

4. MANAGEMENT AND COMMERCIALIZATION OF INTELLECTUAL PROPERTY DRAWING EXPERIENCE FROM THE FIJI ISLANDS

Amit Prakash*

ABSTRACT

Indisputably, progression of globalization has provided the South Pacific Nations with the framework, protection and tools for safeguarding intellectual property (IP). However, a recurring concern is the effectiveness in managing and commercializing IP, especially in resource constrained nations. Fiji's national development documents fall short in comprehending the importance of Intellectual Property. Nurturing creative industry will drive growth and foster job creation. So why are creative producers hesitant in managing and commercializing their creativity? From an economic standpoint, local producers in resource constrained nations fail to realize the value added by intellectual capital. This research signifies that by doing the basics correctly, to build an empire upon which the IP can flourish, mastering of IP management will lay out a platform or norm for new innovators. This paper will take an exploratory approach by venturing into new areas and factors, but will not peg these variables as paramount. Conclusively, the findings of this research will be instrumental in updating or reshaping the IP policies tailored to enhance socio-economic growth in Fiji.

Keywords: *commercialization, small and medium enterprises, creative industry, Knowledge based capital*

* Amit Alvin Prakash MCom Economics (USP), PGD Economics (USP), BAGCED (USP) is currently Lecturer in Economics at the School of Business and Economics, the University of Fiji.

¹ Organization for Economic Co-operation and Development 'Global Value Chains' (2017) <<http://www.oecd.org/sti/ind/global-value-chains.htm>> accessed 7 December 2017.

² Victor Fung, 'Governance Through Partnership in a Changing World' in Deborah K Elms and Patrick Low (eds), *Global Value Chains in a Changing World* (2013) <https://www.wto.org/english/res_e/booksp_e/aid4tradeglobalvalue13_e.pdf> accessed 23 October 2017.

1. INTRODUCTION

The composition of world economies has been exemplified with unique resource endowment. Thus, this uniqueness limits economies to manoeuvre in isolation and propose international linkages and dependences. Globalization provides a unified platform for economies. Furthermore, the revolution of globalization has been attributed to technological advances in transportation and communication. It can be conceptualized that 'the name of the game today' is collaboration, multi trade agreements, offshore activities and international outreach.

Globalization encourages firms to restructure their production process through international outsourcing and offshore activities.¹ On the production side, globalization has shaped Global Value Chains (GVCs). The disjoint production phase spreads over multiple countries to produce a finished product, where GVC varies from production to production. Through GVCs, products are 'made in world' rather than a single country.² In addition, GVCs enable countries to trade more than just products (sharing the knowhow and making things together).³

Intuitively, access to the global platform induces general equilibrium growth (expansion in economic activity).⁴ On the other hand, openness to global interaction challenges the protection and nurturing of knowledge-based capital, which may be reaped away in light of progress.⁵ Indisputably, there are protections offered by Intellectual Property Rights (IPRs).

³ The World Bank, 'Global Value Chains' (2017) <<http://www.worldbank.org/en/topic/global-value-chains>> accessed 2 December 2017.

⁴ General equilibrium involves interaction among all the markets (goods market, money market, labour market and financial market) in an economy.

⁵ Knowledge based capital is non-physical assets that represents valuable ideas, methods, processes, and other intuitive talents that belong to a company.

This paper takes the standpoint that IPRs are in existence but questions how creative producers are managing and commercializing their creativity. Furthermore, from an economic perspective, it can be argued that local producers in Resource Constrained Nations (RCNs) fail to realize the value added by intellectual capital. Alternatively, local producers unintentionally forgo protecting their creations, presuming that registering a business suffices for the trademark. These are a few concerns in relation to management and commercialization of Intellectual Property (IP) in Fiji; this paper will further plunge into investigating other potential exogenous and endogenous factors. IP is yet to become a pivotal policy in Fiji for economic growth.⁶

This research signifies that correctly doing the basics will build a foundation upon which IP can flourish, whereby mastering of IP management will create a platform or norm for new innovators. This paper takes an exploratory approach, venturing into new areas or factors, but does not peg these variables as paramount. Conclusively, the findings of this research will be instrumental in updating or reshaping the IP policies tailored to enhance socio-economic growth in Fiji.

2. SETTING THE SCENE – FIJI ISLANDS

Fiji Islands is a cluster of approximately 330 islands with a land mass of 18,333 sq.km, of which roughly a third is inhabited. The 2017 census disclosed a 5.7% growth in Fiji's population to 884,887. Fiji was a British colony for 96 years before gaining independence in 1970.

⁶ Salvin Nand, 'The New Economy: Utilizing Creative, Cultural and Innovative Industries for Sustainable Socioeconomic Development in Fiji' (2013) 36 Pacific Studies 94

⁷ Neelesh Gounder, 'Trade Liberalization and Poverty in Fiji: A Computable General Equilibrium – Microsimulation Analysis' (DPhil thesis, Griffith University 2013)

⁸ Gross Domestic Product is the total of goods and services produced in an economy over the given period of time

⁹ The World Bank, 'World Development Indicators' (2016) <<http://data.worldbank.org/country/fiji>> accessed 12 May 2016

A. ECONOMIC PLATFORM

As a British colony, Fiji benefited from; easy access to the London market; revitalization of the sugar industry that was highly capital intensive; an indentured labour system to curb labour shortages; and diversification to copra, banana and gold production to complement diminishing sandalwood, beche-de-mer and cotton production.⁷

