

# THE JOHN MARSHALL REVIEW OF INTELLECTUAL PROPERTY LAW



## A NEW INSTITUTIONAL ECONOMICS PERSPECTIVE ON TRADEMARKS: REBUILDING POST CONFLICT ZONES IN SIERRA LEONE AND CROATIA

ROYA GHAFELE & BENJAMIN GIBERT

### ABSTRACT

This paper evaluates the role of collective trademarks in enhancing the ability of tourism clusters to stimulate economic growth, local ownership and innovative governance. Illustrating how intellectual property (IP) law can be leveraged to achieve this, we offer a new economic rationale for trademarks in the context of tourism. Two post-conflict case studies of Sierra Leone and Croatia provide a crash test for this approach. By emphasizing the role of law, institutions and infrastructure in stimulating tourism in post-conflict zones, this paper echoes new institutional economics perspectives that highlight the impact of legal structure on development. Despite widespread acknowledgement of the cluster attributes of tourism, the role of tourism and clustering in regional development policy is seldom addressed. To our knowledge, the role of collective trademarks in strengthening tourism clusters has not been investigated.

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*Cite as* Roya Ghafele & Benjamin Gibert, *A New Institutional Economics Perspective on  
Trademarks: Rebuilding Post Conflict Zones in Sierra Leone and Croatia*,

11 J. MARSHALL REV. INTELL. PROP. L. 745 (2012).

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## A NEW INSTITUTIONAL ECONOMICS PERSPECTIVE ON TRADEMARKS: REBUILDING POST CONFLICT ZONES IN SIERRA LEONE AND CROATIA

ROYA GHAFELE & BENJAMIN GIBERT\*

### INTRODUCTION: THE NEW INSTITUTIONAL ECONOMICS OF TOURISM CLUSTERS

New institutional economics (“NIE”) conceptualizes the economy as a dynamic system comprised of institutional and legal frameworks.<sup>1</sup> Recognizing that “different kinds of goods and services cause different kinds of human interdependence or opportunities for one person to affect another,” NIE is a valuable paradigm to analyze the diverse experiences of tourism development worldwide.<sup>2</sup> Tourism is a bundle of goods and services combining geographical characteristics with various local services.<sup>3</sup> Consequently, increasing tourism’s value depends on cooperation between independent agents.<sup>4</sup>

Consumption of tourism services implies extensive interaction with a local region and hence promotes joint initiatives by inter-related businesses seeking to increase the appeal of a destination.<sup>5</sup> The interdependence of actors providing complementary services and the integration of local culture, heritage and institutions are all fundamental characteristics of tourism.<sup>6</sup> Tourism services thus have enormous cluster potential.

Cluster theory<sup>7</sup> suggests that functional spillovers across interconnected businesses operating in geographically concentrated areas will generate substantial

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This research was made possible through the Oppenheimer Fund. We would like to express our thanks.

<sup>1</sup> Douglas C. North, *The New Institutional Economics and Development*, in THE NEW INSTITUTIONAL ECONOMICS AND THIRD WORLD DEVELOPMENT 1, 1–2 (J. Harris, et al. eds., 1995).

<sup>2</sup> N. MERCURO, LAW AND ECONOMICS 1, 63 (N. Mercurio ed., 1989).

<sup>3</sup> Calvin Jones et al., *Regional Tourism Satellite Accounts: A Useful Policy Tool?*, 40 URBAN STUDIES, 2777, 2777–78 (2003).

<sup>4</sup> Cristina Santos et al. *Searching for Clusters in Tourism. A Qualitative Methodological Proposal 7* (Faculty of Economics, University of Porto, Working Paper No. 293, Sept. 2008).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 6–7.

<sup>7</sup> FRANCESCO CAPONE, REGIONAL COMPETITIVENESS IN TOURIST LOCAL SYSTEMS 5 (European Regional Sci. Ass’n 2004) (illustrating that a cluster is a geographic concentration of interconnected companies and institutions in a particular field); James Simmie, *Innovation and Clustering in the Globalised International Economy*, 41 URBAN STUD. 1095, 1098–99 (2004) (defining a cluster as a regional concentration of activity complying the criteria of the underlying theoretical concept).

efficiency gains that boost a region's competitive advantage in global tourism markets.<sup>8</sup> Recent tourism studies argue that tourism, due to its product characteristics, is particularly suited to benefit from cluster analysis.<sup>9</sup> Adopting the perspective of tourism as a cluster service, we propose that collective trademarks are a useful governance mechanism for both developing countries to generate greater value from tourism activities.

Collective trademarks are conceptualized here as a mechanism for fostering community entrepreneurship. This process, which stimulates local economic growth, may prompt normative acceptance of intellectual property ("IP") and legitimize institutions typically criticized in developing nations. While the reinforcement of the cooperative nature of tourism through the institutional setting of a cluster has been extensively discussed in the literature, it has so far gone unnoticed that the positive externalities associated with clusters can be reinforced through the assignment of trademarks. This paper does not outline the application of collective trademarks to tourism in practice because it is not an ex-post assessment of their utility. It is too early for an impact analysis because too few initiatives in the developing world exist. Instead, the potential value of collective trademarks to tourism is outlined by reference to two post-conflict cases: Sierra Leone and Croatia.

First, cluster analysis and tourism are interpreted according to new institutional economic approaches. Collective trademarks are then defined and conventional rationales for trademark protection reviewed. Linking collective trademarks and cluster theory, we offer a new rationale for collective trademarks in the context of tourism that conceptualizes IP as an enabling mechanism, rather than a defensive right. The two cases, Sierra Leone and Croatia, are then discussed with reference to the role of proprietary infrastructure, both tangible and intangible, in stimulating economic development.

## I. THE LAW AND ECONOMICS OF TOURISM CLUSTERS

Despite the lack of a consensual definition, two features of clusters are widely recognized: agglomeration – 'the geographical concentration of a specific industry and related activities' – and inter-connection, where the mix of competitive-cooperative relationships between local actors generates better performance in terms of employment, productivity, and knowledge transfer.<sup>10</sup> That tourism services are only consumed at geographically specific locations augments the concentration aspect of tourist clusters.<sup>11</sup> Cooperation among local actors minimizes costs and increases the value extracted per tourist, bolsters the region's competitive advantage, fosters spillovers increasing the efficiency of various enterprises and enables the sharing of infrastructure and marketing.<sup>12</sup> Pooling resources can enhance a region's attractiveness and increase the quality of services and products delivered. Many

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<sup>8</sup> CAPONE, *supra* note 7, at 5; Simmie, *supra* note 7, at 1098–99.

<sup>9</sup> Santos, *supra* note 4, at 2–3.

<sup>10</sup> Santos, *supra* note 4 at 4–5.

<sup>11</sup> *Id.* at 2–3.

<sup>12</sup> *Id.* at 8.

definitions of tourism clusters highlight the routine interaction of institutional policies and economic actors.<sup>13</sup> Cluster analysis thus coincides with approaches highlighting the role of law in structuring economic exchange since it underlines the systematic relationship existing between economic life and legal institutions.<sup>14</sup>

Property and contract law – frequently taken for granted in classical economics—rely on legal institutions.<sup>15</sup> Legal systems constitute the market environment.<sup>16</sup> The mix of competition and cooperation between actors in a cluster resonates with institutional perspectives conceptualizing society as both a cooperative venture for mutual advantage and an arena of conflict where interests are often mutually interdependent.<sup>17</sup> Though law constrains individuals in order to foster trade, it simultaneously acts as an enabling mechanism. Tourism clusters, for example, need IP law to leverage collective trademarks to increase service value.<sup>18</sup>

A *value chain* describes the process where the output of one industry becomes the input of another in a long chain that yields a consumer product.<sup>19</sup> Andersson highlights the need to incorporate consumers into this chain, suggesting that ‘the experience is the ultimate output of goods and services.’<sup>20</sup> Tourism goods and services are produced to yield experiences.<sup>21</sup> The purpose and value of goods for consumers are not simply their consumption but rather the experience generated in the moment consumption takes place.<sup>22</sup> This premise is particularly salient to tourism because tourism services are defined as a ‘travel experience.’<sup>23</sup> Drawing parallels between firms and tourists, Andersson argues that tourists ‘choose, test and buy inputs and then use labour, knowledge and creativity in a consumption set to realize a consumption project in order to generate an experience . . . . Holiday planning could be considered as a truly economic activity.’<sup>24</sup> The overall criterion for a planning tourist is usually value for money.<sup>25</sup> Extracting more value for money requires tourists with well-paid but time-consuming jobs to rely on tourism services to render their ‘holiday experience efficient.’<sup>26</sup> Collective trademarks demonstrate a region’s superior value and ensure consumers about product quality.<sup>27</sup> Consequently, they

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<sup>13</sup> CAPONE, *supra* note 7 at 4.

<sup>14</sup> MERCURO *supra* note 2, at 10.

<sup>15</sup> Kevin Davis & Michael J. Trebilcock, *What Role Do Legal Institutions Play in Development?* 4 (Oct. 20, 1999), available at <http://www.imf.org/external/pubs/ft/seminar/1999/reforms/trebil.pdf>.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> MERCURO, *supra* note 2 at 10.

<sup>18</sup> See Tizianna Cuccia et al. *Collective Trademarks and Cultural Districts: The Case of San Gregorio Armeno, Naples*, in CREATIVE CITIES, CULTURAL CLUSTERS AND LOCAL ECONOMIC DEVELOPMENT 121, 121 (Philip Cook & Luciana Lazzeretti eds., 2008).

<sup>19</sup> MICHAEL PORTER, COMPETITIVE ADVANTAGE, CREATING AND SUSTAINING SUPERIOR Performance 33–34 (1985).

<sup>20</sup> Tommy D. Andersson, *The Tourist in the Experience Economy*, 7 SCANDINAVIAN J. HOSPITALITY & TOURISM 46, 47 (2007).

<sup>21</sup> *Id.*

<sup>22</sup> STEPHEN J. PAGE & JOANNE CONNELL, TOURISM: A MODERN SYNTHESIS, 301 (2d ed. 2006).

<sup>23</sup> See Michael E. Porter, *Clusters and the New Economic Competition*, 76 HARV. BUS. REV. 77, 77–90 (1998).

<sup>24</sup> Andersson, *supra* note 20, at 48.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 57.

<sup>27</sup> U.N. INDUS. DEV. ORG., ADDING VALUE TO TRADITIONAL PRODUCTS OF REGIONAL ORIGIN: A GUIDE TO CREATING A QUALITY CONSORTIUM (2010), available at

can reduce consumer uncertainty and increase a destination's appeal by diminishing the time and skills required to organize a holiday.

## II. THE ECONOMIC RATIONALE FOR COLLECTIVE TRADEMARKS – STANDARD ARGUMENT

Collective marks must be “indicative of the source of goods and services and consumers must be able to distinguish it from other marks.”<sup>28</sup> They facilitate price increases due to service/product differentiation that in turn creates further incentives to invest in quality and reputation.<sup>29</sup> Essentially, they are an organizational principle of economic activity that allow a community to promote its market position, build its reputation, protect itself against unfair competition and adopt a governance structure for its collective economic activities.<sup>30</sup> Collective marks foster collaboration among communities.<sup>31</sup> Moreover, they are a form of intellectual property that can be leveraged by developing countries because they enable proactive engagement in creating and maintaining the reputation of a community without requiring the level of administrative and technological sophistication of patents.<sup>32</sup>

The common function of trademark law is “to afford rights to those who use words, names, symbols or devices to identify their goods or services” on the basis that “if the law does not prevent free-riding it will destroy the information capital and accordingly eliminate incentive to develop a valuable trademark.”<sup>33</sup> The level of trademark protection necessary is discussed in the literature according to two major doctrines: *confusion* of source for competing goods and *dilution* (especially in non-competing goods). Both doctrines are predicated on the belief that trademark protection augments the efficiency of free markets by inhibiting unfair trade practices and increasing the amount of available information in the marketplace.<sup>34</sup> The *confusion* of source doctrine has historically dominated trademark cases while the relatively recent emergence of the *dilution* doctrine parallels the growth of global trade across multiple industrial sectors and growing awareness of the power of brand identity and marketing.

The *confusion* doctrine asserts that likelihood of mark confusion by consumers is the “universal judicial touchstone in trade name cases.”<sup>35</sup> Trademark protection not

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[http://www.unido.org/fileadmin/user\\_media/Publications/Pub\\_free/Adding\\_value\\_to\\_traditional\\_products\\_of\\_regional\\_origin.pdf](http://www.unido.org/fileadmin/user_media/Publications/Pub_free/Adding_value_to_traditional_products_of_regional_origin.pdf).

<sup>28</sup> *Asia Sub-Regional Workshop on the Use of Intellectual Property*, WORLD INTELL. PROP. ORG. (June 2007), available at <http://www.amarjitassociates.com/articles/roleofmarks.htm>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Jenny Cave et al., *Cultural Tourism Product: Pacific Island Migrant Perspectives in New Zealand*, 45 J. OF TRAVEL RES. 435, 436 (2007); Roya Ghafele, *Creating the Missing Link: Applying Collective Marks to Create Clusters*, 4 J. INTELL. PROP. L. & PRACTICE, 57, 59 (2009).

