



Towards Development-Oriented Intellectual Property Policy: Advancing the Reform Agenda

The Second Bellagio Dialogue

1. The UNCTAD-ICTSD Project on Intellectual Property Rights (IPRs) and Development launched a series of dialogues in October 2002 in response to concerns that continuing trends in the formulation of international intellectual property policies may be detrimental to economic, technological, social, and cultural development as well as poverty eradication¹.

2. The first dialogue on a development-oriented intellectual property policy focused on “Setting an Agenda for the Next Five Years”. The Group identified various priority areas including:

- The promotion and protection of public health.
- The institutional context in which intellectual property policy is developed and implemented.
- Transfer of technology.
- Harmonization efforts.
- Unilateralism and the promotion of TRIPS-plus standards and capacity building in developing countries.²

3. The 2003 dialogue again included participants from the policy-making community, negotiators, capital-based officials, the private sector, academia and civil society organizations.

4. Key developments highlighted as particularly significant over the past year were:

- The continuing challenge of new treaty development and harmonization.
- The interim 30 August 2003 Decision on TRIPS and Public Health.
- The state of play on discussions related to genetic resources and traditional knowledge.

5. Participants reiterated that intellectual property policy is not as an end in itself, but one of a range of possible instruments that should work to promote innovation, creativity and technological capacity in developing countries and contribute to their competitiveness in the global economy. Furthermore, intellectual property policies and technical assistance should be formulated to respond to national stages of development. Developing countries should not be forced to adopt high standards of protection inappropriate to their different development needs

¹ See <http://www.iprsonline.org/unctadictsd/description.htm>

² See http://www.iprsonline.org/unctadictsd/bellagio/docs/BellagioOutcome_Report.pdf

and priorities. Unfortunately, recent developments in the international IP system do not suggest that the pressures on developing countries to adopt inappropriate standards are diminishing. Work focused on three specific items the conclusions from which are summarized below.

Recent developments and TRIPS-plus standards and parallel multilateral, regional and bilateral negotiations

6. Participants cautioned against any TRIPS-plus commitments being entered into at any level – multilateral, regional or bilateral – by developing countries unless the benefits could be unambiguously shown to outweigh the costs. They saw the need to develop a pro-competitive international IP regime that fosters domestic innovation and maintains a robust public domain. The following needs for action were highlighted:

- Determining internationally agreed principles to guide discussion of intellectual property standards at multilateral, regional, and/or bilateral levels.
- Devising means for individual countries to effectively address unilateral actions and pressures (e.g. by making use of instruments provided by the multilateral trade system).
- Challenging the institutional framework in which IP policy is developed and implemented including opposition to moves to harmonise the patent regime, such as through WIPO's Patent Agenda. An independent development-focused assessment was suggested before any such moves were made.
- Promoting a development-friendly approach to the implementation of the 30 August Decision on paragraph 6, in the spirit of the Doha Ministerial Declaration on TRIPS and Public Health.
- Supporting initiatives requiring disclosure of origin of genetic resources and traditional knowledge and to explore further the best means to address the specific challenges of protecting traditional knowledge.
- Supporting the consideration and development of complementary open models for promoting innovation and affordable access to technologies in developing countries, including open source and other collaborative approaches, liability regimes and utility models.

Transfer of technology, intellectual property rights and technological capacity building

7. The TRIPS Agreement recognizes technology transfer as a basic objective of the international trading system. Much technology transfer occurs between willing partners in voluntary transactions but the process is subject to market failures and the unwillingness of technology owners to transfer technologies that pose a competitive threat. Policies are needed to remove market impediments to the transfer of commercially viable technology and to lower the costs and risks of technology acquisition.

8. There is a need to develop technical and managerial capacities in developing countries to absorb technology more effectively. The Group highlighted the following needs for action:

- The general requirements of Article 7 of the TRIPS Agreement call for actions to facilitate the functioning of technology markets, and the specific requirements of Article 66.2 call for positive government intervention from developed countries in favour of least developed countries. The importance of monitoring actions taken by countries to implement the technology transfer commitments in the TRIPS Agreement was emphasized.
- Technology transfer could be facilitated by: matching grants facilities; public-private partnerships; fiscal incentives; training of scientists and building scientific and technological capacity in developing countries; best practice licensing models.
- At the national level, governments should make use of proactive policies, such as: effective use of competition policy (focusing on the competition-intellectual property interface), better use of existing public tools including exceptions, compulsory licences and government use provisions. Also needed are better means of accessing science and technology information, identifying access to appropriate technology, and exploiting opportunities from export and investment promotion.
- Priority research areas identified were: case studies by sector and industry; impact of cooperative patent regimes on technology transfer and local innovation; international migration of technology transfer personnel.
- Advantage should be taken of the WTO Working Group on Trade and Technology Transfer to promote better understanding and co-operation in this area.

Technical assistance in the field of intellectual property policy and development

9. Participants stress the need for broad participation in the design and implementation of technical assistance in order to ensure that it was appropriate to the development needs of receiving countries. Emphasizing the view that intellectual property is a means to an end not an end in itself, the following needs for action to improve the quality of technical assistance were highlighted:

- Encouraging evaluation of current technical assistance on intellectual property, including learning from prior evaluations and the use of technical assistance programmes in the context of their appropriateness to the social, economic and cultural context of recipients of assistance.
- Ensuring that technical assistance programs adopt a development perspective and that they expose recipients to a range of policy options and implications (e.g., by encouraging broader socio-economic understanding of the appropriate framework and legislative approach for intellectual property).
- Taking into account in the provision of technical assistance the need to ensure the use of flexibilities in intellectual property regimes and in particular in the TRIPS Agreement.
- Developing methodology for needs assessment and guidelines of good practice for technical assistance in intellectual property from a development perspective.
- Promoting professional, pedagogically sound assistance by providers in consultations with users.
- Ensuring that technical assistance targets development of local capabilities and expertise on intellectual property and development.

- Involving a broad range of stakeholders in developing countries within and beyond the traditional intellectual property community, from judges and intellectual property professionals to those in the many sectors affected, from health and agriculture to the scientific and educational communities.
- Considering ways (e.g. pro bono legal assistance schemes) to improve developing country access to developed country intellectual property systems.

The way ahead

10. Participants agreed to follow up aspects of the work in different ways and to share proposals for further action with the broader community of stakeholders working toward development-oriented intellectual property policy and practice. Working with this broader community and the participants from the ICTSD-UNCTAD dialogues on intellectual property and development, it was agreed to continue a process of follow-up and monitoring on the issues identified. In this context reference was made to an international conference on technical assistance to be held tentatively in February 2004.

12. A next session of the Bellagio Dialogue to review progress and focus analysis on other priority areas, such as the application of competition rules to intellectual property in a manner that promotes the interests of developing countries, will be convened in 2004.