In the post-independence era, the service sector dominated the private sector's composition of Gross Domestic Product (GDP) followed by manufacturing and agriculture respectively.⁸ Fiji is an upper middle income country with a Gross National Income (GNI) per capita of \$7590 in US dollars in 2013, calculated as purchasing power parity basis.⁹ Furthermore, Fiji is ranked 101 out of 190 countries for ease of doing business.¹⁰

B. IP PLATFORM

Fiji is party to most of the international IP treaties; however, the signatory serves as a toothless tiger to create international uniformity and to benefit from Free Trade Agreements (FTAs).¹¹ Fiji is a member of the WIPO Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, and the Geneva Phonograms Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms.¹²

¹⁰ The World Bank, 'Doing Business, Measuring Business Regulation' (2018)

<<http://www.doingbusiness.org/en/data/exploreconomies/fiji#>> accessed 25 October 2018

¹¹ Salvin Nand, 'Gone in Seconds yet Protected for Life Plus 70 Years: Copyright Piracy Experience from Fiji' '(forthcoming)', 4

¹² Munro Leys, 'Memberships Conventions and Treaties' (2018) <<http://www.munroleyslaw.com/intellectual-property/memberships-conventions-and-treaties/>> accessed 23 November 2018

Fiji's Trade Mark Act is based on British trade marks legislation, and goods are classified according to the old British classes, rather than the generally accepted international classes. The Registrar of Trademarks prioritizes existing applications rather than filing of new applications. Furthermore, the records at Fiji's Trade Marks Registry are not computerized therefore, manual searches are undertaken. In addition, the registration process takes from 10 months to several years.¹³

As of 13th December 2017, there were 1292 patents on the Fiji Patents Register. It would be interesting to isolate the 1292 patents in terms of Fijian origination.¹⁴ There is a provision in Fiji's Patent Act for either independent or United Kingdom (UK) based applications. Moreover, all independent applications from Fiji are sent to Australia for examination and are likely to take at least 4 years to be registered. Independent patents are valid for fourteen years from the date of issue of the patent letter while UK based patents are valid for the remaining term of the UK patent.¹⁵ Alternatively, under the Patent Cooperation Treaty (PCT), an applicant may seek international patent protection for their inventions in a very large number of countries.¹⁶ However, Fiji is not a signatory to the PCT.

In a nutshell, budding innovators in Fiji only have the option of patent protection via Australian examination. The dilemmas are: (1) whether budding innovators can pocket the cost for patent protection; and (2) the examination of patent protection consumes a minimum of 4 years - in the

absence of protection, would the innovators survive the pre-protection phase in the market?

In addition, one of the amendments to the PCT Regulations on July 1, 2018 was on the schedule of fees:

The amendment clarified that the 90% fee reduction was intended for persons filing PCT applications in their own right and not those filing PCT applications on behalf of a person or entity which is not eligible for the fee reduction (e.g. the director or employee of a company where the application is made for the benefit of the company).¹⁷

Designs, as such, are not registrable in Fiji.¹⁸ Fiji borrowed the 1999 Copyright Act from the United Kingdom, Australia and New Zealand legislations. However, Fiji has not reviewed the Copyright Act, as opposed to the United Kingdom, Australia and New Zealand.¹⁹ Interestingly, the Fiji Video Library Association applied for an injunction to stop the then government from implementing the Copyright Act.²⁰ The association rationalized on the basis that such law would foreclose the video library business, propagate monopolistic behaviour in the market, and contribute towards domestic unemployment.

In addition, there is a Fiji Intellectual Property Office (FIPO), co-shared in the Office of the Attorney General. Ironically, the website of FIPO only provides a single registration form. Moreover, there are no external links to WIPO and WTO databases or to any of the conventions and treaties.

¹³ Munro Leys, 'Trade Marks and Patents' (2018) <<http://www.munroleyslaw.com/intellectual-property/trade-marks/>> accessed 23 November 2018.

¹⁴ This research article limits the content to management and commercialization of IP drawing on experience from Fiji Islands and recommends future research on composition of patent holders.

¹⁵ Munro Leys, 'Patents' (2018) <<http://www.munroleyslaw.com/intellectual-property/patents/>> accessed 23 November 2018

¹⁶ World Intellectual Property Organization, 'PCT – The International Patent System' (2018) <<http://www.wipo.int/pct/en/>> accessed 23 November 2018

¹⁷ World Intellectual Property Organization, 'Amendments to the Regulation July 1, 2018' (2018) <www.wipo.int/pct/en/texts/ppt/2018changes.pptx> accessed 23 November 2018

¹⁸ Munro Leys, 'Designs' (2018) <<http://www.munroleyslaw.com/intellectual-property/patents/>> accessed 26 November 2018

¹⁹ Salvin Nand, *supra* n 11, 4.

²⁰ *Fiji Video Library Association v Attorney-General* [2000] 2 FLR 46.

