

**REFLECTIONS ON THE GHANAIAN EXPERIENCE WITH
INTELLECTUAL PROPERTY TECHNICAL COOPERATION –
HOW COULD A CODE OF ETHICS ALTER IMPLEMENTATION IN PRACTICE?**

Intellectual property is playing a rapidly increasing role in trade globalization whereby works of intellectual creativity are serving as developmental tool for economic empowerment in our society today.

This is based on the conviction generally accepted, that the human creative inventiveness when properly harnessed and resourced by an intellectual property system, is key to the generation of wealth and the raising of the standard of living of a people, thereby enriching their global and cultural heritage.

The World Intellectual Property Organization (WIPO) which was established with the main objective of (among others) of promoting the use of intellectual property throughout the whole world by encouraging cooperation among all its entire membership. It is also committed to the development of a universal creativity promotion programme whereby the intellectual property system may be used to strengthen economic growth, performance and the enhancement of wealth creation for the benefit of all human beings.

To achieve this feat, WIPO has (through contributions from its member-states and donor partners) been assisting developing and less developed countries to embrace the intellectual property system for their own benefit and that of their neighbours.

Ghana has benefited immensely from WIPO's assistance in various ways through the provision of equipment; training of staff and assistance in awareness creation programs through the holding of workshops seminars and so on.

Our government has, through cooperation and interaction with WIPO embraced most of its (WIPO) activities since they both share similar goals and are committed more or less to an attempt at the alleviation of poverty from our society and creation of wealth for all.

Ghana like the other countries in the sub-region are plagued with similar problems and handicaps, namely:

1. inadequate developmental infrastructure.
2. lack of equipment and
3. un-trained personnel to name a few.

The concomitant lack of information and competence in this regard has, I believe resulted in the slow pace of our development and use of the intellectual property system to our overall benefit and advantage.

Our countries have been signatories to most of the protocols and the various legislations governing intellectual property, but our use of the system as a developmental tool has been woefully stunted. This and a host of other reasons have culminated in the quest for a suitable and sustainable technical assistance program tailor-made to suit our peculiar needs and circumstances.

The C.E.O. and president of the Intellectual Property Institute (a non-governmental organization) in the USA said in his annual message of 2002 that during his over 30 years or so career, he had come to the realization of how beneficial the use of a good intellectual property policy had helped promote economic growth in the United States, and that it was with this vision in mind which led him to initiate and incorporate the NGO.

This position cuts across most developed nations. In that by its very nature a good intellectual property system, while encouraging creativity and the use of one's intellect to improve on existing technology, also has the ensuing economic benefits accruing to the owner of the invention or creation. There is also the issue of proper enforcement mechanism which ensures the protection of the individual's right to the things he has created or helped to create.

Thus after the Uruguay round-table meeting in 1994 and the subsequent coming into force of the TRIPS agreement the immediate obligation on all member states was the need to bring up all our

laws to conform with the guidelines as laid down by the Trips Agreement. This is when some of our troubles and woes reared their ugly heads. Compliance with the laid down obligations brought to the forefront the lapses, lack of equipment, necessary infrastructure and capable human resource base to implement and ensure that the right thing was being done.

The situation was salvaged somewhat by the ready assistance of WIPO through the provision of some equipment (work-station) assistance in holding workshops and seminars, training programs and technical expertise to help us re-draft our laws, iron out the thorny issues which were not trips compliant and so on. Thus with such magnitude of assistance we have now passed six (6) laws and are currently preparing the legislative instruments (L I) to help us fully implement the laws effectively. Here, I am sure we may need yet again some technical expertise to be able to produce workable pieces of legislation.

For our needs assessment, there have been established various bodies and state apparatus which meet regularly to reflect on a national innovative framework that aims at identifying national priority goals and developmental objectives. They are also tasked to provide workable means of consensus building in arriving at a meaningful program that could address the issues of the priorities identified and ways by which set targets may be met.

For this project there have been ministerial and institutional cooperation between all stakeholders for the mobilization of resources for the implementation of the Trips Agreement. Again in the year 2000 there was a UNDP sponsored workshop (involving senior officials) on a special unit for technical cooperation among developing countries. Participants were drawn from Asia, Africa and Latin America. The meeting which was held in Accra was with the aim of encouraging participants to share their experiences and also brainstorm the existing mechanism and legal framework, its' weaknesses and strengths for the implementation of their international obligations.

It was designed to help prioritize issues identified during the program to enhance both regional and inter-regional cooperation for technical assistance received by member- states as a whole.

There has also been put in place a multi-country agency for capacity building program named the Joint Integrated Technical Assistance Program (JITAP). This project came about as a result of an African trade ministers meeting held in Tunisia in 1994 at which a call on the international community and our various development partners was made, to help strengthen Africa's capacity to:

1. Effectively participate in activities of the World Trade Organization (WTO)
2. Integrate their economies into multilateral trading systems and to
3. Promote export diversification, giving rise to the opportunities offered by the globalization of the world markets.

