



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

MEETING REPORT

1. In September 2003, building on the outcomes and agenda developed at the first meeting held in October 2002, The UNCTAD-ICTSD Project on Intellectual Property Rights (IPRs) and Sustainable Development hosted a second dialogue entitled “Towards Development-Oriented Intellectual Property Policy: Advancing the Reform Agenda”. Participants were again drawn from the policy-making community, negotiators, and capital-based officials; the private sector; academia and civil society organizations. Informal discussions followed presentations by selected international experts on the intersection of intellectual property and development policy issues.
2. The second meeting reviewed and assessed recent international developments in the evolving international intellectual property system. Discussions on recent trends in the international intellectual property system echoed many of the issues and challenges identified in 2002. Work focused on the three agenda items identified in the “Five Years Agenda on intellectual property and Development of 2002”¹, which are summarised below. In each of them, participants had a focused dialogue to review core issues and challenges and then examined ways and means to advance work in these priority areas. Specifically, discussions centred on recommendations regarding principles, strategic ideas for policy action, and policy-oriented research gaps.
3. Intellectual property policy was described not as an end in itself, but one of a range of possible tools that should work to promote innovation, creativity and technological capacity in developing countries and contribute to their competitiveness in the global economy. Furthermore, the discussion reaffirmed that intellectual property policies and technical assistance should respond to national stages of development and that developing countries should not be forced to adopt standards of protection incommensurate with their development needs and priorities. It was observed that developments in the past twelve months and several ongoing trends in the international intellectual property system continue to generate concerns regarding developing country ability to tailor their national intellectual property system to promote sustainable development.

¹ See http://www.iprsonline.org/unctadictsd/bellagio/docs/BellagioOutcome_Report.pdf

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

4. Five main issues were identified: recent developments regarding TRIPS and public health; WIPO's intellectual property Agenda; genetic resources, traditional knowledge and intellectual property; the need to determine internationally-agreed principles for the development of intellectual property standards; and ways to promote a pro-competitive international system of intellectual property protection.

TRIPS and public health

5. On 30 August 2003, the WTO reached an interim solution to paragraph 6 of the Doha Declaration on TRIPS and Public Health regarding countries with insufficient or no manufacturing capacity in the pharmaceutical sector. The solution involves cumbersome procedures before an eligible beneficiary country can import the medicines needed to deal with a public health crisis. It was highlighted that there is need for developing countries and least developing countries to find practical solutions to the implementation of the 30 August Decision. Engagement of developing countries concerning the interpretation of the Decision and of Doha Declaration was considered fundamental to make full use of their ambiguities and flexibilities. The need to commence work on finding a permanent solution to the issues raised in the Doha Declaration particularly paragraph 6, including the amendment of TRIPS, before the end of the Doha Round, was also pointed out.

WIPO's intellectual property agenda

6. Developed countries are shifting discussions on TRIPS-plus standard-setting from the WTO to WIPO, where a broad new TRIPS-plus agenda is in the making to promote further protection of intellectual property in a universal manner. The components of this TRIPS plus agenda include the following elements:

- WIPO's Patent Agenda, i.e. the promotion of the ratification of the Patent Law Treaty, the reform of the Patent Cooperation Treaty (PCT) and negotiations on a Substantive Law Treaty. In general terms, WIPO's Patent Agenda seeks to further harmonise patent law and to create a global patent system that will limit the discretion of developing countries to develop their own policy space;
- Promotion of the ratification of WIPO Copyrights Treaties (WCT and WPPT) of 1996; and
- A proposed new treaty on broadcasting organisations

Genetic resources, traditional knowledge and intellectual property

7. Participants referred to the lack of progress on the review of Art. 27.3(b) of the TRIPS Agreement, where the issue of the disclosure of origin of genetic resources and traditional knowledge remain unresolved. Requiring the disclosure was considered an important tool for finding synergies between the TRIPS Agreement and the Convention on Biological Diversity. During the discussion, compensatory liability rules were identified as possible model for protection of traditional knowledge. Reference was also made to various model

laws for TK that have been recently developed but not discussed in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of WIPO. Participants considered that activities in this area could benefit by setting clearer objectives, a coherent rationale and adequate linkages to customary law and cultural diversity.

The need to determine internationally agreed principles for the development of intellectual property standards

8. Participants proposed that domestic and international IP policy-making processes should include interagency coordination in order to allow wider participation by stakeholders to formulate policies and negotiating stands that reflect a balanced and careful consideration of competing interests. Some participants proposed that a moratorium, of at least ten years, on new TRIPS Plus negotiations should be considered.

