

Establishing a Development Agenda for the World Intellectual Property Organisation

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Over recent years developing and least-developing countries, as well as the wider international community, have grown increasingly concerned about the implications of intellectual property rights on social, economic, technological and cultural development.

Practically all intergovernmental organisations have recognised that development is the most important challenge facing the international community. At the highest level in the United Nations, the Millennium Development Goals have established a firm commitment to address the significant problems that affect developing and least-developed countries (LDCs). The World Intellectual Property Organisation (WIPO), as a specialised agency of the United Nations since 1974, must be part of that international effort and achieve its mandate in the context of the development objectives of the UN. Article 1 of the Agreement between the United Nations and WIPO recognises the latter as being “responsible for taking appropriate action [...] for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development [...]”.

With the objective of assisting WIPO in fully implementing this mandate, as well as the one set out in the WIPO Convention, Brazil and Argentina on 26 August tabled a *Proposal for Establishing a Development Agenda for the World Intellectual Property Organisation*¹, and requested that it be included in the agenda of the WIPO General Assembly to be held on 27 September to 5 October, 2004. To date, the proposal has been co-sponsored by Bolivia, Cuba, Ecuador, Iran, Kenya and Venezuela, and broadly supported by other developing countries and LDCs. The proposal is open to co-sponsorship and support of all WIPO Members States.

Main Aspects of the Proposal

The core concept of the proposal is the integration of a ‘development dimension’ into WIPO’s activities (intellectual property norm-setting, transfer of technology and technical co-operation). The need to integrate that dimension into policy-making on intellectual property protection is increasingly recognised; the Doha Declaration on the TRIPs Agreement and Public Health represents a milestone in this respect.

Intellectual property rights (IPRs) should be an instrument to promote technological innovation and the transfer and dissemination of technology. Taking into account the fact that the ‘technology gap’ between developed and developing countries and LDCs is indeed significant, it must be ensured that the costs do not outweigh the benefits of IP protection. This has been recognised, *inter alia*, by the UK Commission on Intellectual Property Rights, which urged WIPO to give greater emphasis to the need for IP regimes to be appropriately tailored to the individual circumstances of developing countries. In its 2002 report the Commission clearly stated that WIPO “should act to integrate development objectives into its approach to the promotion of IP protection in developing countries”. In order further this goal, the possibility of amending the WIPO Convention should be considered.

Future Treaties

The development dimension also needs to be fully integrated in WIPO’s norm-setting activities. One of the organisation’s main functions is the negotiation of international IP treaties that will significantly raise the level of current protection at the international level. While developing countries and LDCs have sought to ensure the integration of the development dimension in the negotiations and debates in fora such as the WTO, this has yet to occur at WIPO.

The preservation of public interest flexibilities and policy space of all Member States should be pursued and acknowledged in current WIPO negotiations, with proposals submitted by developing countries and LDCs properly taken into account. In particular, the provisions on ‘objectives and principles’, reflecting the content of Articles 7 and 8 of the WTO’s TRIPs

Agreement, should be included in the Substantive Patent Law Treaty (SPLT) and other treaties under discussion in WIPO.

New treaties should also include provisions related to the transfer of technology and to anticompetitive practices to ensure that IP protection is supportive of transfer of technology to developing and least-developed countries, something that higher IPR standards have thus far failed to foster through foreign direct investment and licensing.

Similarly, IP enforcement should be approached in the context of broader societal interests and development-related concerns. The right of countries to implement their international obligations within their own legal systems and practices (as established in Art. 1.1. of the TRIPs Agreement) should be safeguarded. WIPO cannot approach enforcement exclusively from the perspective of right holders or the promotion IP protection; it must also give consideration to the obligations of right holders and abusive practices that unduly restrain legitimate competition.

Technical assistance should be both expanded and qualitatively improved. It should also be fully consistent with the requirements of UN operational activities in this field; i.e. neutral, impartial and demand-driven. Regimes set up to implement international obligations should be administratively sustainable and should not overburden national resources.

Finally, given the broad public policy implications of intellectual property, it is crucial to involve a broad range of stakeholders in the discussions at the national and international levels, including in all norm-setting activity. WIPO must respond to this challenge and, in particular, take appropriate measures to distinguish between user organisations representing the interests of IP right holders and NGOs representing the public interest.

