

The World Intellectual Property Organization (WIPO) and the developing world

The Director General of WIPO, Kamil Idris, replies to the Courier's questions on the relevance of intellectual property for developing countries. He began by outlining the origin and aims of WIPO.

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The roots of the World Intellectual Property Organization (WIPO) go back to 1883, the year that marked the birth of the Paris Convention for the Protection of Industrial Property. In 1886, copyright entered the international arena with the Berne Convention for the Protection of Literary and Artistic Works. The aim of this Convention is to help nationals of those countries that have signed the Treaty to obtain international protection of their right to control, and receive payment for, the use of their creative works.

Like the Paris Convention, the Berne Convention established an international bureau to carry out administrative tasks. In 1893, these two small bureaux united to form an international organisation called the United International Bureaux for the Protection of Intellectual Property (best known by its French acronym BIRPI). Based in Berne, Switzerland, with a staff of seven, this small organisation evolved into the WIPO of today – a dynamic entity with 179 member states and a staff that now numbers over 900, from some 92 countries around the world.

In 1974, WIPO became a specialised agency of the United Nations system of organisations, with a mandate to administer intellectual property matters recognised by the member states of the UN. The Organization has since expanded its role and demonstrated the importance of intellectual property rights in global trade and as a catalyst for economic, social and cultural development.

WIPO's objective is the promotion of the effective protection and use of intellectual property throughout the world through cooperation with, and among, member states and other stakeholders. To this end, WIPO is working to create an environment conducive to an enhanced understanding of the contribution of IP to improving human life. WIPO is committed to assisting developing countries in building their capacity to deliver efficient IP services, and enable greater access to, and more effective use of, the IP system to further their national development objectives.

Can you explain the importance of IP for developing countries?

The 21st century presents many challenges – including bridging the widening knowledge divide and reducing poverty. The success of a country in meeting these challenges will depend upon its ability to develop, use and protect its national creativity and innovation. An effective intellectual property (IP)

system, embedded within a national IP strategy, will help nations to promote and protect their intellectual assets and thereby promote national development objectives. The intellectual property system is a powerful catalyst to trigger the application of new ideas and creativity to economic life, generating new industries, new products, new services, and stimulating investment while reinforcing traditional areas of commercial and industrial enterprise.

WIPO is committed to supporting developing and least developed countries in their efforts to maximise the use and effectiveness of IP as a tool for economic, social and cultural development. To this end, WIPO offers help in strengthening national IP systems and in creating a policy environment that encourages innovation and creativity and that allows for optimal use of these intellectual resources as economic assets.

The criticism is often made that a reinforcement of IP can lead to restrictions for developing countries, denying them access to ideas and technologies that are vital for their development. How can developing countries afford and benefit from technologies devised by the North?

The intellectual property system does not discriminate between users, be they from developed or developing countries. The underlying concept behind patent rights, as a typical example of intellectual property rights, is that of an exchange – in exchange for exclusive rights over their inventions or creations for a fixed period of time, the intellectual property right holder must disclose to the public details of their inventions. This feeds the body of technological knowledge in the world and provides fuel for technological development.

The challenge for the developing world lies in overcoming certain barriers that inhibit access to and full exploitation of the intellectual property system. And by barriers to access, I do not just mean financial barriers. Access may be improved by putting an effective legal and policy infrastructure into place. This facilitates use of the system and enforcement of IP laws.

WIPO is working towards the development of a flexible, user-friendly, cost-effective and fully responsive international intellectual property system that is widely accessible, and that provides an appropriate balance between the rights of inventors and creators and the public interest in general.

WIPO

In the context of developing countries, two factors define the environment for acquiring technological capacity. First, developing countries realise that to benefit from the global trend towards greater free trade and to encourage foreign investment, adequate IP protection is essential. Second, the amount of technological knowledge that is in the public domain – and increasingly accessible through online sources – is much greater than just two decades ago.

Is it possible to find a balance between legal and commercial interests protected by IP and protection of global public goods? How can IP be balanced with the rights of users?