<sup>32</sup> Ghafele, *supra* note 31, at 59.

<sup>33</sup> Ashitha Bhagwan et al., *The Economic Rationale for Extending Protection to Smell Marks*, MUNICH PERSONAL REPEC ARCHIVE (Oct. 31, 2007), available at [http://mpra.ub.uni-muenchen.de/5604/1/MPRA\\_paper\\_5604.pdf](http://mpra.ub.uni-muenchen.de/5604/1/MPRA_paper_5604.pdf).

<sup>34</sup> Beverly W. Pattishall, *The Use Rationale and the Trademark Registration Treaty*, 2 AIPLA Q.J. 97, 97 (1974).

<sup>35</sup> Ralph S. Brown Jr., *Advertising and the Public Interest: Legal Protection* 108 YALE L.J. 1619, 1648 (1948).

only enhances market efficiency by allowing consumers to better relate certain information to precise goods or services, but also helps consumers express preferences about product/service quality, price and features.<sup>36</sup> This means *expressed demand* (pricing signals) received by producers more accurately reflect *actual demand* (consumer's tastes and preferences) in the market.<sup>37</sup> Consequently, trademark protection creates incentives for firms to invest in and maintain product/service quality in the hopes of building consumer confidence in their mark.<sup>38</sup> The U.S. Supreme Court proposes that "trademarks foster competition and the maintenance of quality by securing to the producer the benefits of a good reputation."<sup>39</sup> This reputation is often identified as a business's *goodwill*,<sup>40</sup> a nebulous concept whose precise source is difficult to trace but whose importance should not be underestimated.

The *dilution* doctrine stands for the principle that the owner of a trademark should receive the same protection for investments in advertising a mark that he would be entitled to receive for investment in tangible assets.<sup>41</sup> This rationale is termed the *dilution* doctrine because "when use of the same or similar marks by others has caused a mark to become less distinctive than before, it has been diluted."<sup>42</sup> The more widespread a symbol is, the less effective it will be for any one user.<sup>43</sup> Schechter's analysis suggests that, while trademarks historically indicated the origin or ownership of goods, their primary function today in the context of international trade is "to identify a product as satisfactory and thereby stimulate further purchases by the consuming public."<sup>44</sup> Critics of the *dilution* doctrine argue protection invites abuse by monopoly-inclined interests by exposing small businesses to harassment in the claim of protection against trademark infringement.<sup>45</sup> Application of the *dilution* concept also greatly diminishes the free use of language in the market and may yield wasteful expenditures on advertising.<sup>46</sup> These criticisms are significant but are not elaborated here.

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<sup>36</sup> Mark P. McKenna, *The Normative Foundations of Trademark Law*, 82 NOTRE DAME L. REV. 1838, 1844 (2007).

<sup>37</sup> *Id.*

<sup>38</sup> Stephen L. Carter, *The Trouble With Trademark*, 99 YALE L.J. 759, 759 (1990).

<sup>39</sup> *Id.* at 761; *Park 'N Fly Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 198 (1985).

<sup>40</sup> Carter, *supra* note 38, at 761.

<sup>41</sup> See generally Frank I. Schechter, *The Rational Basis of Trademark Protection*, 40 HARV. L. REV. 813, 831 (1927) (alluding to the fact that the predominant value of the modern trademark is intangible and not predicated solely on the tangible aspects of the goods themselves).

<sup>42</sup> Beverly W. Pattishall, *Dawning Acceptance of the Dilution Rationale for Trademark-Trade Identity Protection*, 74 TRADEMARK REP. 289, 308-09.

<sup>43</sup> Jessica Litman, *Breakfast with Batman: The Public Interest in the Advertising Age*, 108 YALE L.J. 1717, 1724 (1999).

<sup>44</sup> Schechter, *supra* note 41, at 814-18.

<sup>45</sup> Beverly W. Pattishall, *The Dilution Rationale for Trademark-Trade Identity Protection, Its Progress and Prospects*, 67 TRADEMARK REP. 607, 601-02 (1977).

<sup>46</sup> *Id.* at 602.



### III. A NEW INSTITUTIONAL ECONOMIC RATIONALE FOR TRADEMARK PROTECTION

A collective trademark, viewed through a new institutional economic (“NIE”) lens, can be conceived as a means to establish a legal structure for cluster creation, because it engenders a specific set of economic relationships. A collective mark is a mark owned by a collective entity, such as an association, a cooperative, or a union.<sup>47</sup> In principle, it can be used only by members of the collective entity.<sup>48</sup> Serving similar functions as conventional trademarks, collective marks establish a collective ownership structure that prompts cooperation among economic actors and enables the syndication of economic activity.<sup>49</sup> The governing authority of the mark defines quality standards and rules that must be followed by participants in exchange for use of the mark on products and services.<sup>50</sup> Collective marks thus establish an institutional setting that directs the commercial operations of firms operating within a cluster.

The *cluster* rationale proposed for collective trademark protection combines both *confusion* and *dilution* doctrines, as well as extending beyond them.<sup>51</sup> It echoes *confusion* by admitting that an important function of trademarks is reducing consumer search costs by enabling selection on the basis of past experience or recommendation.<sup>52</sup> Collective trademarks in tourism improve the quality of information available to tourists choosing a holiday destination and protect regional clusters of tourism businesses from illegitimate attempts to divert trade.<sup>53</sup> It borrows from *dilution* an awareness of brand identity and accepts that a mark may operate across a variety of economic sectors.<sup>54</sup> Collective trademarks allow tourism clusters to capitalize on advertising investments by protecting the vital intangible assets of a

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<sup>47</sup> 15 U.S.C. § 1127 (2006); *Huber Baking Co. v. Stroehmann Bros. Co.*, 252 F.2d 945, 952 (2d Cir. 1958).

<sup>48</sup> 15 U.S.C. § 1054 (describing how registration of collective marks have the same control effect as individually registered trademarks).

<sup>49</sup> See *Collective Marks*, WORLD INTELL. PROP. ORG., [http://www.wipo.int/sme/en/ip\\_business/collective\\_marks/collective\\_marks.htm](http://www.wipo.int/sme/en/ip_business/collective_marks/collective_marks.htm) (last visited June 5, 2012) (describing how collective marks provide a framework for cooperation).

<sup>50</sup> See Ghafele, *supra* note 31, at 59 (stating that the governing authority sets the quality standards and rules for the participating companies); see also *Registration of Collective Marks*, WORLD INTELL. PROP. ORG., [http://www.wipo.int/sct/en/comments/pdf/sct21/cert\\_ec.pdf](http://www.wipo.int/sct/en/comments/pdf/sct21/cert_ec.pdf) (last visited June 5, 2012) (stating that the applicant for a collective mark submits the regulations that will govern the mark’s use).

<sup>51</sup> See Ghafele, *supra* note 31, at 58 (describing how the use of a collective mark in a cluster scenario allows for collaboration instead of competition and the creation of unique products); see also Ralph S. Brown, Jr., *Advertising and the Public Interest: Legal Protection of Trade Symbols*, 108 YALE L.J. 1619, 1648 (1999) (describing confusion theory as the use of “imitative symbols which drain . . . advertiser’s selling potential . . .”); *id.* at 1644 (stating that under dilution theory the less unique a mark is, the less effective it is).

<sup>52</sup> William M. Landes & Richard A. Posner, *Trademark Law: An Economic Perspective*, 30 J. LAW & ECON. 265, 275 (1987).

<sup>53</sup> See Ghafele, *supra* note 31, at 58 (positing that consumer confidence is improved and competitor confusion is minimized by the use of collective marks); See *id.* at 59 (stating that the use of collective marks protects against third party interference).

<sup>54</sup> See *id.* at 59 (describing the variety of economic areas that are influenced by collective marks).

region: business *goodwill* and *reputation*.<sup>55</sup> The *cluster* argument extends beyond both rationales by suggesting that the enforcement of collective trademarks precipitates a regional governance structure that stimulates local entrepreneurship in tourism.<sup>56</sup> As the positive externalities of tourism cluster development, are recognized by relevant actors, possibly due to collective trademarks, they should internalize the values supporting the framework specifically and IP law more generally.<sup>57</sup> This is important if developing countries with relatively new IP institutional architectures wish to leverage the system for their own benefit.

Since institutions are formed to reduce uncertainties in human exchange, established trademark law allows individuals to maximize the value of a tourist destination by permitting the legal protection of a tourism service under a collective trademark.<sup>58</sup> Yet, IP is not merely a defensive tool; it is also an enabling mechanism. The concept of bounded rationality implies that individuals make choices based on their mental models.<sup>59</sup> Instead of neo-classical economic agents with perfect information selecting the most efficient means of maximizing rationally chosen ends based on values that are given and constant, NIE recognizes that individuals have limited mental capacity and information from which to make decisions.<sup>60</sup> Collective trademarks allow local actors to communicate the value and quality of their tourism service to consumers with limited time and information. Stable institutions need the support of organizations with an interest in their perpetuation.<sup>61</sup> Envisioning trademarks as enabling mechanisms for local communities helps evolve norms that support trademark law. Law and economics are mutually supportive: law facilitates beneficial economic interactions that then legitimize the law.<sup>62</sup>

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<sup>55</sup> See Roya Ghafele, *How Developing Countries can Benefit from Intellectual Property: The Role of Collective Marks in Tourism*, MUNICH PERSONAL REPEC ARCHIVE (Mar. 8, 2011), available at <http://mpira.uibk.ac.at/handle/document/32762/1> (MPRA\_paper\_32762.pdf (“collective marks protect the collective goodwill or reputation of a community and ultimately foster the identity of a society.”)).

<sup>56</sup> See Ghafele, *supra* note 31, at 59 (stating that collective marks incentivize local producers to create and maintain quality products); See also *Collective Marks*, *supra* note 49 (stating that the use of collective marks may be a “powerful tool[] for local development”).

<sup>57</sup> Jean Raymond Homere, *Intellectual Property Rights Can Help Stimulate the Economic Development of Least Developed Countries*, 27 COLUM. J.L. & ARTS 277, 298 (2004) (concluding that intellectual property rights could stimulate developing countries, but conforming to the current rules might be too costly for countries lacking the proper infrastructure).

<sup>58</sup> See Douglass C. North, *Institutions*, 5 J. ECON. PERSPECTIVES 97, 97 (1991) (describing reason for institution creation); see also *Use of Trade Marks to Protect Traditional Cultural Expressions*, WORLD INTEL. PROP. ORG., <http://www.wipo.int/export/sites/www/tk/en/studies/cultural/minding-culture/studies/trademarks.pdf> (last visited June 5, 2012) (stating that local populations use trademark to protect tourism services).

<sup>59</sup> See Bryan D. Jones, *Bounded Rationality*, 2 ANN. REV. POLIT. SCI. 297, 299 (1999) (describing how people have different mental models they use for decision making).

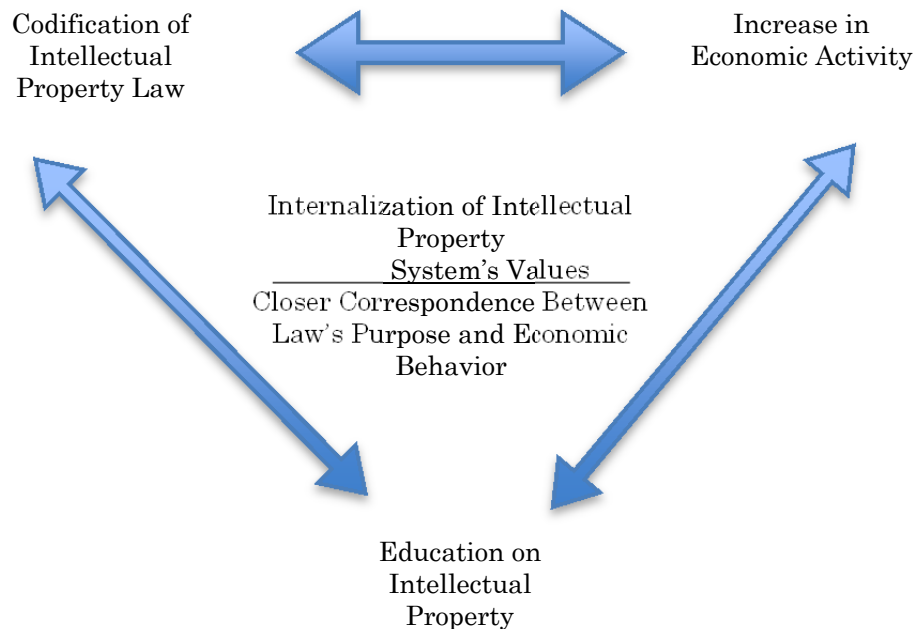
<sup>60</sup> JOHN HARRISS ET AL., *THE NEW INSTITUTIONAL ECONOMICS AND THIRD WORLD DEVELOPMENT* 17 (John Harris et al. eds., 1995).