3. CREATIVE ECONOMY IN THE FIJI ISLANDS

In the midst of transforming to industrialized economies, at times the decisive component of nourishing and protecting the creative industry is overlooked. The United Nations Conference on Trade and Development (UNCTAD) *Creative Economy Report* of 2010²¹ highlighted that during the global financial crisis of 2008, global trade contracted by 12 percent. On the other hand, trade in creative goods and services grew at an annual rate of 14 percent for the period 2002 to 2008, reaching \$592 billion.²² Succinctly, creative industries are composed of creation, production, marketing, and distribution of products and services generated from human creativity. Thus, knowledge-based economic activities rise from tangible products and intangible intellectual services with economic and cultural value, creative content and market objectives.²³

The potential for escalating socio-economic growth and employment through creative industries in developing countries remains mostly untapped.²⁴ Even though creative industries contribute significantly towards employment, the unstable source of income is a result of unstable work contracts, poor working conditions and lack of social protection.²⁵ UNCTAD documented benefits from creative industries to be as follows: (1) promotes new integration with the global economy through regional cooperation; (2) assists developing countries in achieving 5 out of the 8 Millennium Development Goals; (3) fosters social inclusion; (4) promotes economic diversification, trade and innovation; and (5) promotes cultural sustainability.²⁶

Developing countries' share of creative goods exports are growing faster than that of developed economies, accounting for 57 percent of the world's export of creative goods compared to 42 percent for developed economies in 2012.²⁷ The global creative goods exports in 2012 is composed as follows: 60 percent designs, 9 percent new media, and 31 percent by publishing, visual arts, art crafts, audio visuals, and performing arts.²⁸

The Fiji Islands is a multi-racial community enriched with diverse cultural values and traditional skills. In Fiji, community interest is paramount to self-interest and the reference vocabulary is 'We' and not 'I'. Furthermore, there is a very strong bond among extended family members and as such, traditional knowledge, cultural significance, and skills are passed from generation to generation. Moreover, Fiji is a Melanesian island and there is a forever lasting passion for singing and art work. Fiji has been ranked highly in the happiness index indicator for developed countries and fosters an exemplary environment for brewing creativity.²⁹

The Fiji Performing Rights Association Limited (FPRA) is a non-profit organization established in 1993 to administer the performing rights of local composers and songwriters.³⁰ FPRA has a license agreement with the Australasian

²¹ UNCTAD, *Creative Economy Report* 2010, <https://unctad.org/en/Docs/ditctab20103_en.pdf> accessed 29 October 2018.

²² UNCTAD 'Strengthening the Creative Industries for Development in Mozambique' UNCTAD/DITC/TAB/2009/2 11 2009 <https://unctad.org/en/Docs/ditctab20092_en.pdf> accessed 29 October 2018.

²³ *ibid* 7.

²⁴ *ibid* 7.

²⁵ *ibid* 7.

²⁶ *ibid* 10.

²⁷ United Nations Conference on Trade and Development (UNCTAD), 'Creative Economy Outlook and Country Profiles:

Trends in International Trade in Creative Industries' UNCTAD/DITC/TAB/2015/5 1

<https://unctad.org/en/PublicationsLibrary/webditcted2016d5_en.pdf> accessed 5 November 2018.

²⁸ *Ibid* 2

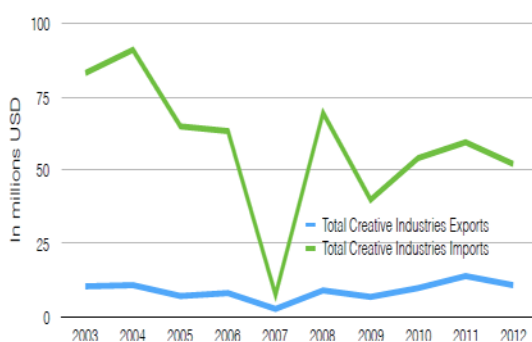
²⁹ ABC News, 'Global Happiness Survey Shows Fijians are the World's most Content' <<https://www.abc.net.au/news/2014-12-31/global-happiness-survey/5994014>> accessed 29 October 2018.

³⁰ 'Fiji Performing Rights Association, Fiji Performing Rights Association' (2018) <<http://www.fpra.com.fj/index.htm>> accessed 5 November 2018.

Performing Association (APRA). AMOCS and FPRA represent the 2 million foreign composers throughout Fiji.³¹

The creative industry export total for Fiji in 2003 was valued at US\$10.44 million, compared to US\$10.78 million in 2012.³² However, the import bills for 2012 stood around US\$5206 million relative to US\$83.05 million in 2003.³³ Consistently, for the period 2003–2012 Fiji had a trade deficit in creative industry.

Figure 1. Fiji's Creative Industry Trade Performance 2003–2012



Source: United Nations Conference on Trade and Development³⁴

The export trend is smooth in contrast to the import trend. The import trend of the creative industry is very volatile with highs and lows. The import bills of trade may be escorted by the key determinant agent of political instability, which has a direct effect on tourism. This can be confirmed with a slump for 2007's import trade (Figure 1), following the political unrest in December 2006.³⁵

The major markets for Fiji's creative trade in 2012 were the United States, New Zealand, Singapore, Solomon Islands and Australia.³⁶ The creative commodities in trading for Fiji

are art crafts, audio visuals, designs, new media, performing arts, publishing and visual arts. Of the above mentioned, in 2012 the main export was designs (even though the value in 2012 decreased by almost US\$2 million) followed by publishing and art crafts respectively.

4. CREATIVE COMMONS IN THE CREATIVE INDUSTRY

The growth and progress of the global community warrants either revitalizing existing or construction of new policies. For instance, the shortfall of the General Agreement on Tariff and Trade (GATT) in addressing the complex nature of global trade in service was addressed by the formation of the World Trade Organization (WTO). Critics in the creative industry, in particular to copyright protection, challenge the re-creativity of the existing protected work. On the other hand, proponents of copyright protection demand longer protection for creative work so that creators are fully compensated for their efforts. Furthermore, a longer protection term will prompt creators to create new work; in the absence of scientific data, the correlation between the protection term and the creation of new work is open to debate.