Yes, indeed, it is possible. As mentioned earlier, our aim is to develop a flexible system that provides an appropriate balance between the rights of inventors and creators and the general public of all countries. In addition to striking the proper balance within the IP system, we are encouraging countries to develop an IP strategy that is fully integrated with the broader social, economic and cultural context. This is in order to ensure that an appropriate balance between public and private interests is maintained. There is no one-size-fits-all solution and each country must tailor its IP strategy, taking into account its particular circumstances.

Some people believe that patents threaten “traditional collective knowledge”. What do you think?

The patent system can and should respect traditional knowledge. Many traditional knowledge holders are themselves innovators, and deserve recognition for their inventions. Many innovators working within a traditional context have been granted patents – for example, many practitioners of traditional Chinese medicine hold patents for their inventions.

Much concern has been expressed that patents could be used to misappropriate traditional knowledge. It is a fundamental principle of patent law that patents should only recognise newly-developed inventions. To be eligible for a patent, therefore, an invention has to be a clear step forward, a truly inventive addition to what was known before. Moreover, the entitlement to a patent must be derived from the true inventor. So if a patent applicant asserts that they have invented something that is already part of traditional knowledge, their claim could fail for two reasons – first, the application is not derived from the true inventor, and second, it is not new and inventive.

As it can be difficult in practice to locate traditional knowledge that may be relevant to a particular patent application, WIPO has been working to improve the recognition of traditional knowledge within the international patent system. Governments, too, are taking action in this regard. The government of India has, for example, developed a Traditional Knowledge Digital Library, aimed at ensuring that traditional medical knowledge that is already publicly available is readily accessible to patent examiners.

Why has WIPO decided to involve indigenous people and local communities in the extension of IP?

Indigenous people and local communities are the custodians of diverse intellectual and cultural heritages that are invaluable, and indeed often form the basis of their very social and cultural identity. Indigenous and local communities are themselves strongly articulating the need for this intellectual property to be better respected, and for a fair share of the benefits of its exploitation to flow back to them. It has been our priority to involve indigenous and local communities in WIPO's policy debates in this area.

This work began in 1998 and aims to strengthen the capacity of these communities to make their own choices about intellectual property protection, to better control their own intellectual property, and to derive benefits from it. As a first step, a worldwide fact-finding dialogue was established with more than 3,000 holders of traditional knowledge and representatives of indigenous communities. The needs and expectations expressed in this dialogue still provide critical guidance for WIPO's work.

In your view, is there any contradiction between the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement and the Convention on Biodiversity (CBD)?

There is a complex legal debate about this issue. It should be put into perspective by looking at the basic objectives of the CBD and the intellectual property system. The CBD aims at conserving biodiversity, the sustainable use of its components, and equitable sharing of the benefits from its use. The thrust of the intellectual property system, and patent law in particular, is to recognise innovation, define and clarify its derived benefits and to promote its exploitation in an equitable way for the benefit both of the innovator and of society at large. Intellectual property rights are therefore an integral component of an overall approach to defining and sharing the benefits resulting from the use of biodiversity. ■

The evolution of WIPO

The Paris Convention for the Protection of Industrial Property was the first major international treaty designed to help the people of one country obtain protection in other countries for their intellectual creations in the form of industrial property rights, known as inventions (patents), trademarks, and industrial designs. The Paris Convention entered into force in 1884 with 14 member states, which set up an international bureau to carry out administrative tasks.

It was followed in 1886 by the Berne Convention, which also set up its own bureau. The union of these two in 1893 created the United International Bureaux for the Protection of Intellectual Property (BIRPI). In 1960, BIRPI moved from Berne to Geneva to be closer to the United Nations and other international organisations in that city. A decade later, following the entry into force of the Convention Establishing the World Intellectual Property Organization, BIRPI underwent structural and administrative reforms to become WIPO, an intergovernmental organisation whose mandate is to promote creativity and the protection of intellectual property rights through cooperation with its member states.