<sup>61</sup> See Mark A. Lemley, *The Economics of Improvement in Intellectual Property Law*, 75 TEX. L. REV. 989, 994–95 (1997) (explaining that in the absence of enforced intellectual property rights, ideas and investment in those ideas is not secure).

<sup>62</sup> See William O. Hennessey, *The Role of Trademarks in Economic Development and Competitiveness*, FRANKLIN PIERCE LAW CTR., available at <http://www.aief-usa.org/ipr/workshop/presentation/hennessey.pdf> (explaining that trademark protection is tied to economic growth).

Since we are concerned with the law's practical effect on economic behavior, it is worth noting that awareness of IP laws, particularly the benefits that can be leveraged from them by local communities, is a pivotal element of this complex equation. Economic actors cannot be expected to leverage a legal system they know nothing about. Promoting awareness of collective trademark law specifically, and IP law more generally, is crucial to fully leverage the positive development effects they can engender<sup>63</sup>. The implication of this model is that the careful implementation of a legal IP architecture can initiate a cycle that leads to increased economic activity, internalization of values, and support for law and the institutions. A significant corollary effect will be closer correspondence between the intended function of trademark protection and the actual behavior of economic actors operating within the system established.<sup>64</sup>

**Figure 1**  
Intellectual Property as an Enabling Mechanism



The viability of this model requires evaluating the potential of collective trademarks to leverage tourism clusters in various cases. Understanding the progress (or lack thereof) of tourism development in relevant cases should yield

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<sup>63</sup> See Ghafele, *supra* note 55, at 6 (stating that although stakeholders may recognize the role of clusters or marketing in tourism, the role of intellectual property protection and collective marks is less clear, requiring the need for awareness and education).

<sup>64</sup> See Hennessey, *supra* note 62, at 4 (indicating that trademark protection helps consumers identify products, increases product sales, and gives manufacturers the motivation to create better products).

better understanding of the interplay between intellectual property laws, institutions, values, and economic activity in tourism services.

#### IV. ASSESSING THE ENABLING POTENTIAL OF COLLECTIVE MARKS – THE CASES OF SIERRA LEONE AND CROATIA

##### *A. Case Selection Methodology*

The enforcement of property rights provides security and incentive for production by clarifying the parameters of exchange and establishing institutional constraints that mitigate the risks of information asymmetry, cheating, and free-riding.<sup>65</sup> It is thus reasonable to assume that well-established, clearly codified legal systems, supported by widely held socio-cultural values, stimulate economic growth.<sup>66</sup> Being primarily concerned with the law's practical effect on economic behavior, rather than with its mere statutory existence, it seems logical that laws that are widely understood, firmly established, and have developed organically, i.e. they are rooted in the social relations and cultural values of the society in which they are implemented, are more likely to affect economic activity in a free market. The two post-conflict cases of Croatia and Sierra Leone exhibit few of these characteristics. Not only have their IP systems been imported from developed countries and harmonized under TRIPS, but their political and legal structures, as well as the main institutions involved in IP administration, are relatively new.<sup>67</sup> Both cases constitute an extreme context: they are a demanding crash test for the model proposed. If IP law has the potential to be an enabling mechanism to create clusters in these cases where understanding of IP is minimal, where the values it promotes have not yet internalized, and where the institutions it requires still in their infancy, it is highly likely to work in other nations with more firmly established IP laws, institutions, and values. We have thus attempted to minimize conventional verification biases in case selection by presenting atypical or extreme cases that most challenge the model we propose. Additionally, these two cases demonstrate the need for institutional architecture, law, property rights, and transport infrastructure to stimulate tourism specifically and economic development more generally. Awareness of this complex amalgam of mutually reinforcing conditions coincides with NIE

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<sup>65</sup> See Lemley, *supra* note 61, at 994 (stating that the enforcement of intellectual property rights incentivizes authors or inventors to generate creative works in exchange for profits and protection over their creative ideas and works).

<sup>66</sup> *Id.* (indicating that the economic philosophy and incentive theory are the best ways to advance the public welfare through the talents of authors and inventors).

<sup>67</sup> See *Sierra Leone Intellectual Property Profile*, WORLD INTELL. PROP. ORG., <http://www.wipo.int/ldcs/en/country/pdf/sl.pdf> (last visited June 5, 2012) (indicating that the intellectual property rights for Sierra Leone were developed in 1972 or later); see also *Croatia Intellectual Property Profile*, WORLD INTELL. PROP. ORG., <http://www.wipo.int/wipolex/en/details.jsp?id=10059> (last visited June 5, 2012) (indicating that Croatia's intellectual property law governing competition, copyright and related rights (i.e. neighboring rights), enforcement of IP and related laws, industrial property, IP regulatory body, and trademarks was enacted on October 15, 2003).

perspectives and renders these particular cases highly relevant to the approach adopted.

### *B. Methodological Framework for the Case Studies*

It is not possible to provide an ex-post assessment of the validity of the cluster rationale for collective trademarks due to insufficient empirical evidence regarding the implementation of collective trademarks in tourism. Consequently, the cases presented serve to outline the *potential* for collective trademarks to stimulate clustered economic activity. To assess this potential, we must establish the critical elements necessary for the benefits of collective trademarks to be fully leveraged. Staying in line with new institutional economics perspectives, four factors have been identified as crucial to constituting an environment where collective trademarks can be exploited to precipitate an increase in cluster productivity: (1) the state of private property law in general, and intellectual property legislation more specifically; (2) the efficiency and legitimacy of the primary institutions involved in IP administration and tourism; (3) adequate transport and communications infrastructure; and (4) the degree of awareness about IP among local and national actors. These four factors, while certainly not a comprehensive list, are deemed to be the most essential for a number of reasons. Collective trademarks cannot hope to be leveraged if there is inadequate legislation for their protection and management.<sup>68</sup> Even if clearly codified legislation exists, the ability for IP to stimulate economic activity requires that the relevant institutions involved run efficiently and are perceived as legitimate actors.<sup>69</sup> Both the degree of legal codification and institutional capacity are intimately bound up to broader awareness of the intellectual property system and the assumptions underpinning it. While specific mention has been made to law, it is vital to understand that the role of law in the context of collective trademarks is not so much dependent on national enforcement mechanisms, but on local apprehension of the law- the degree of informal acceptance of a legal mechanism to stimulate joint business activities.<sup>70</sup> Local stakeholders must understand and accept the concept of tourism as a cluster service where the success of each business relies on the output of other firms.<sup>71</sup> Finally, sufficient transport and communications infrastructure must exist for businesses to engage in efficient clustered economic activity.<sup>72</sup> Accordingly,

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<sup>68</sup> See Ghafele, *supra* note 31, at 58 (explaining that, generally, law is “constitutive for most economic phenomena.”); see *About IP: Enforcement of Intellectual Property Rights*, WORLD INTELL. PROP. ORG., available at <http://www.wipo.int/about-ip/en/iprm/pdf/ch4.pdf> (last visited June 5, 2012) (explaining that, without an intellectual property law that enforces right, an intellectual property system is valueless).

<sup>69</sup> See *generally About IP: Enforcement of Intellectual Property Rights*, *supra* note 68 (explaining that IP law’s ability to stimulate economic activity is dependent on a strong judicial system).

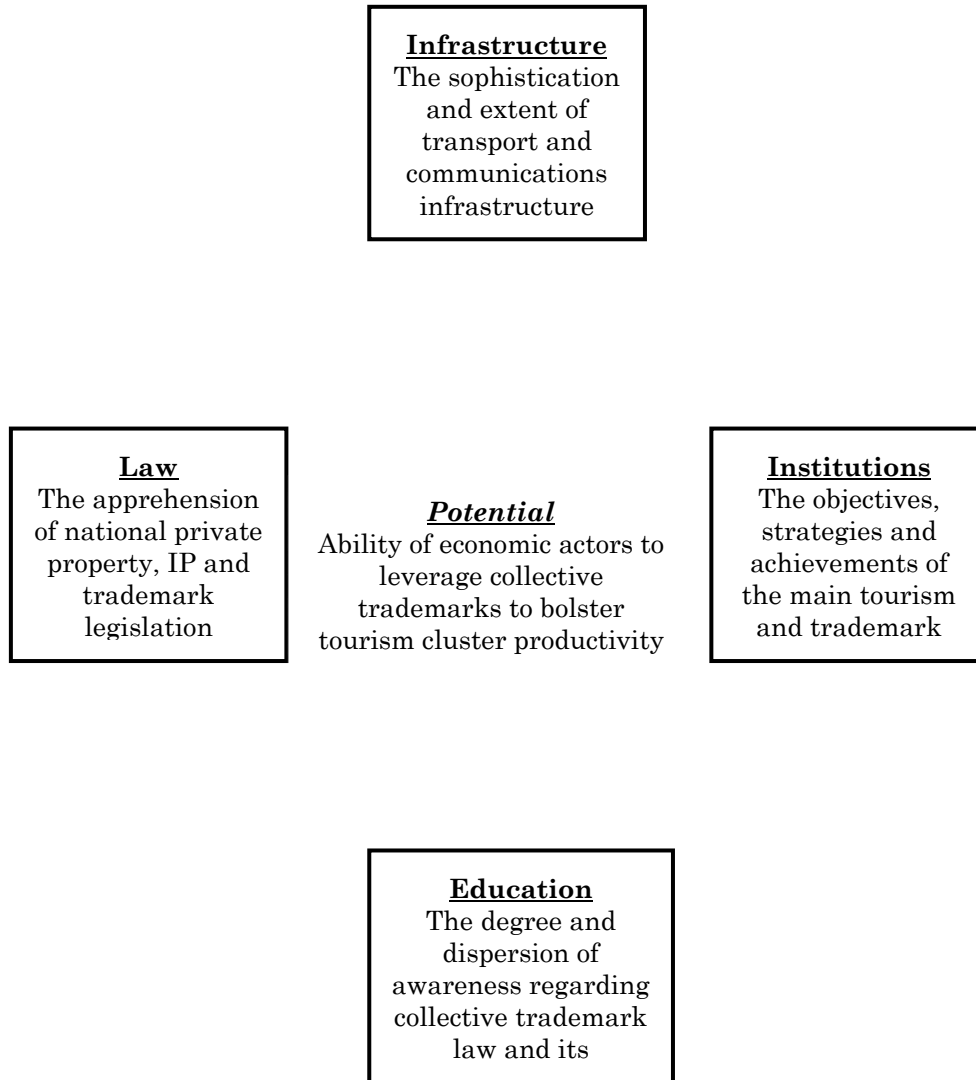
<sup>70</sup> See *generally* Ghafele, *supra* note 31, at 58–59 (discussing throughout the local intellectual property grassroots initiative necessary for cluster trademarks to stimulate local economic growth).

<sup>71</sup> *Id.* at 29 (explaining that small businesses within a local tourism industry that accept the cluster mark and quality standards that come with it may benefit economically).

<sup>72</sup> See Ghafele, *supra* note 55, at 1 (explaining that, inversely, countries that struggle with basic infrastructure issues may not be in a position to benefit from the tourism industry).

we can establish a clear framework to assess the potential for IP to serve as an enabling mechanism.

Figure 2  
Establishing the Necessary Context for IP to Serve as an Enabling Mechanism  
to Stimulate Clustered Tourist Activity—Four Factors



## V. POTENTIAL IN SIERRA LEONE

Tourism in Sierra Leone is experiencing partial revival after disappearing during the eleven-year civil war that began in 1991.<sup>73</sup> While relying on the export of mineral resources to generate income, the government has aspirations for tourism to be a key driver of economic development, backed by the Africa Governance Initiative.<sup>74</sup> In April 2009, former U.K. Prime Minister Tony Blair brought attention to how tourism has “huge untapped potential” for Sierra Leone.<sup>75</sup> Sierra Leone’s experience of the so-called “resource curse”, where diamonds have played a major role in initiating and prolonging the civil war,<sup>76</sup> renders adopting new development strategies all the more important. Unlike the concentration of wealth (often to foreigners) resulting from mineral mining operations, promoting tourism clusters has the potential to stimulate truly disperse regional development and encourage local ownership. Travel and tourism presently contributes an estimated 6.6 percent of GDP.<sup>77</sup> In comparison, tourism in neighboring Gambia – the leader in Sub-Saharan Africa for visitors and tourism’s contribution to GDP – generates 7.8 percent of GDP.<sup>78</sup> Agriculture remains Sierra Leone’s biggest employer, comprising 46 percent of GDP and consisting primarily of subsistence farmers,<sup>79</sup> while government services dominate the service sector.<sup>80</sup> The 2006 FIAS Report on Competitiveness and Corporate Social Responsibility in Sierra Leone recommended the country focus on improving “viable tourism development clusters of services and infrastructure around the Western Peninsula, Bunce Island, Tiwai Island and Outamba Kilimi.”<sup>81</sup> The New Tourism Development Act that is being implemented, modeled after the

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<sup>73</sup> See generally, Mallika Shakya, *Competitiveness Assessment of Tourism in Sierra Leone A Cluster-Based Approach 3* (The World Bank Poverty Reduction and Econ. Mgmt. Network Int’l Trade Dep’t, Working Paper No. 5083, Oct. 2009), available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2009/10/20/000158349\\_20091020143421/Rendered/PDF/WPS5083.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2009/10/20/000158349_20091020143421/Rendered/PDF/WPS5083.pdf) (noting “rapid and steady” progress in Sierra Leone following peace accords in 1999 and 2001).