Creative Commons (CC) is a concept that originated in 2001 and is complementary to copyright law. The copyright principle is that the default position is 'all rights reserved' for all new works, which continues for the life of the author, plus 50 or 70 years depending on the country.³⁷ Thus, as long as the work is protected by copyright the material cannot be reproduced or reused without the consent of the creator. The rationale of CC licenses is to eliminate the barrier of collaborating in the global commons. Moreover, a CC license enables sharing and reuse of creativity and

³¹ Ibid.

³² Ibid 54.

³³ Ibid 54.

³⁴ UNCTAD, n 26, p 54.

³⁵ See Asian Development Bank Economic Analysis on Fiji, 2014 - 2018 for illustrations of the key chronological events in Fiji from 1970-2013 <<https://www.adb.org/sites/default/files/linked-documents/cps-fij-2014-2018-ea.pdf>>.

³⁶ UNCTAD, n 29, p 55.

³⁷ Miranda Forsyth, 'Creative Commons come to the Pacific Islands' (2014) Australian National University Brief 2014/8, <http://dpa.bellschool.anu.edu.au/sites/default/files/publications/attachments/2015-12/IB-2014-8-Forsyth-ONLINE_0.pdf> accessed 7 December 2018.

knowledge through provision of free legal tools.³⁸ The flexibility with of a CC license extends certain usage rights to the public while creators decide on the extent of relaxation.³⁹

The CC license may be favoured in the Pacific region because enforcement of copyright laws can be difficult due to lack of captivity of the courts, police, and others in the judicial system to effectively deal with new categories of cases.⁴⁰ Thus, CC allows more flexibility than traditional copyright and presents a more practical benefit to the practice of copyright in the region.⁴¹ However, CC is based on copyright laws, and as such in the Pacific region the copyright system does not exist or is not enforced whereby CC licenses are legally ineffective.⁴²

According to Miranda,⁴³ there is a need for reform in copyright law to provide balance between creators and users. Furthermore, such policies should consider:

- The need to ensure access to global sources of knowledge and IP protected goods (computer software and textbooks) with the reality that Pacific Island countries import more IP than they export.
- Limited capacities of most states and divisions to administer and enforce state-based copyright regimes and cost of these regimes.

- The existing local understandings, norms and institutions, which currently regulate intangible property in the region.

In addition, few of the issues identified with Creative Commons for small businesses are as follows: (1) a CC license provides no legal protection as a CC license has no legal significance beyond the license itself; (2) CC licenses are irrevocable once it has been applied to a work; (3) a CC license organization 'disclaims all the liability and ... is not a party to public license'; (4) CC licenses are difficult for a layman to understand as there is a lot of legal language; and (5) anyone can apply CC license to any work-however, license applied by a person other than the creator, invalidates the licenses and use of improperly licensed work may be subject to an expensive copyright infringement lawsuit.⁴⁴ It seems that benefits of CC for South Pacific Counties are diverse, however given the scope of this research, it is not possible to fully investigate the benefits of CC but it is a strong moot point for researchers.

5. KNOWLEDGE BASED CAPITAL (KBC) AND YOUNG ENTREPRENEURSHIP SCHEME (YES)

According to the Organization for Economic Co-operation and Development (OECD), innovation is a strategic factor for today's business success.⁴⁵ Moreover, innovation involves production of new knowledge from complementary assets; not only Research and Development but also software, human capital, and

³⁸ Creative Commons, 'Frequently asked questions' (*Creative Commons*, 29 August 2018)

<<https://creativecommons.org/faq/#what-is-creative-commons-and-what-do-you-do>> accessed 6 December 2018.

³⁹ Laura Brahm and Vera Franz, 'Why We Support Creative Commons' Open Society Foundation (2018)

<<https://www.opensocietyfoundations.org/voices/why-we-support-creative-commons>> accessed 6 December 2018.

⁴⁰ Daurewa (2013) as cited in Miranda Forsyth, 'Creative Commons come to the Pacific Islands' (2014) Australian National University Brief 2014/8, <http://dpa.bellschool.anu.edu.au/sites/default/files/publications/attachments/2015-12/IB-2014-8-Forsyth-ONLINE_0.pdf> accessed 7 December 2018.

⁴¹ Miranda Forsyth (n 36) 2.

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ Kelly Keller, '5 Expensive Problems with Using Creative Commons for Small Business' (2016) <<https://smallbiztrends.com/2015/03/using-creative-commons.html>> accessed 6 December 2018.

⁴⁵ OECD, 'Supporting Investment in Knowledge Capital, Growth and Innovation' (OCED Publishing, 2013) <<https://dx.doi.org/10.1787/9789264193307-en>> accessed 1 December 2018.

organizational structure.⁴⁶ In addition, OECD countries experience a greater comparative advantage by investing in the intangible assets that enhance creation and application of knowledge.⁴⁷

Furthermore, business investment activities have shifted from investment in traditional physical assets to investment in knowledge-based capital (KBC). Barnes and McClure disclosed that in Australia, investment in KBC has been around 1.3 times that of investment in physical assets and business investment in KBC has become a priority in emerging countries.⁴⁸

KBC refers to non-physical assets that create future benefit for firms. Corrado, Hulten and Sichel⁴⁹ subdivided KBC into three types: computerized information (software and database); innovative property (patents, copyright, designs, and trademarks); and economic competencies (brand equity, firm-specific human capital, networks of people and institutions, and organizational know-how that increases enterprise efficiency).⁵⁰ Also, countries that invest more in KBC are more effective in reallocating resources to innovative firms. For instances, USA, Japan, and Sweden invest around 10% of GDP in KBC, compared to 5% by Italy, Portugal, and Spain. Thus, the success from patent firms in the USA, Japan and Sweden raise four times as much capital than in Italy and Spain.⁵¹

The Fijian government, in its effort to nurture and empower youth participation in the innovation process, initiated the Young Entrepreneurship Scheme (YES) with an allocation of FJ\$2 million in the 2017-2018 National budget. The Prime Minister of Fiji stated that the government wanted young people to think outside the box and make Fiji a hub of innovation in the Pacific.⁵² The scheme aims to provide grants to young and budding entrepreneurs' whose ideas are bankable and innovative and for which financial institutions are not providing capital due to lack of collateral.⁵³ The Fiji government is adamant in protecting innovation through IPR in Fiji.

