



Submission on the draft "IPR from PFR" bill

Public Hearings
PPC on S&T
29 & 30 July 2008



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Denklaers • Leading Minds • Dikgopolo Itsa Diholef

The University of Pretoria supports the spirit and intent of the policy and the proposed legislation, however, the current draft needs important amendments to improve both its ability to enable and support the protection of intellectual property emanating from publicly financed research.

Outline of submission

- Our understanding of the context
- Lessons from the genesis legislation – the Bayh-Dole
- A global response
- Comments on the draft legislation from *Yunibesithi Ya Pretoria*

Universities and Small Business Act (1980) (*Bayh-Dole*)

- "What sense does it make to spend billions of dollars each year on government-supported research and then prevent new developments from benefiting the American people because of dumb bureaucratic red tape" Sen. Birch Bayh.
- 'possibly the most inspired piece of legislation to be enacted in America over the past half century' by "The Economist, Dec 14, 2002".

Bayh-Dole (1980)

- The commercialisation of research financed through federal funds was formally encouraged.
- Research institutions became responsible for filing patents and own IP.
- Research Institutions able to grant **exclusive licences**
- Small businesses were given preferences in licensing
- The federal government retained 'march-in rights'

Global movement

- Most OECD countries
- India
- China - *The regulation of enhancing intellectual property protection in National Scientific programmes*.
- Japan - *1998 Technology Licensing Organisations (TLO) Law*.

Yunibesithi ya Pretoria Comments

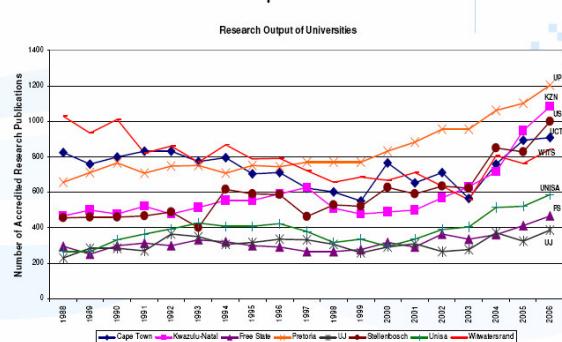
Teaching, learning and research

- The Act and its implementation must not in any way hinder the enterprise of teaching and knowledge generation.
- This has implications for both the definition of "*intellectual property*" in the act as well as the **regulations related to disclosures**.

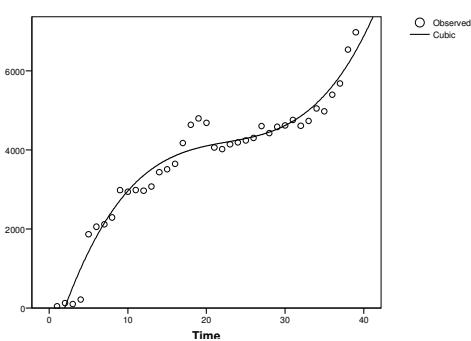
Growth in Output (1994-2007)

- ISI web of knowledge
- SA in 1994 = 4 300 ISI articles
- SA in 2007 = 7 065 ISI articles
- Represents a growth factor of 1.64

Research Outputs of Universities



SouthAfrica

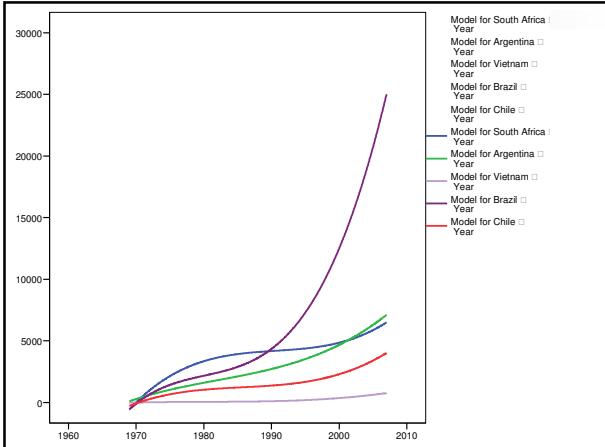


Sober Perspective

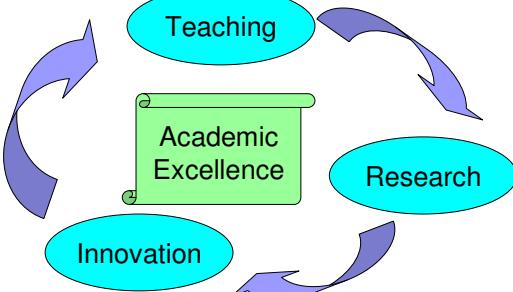
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China	10 576	97 846	9.25
Egypt	2 154	4 063	1.89
Nigeria	830	1 695	2.04
Tunisia	339	2 032	6.00



Creating a virtuous cycle



Further definitions

- “Department of...” to department responsible for....”
- “Technology transfer”
- “Full cost”

Dispute resolution – Section 9

- The act would benefit from a clause that indicates mechanisms that will be available for dispute resolution between NIPMO and the Recipient *prior* to formal court proceedings
- The 9.(6) question to state law advisors

Conditions for IP transactions – Section 11

- Exclusive licensing should be specifically enabled (not just allowed) by the act.
- It is a key tool to encourage private sector development and venture capital investment.

Conditions for IP transactions – Section 11. (e)

- The unbundling and regulations
- Definition of conditions under which the state can exercise this right needs to be crystal clear.
- The mechanisms for such declarations also need to be explicitly spelt out.
- Harmonisation of this act with South Africa's international agreements esp. TRIPS

The case for supporting innovation in universities is compelling

- Universities are the primary developers of new knowledge
- Universities are the primary developers of knowledge workers – the human capital needed for an innovation driven economy
- The positioning of universities in the social fabric should also mean a closer proximity to communities than other structures/institutions

Conclusions

- YyP supports the spirit & intent of the bill.
- It would be useful if the final draft captured the **enabling and encouraging character** more succinctly.
- We should ensure an environment in which the innovation passion can thrive.
- **We commit to continue to be partners to parliament and government in taking this process forward.**

Thank You