<sup>74</sup> See *President Koroma and Tony Blair Announce Investment Conferences to Showcase Sierra Leonean Progress*, OFF. OF TONY BLAIR, <http://www.tonyblairoffice.org/africa/news-entry/president-koroma-and-tony-blair-announce-investment-conference-to-showcase/> (last visited June 5, 2012) (highlighting the various investment opportunities in Sierra Leone, including tourism).

<sup>75</sup> *Tony Blair Praises Sierra Leone’s Pro-Business Climate and Encourages International Investment*, OFF. OF TONY BLAIR, <http://www.tonyblairoffice.org/news/entry/tony-blair-praises-sierra-leones-pro-business-climate-and-encourages-intern/> (last visited June 5, 2012).

<sup>76</sup> Dele Ogunmola, *Socio-Economic Injustice and Cronyism: Warlordism and Taylorism in the Sierra Leone Civil War 3* (J. of Alt. Perspectives in the Soc. Sci. Working Paper No. 3, 2009); see also Paul Richards, *The Political Economy of Internal Conflict in Sierra Leone 22* (Netherlands Inst. of Int’l Relations Working Paper No. 21, Aug. 2003), available at [http://www.clingendael.nl/publications/2003/20030800\\_cru\\_working\\_paper\\_21.pdf](http://www.clingendael.nl/publications/2003/20030800_cru_working_paper_21.pdf) (noting that “it is beyond doubt that diamonds became the main way to pay for the war in its later stages.”).

<sup>77</sup> *The Authority of World Travel and Tourism Economic Impact Sierra Leone*, WORLD TRAVEL & TOURISM COUNCIL (2012), [http://www.wttc.org/site\\_media/uploads/downloads/sierra\\_leone2012.pdf](http://www.wttc.org/site_media/uploads/downloads/sierra_leone2012.pdf).

<sup>78</sup> *Id.*

<sup>79</sup> ECON. INTELLIGENCE UNIT, COUNTRY PROFILE: SIERRA LEONE 22 (2007) [hereinafter SIERRA LEONE COUNTRY PROFILE].

<sup>80</sup> *Id.*

<sup>81</sup> FOREIGN INVESTMENT ADVISORY SERVICE, COMPETITIVENESS AND CORPORATE SOCIAL RESPONSIBILITY IN SIERRA LEONE (2006).

successful Gambian Tourism Development Act, foresees to provide hotel accommodation and develop the beaches.<sup>82</sup> The Government's establishment of a series of national parks to promote Sierra Leone as an eco-tourism destination, and entrepreneurs' construction of new hotels and facilities in Freetown in anticipation of increased visitor numbers, are steps in the right direction.<sup>83</sup> The legal framework should, to a certain extent, reduce uncertainty and trigger economic growth.

The memory of civil war looms large in the national and international consciousness.<sup>84</sup> Frequent collusion between the Sierra Leone Army ("SLA") and the Revolutionary United Front ("RUF") exerted heavy tolls on the civilian population.<sup>85</sup> Images of civilians with missing limbs continue to provide a visual reminder of the terrible violence inflicted by the RUF on the population. These images perpetuate the association of Sierra Leone with turbulence and violence, and thus contribute to economic stagnation; the amplified sensitivity of the tourism sector towards socio-political instability, disasters, crises, and wars translates into a strong loss of earnings.<sup>86</sup> Although the civil war ended in 2002, UN forces remained to ensure political stability until 2005.<sup>87</sup> Following the end of the war, there was an initial increase in tourism.<sup>88</sup>

#### A. *The Institutionalization of Intellectual Property Law in Sierra Leone*

Sierra Leone is a member and signatory to a number of international IP treaties, including the TRIPS Agreement, which it signed in July 1995.<sup>89</sup> A new Copyright Law (Number 75, entered into effect on June 13, 1999) allows the protection of computer software, video films and all kinds of audio-visual works (Ministry of Economy and Trade). The Ministry of Economy and Trade indicates that the new law "provides stiffer penalties for offenders and better compensation to the person whose rights have been infringed." Sierra Leone is not only TRIPS compliant, but is actively expanding its IP protections. It therefore meets and exceeds the requirements for the use of collective trademarks.

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<sup>82</sup> See *Taking the Plunge*, AFRICA INVESTOR (July 1, 2007), <http://www.africaninvestor.com/article.asp?id=1676> (detailing one investor's plans for developing golf courses and resorts in Sierra Leone), <http://www.africaninvestor.com/article.asp?id=1676>.

<sup>83</sup> *Id.*

<sup>84</sup> See generally Marlise Simons, *Liberian Ex-Leader Convicted for Role in Sierra Leone War Atrocities*, N.Y. TIMES, Apr. 27, 2012, at A6 (discussing Sierra Leonean reaction to Charles Taylors' conviction for crimes against humanity and war crimes at the Hague, and recounting the events of the civil war).

<sup>85</sup> John Bellows & Edward Miguel, *War and Local Institutions in Sierra Leone*, 96 AM. ECON. REV. 1, 5(2006) ("Both the RUF and the SLA were widely implicated in the abuse of civilians, through looting, forced labor and recruitment (including of children), sexual violence, and indiscriminate killing.")

<sup>86</sup> See SIERRA LEONE COUNTRY PROFILE, *supra* note 79, at 31 (noting that tourism is slowly reviving after being non-existent during the war).

<sup>87</sup> *Id.* at 4.

<sup>88</sup> Shakya, *supra* note 73, at 3.

<sup>89</sup> *Sierra Leone and the WTO*, WORLD TRADE ORG., [http://www.wto.org/english/thewto\\_e/countries\\_e/sierra\\_leone\\_e.htm](http://www.wto.org/english/thewto_e/countries_e/sierra_leone_e.htm) (last visited June 5, 2012).



The Sierra Leone Intellectual Property organization is located at the Department of Information and Communication in Freetown.<sup>90</sup> The Intellectual Property Protection Office (“IP Office”) has twelve employees.<sup>91</sup> The IP Office performs several tasks related to the registration of trademarks, industrial designs and patents.<sup>92</sup> While there seems to be sufficient information available to those desiring to register a trademark in Sierra Leone,<sup>93</sup> the low number and inadequate training of those involved in trademarks specifically is cause for concern. That said, the ability to search for and register trademarks is believed to be advanced enough to enable clustered economic activity.<sup>94</sup>

Awareness of the economic function of intellectual property in general, and trademarks in particular, vary according to social strata. While the higher public administration and academics acknowledge the economic effect of trademarks,<sup>95</sup> at the regional and municipal level, caution prevails with regard to the implementation and management of trademarks. Despite private sector skepticism about the public sector’s capacity to implement trademarks and related tourism policies, companies have a vested interest in implementing trademarks in conjunction with the public sector as a tourism promotion strategy.<sup>96</sup> The use of logos among tourism institutions suggests a degree of understanding relating to trademarks. Although entrepreneurs know of the value that trademarks can provide, it is unlikely that the wider population, particularly in rural areas, is aware of the benefits they can leverage from the use of collective trademarks. Further education is necessary to stimulate disperse local ownership in such tourism initiatives.

Since we are concerned with the use of collective trademarks by local entrepreneurs, Sierra Leone scores low here because it is only recently TRIPS compliant.<sup>97</sup> Though the IP Office is involved in promoting awareness, it is unlikely that the average resident will interact much with this institution. Awareness of trademarks in Sierra Leone is accordingly deemed too low to bolster cluster productivity. With few locals aware of the benefits of IP and trademark law specifically, the degree to which the values underlying such a system have been internalized cannot be very high. It is reasonable to assume a time-lag between the

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<sup>90</sup> *Sierra Leone Copyright Offices Contact Information*, WORLD INTELL. PROP. ORG., [http://www.wipo.int/directory/en/contact.jsp?country\\_id=157&type=ADMIN\\_CR](http://www.wipo.int/directory/en/contact.jsp?country_id=157&type=ADMIN_CR) (last visited June 5, 2012).

<sup>91</sup> MART LEESTI & TOM PENGELLY., TECHNICAL AND FINANCIAL CO-OPERATION NEEDS FOR IMPLEMENTATION OF THE WTO TRIPS AGREEMENT IN SIERRA LEONE: FINAL REPORT OF NEEDS ASSESSMENT DIAGNOSTIC 13 (Int’l Ctr. for Trade and Sust. Dev. 2007), *available at* [http://ictsd.org/downloads/2008/06/sierra\\_leone20final20report20with20logos20november202007.pdf](http://ictsd.org/downloads/2008/06/sierra_leone20final20report20with20logos20november202007.pdf).

<sup>92</sup> *Sierra Leone Presentation on Challenges in Formulation and Implementation of National Intellectual Property Policies and Strategies*, WORLD INTELL. PROP. ORG., [http://www.wipo.int/edocs/mdocs/aspac/en/wipo\\_inn\\_tyo\\_12/wipo\\_inn\\_tyo\\_12\\_ref\\_t3sierra\\_leone.pdf](http://www.wipo.int/edocs/mdocs/aspac/en/wipo_inn_tyo_12/wipo_inn_tyo_12_ref_t3sierra_leone.pdf) (last visited June 5, 2012).

<sup>93</sup> LEESTI & PENGELLY., *supra* note 91, at 13.

<sup>94</sup> *Sierra Leone Presentation on Challenges* *supra* note 92, at 4.

<sup>95</sup> *See generally* Landes & Posner, *supra* note 52, at 269 (discussing the market for trademarked goods).

<sup>96</sup> CAROLINE ASHLEY ET AL, THE ROLE OF THE TOURISM SECTOR IN EXPANDING ECONOMIC OPPORTUNITY 8–9 (2007), *available at* [http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report\\_23\\_EO%20Tourism%20Final.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report_23_EO%20Tourism%20Final.pdf).

<sup>97</sup> *Sierra Leone and the WTO*, *supra* note 89.

implementation of IP laws and their gradual acceptance by populations in developing nations, if such acceptance materializes at all. Though IP is a recent addition to Sierra Leone's legal system, there seem to be no substantial philosophical traditions that would contradict the values such a system espouses.

The institutionalization of intellectual property rights in Sierra Leone needs to be seen, however, within the wider context of the institutionalization of private property. While a private property system is established throughout Sierra Leone, it still ranks relatively poorly in terms of economic freedoms. The Global Property Guide Economic Freedom Rating for the country is 47.85 out of 100 and falls under the "repressed" category.<sup>98</sup> There is considerable government interference in the economy that may deter potential international investors and stifle the freedom of movement of local entrepreneurs. The first peaceful handover of power through democratic election was not until 2007.<sup>99</sup> Sierra Leone is not even listed in the WEF Global Competitiveness Report.<sup>100</sup> The security and incentive provided by private property is therefore not sufficiently institutionalized or widespread to engender productivity gains in relation to collective trademarks.

## *B. Infrastructure in Sierra Leone*

### *1. Physical Infrastructure*

National infrastructure was seriously damaged during the war and hence transports, communication, water supply and electricity networks remain in a poor state.<sup>101</sup> Sierra Leone ranks 160<sup>th</sup> in the world in terms of airport accessibility, and only one out of nine airports in the country has a paved runway over three kilometers to enable international commercial flights.<sup>102</sup> There are only eight airlines operating out of Freetown International Airport with just over twenty-five international flights per week, and only eight short-haul flights per week.<sup>103</sup>

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<sup>98</sup> *Global Property Guide: Sierra Leone*, GLOBALPROPERTYGUIDE.ORG, <http://www.globalpropertyguide.com/Africa/Sierra-Leone/economic-freedom> (last visited June 5, 2012).

<sup>99</sup> ECON. INTELLIGENCE UNIT, THE ECONOMIST INTELLIGENCE UNIT'S INDEX OF DEMOCRACY 2008 (2008), *available at* <http://graphics.eiu.com/PDF/Democracy%20Index%202008.pdf>.

<sup>100</sup> *See generally* WORLD ECON. FORUM, THE GLOBAL COMPETITIVENESS REPORT 2011-2012 (Klaus Schwab ed. 2012), *available at* [http://www3.weforum.org/docs/WEF\\_GCR\\_Report\\_2011-12.pdf](http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf).

<sup>101</sup> *See* Nataliya Pushak & Vivien Foster, *Sierra Leone's Infrastructure: A Continental Perspective* 1 (World Bank Africa Region Sustainable Dev. Dep't., Working Paper No. 5371, June 2011), *available at* <http://www.cgdev.org/doc/event%20docs/Trans-Africa%20Network%20%28Color%20Version%29.pdf>.