Furthermore, the scheme is targeting Fijians between the ages of 18 and 40. In addition, the grants are up to a maximum of FJ\$20,000, ranging from full funding, partial funding, to equity for loans. The uniqueness of the scheme is the followed up with business mentoring, monitoring, and evaluation of projects, initiated by young entrepreneurs. Moreover, the Minister for Industry, Trade and Tourism reported that as of March 2018, a total of 270 applications had been received for the YES initiative.⁵⁴

6. CHALLENGES FOR FIJIAN SMES IN UTILIZING IP AS A TOOL FOR COMMERCIALIZATION

The agents of creative industry (copyright-based industry) can be tied to Small and Medium Enterprises (SMEs). These enterprises are an important segment of an economy and have the ability to introduce essential innovations.⁵⁵ The

⁴⁶ World Bank & OECD, 'Knowledge based capital and intangible assets' (2013)

<<https://www.innovationpolicyplatform.org/content/knowledge-based-capital-and-intangible-assets>> accessed 1 December 2018.

⁴⁷ *ibid.*

⁴⁸ OECD (n 44), 22.

⁴⁹ *ibid.*

⁵⁰ *ibid.*

⁵¹ *ibid.*, 17.

⁵² Apenisa Waqairadovu, 'We want our young people to think outside the box and make Fiji a true hub of innovation in the Pacific – PM' *The Fiji Village* (1 January 2018) <<http://fijivillage.com/news/We-want-our-young-people-to-think-outside-the-box-and-make-Fiji-a-true-hub-of-innovation-in-the-Pacific---PM-2rk59s/>> accessed 1 December 2018.

<<http://yes.gov.fj/>> accessed 1 December 2018.

⁵³ YES, 'Welcome to the Young Entrepreneurship Scheme' (2018) <<http://yes.gov.fj/>> accessed 1 December 2018.

⁵⁴ Talebua Kate, '270 applications received for YES initiative' *The Fiji Times* (Suva, 15 March 2018) <<https://www.fijitimes.com/270-applications-received-for-yes-initiative/>> accessed 2 December 2018.

⁵⁵ Harry Bloch and Mita Bhattacharya, 'Promotion of Innovation and Job Growth in Small and Medium Sized Enterprise in Australia: Evidence and Policy Issues' (Discussion Paper 17/16, Monash

entrepreneurial dynamism and internal flexibility to respond to changing circumstances are the major advantages SMEs have to be successful.⁵⁶ However, when compared to developed countries, the extent of innovation is low in developing countries.⁵⁷

Although SMEs are a major engine of growth and job creation, the copyright-based industry is stagnant in Fiji. This is the core of this research paper: why SMEs in the Fijian creative industry fail to manage and commercialize their earnings from IP. UNCTAD disclosed that the nemesis to performance and competitiveness of creative industries in developing countries include weak institutional and political support, low levels of entrepreneurial capability, low added value, over-dependence on foreign firms, and massive copyright infringements.⁵⁸

Fijian SMEs, in particular, are disadvantaged by poor business innovation culture, cultural taboo, lack of access to finance, ownership issues, relatively high labour and capital cost, high energy prices, limited access to the market, weak network, lack of skilled workers and the rigid regulatory environment. These factors are significant impediments to SMEs and it is important to identify specific innovation barriers before policies could be implemented to rectify these impediments.

A. POOR ORGANIZATIONAL CULTURE

The culture of an organization can either limit or foster innovation. According to the OCED, individuals' attitude

towards entrepreneurship, ambition to start again after failure and the probability of choosing entrepreneurship as a career reflects a country's entrepreneurial culture.⁵⁹ Fiji has, relatively, very low innovation performance because of poor business innovation culture and poor management performance compared to other countries with a similar political system and culture.⁶⁰ Thus, in the 2018 Global Innovation Index report, Fiji has not been ranked in the 130 countries. However, Mauritius is ranked as the 75th most innovative country in the world.⁶¹

In addition, the multiple roles, long work hours, occupational loneliness are common characteristics of SMEs, which can put SME owner-managers at risk of 'occupational stresses'. As such, burnout can cause substantial physiological and economical costs, reduce creativity, productivity and innovation.⁶² Therefore, as the Microsoft 2015 report revealed, due to poor workplace culture, seven out of ten SMEs fail to reach their full potential of creating innovative ideas.⁶³

Moreover, Fijian businesses need to change their business culture favouring the 'old economy' and comprehend the significance of the 'new economy'. Compared to their trading partners, Fiji relies heavily on natural resources and has limited national initiatives to foster intellect in the 'new economy'. Moreover, SMEs in Fiji have the following impediments: not being able to draw the line between business and culture; lack of coordination and monitoring of SMEs progress; and lack of coordination between

Business School, 2016), 2; OCED, 'Removing Barriers to SME Access to International Markets' (2008) 13-19.