In 1996, at the UNCTAD IX, conference, the heads of the WTO, UNCTAD and ITC (International Trade Centre) pledged their commitment to help their African partners. Here the issues of needs assessment evaluation and monitoring have been given great prominence. There has subsequently been established various working groups involving relevant stakeholders drawn from both the private and the public sectors, including institutions that are directly concerned with specific issues discussed at the meeting. These groups have been meeting periodically to evaluate and assess their work plans, negotiation criteria; review progress made and to provide inputs on the objectives, priorities and strategies of interest to our various countries.

Having reached this far the next milestone was getting funding for the needs assessed. This has not been very easy and proven to be quite an arduous task in that access to technical assistance has, of late become demand-driven where the recipient nation is required to have a needs oriented and prioritized plan of action and be able to either defend or justify the reason for the item requested for and also compete with others for whatever scanty resources there is available

They are often also required to be in a country document prepared by the relevant stakeholders. For this requirement all the various bodies and organizations aforementioned come into play. All the needs collated at the various group meetings are revised to reflect government policy.

Fortunately for Ghana the current government having realized (through interaction with international organizations such as WIPO, WTO, UNDP, DANIDA etc.) the very unique and important role intellectual property plays in the socio-economic development of a people have also whole heartedly embraced the need for a well thought out and planned intellectual property system for the nation. There has been for instance the setting up of a private sector advisory group from which evolved the Private Enterprise Foundation a Non-Government Organization made up of some relevant key players in the field – these include Association of Ghana Industries (AGI), Ghana National Chamber of Commerce, Ghana Bankers Association and the Federation of Ghanaian Exporters which partners with the public sector to evaluate policies, which with the aid of technical assistance, would promote intellectual property in the society, to help increase the growth and sustained development of the country.

We have seen a great awakening of intellectual property in our society. We now celebrate WIPO Day each year (on the 26th of April) and by so doing there has been established some level of awareness with the media (always included in our workshops and seminars) having been called upon to help disseminate the idea which when properly used would improve the totality of our lives.

We are hoping to see some ease in our commercial and intellectual property activities with the establishment of our first commercial court. This is a fast track court (set up with the assistance of DANIDA) which would solely handle issues on commercial litigation; infringement and enforcement. The judiciary is also involved in our sensitization efforts. We include them at our workshops and there are plans afoot to include them in our training programs (technical assistance would be required here as well).

There have been stakeholder meetings and workshops in the agriculture and health sectors where issues of technical assistance feature prominently. A very recent one I attended was organized by the Ministry of Health and the Ghana Access to medicines advisory committee where IP issues such as technology transfer and local (Ghanaian) manufacturers, flexibilities within the Trips Agreement (i.e. in terms of compulsory and voluntary licensing); parallel importation and so on,

were discussed at length. Mention was also made on the need for greater international commitment and dialogue with OECD governments and other international pharmaceutical industries.

In the area of agriculture, Ghana has received some assistance from UPOV on the use of the African model law which initially run into some teething problems but with the timely intervention of UPOV and other stakeholders a new law has been drafted ready to be laid before parliament.

In spite of all the technical assistance enjoyed by Ghana there is still a gaping hole which needs to be filled; which translates into capacity building for the staff who are tasked to interpret, implement and enforce the IP system efficiently in Ghana. We are all aware and agree that the very complex and technical nature of the system requires a level of expertise and competence which can only be obtained through intensified training for its enforcers (i.e. lawyers, judges, local manufacturers and businesses and other practitioners).

In terms of logistics there is also the need for equipment and funding for research work in tertiary institutions and the academia would be very welcome to participate in IP research and dissemination efforts.

On our future position and a possible way forward, I believe governments or member states must be called upon to help create an enabling environment for the smooth implementation of the system and also help ensure that the various obligations like dues etc. are timeously taken care of.

There is also a backlog of publication particularly for trademark applications which needs to be given prompt attention; so also is the need to draft legislative instruments (L.I.) to support the laws recently passed to ensure their smooth operation because this is where the fees chargeable and ancillary matters can be taken care of and given due attention.

Any training program should in the future be extended to cover the Police Service, Customs Excise and Preventive Service (CEPS) (enforcement agencies) and Non- Governmental Organizations .

With the passage of the new laws it is envisaged that there would be an increase in the work load of the department which handles the IP system thus the department needs to be upgraded and well equipped to take up the challenge.

On the issue of the use of a code of ethics to govern the implementation and practice of an IP system; this is considered a laudable idea in that with such a guideline in place, one would be able to determine what constitutes a default or an infringed rights issue.

If we should take into consideration the Trips Agreement, for instance, it spells out modalities for the application of the various IP regimes and systems. It outlines the processes for laying claims to what IP rights one has created and the limits or extent of the protection available.

There are also issues regarding unfair trade practices; equal treatment for nationals and others; to name a few. As the term itself connotes, a code of ethics governs behavioral, attitudes and provides a modus operandi for a particular group or association. Thus a code of ethics for all practitioners of an IP system will prove profitable. Unlike the situation where one would say “all size fits all” it would just serve as a yardstick or guideline for measuring performance and application of the system. Thus if one desires to avail themselves of that system at least they would know before hand the do’s and don’ts of the system and what to expect from the system. Members of the regime and practitioners from all the various divides (ie Donor or Recipient ; Developed or Less Developed Nation.) will be adjudged by the same yardstick .It would also provide a level playing field for all users of the I P system.

Distinguished ladies and gentlemen, I am done. Thank you.