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Specifically, the proposal suggests that the upcoming General Assembly consider at least the following actions:

- adoption of a high-level declaration on IP and development, addressing the development concerns that have been raised by WIPO Members States and the international community at large;
- an amendment to the WIPO Convention in order to explicitly incorporate the development dimension into the organisation's objectives and functions;
- inclusion of provisions on transfer of technology, anticompetitive practices and safeguarding the public interest flexibilities into treaties under negotiation;
- the establishment of a multi-year WIPO programme for technical co-operation with the aim of strengthening national intellectual property offices so that they can become an acting element in national development policies;
- the creation of a Standing Committee on IP and Transfer of Technology, which would consider, *inter alia*, the negotiation of an Agreement on Transfer of Technology to developing countries and LDCs;
- the organisation of a joint WIPO-WTO-UNCTAD international seminar on intellectual property and development;
- the adoption of measures to ensure the wide participation of civil society in WIPO activities and a change of WIPO's terminology with regard to NGOs; and
- the establishment of a Working Group for a further discussion on the implementation of the Development Agenda and work programmes for WIPO.

The proposal addresses some of the main concerns raised by WIPO Members States and the international community regarding the implications of IPRs on development. Beyond the specific suggestions, however, it will provide an important starting point for discussions within WIPO on an agenda to make IPRs a supportive of the international community's development objectives.

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ENDNOTE

¹ The proposal was distributed by WIPO to Member States as document WO/GA/31/11 of the General Assembly.

ASEAN Looks to Inward and Outward Market Opening

Trade ministers of the Association of South Asian Nations (ASEAN) vowed in early September to step up regional integration, while initiating new trade arrangements with other countries in the region and beyond.

Meeting in Jakarta, Indonesia, the ministers signed a framework agreement with a view to establishing an ASEAN Economic Community by 2020. The ten-member group committed itself to cutting duties and revising government regulations with regard to agriculture, fisheries, auto manufacture, wood processing, rubber processing, clothing, electronic products, tourism, telecommunications and healthcare. Singapore, Malaysia, Brunei, Thailand, Indonesia and the Philippines are to eliminate duties by 2007. The four remaining countries – Vietnam, Laos, Cambodia and Myanmar – will follow in 2012. Already in 2005, intra-ASEAN trade is predicted to rise from 23 percent of the region's total trade in 2003 to 27 percent.

ASEAN heads of state are expected to confirm the arrangement at their tenth summit meeting to be held in Vientiane, Laos, in November.

Extending Free Trade Beyond ASEAN

Outward expansion is also planned through a free trade agreement (FTA) with Australia and New Zealand by 2007. Negotiations could start as soon as next year if the heads of government give them a green light in Vientiane. Talks with South Korea and Japan are also planned. ASEAN reportedly wishes the agreements to come into effect between 2009 and 2017.

Talks on a free trade area are also scheduled between ASEAN and India next year, with the immediate aim of concluding an early harvest programme that would eliminate tariffs on 105 products by 2007. These are slated to include unprocessed agriculture products, as well as chemical and manufactured products.

In addition, by 2007 ASEAN hopes to conclude FTA negotiations with Japan, which is already conducting the fourth round of talks with the Philippines on a deal that could cover goods, services and investment (negotiations are also underway between Japan, South Korea, Malaysia and Thailand, as well as Indonesia). With regard to the Philippines, Japan is mainly interested in opening the market to investment, while the Philippines is seeking to expand access to nurses and other health care workers in Japan. According to media sources, however, Japan is expected to pose tough conditions on service providers, such as ensuring that workers can communicate in Japanese and meet local qualification standards. So far, Japan only has free trade pacts with Singapore and Mexico, while the Philippines has none.

Two years ago, China and the six more advanced ASEAN members agreed to eliminate tariffs by 2010, while import duties with Vietnam, Laos, Cambodia and Myanmar will be brought to zero in 2015 (Bridges Year 7 No.7, page 17). Talks between ASEAN and South Korea are to start next year.

The EU has also said it aims eventually to conclude a free-trade agreement with ASEAN. For the moment, though, the EU focuses on fostering convergence between the two regions' regulatory systems with regard to sanitary and phytosanitary measures (particularly in agrifood and fisheries), technical barriers to trade (in electronics and wood-based industries), as well as trade policy facilitation (implementation capacity). Other priority areas are co-operation on trade facilitation and investment. Singapore is to be the spearhead of the EU's eastward trade expansion, with a 'comprehensive partnership and co-operation agreement' that could cover a range of areas, including agriculture, transport, energy, industrial policy, science and technology, education and culture. Negotiations on this agreement could start before the end of the year.