⁵⁶ James Love and Stephen Roper, 'SME innovation, exporting and growth: A review of existing evidence' (2015) 33.1 Intl Small Business J 20, 29.

⁵⁷ Mike Wright et al, 'Joining the dots: Building the evidence base for SME growth policy' (2015) 33.1 Intl Small Business J 3, 6.

⁵⁸ UNCTAD, n 22, 7.

⁵⁹ OECD 'Entrepreneurship at a Glance' (2015) OCED/2015, 10 <<https://tinyurl.com/y6r815v7>> accessed 1 December 2018.

⁶⁰ Soumitra Dutta, Bruno Lanvin and Sacha Wunsch-Vincent (eds), 'Global Innovation Index 2018: Energizing the World with Innovation' (11th edition, WIPO, 2018)

<https://www.wipo.int/edocs/pubdocs/en/wipo_pub_gii_2018.pdf> accessed 5 November 2018.

⁶¹ *ibid*, xxi.

⁶² Claude Fernet, et al 'The Psychological Cost of Owning and Managing an SME: Linking Job Stress, Occupational Loneliness, Entrepreneurial Orientation and Burnout' (2016) 3 Elsevier 45-53.

⁶³ Microsoft, *Culturing Success: How Workplace Culture Drives Innovation at Australia's Leading SMES* (17 March 2015) Microsoft Corporation <<http://download.microsoft.com/documents/australia/smb/Culturing-success-report.pdf>> accessed 25 June 2015.

donors.⁶⁴ According to the 2015 Global Innovation Index report, countries with no resource base are more innovative.⁶⁵ Another cultural problem is that Fijians are more susceptible to their traditional partners (Australia, New Zealand, United States, and United Kingdom) and have failed to appreciate the growing significance of the Asian market, especially in the high-tech sectors. Furthermore, low employee empowerment, insignificant role of managers to promote innovation, little appreciation for employees' ideas, and lack of building capacity, are notable barriers to SMEs innovations.⁶⁶

To promote long run innovation, educators should create a culture of innovation, an essential element to support research and development. Therefore, to create an entrepreneurial cultural shift, the Fijian government has to invest sufficient financial support in education and implement policies that propel innovation in the 'new economy'.

B. ACCESS TO FINANCE AND INABILITY TO SCALE-UP

Entrepreneurs need significant financial resources to remain competitive when commercializing their product or service to the market. Access to finance and venture capital are very important for firms in particular. As such, the Fijian government has implemented various initiatives for SMEs to innovate and commercialize their product. The National Centre for Small and Micro Enterprise Development (NCSMED) is tasked with supporting and promoting SMEs to generate income, reduce poverty, improve livelihoods,

create employment and contribute to Fiji's economic growth.⁶⁷

The NCSMED research acknowledged that access to finance is a problem for business, but argued that it is not necessarily widespread.⁶⁸ Furthermore, Holmes and Gupta disclosed that difficulty in accessing finance was not common to all SMEs.⁶⁹ However, innovative businesses with limited tangible assets encounter difficulty while accessing finance. The CUASEE study also showed that innovative firms (65 percent) compared to non-innovative business (25 percent) required a greater amount of finance. In the most part, financial service providers often do not understand intangible assets. As a consequence, lack of collateral for loans, lack of equity, unstable revenue streams and lack of a business financial track record, makes it difficult for potential investors or financial institutions to determine the magnitude of business uncertainty and investment returns. Therefore, financial institutions are reluctant to finance SMEs and lack of finance means SMEs are unable to create and commercialize innovation.

C. POOR FINANCIAL MANAGEMENT

SMEs' inability to successfully raise capital is aggravated by their poor financial planning, lack of business management knowledge and limited strategy to manage IP.⁷⁰ SMEs are mostly limited to internal equity finance and the NCSMED report argued that most new businesses do not seek external funding. As such, SME owner-manager's

⁶⁴ Gurmeet Singh, Rafia Naz and Rd Pathak, 'Internationalization of SMEs: A challenge for Fiji' (AGSE conference 2009).

⁶⁵ The Global Innovation index 2015: Effective Innovation Policies for Development.

⁶⁶ David Thorpe and Steven Goh, 'Study of SME Innovation in two Queensland Industries' (2013) 1.3 *Intl J of E-Entrepreneurship and Innovation*, 14, 18.

⁶⁷ Fiji's National Financial Inclusion Taskforce, 'Micro, Small and Medium Enterprise' (2018) <<http://www.nfitfiji.com/for-smes/micro-small-and-medium-enterprise/>> accessed 5 November 2018.

⁶⁸ Robin Nair and John Chelliah, 'Understanding key impediments to small businesses in South Pacific Nations: A Case of Fiji' (2012) 8.1 J of Global Business Management <<http://www.jgbm.org/page/24%20John%20Chelliah.pdf>> accessed 5 November 2018.

⁶⁹ Scott Holmes and Dhruva Gupta, 'Opening Aladdin's Cave: Unpacking the Factors Impacting on Small Business' (presented at Reserve Bank of Australia's Conference, Australia, 2015), 43.

⁷⁰ Belas et al, 'Approach of the SME Entrepreneurs to Financial Risk Management in Relation to Gender and Level of Education' (2015) 8.4 *Economics and Sociology* 32, 38.

knowledge gap on funding opportunity is a notable reason why SMEs have poor working capital.

In addition, a poor finance stream would mean that innovators may not be able to upscale their business to exploit the innovation and may end up selling or licensing their creative work.