Promoting a pro competitive intellectual property system

9. Participants advocated the promotion of a pro competitive intellectual property system and in this respect the importance of competition law as a countervailing factor to the expansion of intellectual property rights was underscored. The need to explore alternative mechanisms, formats and models for protecting innovation was discussed, including self – help incentives and open source initiatives.

Transfer of technology, intellectual property rights and technological capacity building

10. The TRIPS Agreement recognises technology transfer as a basic objective of the international trading system. However, while a great deal of technology transfer occurs between willing partners in voluntary transactions, the process is subject to market failures. Many developing countries need policies to remove market impediments to the transfer of commercially-viable technology and to lower the costs and risks of technology acquisition. The discussions addressed ways to implement Article 66.2 of the TRIPS Agreement, models for technology transfer and possible research gaps.

Implementing Article 66.2 of the TRIPS Agreement

11. Participants identified various means by which Article 66 could be implemented, including the following:

- creating fiscal incentives and R&D subsidies (in developed countries for developing countries);
- improving funding for public research facilities in areas of interest to developing countries and for technologies that have an impact on poverty eradication; and
- encouraging national science foundations and academia to create grant programmes on developing country needs with results that would go to the public domain.

Policy Models for technology transfer practices

12. Participants discussed various types of policy models for technology transfer:

- host country policies: incentives for innovation, measures to ensure a healthy business environment, use of competition law and policies, and education and training policies for enhancing technological absorption capacity;
- source-country policies: tax incentives, technical and financial assistance, public domain research, educational arrangements between academic and research institutions;
- multilateral policy options: linking Articles 7 and 66.2 of the TRIPS Agreement in any legal interpretation applying to technology transfer policies. Participants also indicated the need to expand the scope of Article 66.2 so as to include all developing countries; and
- proposals were put forward and analysed regarding an international agreement on access to basic science and technology and creating a trust fund for scientific personnel.

Policy-relevant research gaps in technology transfer

13. Participants highlighted the following as possible areas of research regarding technology transfer:

- undertaking sectorally-based and developing country-based studies;
- exploring the use in developing countries of concepts such as “refusal to deal” and “government use” (specially in the case of compulsory licensing);
- assessing the impact of the PCT on the transfer of technology;
- assessing the usefulness of liability rules and utility models;
- exploring the relevance of liberalising the movement of natural persons (mode four of GATS) to transfer of technology;
- documenting examples of mechanisms to promote humanitarian technology transfer (i.e. the African Agricultural Technology Foundation and the Public Sector Intellectual Property Resource for Agriculture); and
- exploring possible components and possible implications of an international agreement on access to science and access to information; and
- undertaking case studies of global/international value chains and the role of intellectual property.

Technical assistance in the field of intellectual property policy and development

14. Participants indicated that the provision of technical assistance should be based on the recognition that intellectual property is a tool not an end in itself. Professional and pedagogically-sound assistance – learning from independent evaluations of previous technical assistance on intellectual property from a development perspective – is necessary. This should deal with both technical skills development necessary to operate an intellectual property system and on ways to take advantage of the flexibilities in TRIPS for development

needs. It should also help develop a broader socio-economic understanding of the appropriate framework and legislative approach for intellectual property and development. This requires the involvement of a wide range of interests (from judges and intellectual property professionals to those in the many affected sectors and from health and agriculture to the scientific and educational communities). A key concern is that technical assistance (and provision of pro bono intellectual property legal assistance) should help develop local capacity on intellectual property and development in academic and other institutions in developing countries.

15. Participants acknowledged that international technical assistance should be based on the following principles:

- targeted and neutral;
- demand-driven;
- based in the broad intellectual property knowledge-community;
- respond to development concerns;
- professionally responsible; and
- subject to evaluation.

Strategies for change

16. The following strategies for change were underlined:

- evaluating possible impacts of current technical assistance on development policies;
- defining channels for reform of existing assistance;
- calling for increased donor coordination;
- integrating TRIPS-related technical assistance into the UN Integrated Framework and other wider technical assistance initiatives; and
- creating a network of assistance providers.

Policy-relevant research gaps in technical assistance

17. The following areas for policy relevant research were identified:

- better understanding of the use of flexibilities in the international intellectual property regime and particularly the TRIPS Agreement;
- analysis of intellectual property-model laws used in technical assistance and their relationship to flexibilities (patentability exceptions, the Bolar exception and use of parallel imports, etc.);
- devising alternative curricula and exploring different sources; and
- devising methodologies for evaluating assistance programmes in the intellectual property field.