<sup>102</sup> *The World Factbook: Sierra Leone*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/sl.html> (last visited June 5, 2012).

<sup>103</sup> *See generally* *Sierra Leone Flights Schedule*, VISITSIERRALEONE.ORG, <http://www.visitsierraleone.org/Visiting-Sierra-Leone/getting-there/Sierra-Leone-Flights-Schedule.html> (last visited June 5, 2012).

The public road network in Sierra Leone totals over 11,000 km of classified roads and 3,000 km of local, unclassified roads,<sup>104</sup> but the most essential parts of this network are so deteriorated that they are unusable in the rainy season.<sup>105</sup> Only 904 km of these are paved, ranking the nation at 132 in comparison to the world in terms of road network capability.<sup>106</sup> A comprehensive analysis of road transport quality in Sub-Saharan Africa done in 2006 ranks Sierra Leone thirty-sixth out of forty-two.<sup>107</sup> This low ranking in the context of a region with very poor transport links suggests Sierra Leone needs to invest heavily to stimulate trade within the nation and enable tourists to reach their destinations easily. Combined with the poor state of the road system, accessing anything outside of Freetown remains very difficult if not impossible for the average tourist.

## 2. Electricity, water supplies and ICT infrastructure

Most energy is produced and used within households where biomass energy (wood and charcoal) is used to cook and kerosene is used for lighting.<sup>108</sup> These traditional forms of energy account for over 80 percent of total energy use in the country.<sup>109</sup> The lack of established energy networks makes local initiatives to attract tourism difficult.<sup>110</sup> Investors in the region continuously cite lack of stable electricity supplies as a main deterrent from investment.<sup>111</sup> The Ministry of Energy and Water resources has published strategic plans to push Sierra Leone into modern energy production and it does possess significant renewable energy resources, yet these have yet to be utilized efficiently at a national level.<sup>112</sup>

There is a “marginal telephone service with poor infrastructure.”<sup>113</sup> As of 2010, there were 14,000 main telephone lines in use, placing the nation at 199 in the world ranking.<sup>114</sup> The use of mobile phones is increasing but remains concentrated in urban areas. The country has 280 internet hosts and counts 14,900 internet users ranking it at 198 worldwide in terms of connectivity.<sup>115</sup> While some of the main tourism institutions have websites, the lack of widespread regional internet use (or

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<sup>104</sup> Pushak & Foster, *supra* note 101, at 20.

<sup>105</sup> *Id.* at 7.

<sup>106</sup> *Id.*

<sup>107</sup> PIET BUYS ET AL., ROAD NETWORK UPGRADING AND OVERLAND TRADE EXPANSION IN SUB-SAHARAN AFRICA 11 (2006), *available at* <http://www.cgdev.org/doc/event%20docs/Trans-Africa%20Network%20%28Color%20Version%29.pdf>.

<sup>108</sup> CEMMATS GROUP LTD., THE ENERGY POLICY FOR SIERRA LEONE 20 (May 2004), *available at* [http://www.uneca.org/eca\\_resources/conference\\_reports\\_and\\_other\\_documents/sdd/cemrats\\_study.pdf](http://www.uneca.org/eca_resources/conference_reports_and_other_documents/sdd/cemrats_study.pdf).

<sup>109</sup> *Sierra Leone*, RENEWABLE ENERGY AND ENERGY EFFICIENCY P'SHIP (2010), *available at* <http://www.reeep.org/index.php?id=9353&text=policy-database&special=viewitem&cid=125>.

<sup>110</sup> Shakya, *supra* note 73, at 2

<sup>111</sup> *Id.* at 15.

<sup>112</sup> *See* MINISTRY OF ENERGY AND POWER, THE SIERRA LEONE ENERGY SECTOR: PROSPECTS & CHALLENGES MINISTRY (Nov. 2006), *available at* [http://siteresources.worldbank.org/SIERRALEONEEXTN/Resources/SL\\_Energy\\_Sector\\_.pdf](http://siteresources.worldbank.org/SIERRALEONEEXTN/Resources/SL_Energy_Sector_.pdf).

<sup>113</sup> *The World Factbook: Sierra Leone*, *supra* note 102.

<sup>114</sup> *Id.*

<sup>115</sup> *The World Factbook: supra* note 102.

other forms of communications such as telephones) suggests that local actors will have difficulty engaging with regional tourists, let alone international ones. There are frequently delays in telephone line connection, and only 8.2 percent of firms use the web when interacting with clients and suppliers.<sup>116</sup> It is thus highly unlikely that adequate infrastructure exists for firms to trade effectively and efficiently coordinate their activities in the tourism sector.

### *C. Institutions in Sierra Leone*

The tourism institutions in Sierra Leone are limited. The Ministry of Tourism and Culture is charged with the responsibility to develop Policies and Programmes geared towards the Promotion of Tourism and Culture in Sierra Leone.<sup>117</sup> There is also the National Tourist Board, overseen by the Ministry of Tourism and Culture, and the website 'VisitSierraLeone.org' that is endorsed by the National Tourist Board.<sup>118</sup> While these institutions are still in their infancy, important steps are being taken in the right directions with relative tangible output so far, however.

The Ministry of Tourism and Culture was formed in 2007 and seeks to coordinate all tourism-related investment and services.<sup>119</sup> It has already developed a national policy on tourism and is charged with the supervision of the National Tourist Board.<sup>120</sup> Thus, it provides the necessary institutional architecture for tourism development nationally.

The National Tourism Board for Sierra Leone is charged with coordinating activities relating to tourism throughout the country.<sup>121</sup> Part of the office is allocated to the Sierra Leone police force in order to collaborate on ensuring safety.<sup>122</sup> Though more specifically involved with tourism activities than the Ministry, it does not have regional tourism boards at its disposal.<sup>123</sup> These would be integral for establishing and promoting collective trademarks among tourism actors in rural areas.<sup>124</sup> While this suggests an adequate institutional structure for the coordination of national tourism activities, the complete lack of regional tourism boards means development will be focused in urban or designated regions.<sup>125</sup> The establishment of regional boards will go a long way to ensure disperse tourism development and strengthen the value-claim that collective trademarks can offer.

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<sup>116</sup> *Keeping in Touch – Mobile and Internet*, VISITSIERRALEONE.ORG, <http://www.visitsierraleone.org/Visiting-Sierra-Leone/business/Keeping-in-touch-Mobile-and-Internet.html> (last visited June 5, 2012).

<sup>117</sup> *Profile/Activities and Areas of Operation*, SIERRA LEONE NAT'L TOURIST BOARD, [http://www.welcometosierraleone.sl/index.php?option=com\\_content&view=article&id=2](http://www.welcometosierraleone.sl/index.php?option=com_content&view=article&id=2) (last visited June 5, 2012).

<sup>118</sup> SIERRA LEONE TRAVEL & TOURISM, <http://www.visitsierraleone.org/> (last visited June 5, 2012).

<sup>119</sup> *See generally*, Shakya, *supra* note 73, at, 8–9.

<sup>120</sup> *Id.*

<sup>121</sup> Shakya, *supra* note 73, at 8–9.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 8.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

Though the Tourist board totally lacks any online presence, information regarding tourism is accessible via the ‘VisitSierraLeone.org’ website.<sup>126</sup> The website was launched in 2004 by a Sierra Leone resident as a “one-stop shop” to provide comprehensive information and guidance about travelling to Sierra Leone, accommodation and visitor attractions.<sup>127</sup> It is officially endorsed by The National Tourist Board.<sup>128</sup>

Neither is the logo protected by trademark law and nor are the logo and slogan systematically applied across the various advertising campaigns. No slogans or logos exist at the regional level and the tourism promotional materials of various sites do not contain icons, slogans, or logos. Hence there is a scope for a concerted effort to promote tourism in Sierra Leone through IP, emphasizing *one* specific campaign – which would be best centered on the “Visit Sierra Leone” logo and slogan rather than various campaigns. The extent to which guidebooks and destinations refer to Sierra Leone’s war-torn and turbulent history is regrettable. These events are currently fully eclipsed by the way tourism is promoted and perceived in Sierra Leone. The “denial communication” strategy pursued by the country has not helped present a concerted approach towards tourism as much of its history is left in the dark.<sup>129</sup>

#### *D. Education in Sierra Leone*

A 2007 International Centre for Trade and Sustainable Development Report (“ICTSD”) identified the need for IP public awareness campaigns and training for IP staff.<sup>130</sup> While many of the institutions and laws required for the efficient use of trademarks exist, there is an inadequate use of the institutional channels to educate the wider public on the benefits of trademark law for tourism services.<sup>131</sup> It should be noted that quantifying degrees of internalization of IP values is tenuous at best. Moreover, the lack of available information regarding IP training programs in Sierra Leone makes accurate predictions difficult. According to ICTSD, there is a need for a ‘gradual, patient level of sustained activity supported by the Government and its development partners over the programme period rather than a series of ad hoc events, peaks, troughs and interruptions’.<sup>132</sup> Furthermore, there is a need for training of IP staff. With only eight employees at the Intellectual Property Office, Sierra Leone does not have the necessary human resources for a large expansion in trademark registration activity.<sup>133</sup> Moreover, few government initiatives exist to improve this. Training of IP staff as well as training in collective trademark

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<sup>126</sup> SIERRA LEONE TRAVEL AND TOURISM, <http://www.visitsierraleone.org/> (last visited May 19, 2012).

<sup>127</sup> See *generally*, *About Us*, SIERRA LEONE TRAVEL & TOURISM, <http://www.visitsierraleone.org/About-Visit-Sierra-Leone/general/About-us.html> (last visited June 5, 2012).

<sup>128</sup> *Id.*

<sup>129</sup> Shakya, *supra* note 73, at 2–3.

<sup>130</sup> LEESTI & PENGELLY., *supra* note 91, at 2.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 13.

management is required for local actors to begin leveraging trademarks to their own advantage.<sup>134</sup>

While the need for harmonized, predictable, and transparent educational arrangements is recognized, Sierra Leone lacks established educational programs informing stakeholders on the use of trademarks.<sup>135</sup> Engagement with informal trademark mechanisms thus remains poor considering their lack of use in tourism services. While it is likely that local stakeholders will begin to engage more trademarks as they become aware of their benefits, Sierra Leone scores low in terms of engagement with informal mechanisms due to its recent adoption of formal legal mechanisms.<sup>136</sup> This score is expected to increase as residents gain experience of the intellectual property system.

## VI. POTENTIAL IN CROATIA

### A. Overview

Croatia's image as an attractive tourist spot suffered a serious setbacks as a result of the war between 1991 and 1995. However, an aggressive marketing campaign by the Ministry of Tourism, led by the slogan "The Mediterranean as it once was," combined with Croatia's geographic proximity to Western Europe, has since re-established it as a premier holiday destination for the lucrative European travel market.<sup>137</sup> Its pristine environment, diverse flora and fauna, rich cultural heritage, high literacy rates, and its citizens' language skills (including widespread German and Italian) give it enormous potential.<sup>138</sup> Croatia boasts nine national parks, six cultural UNESCO heritage sites, and one natural one. In 2003, tourism accounted for approximately 22 percent of GDP and 40 percent of total exports.<sup>139</sup>

Prior to the war, Croatia was one of the richest regions of the Yugoslav republic.<sup>140</sup> The war caused heavy damage to the economic and transportation infrastructure of the country and GDP fell 40.5 percent from 1989 to 1993.<sup>141</sup> All accounts of pre- and post-war levels of tourism in Croatia demonstrate the extent to which the war was detrimental to the industry.<sup>142</sup> However, they also indicate how

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<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> See, e.g. *Croatia: The Mediterranean as it Once Was*, CROATIAN NAT'L TOURIST BOARD (2011), <http://croatia.hr/en-GB/Homepage> (last visited June 5, 2012).

<sup>138</sup> *Id.*; see also, *The World Factbook: Croatia*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/hr.html> (last visited June 5, 2012).

<sup>139</sup> MINISTRY OF TOURISM, STRATEGY REPORT: CROATIAN TOURISM DEVELOPMENT BY 2010 4 (2003) [hereinafter CROATIAN STRATEGY REPORT].

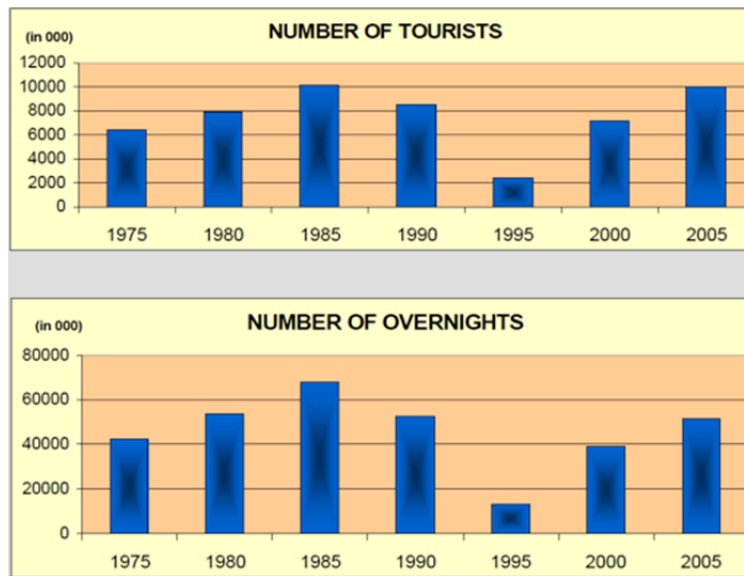
<sup>140</sup> *The World Factbook: Croatia*, *supra* note 138.