D. INTELLECTUAL PROPERTY RIGHTS A BARRIER FOR PROTECTION

The nature of the IP regime, regulatory requirements, and technical standards, are important factors for firms to optimize their innovation processes.⁷¹ SMEs consider IP protection as an important element to establish a strategic alliance and create certainty in business transactions.⁷² However, lack of knowledge, limited finance, high costs and lack of adequate legal, business and technical support can hinder SMEs’ ability to effectively use the IP system. According to the Australian Council on Intellectual Property, even if SMEs are able to raise sufficient capital and create novel products, SMEs are particularly vulnerable as they have limited ability to enforce or defend their IP rights.⁷³

Moreover, the business culture is still prohibiting SMEs from changing their behaviour to improve their strategic knowledge of the IP regime.⁷⁴ In addition, studies on OECD countries revealed that SMEs face difficulty in using the IP system due to, possession of restricted knowledge on the ins and out of the IP system; lack of clarity on the benefit of IP in their business strategy and competitiveness; and IP protection warranting too much from already resource constrained SMEs.⁷⁵ Likewise, few IP offices ruled out

reduction of official fees as a significant factor for IP protection by SMEs.⁷⁶ That is, in budgeting for the cost of IP protection, SMEs need not only consider official fees but also the complementary cost of application preparation and prosecution, legal advice, and translation cost.⁷⁷ Furthermore, the application process acts as a disincentive for SMEs to seek IP protection.⁷⁸ In Fiji, patent protection can be sought via the Australian IP office, which takes a minimum of 4 years for registration.

E. LACK OF MACRO FORESIGHT

The national development documents that govern the strategic and timeliness of macroeconomic performances indicators are in absence of IP and intellectual capital. The guiding development strategy documents for Fiji are as follows: Sustainable Economic and Empowerment Development Strategy (SEEDS) 2008 – 2010; Roadmap for Democracy and Sustainable Socio-Economic Development (RDSSED) 2010 – 2014; and A Green Growth Framework (GGF) 2014.

Table 1. Analysis of Fiji's National Development Documents: Role of IP and Intellectual Capital

	SEEDS	RDSSED	GGF
Macroeconomic Stability	✓	✓	✓
Intellectual Property	×	×	×
Intellectual Capital	×	×	×

⁷¹ Swanson Reed, ‘Innovation in Australia: Building a Prosperous Future through Innovation in Australia’ (Discussion Paper, 2015), 12.

⁷² Julio Viana and Lutz Maicher, ‘Designing innovative tools for improving literacy on intellectual property among SMEs (2015) 27.3 *Technology Analysis & Strategic Management*, 314, 318.

⁷³ Australian Council on Intellectual Property, *Review of Post-Grant Patent Enforcement Strategies* (Final report, Intellectual Property Australia, November 2006) 24.

⁷⁴ OECD, *Intellectual Assets and Innovation: The SME Dimension* (OCED Publishing, 2011), 46.

⁷⁵ Esteban Burrone, ‘Intellectual Property Rights and Innovation in SMEs in OECD Countries’ (2005) 10 *J of Intellectual Property Rights* <[http://nopr.niscair.res.in/bitstream/123456789/3612/1/JIPR%2010\(1\)%2034-43.pdf](http://nopr.niscair.res.in/bitstream/123456789/3612/1/JIPR%2010(1)%2034-43.pdf)> accessed 7 November 2018.

⁷⁶ *ibid*, 3.

⁷⁷ *ibid*, 3.

⁷⁸ *ibid*, 4.

7. POSSIBLE POLICY SOLUTIONS TO IMPROVE MANAGEMENT AND COMMERCIALIZATION OF IP FOR SMEs IN FIJI

There have been various initiatives implemented to promote SMEs in Fiji. Few initiatives by the National Center for Small and Micro Enterprise Development (NCSMED) in facilitating growth of SMEs are: business training, business monitoring, business cluster development, market linkage and providing access to financial services.⁷⁹ The Fijian government, through commercial banks, licensed credit institutions and the Fiji Development Bank, coordinate the SME Credit Guarantee Scheme (SMECGS).⁸⁰ A notable point is that at the end of July 2018, 1844 SME loans valued at FJ\$108.5 million were registered under the SMECGS.⁸¹ Furthermore, the Fijian government in late 2014 signed a Memorandum of Agreement (MOA) with the Indian government intended to strengthen SMEs in Fiji and the assistance was valued at approximately FJ\$10.10m to be released in stages.⁸² To recognize and encourage growth of SMEs, in 2004 the Fiji Development Bank inaugurated Small Business Awards and after 12 years the awards were revamped as Fiji Development Bank's National SME Awards.⁸³ Weighing the benefit to SMEs via such initiatives is beyond the scope of this research.

However, it is evident that there is still room for improvement in adopting IPR as a strategic tool for SMEs in Fiji. Additionally, the Fiji Intellectual Property Organization (FIPO) revealed that from 2004 till now, only 4 applications had been received for IP protection. The common theme is that the programs are littered with red tape and regulations. Simply funding SMEs does not encourage

innovation, risk taking or improvement to IP protection knowledge.

A. CULTURAL SHIFT

The cultural shift extends to both the business and the traditional set up. The 'new economy' is a high risk, high reward industry, something Fijians have long been unassociated with. The culture has been of safe investments and protecting what is already owned. Moreover, there needs to be revitalizing of avenues to remove stigma attached to failure.

