of IPR protection can be expected in the future in connection with the introduction of a Community Patent.

This patent would allow inventors to obtain, with just one application, a single patent legally valid throughout the European Union at a fraction of the existing cost of doing so. Currently, patent protection in several European countries costs around five times as much as in the USA or Japan.

In March of this year, the European Parliament passed a new directive prepared by the European Commission on intellectual property rights enforcement. The purposes of the directive are to harmonize European IPR legislation and to combat the rapid growth of piracy. During parliamentary debates on the subject, critics from both academic and industry circles said the proposed directive went goes far in increasing the severity of penalties for infringements of IPRs (including unwitting ones), introducing sweeping changes which transform infractions previously treated as civil cases into criminal violations. These measures were, however, defeated and not included in the final text of the legislation. However, the directive does contain provisions allowing companies to raid offices and homes, seize property and petition courts to freeze the bank accounts of those they believe to be engaged in piracy.

In any event, future discussion about IPR-related issues in Poland will certainly be taking place within the context of the wider European debates on the subject.

Doctor Richard Woodward has worked with the CASE Foundation since 1994. He has participated in numerous research projects on the privatization and restructuring of state enterprises in Poland and other post-communist countries, with a special emphasis on employee ownership as a form of privatization. Other research interests include small business development, local governance, innovation and business networks. He has recently been involved in several projects related to the development of the knowledge- based economy in Poland and other transition economies. He has authored and edited numerous publications, including books, on these subjects. He graduated from the Pennsylvania State University (economics) in 1992 and received his PhD in economics at the Department of Sociology and Economy of the Lodz University in 2000.