<sup>141</sup> *Background Note: Croatia*, U.S. DEPT OF ST., [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1095.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1095.html).

<sup>142</sup> DAVID M. CURRIE ET AL., THE IMPACT OF WAR ON TOURISM: THE CASE OF CROATIA 2-3 (2004); Derek Hall, *Rejuvenation, Diversification and Imagery: Sustainability Conflict for Tourism Policy in the Eastern Adriatic*, 11 J. OF SUSTAINABLE TOURISM 280, 280 (2003).

well Croatia has recuperated. Croatia reached its pre-war figure of 8.5 million guests in 2002.<sup>143</sup>

**Table 1**  
Tourist Arrivals and Overnights in Croatia<sup>144</sup>



The country is now perceived as a relatively stable parliamentary democracy where violent crime is rare, day-to-day life safe, and foreigners are not targets for criminals.<sup>145</sup> Although favorable publicity of Croatia in the press has led to better perceptions of the country, the trials of war criminals at the UN ICT in the Hague Convention has kept the conflict in public memory.<sup>146</sup> With instability in the region affecting tourists' propensity to travel to Croatia, the country has sought to distance itself from the pejorative notion of "Balkan-ness."<sup>147</sup> While the ethnic violence depicted in the international media surely damaged the nation's reputation and thus contributed to the drop in tourism, no estimates exist for the immaterial costs of the war.<sup>148</sup>

<sup>143</sup> CROATIAN STRATEGY REPORT, *supra* note 139, at 4.

<sup>144</sup> *Tourism in Figures 2007*, MINISTRY OF TOURISM, available at <http://www.mint.hr/UserDocsImages/080702-turizm-07-eng.pdf> (last visited June 5, 2012)

<sup>145</sup> *Croatia Country Specific Information*, U.S. DEPARTMENT OF STATE, [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1095.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1095.html).

<sup>146</sup> Howard L. Hughes, *Visitor and Non-Visitory Destination Images: the Influence of Political Instability in South-Eastern Europe*, 56 *Preliminary Communication No. 1* (2008), 59, 63-64, 67.

<sup>147</sup> See Hall, *supra* note 142, at 287.

<sup>148</sup> See Hughes, *supra* note 146, at 59, 63-64, 67.

*B. The Institutionalization of Intellectual Property Law in Croatia*

Croatia is a member and signatory to a number of international IP treaties, including the TRIPS Agreement.<sup>149</sup> National focus has been on creating the legal institutional architecture necessary for economic exchange with developed markets; IP laws in Croatia have been harmonized with EU law since 2003 and are in accordance with TRIPS requirements.<sup>150</sup> The Trademark Act has been in force since January 1, 2004 and was amended on July 31, 2007.<sup>151</sup> While legal institutions have reassured the business community and stimulated investment, both criminal and civilian court proceedings regarding infringement are longer in comparison to other EU states.<sup>152</sup> This is further complicated by the lack of specialized IP courts and judges, as well as limited awareness about IP among small, local tourism enterprises.<sup>153</sup> Thus, inefficiencies in the judicial system and an opaque regulatory environment make it less than perfect in terms of compliance.

The State Intellectual Property Office of the Republic of Croatia (“SIPO”) is located in Zagreb and also contains the Information Centre for Intellectual Property (“INCENTIV”).<sup>154</sup> The SIPO website provides all the relevant documents concerning legislation, application procedures, and intellectual property in general.<sup>155</sup> INCENTIV is a public information service of SIPO that provides professional information assistance to anyone interested that wants to protect and exploit intellectual property.<sup>156</sup> On top of this free education, INCENTIV also provides free search services of IP databases.<sup>157</sup> This being said, the tourism slogan of Croatia itself does not enjoy trademark protection.<sup>158</sup>

Though the use of various regional tourism logos and slogans and the prevalence of the single marketing slogan internationally, demonstrate awareness of the benefits offered by strategic use of branding, the lack of international trademark protection suggests a lack of education on intellectual property throughout the country.

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<sup>149</sup> *Croatia: IP Laws and Treaties*, WORLD INTELL. PROP. ORG., <http://www.wipo.int/wipolex/en/profile.jsp?code=HR> (last visited June 5, 2012).

<sup>150</sup> Andrej Matijevich & Tamiko R Franklin, *Croatia: Practical Issues in IP Administration and Protection of IP Rights, Building and Enforcing Intellectual Property Value*, MATIJEVICH LAW OFFICES (2007), <http://www.buildingipvalue.com/07EU/p.176-179%20Croatia.pdf>.

<sup>151</sup> See Trademarks Act (NN 173/2003, effective January 1, 2004) (Croat.); see also The Act on Amendments to the Trademarks Act (NN 76/2007, amended July 31, 2007, NN 30/2009, amended March 17, 2009, and NN 49/ 2011, amended May 7, 2011) (Croat.).

<sup>152</sup> See Matijevich & Franklin, *supra* note 150.

<sup>153</sup> *Id.*

<sup>154</sup> *Contacts*, ST. INTELL. PROP. OFF. OF CROATIA, <http://www.dziv.hr/en/contact/> (last visited June 5, 2012).

<sup>155</sup> *Forms*, ST. INTELL. PROP. OFF. OF CROATIA, <http://www.dziv.hr/en/forms-and-publications/forms/> (last visited June 5, 2012).

<sup>156</sup> *Information Center: INCENTIV*, ST. INTELL. PROP. OFF. OF CROATIA, <http://www.dziv.hr/en/sipo-information-services/information-centre/>

<sup>157</sup> *Id.*

<sup>158</sup> See *Promo*, CROATIAN NAT'L TOURIST BOARD, <http://business.croatia.hr/en-GB/Croatian-national-tourist-board/Promo> (last visited June 5, 2012).



### *C. Infrastructure in Croatia*

#### *1. Physical Infrastructure*

Although privatizing the Croatian hotel industry proved difficult due to its communist legacy, many of these issues were resolved in the early part of the decade.<sup>159</sup> Institutions engendering security and respect for private property have since stimulated trade and investment as the perception of risk declines.<sup>160</sup> Multiple tourism laws have been enacted to promote development of the tourism industry: The Act on Provisions of Tourism Services, Hospitality and Catering Industry Act, the Sojourn Tax Act, Act on Tourist Board System, the Promotion of Croatian Tourism, the Tourist Board Membership Fee Act.<sup>161</sup> However, assessments continue to rank the Croatian regulatory environment unfavorably. The Global Enabling Trade Report 2010 ranks it 76 out of 125 for institutionalizing property rights, giving it a score of 3.8 out of 7.<sup>162</sup> This suggests that while there is adequate respect for private property to leverage collective trademarks, there are still issues to resolve.

The damage to national transport, communications and tourist accommodation infrastructure during the war was substantial.<sup>163</sup> Significant investments have slowly turned this situation around. The government has spent over \$2m a year since 1991 on the reconstruction of Dubrovnik alone.<sup>164</sup>

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<sup>159</sup> Pamela Ballinger, *SELLING CROATIA OR SELLING OUT CROATIA? TOURISM, PRIVATIZATION, AND COASTAL DEVELOPMENT ISSUES IN A "NEW" DEMOCRACY* 9 (Bowdoin College, The National Council for Eurasian and European Research) (2003).

<sup>160</sup> See WORLD TRADE ORG., *TRADE POLICY REVIEW* 15–16 (2010).

<sup>161</sup> EUROPEAN COMM'N, *CROATIA TOURISM REPORT* § 3.4 (2008); The Act on the Provision of Tourism Services (2007) (Croat.); The Hospitality and Catering Industry Act (2006) (Croat.); The Act on Tourist Boards and the Promotion on Croatian Tourism (2008) (Croat.); The Sojourn Tax Act (2008) (Croat.).

<sup>162</sup> ROBERT Z. LAWRENCE, ET. AL., *THE GLOBAL ENABLING TRADE REPORT 2* (World Econ. Forum, 2010).

<sup>163</sup> SLOBODAN PRALJAK, *AN ESTIMATE OF WAR DAMAGES IN CROATIA* 12 (2005).

<sup>164</sup> Jim Banks, *Croatia Rejoins the Elite*, HOTEL MGMT NETWORK (July 1, 2007), <http://www.hotelmanagement-network.com/features/feature1092/>.

**Table 2**  
 Accommodation Capacities—Types of Accommodation<sup>165</sup>

	1975	1980	1985	1990	1995	2000	2005
Hotels and Apartment hotels	100,255	113,177	127,802	142,917	138,535	126,656	115,776
Tourist resorts	35,030	41,715	51,065	58,201	61,389	64,593	61,991
Camping sites	184,311	232,960	278,779	292,934	260,764	210,148	217,324
Private rooms	189,846	196,034	246,995	264,092	125,370	273,833	400,454
Spas	1,411	1,045	2,292	2,906	2,683	2,830	2,258
Vacation facilities	65,982	68,228	76,061	69,319	6,996	11,657	11,124
Youth hotels and hostels	26,677	25,742	27,397	19,853	3,321	6,192	4,667
Other	12,559	13,099	9,860	12,458	9,568	14,279	95,616
<b>TOTAL</b>	<b>616,071</b>	<b>692,000</b>	<b>820,251</b>	<b>862,680</b>	<b>608,626</b>	<b>710,188</b>	<b>909,210</b>

Air traffic routes between Croatia and its major tourist-generating markets in Europe have improved: there are nearly ten international airports and the major airports Zadar, Split, Dubrovnik, and Zagreb continue to increase flights.<sup>166</sup> Split airport, now the largest in the Adriatic, is directly connected to seventy-four European destinations, with regular flights to forty-six cities in over nineteen countries.<sup>167</sup> The highest tourist generating markets are all from Europe.<sup>168</sup> This is likely due to the proximity of Croatia to other countries in the region, substantial increase in flights routes connecting Croatia to them, the perception of stability achieved in Croatia, and aggressive marketing campaigns by the Ministry for Tourism depicting Croatia as an untouched Mediterranean coastal paradise.<sup>169</sup> That tourism levels kept growing, albeit modestly, after the 2007 financial crisis is most likely because Croatia offers relatively cheap vacations in comparison to other European tourist destinations.<sup>170</sup>

Croatia's geographical position makes it an integral part of the Greater European Transport Network and it is thus likely to receive funding from the EU in the future.<sup>171</sup> The Travel and Tourism Competitiveness Report 2009 ranks the quality of Croatia's roads at 34 out of 133 and suggests that it is at a competitive

<sup>165</sup> *Tourism in Figures 2007*, *supra* note 144.

<sup>166</sup> CENT. OFF. FOR DEV. STRATEGY AND COORDINATION OF EU FUNDS, NATIONAL STRATEGIC REFERENCE FRAMEWORK 18 (2010).

<sup>167</sup> *Newsletter*, CROATIA NAT'L TOURISM BOARD (2010).

<sup>168</sup> NIKOLA KNEGO & HALID KONJHODZIC, TOURISM TRAITS IN THE REPUBLIC OF CROATIA AT THE END OF THE 20TH CENTURY 6–11 (2002), *available at* <http://fama2.us.es:8080/turismo/turismonet1/economia%20del%20turismo/turismo%20zonal/europa/TOURISM%20TRAITS%20IN%20CROATIA.PDF>.

<sup>169</sup> CENT. OFF. FOR DEV. STRATEGY, *supra* note 166, at 16.

<sup>170</sup> *See* THE CROATIA TOURISM CLUSTER, CROATIAN TOURISM INDUSTRY COMPETITIVENESS STRATEGY 12 (2003), *available at* [http://www.channelingreality.com/CORE/Other\\_Areas/Croatia\\_Cluster\\_Strategy.pdf](http://www.channelingreality.com/CORE/Other_Areas/Croatia_Cluster_Strategy.pdf).