There is no harm in adopting good policies from other countries; Australia documented two policies: (1) allow SMEs to offset previously accumulated loss from future profit even after new ownership or a change in product direction by the company;⁸⁴ and (2) make insolvency procedures easier for companies to achieve.⁸⁵ Therefore, the above will not deter Fijians' innovative and creative ideas being put to test and smooth the transition to a new economy.

The traditional cultural shift may be very challenging but requires considerable attention. In the native Fijian language there is no vocabulary for business. Whereby, most transactions in SMEs are undertaken with expectation that the payments would be made later. However, there is no urgency in recovering the outstanding debt, which collapses the going concern for substantial number of SMEs. The SMEs are either operated in partnership with family or friends and the implications are on good business practices and internal control.

⁷⁹ Fiji's National Financial Inclusion Taskforce, (n65).

⁸⁰ Fiji Development Bank, 'SME Credit Guarantee Scheme' (2018) <<https://www.fdb.com.fj/sme-credit-guarantee-scheme/>> accessed 6 November 2018.

⁸¹ Reserve Bank of Fiji, 'Annual Report 2018' (2018) <[https://www.rbf.gov.fj/getattachment/Publications-\(1\)/Reserve-Bank-Annual-Reports/RBF-AR-2017-2018-\(1\).pdf?lang=en-US](https://www.rbf.gov.fj/getattachment/Publications-(1)/Reserve-Bank-Annual-Reports/RBF-AR-2017-2018-(1).pdf?lang=en-US)> accessed 6 November 2018.

⁸² DEPFO New, 'Indian government's continued support for Fiji's micro and small businesses' The Fiji Sun (Suva, 14 September 2017)

<<http://fijisun.com.fj/2017/09/14/indian-governments-continued-support-for-fijis-micro-and-small-businesses/>> accessed 2 December 2018.

⁸³ Fiji Development Bank, 'About FDBs National SME Awards' (2018) <<https://www.fdb.com.fj/about-fdbs-national-sme-awards/>> accessed 6 November 2018.

⁸⁴ Tax and Superannuation Laws Amendment Bill (Measure No 2) 2016(Cth).

⁸⁵ Australian Government, 'Improving Bankruptcy and Insolvency Laws' (Proposal paper, Treasury, 2016) 10.

B. IP EDUCATION AND MANAGEMENT

The creation of IP to gain a competitive edge in an SME is often lost as the companies are not aware they have an innovative idea in the first place and that they can protect it. IP education is important for SMEs. Knowing from the outset that rights and protections are available and will allow companies to innovate rather than litigate.

A common misapprehension is that the business registration is sufficient to protect innovation and creativity. There needs to be dissemination of information on the distinction between IPRs and business licenses. The short run approach is integrating basic IPR courses with the YES program initiated by the Fijian government. Apart from business mentoring and training on financial stability, IPR content must also be complementary to the YES program.

Medium term prospects should target incorporating fundamental IP knowledge in primary and secondary schools. Basic knowledge will equip future innovators on taking ownership of who owns what. Moreover, in the long run it would be worthwhile for stakeholders in the education sector to focus on delivering undergraduate and postgraduate courses in IP.

C. CREATING A STABLE AND NURTURING BUSINESS IP ENVIRONMENT FOR SMES

SMEs in Fiji are faced with many legislative, regulatory and financial issues upon start-up. It is a lot to undergo with minimal employees without specialized skills. The stability will be reflected with macro policies addressing IP issues and more so, outlining gradual implementation of IPR in Fiji. The IP factors must not be viewed in isolation but knotted with economic and social variables.

There needs to be more collaborative platforms for Fijians to showcase their creativity. It was in December of 2008 that Fiji held its first ever fashion week at the Hilton Hotel in Denarau. In addition, the government's commitment to

empower Fijian women as entrepreneurs and enhance their economic participation stemmed the program, National Women's Expo in 2014. There is an annual budget allocation through the Ministry of Women, Children, and Poverty, to facilitate the Expo that brings rural women from all over Fiji to showcase their creativity.⁸⁶

Be that as it may, the question is what happens after the fashion show and expo is rounded up. Do the budding innovators and creators get updated on how to protect their work? Are the creators informed on projected revenue gain from IPR? Therefore, the collaborating platforms must nurture the creativity and not expose and abandon creative work. The Fijian government through the FIPO can invite reputed organizations to be available during the expo and could later follow up on protecting creative work, given the limited role played by FIPO.

8. CONCLUSION

The global platform is forever revolutionizing and Fiji needs to ensure an environment is present for growth, nurture, and security of IP. With financial policies and initiatives available from government to back innovative changes, this should encourage more innovation and risk-taking by SMEs. The consequence of continuing to support the 'old economy' is the inability to diversify for sustainable growth. However, transiting to 'new economy' warrants synchronized collaboration between the various economic, social and legal actors in the economy.

SMEs face numerous challenges from increasing technology costs, regulatory compliance costs, high costs of innovation, lack of technological and market information, organizational culture, and lack of finance. These impediments are not widespread and equal to all SMEs that create barriers for SMEs to innovate and commercialize their products. As such, the Fijian government has to undertake a national survey to determine the level of innovation barriers specific to domestic SMEs. This paper argues that government can implement targeted policies

⁸⁶ Ashna Kumar, 'Call to give women an equal break' The Fiji Sun (Suva, 22 June 2018) <<http://fijisun.com.fj/2018/06/22/call-to-give-women-an-equal-break/>> accessed 7 December 2018.

that can increase innovation and growth in Fijian SMEs. Therefore, an increase in innovation would lead to wide economic prosperity.

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