<sup>171</sup> *See* REPUBLIC OF CROATIA MINISTRY OF THE SEA, TOURISM, TRANSP. AND DEV., TRANSPORT OPERATIONAL PROGRAMME 2007–2009: INSTRUMENT FOR PRE-ACCESSION ASSISTANCE 7 (Sept. 2007), *available at* [http://ec.europa.eu/enlargement/pdf/croatia/ipa/3\\_croatia\\_transport\\_operational\\_programme\\_2007-2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/croatia/ipa/3_croatia_transport_operational_programme_2007-2009_en.pdf).

disadvantage globally.<sup>172</sup> Moreover, Croatia's long, thin shape makes effective road networks essential for travel within the country. Access to rural areas via paved roadways need to be expanded, however, in order to fully leverage the benefits of tourism clusters and avoid mass tourism along the coast.<sup>173</sup>

**Table 3**  
Tourist Arrivals and Overnights in Croatia<sup>174</sup>

ZEMLJE	TOURIST ARRIVALS			INDEX		TOURIST OVERNIGHTS			INDEX		STRUCT. IN % 2009
	2007	2008	2009	2009/08	2009/07	2007	2008	2009	2009/08	2009/07	
GERMANY	1.554.794	1.545.735	1.579.610	102,19	101,60	10.848.939	10.982.654	11.450.766	104,26	105,55	22,7
SLOVENIA	1.015.379	1.042.666	1.012.743	97,13	99,74	5.689.746	5.802.277	5.635.477	97,13	99,05	11,2
ITALY	1.249.343	1.167.646	1.200.126	102,78	96,06	5.451.968	5.069.287	5.135.275	101,30	94,19	10,2
AUSTRIA	839.717	813.728	881.846	108,37	105,02	4.244.607	4.164.793	4.514.902	108,41	106,37	8,9
CZECH REPUBLIC	669.132	622.620	607.421	97,56	90,78	4.394.711	4.122.460	4.020.096	97,52	91,48	8,0
POLAND	322.890	417.211	454.407	108,92	140,73	1.833.961	2.511.568	2.737.609	109,00	149,27	5,4
NETHERLANDS	264.664	297.318	307.850	103,54	116,32	2.030.442	2.334.993	2.446.431	104,77	120,49	4,8
SLOVAKIA	280.586	299.318	306.741	102,48	109,32	1.831.655	1.927.093	2.000.420	103,81	109,21	4,0
HUNGARY	381.202	370.392	323.368	87,30	84,83	1.984.644	1.933.978	1.644.280	85,02	82,85	3,3
FRANCE	473.806	439.095	406.037	92,47	85,70	1.664.973	1.635.494	1.532.973	93,73	92,07	3,0
OTHER	2.255.178	2.399.376	2.254.673	93,97	99,98	9.598.984	10.140.925	9.382.388	92,52	97,74	18,6
TOTAL FOREIGN	9.306.691	9.415.105	9.334.822	99,15	100,30	49.574.630	50.625.522	50.500.617	99,75	101,87	100,0

## 2. Electricity, Water Supplies and ICT Infrastructure

Unlike Sierra Leone, Croatia does not suffer from power blackouts and it has a stable water supply network that extends throughout the country.<sup>175</sup> While not the most sophisticated in the world, Croatia's electricity and water supply is certainly sufficient to contribute to continued growth rates in the tourism sector.

Croatia ranks quite high in terms of availability and use of Internet and communications technologies. It was 25 out of 133 in the world in terms of the number of telephone lines in 2008.<sup>176</sup> With 133 mobile phone subscriptions per 100 of the population and following substantial investments made in communications infrastructure, The Global Information Technology Report 2009-2010 now ranks Croatia 51 out of 133 on their Networked Readiness index.<sup>177</sup> Though improvements can still be made, there is certainly more than enough communication infrastructures for tourism actors to stimulate cluster productivity.

<sup>172</sup> WORLD ECON. FORUM, THE TRAVEL & TOURISM COMPETITIVENESS REPORT 2009 175 (Jennifer Blanke & Thea Chiesa, eds., 2009) [hereinafter TRAVEL & TOURISM COMPETITIVENESS REPORT].

<sup>173</sup> See JERNEJ STRITIH ET AL., ENVIRONMENTAL POLICY IN SOUTH-EASTERN EUROPE 21 (Sept. 2007), available at <http://europeandcis.undp.org/environment/show/B341E335-F203-1EE9-BC2D83CD5B55F495> (stating that Croatia is making efforts to avoid mass tourism along the coast).

<sup>174</sup> MINISTRY OF TOURISM, TRAFFIC IN CROATIA FOR THE YEAR 2009, Table 2 (2009).

<sup>175</sup> See CENT. OFF. FOR DEV. STRATEGY, *supra* note 166, at 21 (detailing the water supply network and other energy systems in Croatia).

<sup>176</sup> WORLD ECON. FORUM, GLOBAL INFORMATION TECHNOLOGY REPORT 2009-2010 209 (Soumitra Dutta & Irene Mia, eds., 2010).

<sup>177</sup> *Id.*

#### *D. Institutions in Croatia*

The crisis of war seems to have permitted a shift from mass tourism policies, allowing innovative redevelopment by providing an opportunity to overcome institutional path dependency.<sup>178</sup> The Croatian government has invested substantial resources in developing the legislative and commercial environment necessary for tourism. Investment in CNTB marketing campaigns (figures above) and its budget of roughly \$15 million a year demonstrate this commitment.<sup>179</sup>

The National Tourism Ministry was formed in 2008 as a separate, self-contained entity to streamline the governance of tourism in the country,<sup>180</sup> which demonstrates the importance of tourism to the country ‘even in those areas where it was grossly marginalized in the past.’<sup>181</sup> The Ministry is charged with coordinating the activities of national organizations and liaising with foreign countries and organizations to promote Croatian tourism abroad.<sup>182</sup> This coordinated effort provides a national environment that is highly beneficial to regional actors wishing to stimulate tourism clusters.<sup>183</sup>

The Croatian National Tourism Board (“CNTB”) sets the national tourism strategy and acts as a hub to coordinate the activities of twenty-one regional tourist boards, each with their own website.<sup>184</sup> It is also central in conducting operational market research to achieve the renovation, protection and comprehensive evaluation of tourism potential in the country.<sup>185</sup> The CNTB’s extensive promotional activities encompass an overall investment of 8.6m EUR, including 2.03m EUR in general advertising and 4.12m EUR in TV marketing in primary and secondary markets. The CNTB acts as an online hub with links to all regional tourist boards, each of which has a logo and website. It is also responsible for representing Croatian tourism abroad.<sup>186</sup> These efforts exhibit an awareness of the benefits of branding to destination management, though the extent of trademark protection is limited.<sup>187</sup> Before the war, most tourists were domestic so an international online presence is

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<sup>178</sup> STRITIH *supra* note 173, at 21.

<sup>179</sup> THE CROATIA TOURISM CLUSTER, *supra* note 170, at 15.

<sup>180</sup> See EUROPEAN COMM’N, *supra* note 161, § 2.1.

<sup>181</sup> CROATIAN STRATEGY REPORT, *supra* note 139, at 2.

<sup>182</sup> CROATIA NAT’L TOURISM BOARD, <http://business.croatia.hr/en-GB/Croatian-national-tourist-board> (last visited June 5, 2012).

<sup>183</sup> See INT’L CONFERENCE COMM., TOURIST CLUSTERISATION OF SMALL ENTREPRENEURS IN THE TOURISM OF THE REPUBLIC OF CROATIA IN THE FRAMEWORK OF THE EUROPEAN UNION CLUSTER POLICY 2–9 (2009), *available at* <http://oliver.efri.hr/~euconf/2011/docs/Session7/5.%20Ivanis%20Crnjari%20Alkier-Radnic.pdf> [hereinafter TOURIST CLUSTERISATION] (illustrating that coordinated efforts such as the CNTB encourage the stimulation of tourism clusters through enabling “enterprises to jointly overcome obstacles to taking advantage of opportunities provided by the business environment in an easier and faster manner.”).

<sup>184</sup> CROATIA NAT’L TOURISM BOARD, *supra* note 182.

<sup>185</sup> *Id.*

<sup>186</sup> CROATIA NAT’L TOURISM BOARD, *supra* note 182.

<sup>187</sup> See also RUXANDRA IRINA POPESCU, STUDY CASE: THE COUNTRIES OF FORMER YUGOSLAVIA 167 (2009), *available at* [http://www.ramp.ase.ro/en/\\_data/files/rezummat/2009/12-04.pdf](http://www.ramp.ase.ro/en/_data/files/rezummat/2009/12-04.pdf) (outlining the actions of the CNTB as indicative of good brand management).

certainly a driving force and requirement for post-war tourism in Croatia.<sup>188</sup> Easily accessible centralized information services reduce the time tourists must invest in researching a destination and thus contribute to making holidays more “experience efficient.”<sup>189</sup> The CNTB is a valuable starting point for identifying and nurturing tourism clusters in the country. Yet, despite the persistent presentation of Croatia’s natural and cultural heritage, the CNTB website and the regional boards make little or no reference to the recent war.<sup>190</sup> This “denial communication” strategy, like that used in Sierra Leone, does not help in creating a concerted approach to the treatment of Croatia’s history.

The Association of Family and Small Hotels of Croatia is an indicator of the innovative approach to sustainable development of tourist infrastructure in Croatia that stresses small-scale, eco-friendly accommodation over massive hotel projects.<sup>191</sup> In this sense, it is a vital component of Croatia’s attempt to stimulate local and rural development through tourism.<sup>192</sup> However, the association has not yet embraced the role of trademarks. Such an initiative provides a perfect example of how collective trademarks could be exploited to create and sustain collective management structures in regional clusters of small hotels and related services. The association provides a valuable organizational framework by which local stakeholders could be educated on the benefits of intellectual property protection.<sup>193</sup>

#### *E. Education in Croatia*

In Croatia, just as in Sierra Leone and elsewhere, awareness of the economic function of intellectual property, and trademarks more specifically, varies according to social strata.<sup>194</sup> Despite establishing the legislative framework for IP, trademarks have not been leveraged to their full extent by the relevant tourism administrations.<sup>195</sup> However, the information resources provided through the INCENTIV service of SIPO are likely to raise awareness of the value trademarks can

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<sup>188</sup> See *Croatia: The Holiday Paradise*, HOMELTD, [http://www.homeltd.com/pagina.phtml?id\\_articolo=241-Croatia-the-holiday-paradise.html](http://www.homeltd.com/pagina.phtml?id_articolo=241-Croatia-the-holiday-paradise.html) (last visited June 5, 2012).

<sup>189</sup> Andersson, *supra* note 20, at 56.

<sup>190</sup> CROATIA NAT’L TOURISM BOARD, *supra* note 182.

<sup>191</sup> NAT’L ASS’N OF FAMILY AND SMALL HOTELS, <http://www.omh.hr/default.aspx?id=156> (last visited June 5, 2012).

<sup>192</sup> CROATIAN STRATEGY REPORT, *supra* note 139, at 9 (illustrating how rural areas can benefit from ecotourism which “has created possibilities for development in inadequately developed tourism regions . . .”).

<sup>193</sup> TOURIST CLUSTERISATION., *supra* note 183, at 3 (supporting the function of clusters to enable smaller enterprises to tackle obstacles jointly, as in this case the association can act as a cluster for small and family hotels to rely upon one another for success); NAT’L ASS’N OF FAMILY AND SMALL HOTELS, *supra* note 191.

<sup>194</sup> ORG. FOR ECON. COOPERATION AND DEV., THE ECONOMIC IMPACT OF COUNTERFEITING AND PIRACY 54 (2008) (listing high budgetary concerns as a factor driving demand for infringing goods and services).

<sup>195</sup> See TRAVEL & TOURISM COMPETITIVENESS REPORT, *supra* note 172, at 171 (ranking Croatia 79th out of 139 countries in effectiveness of marketing and branding).

provide.<sup>196</sup> These services should be made as accessible as possible to raise awareness and engagement with trademarks in tourism services.

While central administration officials appreciate the role of trademarks in destination branding, this has not been replicated at a regional level. If regional tourism boards are not capitalizing on the benefits of collective trademarks then it is unlikely that smaller actors operating within their territories will be. Education is a necessary component of increasing engagement with informal trademark mechanisms.<sup>197</sup> This said, the sporadic use of trademarks at both national and regional levels suggests an adequate level of engagement to stimulate tourism clusters.<sup>198</sup> That trademarks have been used extensively by tourism boards, but not

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<sup>196</sup> See ST. INTELL. PROP. OFF. OF CROATIA, ANNUAL REPORT 2010 69–83 (2010), available at [http://www.dziv.hr/files/File/go-izvjesca/godisnje\\_izvjesce\\_2010.pdf](http://www.dziv.hr/files/File/go-izvjesca/godisnje_izvjesce_2010.pdf) (describing SIPO's informational, promotional, and educational services and noting a 12% year-to-year increase in use of information services).

<sup>197</sup> See, e.g., Dalila Hoover, *Coercion will not Protect Trademark Owners in China, but an Understanding of China's Culture will: A Lesson the United States has to Learn*, 35 MARQ. INTELL. PROP. L. REV. 325, 339 (2011) ("As more and more Chinese companies and individuals are becoming aware of their trademark rights, they are more willing to go to court to protect them").

<sup>198</sup> The Croatian National Tourist Board owns a registered trademark, but national searches (in both English and Croatian language) of marks used on twenty-two regional tourism websites yielded only one registered mark. See e.g., *National Trademark Search*, ST. INTELL. PROP. OFF. OF CROATIA, <http://www.dziv.hr/en/e-services/on-line-database-search/trademarks/> (last visited June 5, 2012); CROATIA NAT'L TOURISM BOARD, *supra* note 182 (displaying unregistered mark); TOURIST BOARD OF COUNTY OF BROD AND POSAVINA, <http://www.tzbpz.hr> (last visited June 5, 2012) (unregistered mark); TOURIST BOARD OF OSIJEK-BARANJA COUNTY, <http://www.tzosbarzup.hr/en> (last visited June 5, 2012) (displaying unregistered mark); TOURIST BOARD OF VIROVITICA-PODRAVINA COUNTY, <http://www.tzvpz.hr> (last visited June 5, 2012) (displaying unregistered mark); TOURIST BOARD OF VUKOVAR-SRIJEM COUNTY, <http://www.tzvsz.hr> (last visited June 5, 2012) (displaying unregistered mark); TOURIST BOARD OF BJELOVAR-BILOGORA COUNTY, <http://www.tzbbz.hr/> (last visited June 5, 2012) (displaying unregistered mark); TOURIST BOARD OF KOPRIVNICA-KRIZEVCI COUNTY <http://www.tz-koprivnicko-krizevacka.hr/> (last visited June 5, 2012) (displaying used, and registered mark); TOURIST BOARD OF POZESKO-SLAVONSKA COUNTY, <http://www.tzps.hr/> (last visited June 5, 2012) (displaying unregistered mark); TOURIST BOARD OF MEDIMURJE COUNTY, <http://www.tzm.hr> (last visited June 5, 2012) (displaying unregistered mark); TOURIST BOARD OF KRAPINA-ZAGORJE COUNTY, [www.tzkzz.hr](http://www.tzkzz.hr) (last visited June 5, 2012) (unregistered mark); TOURIST BOARD OF SISAK-MOSLAVINA COUNTY, [www.turizam-smz.hr](http://www.turizam-smz.hr) (last visited June 5, 2012) (displaying unregistered mark); VERAZDIN COUNTY TOURIST BOARD, <http://www.turizam-vzz.hr/en/pocetna> (last visited June 5, 2012) (no mark used); ZAGREB COUNTY TOURIST BOARD, <http://www.tzzz.hr/en/> (last visited June 5, 2012) (displaying unregistered mark); ZAGREB TOURIST BOARD, <http://www.zagreb-touristinfo.hr/?l=e> (last visited June 5, 2012) (displaying unregistered mark); KARLOVAC COUNTY TOURIST BOARD, <http://www.tzkz.hr/en> (last visited June 5, 2012) (displaying unregistered mark); LIKA-SENJ COUNTY TOURIST BOARD, <http://www.lickosenjska.com> (last visited June 5, 2012) (displaying unregistered mark); KVARNER COUNTY TOURISM OFFICE, <http://www.kvarner.hr/en/tourism> (last visited June 5, 2012) (displaying unregistered mark); ISTRIA TOURIST BOARD, <http://www.istra.hr/en/home> (last visited June 5, 2012) (displaying unregistered mark); ZADAR COUNTY TOURIST BOARD, <http://www.zadar.hr/index.asp> (last visited June 5, 2012) (displaying unregistered mark); SIBENIK-KNIN COUNTY TOURIST BOARD, <http://www.sibenikregion.com> (last visited June 5, 2012) (displaying unregistered mark); SPLIT AND DALMATIA COUNTY TOURIST BOARD, <http://www.dalmatia.hr> (last visited June 5, 2012) (displaying unregistered mark); DUBROVNIK AND NEREVA COUNTY TOURIST BOARD, <http://visitdubrovnik.hr/en-GB/Home> (last visited June 5, 2012) (displaying unregistered mark); DUBROVNIK TOURIST BOARD, <http://www.tzdubrovnik.hr/eng> (last visited June 5, 2012) (displaying unregistered mark).

protected via trademark registration,<sup>199</sup> suggests an awareness of the value of trademarks that is limited in its understanding of the formal and informal mechanisms at the disposal of local actors.

It has been remarked that there are inadequate human resources in the judicial sector for the efficient running of the trademark system.<sup>200</sup> However, Croatia is investing in educational resources to this end.<sup>201</sup> The World Economic Forum's Travel and Tourism Competitiveness Report for 2011 ranks the overall quality of Croatia's education system at 73 out of 139.<sup>202</sup> The local availability of research and training in tourism services ranks 61st while total secondary education enrollment ranks 49th.<sup>203</sup> Thus, while many of the formal mechanisms are in place, the quality and regional dispersion must be improved in order to really foster gains in cluster productivity.

## VII. REBUILDING POTENTIAL TOURISM CLUSTERS IN SIERRA LEONE AND CROATIA

War and tourism are not incompatible. If managed appropriately, crises may even present opportunities to reorganize established structures and thus reinvent established organizations, patterns and habits. While Sierra Leone has taken steps to market tourism and promote its image abroad, the poor state of its infrastructure and institutions stands in the way.<sup>204</sup> Sierra Leone has not succeeded in reestablishing the image of a safe and beautiful tourism destination.<sup>205</sup> Moreover, education concerning IP is limited at best and must be made more available to engender productive gains in tourism clusters via collective trademarks. Though the National Tourist Board has endorsed some private efforts to use trademarks in promoting tourism, these campaigns lack the unity and organization that would result from a comprehensive national and regional campaign.<sup>206</sup> Raising efficiency through clustering and communicating product value via trademarks will attract

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<sup>199</sup> See collection of regional tourist board marks, *supra* note 198.

<sup>200</sup> See INT'L INTELL. PROP. ALLIANCE, SPECIAL 301 REPORT 2011 289–90 (2011) (including Croatia in the least pernicious “countries deserving special mention” category, and noting enforcement issues). Importantly, Croatia was removed from the report entirely in 2012. See INT'L INTELL. PROP. ALLIANCE, SPECIAL 301 REPORT 2012, APPENDIX – HISTORICAL SUMMARY 12 (2012).

<sup>201</sup> See EUROPEAN COMM'N, CROATIA 2011 PROGRESS REPORT 30, 45–48 (2011), *available at* <http://www.mvep.hr/custompages/static/hrv/files/111014-izvjesceek.pdf> (noting recent efforts to improve intellectual property enforcement and promote independence and competence in the judiciary); *see also*, ANNUAL REPORT, *supra* note 196, at 95 (2010) (reporting a 37 percent increase in number of appeals decided by the SIPO Board of Appeals).

<sup>202</sup> See TRAVEL & TOURISM COMPETITIVENESS REPORT, *supra* note 172, at 170.

<sup>203</sup> *Id.* at 171.

<sup>204</sup> See, *Sierra Leone Travel Advice*, BRITISH FOREIGN OFF., <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/sub-saharan-africa/sierra-leone> (last visited June 5, 2012) (listing a variety of institutional and infrastructural impediments to safe travel).

<sup>205</sup> See Bruce Baker, *The African Post-Conflict Policing Agenda in Sierra Leone*, 6 CONFLICT, SEC. & DEV 25, 31 (2006) (explaining that only 3 percent of people in Sierra Leone feel “very safe”).

<sup>206</sup> Compare *About Us*, VISITSIERRALEONE.ORG, <http://www.visitsierraleone.org/About-Visit-Sierra-Leone/general/About-us.html> (last visited June 5, 2012), and *About Us*, BRANDSIERRALEONE, <http://brandsierraleone.tv/about-us> (last visited June 5, 2012), with SIERRA LEONE NAT'L TOURIST BOARD, <http://www.welcometoserraleone.sl> (last visited June 5, 2012).

more - especially high-income - tourists to holiday destinations.<sup>207</sup> This should increase local ownership, innovation, reputation and self-esteem.

Croatia, to the contrary, has rebounded admirably from the destruction wrought to its infrastructure and security by war. Having reinvented itself via extensive marketing campaigns both internally and abroad,<sup>208</sup> the negative connotations associated with Croatia are being replaced by a vision of an untouched coastal paradise.<sup>209</sup> Though infrastructure and the legal environment are certainly advanced enough to enable collective trademarks to stimulate tourism cluster development, there is room for improvement.<sup>210</sup> The strength of Croatia's coordinated tourism development plan implemented through its institutions is likely to help overcome these difficulties.<sup>211</sup> This positive image must be qualified by stressing the need for education to promote the values of the trademark system and to inform local actors of the benefits that can be derived from the use of collective trademarks. While there are certainly adequate institutional channels in place, training programs should be made more readily available to the wider public. As awareness of these benefits proliferates, regional tourism clusters should be in a better position to coordinate their activities and communicate the value of their destination to international tourists.

## VIII. CONCLUSION

Trademarks are conventionally justified either by reference to *confusion* or *dilution* rationales.<sup>212</sup> The rationale we propose for the protection of collective trademarks is entirely different: clearly codified collective trademark legislation enables and stimulates clustered economic activity and thereby induces the internalization of values and skills necessary to support a functioning intellectual property regime.<sup>213</sup> Conceptualizing IP protection as an enabling rather than a restricting force is particularly important for emerging economies often considered victims of international IP harmonization. Implementation of a collective trademarks scheme would demonstrate that IP can be an instrument that empowers

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<sup>207</sup> See generally THE CLUSTER CONSORTIUM, SOUTH AFRICAN TOURISM COLLABORATIVE ACTION PROCESS, STRATEGY IN ACTION REPORT 40-42 (1999), available at <http://www.ecgroup.com/documents/South%20Africa%20Master.pdf> (discussing South Africa's success with tourism clustering).

<sup>208</sup> *Croatian Marketing Campaign in Serbia May Fall Short of Desired 100,000 Visitors*, CROATIAN TIMES (May 31, 2010), <http://www.croatiantimes.com/?id=11332>.

<sup>209</sup> *Some Central European Cities Offer a Refuge From the Mighty Euro; South America and China are Dollar-Friendly, Too*, N.Y. TIMES, Jan. 9, 2005, at 5.11.

<sup>210</sup> See THE CROATIA TOURISM CLUSTER, *supra* note 170, at 5.

<sup>211</sup> See, e.g., *id.* at 8-9 (outlining a five-year plan to increase overall tourism).

<sup>212</sup> See 15 U.S.C. § 1114 (2006) (prohibiting the use of a mark in connection with goods or services that is likely to cause consumer confusion); *id.* § 1125(c) (prohibiting the dilution of a famous mark through blurring or tarnishment); see also Mark P. McKenna, *supra* note 36, at 1912-13 (explaining the dilution rationale of trademarks).

<sup>213</sup> See ASS'N FOR CULTURE & TOURISM EXCHANGE, TOWARDS A POLITICS OF SUSTAINABLE TOURISM 5-7 (Jan. 11, 2011), available at [http://www.coe.int/t/dg4/cultureheritage/cooperation/kyiv/wcte/KI2011-06CPCEPolicyBrief6\\_en.pdf](http://www.coe.int/t/dg4/cultureheritage/cooperation/kyiv/wcte/KI2011-06CPCEPolicyBrief6_en.pdf) (describing positive effects of a well-implemented collective trademark system).



communities because such a scheme would increase the economic advantages derived from tourism clusters and precipitate a regional governance structure owned and operated by local individuals.<sup>214</sup>

NIE's focus on institutional setting as the product of choice and its dynamic understanding of the role of institutions in economic development helps elucidate the interrelated phenomena of law, individual behavior and economic activity. North argues that change is a complex process resulting from the daily choices of individuals and organizations subjected to limited information, diverse mental models, and the influence of historically rooted norms and conventions.<sup>215</sup> Because "[l]aw both reflects and shapes preferences,"<sup>216</sup> modified institutions may slowly induce normative change within a society, provided these arrangements are supported by organizations with an interest in their perpetuation.<sup>217</sup> In a sense, law, economic activity and cultural values are not distinct and exclusive realms of social behavior but highly interrelated and mutually reinforcing phenomena. In the case of IP law, it is reasonable to assume that a legal architecture that enables economic activity by enforcing intellectual property rights, such as collective trademarks utilized in tourism services, will stimulate development.<sup>218</sup> The benefits accrued to individuals and communities from this economic development are in turn likely to lead to the internalization of the values supporting such legal frameworks. Conceived in this manner, law, cultural values and economics are mutually supportive realms of human activity.

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<sup>214</sup> See *Collective Marks*, *supra* note 49.

<sup>215</sup> See Douglass C. North, *The New Institutional Economics and Third World Development*, in THE NEW INSTITUTIONAL ECONOMICS AND THIRD WORLD DEVELOPMENT 17, 18 (John Harriss et al. eds., 1995).

<sup>216</sup> A. Allan Schmid, *Law and Economics: An Institutional Perspective*, in LAW AND ECONOMICS 57, 62 (Nicholas Mercuro ed., 1989).

<sup>217</sup> See generally Masahiko Aoki, *Endogenizing Institutions and Institutional Changes*, 3 J. INST'L ECON. 1, 1 (2007) (discussing the properties of effective institutional change).

<sup>218</sup> Dov Greenbaum, *Determining Optimal Levels of Intellectual Property Protection in Developing Nations: Is Less Really More? Is More Really Less?*, 97 CURRENT SCI. 1604, 1611 (2009).