

THE
WIPO

Development Agenda

A start but it lacks a role for developing country enterprises.

J. Michael Finger

IN JUNE OF THIS YEAR, delegates from over 100 Member governments of the World Intellectual Property Organisation (WIPO) reached an agreement on 45 recommendations for increased WIPO activity in support of development — a WIPO Development Agenda. These recommendations will be submitted to WIPO's General Assembly in September for formal approval. In this note, this Issue Paper attempts to explain from a development perspective the objectives these recommendations seem to express and how they propose to advance them. The author argues that the contribution of intellectual property (IP) to development depends in large part on developing country private enterprises applying the business and legal tools of IP to exploit in rich markets the commercial values of knowledge that is generated in developing countries and of the identities of developing country products. This element is not in the 45 recommendations.

DEVELOPING COUNTRY OBJECTIVES

The WIPO Development Agenda aims to assist developing countries to strengthen their IP institutions (e.g., patent offices) and more generally to strengthen the framework of IP policies and practices in developing countries. Among advocates of this WIPO Agenda, the term “strengthening institutions” is, however, something of a stalking horse. The effort to create a WIPO Development Agenda bespeaks the concern that the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organisation (WTO) has done much to advance developed country interests over those of developing countries, e.g., TRIPS created a claim of US\$ 60 billion/year for knowledge that previous rules allowed developing countries to use without paying. The tension implicit in the list of recommendations is over the developing countries' concern to change an outcome now shaped primarily by TRIPS.

Reoriented WIPO programmes

Primary targets for reorientation are WIPO's technical assistance programme and its work in drafting treaties and in setting norms for interpretation and application of existing treaties. By virtue of a 1995 agreement with the

WTO, WIPO provides technical assistance to implement the TRIPS Agreement. This assistance, many believe, has been conditioned by the interests of developed countries and has served primarily to implement the obligation to pay for IP owned by developed country interests. Likewise, many believe that work at WIPO to draft treaties and to establish norms has been in effect to create “TRIPS plus” obligations — to further advance the interests of IP owners without concern for other impacts.

Reorientation would take into account the following elements.

Flexibilities

In consequence of these concerns, the recommendations call for increased attention in norm-setting, technical assistance and other WIPO activities to the flexibilities within the TRIPS and other IP treaties. The negative side of this is to exploit the ambiguities and loopholes in TRIPS so as not to support in national law the claims of developed country IP owners. The positive side is to shift the balance toward other objectives (taken up below) and the interests of IP users.

Public domain

An “other objective” the recommendations bring forward emphatically is defending the public domain — knowledge that is available to all, over which no individual may claim ownership. The recommendations are to:

- deepen WIPO consideration and analysis of the implications and benefits of a rich and accessible public domain,
- approach IP enforcement in the context of broader societal goals, especially development concerns,
- assist Members to develop IP capacity and infrastructure that establishes a fair balance between IP protection and the public interest,
- promote norm-setting that supports a robust public domain in Member States, and
- consider preparing guidelines to assist Member States to identify subject matters that have fallen into the public domain, i.e., establish a basis to defend against further encroachment on the public domain.

Transfer and dissemination of technology

Transfer and dissemination of technologies are also

prominent in the recommendations. In addition to incorporating this consideration into its norm-setting and technical assistance, the recommendations call for an augmented WIPO role in the identification of supportive policies and practices in developed as well as in developing countries. This might include discussions in appropriate WIPO bodies, perhaps WIPO facilitating better access to publicly available patent information.

Competition policy

An intellectual property right (IPR) is of course a temporary grant of monopoly power. Control here is about matters such as ensuring that protection of a particular product or process does not spill over to other products and processes, nor unduly inhibit competitive innovation. The recommendations call for exchange among Members of experiences in this area, assistance to help developing countries deal with IP related anti-competitive practices, attention to this matter in WTO working documents and norm-setting.

NEXT STRUGGLE: CREATING A WORK PROGRAMME

Moving from the list of recommendations to a development-supportive work programme will not be easy. For one thing, there is little specificity in the recommendations; no more than provided in the list above. Moreover, supervision will be tight — the recommendations for WIPO to conduct or support studies, e.g., “new studies to assess the economic, social and cultural impact of the use of intellectual property systems,” and of “links and impacts between IP and development,” are qualified by “upon request of Member States,” or even more severely by “upon request and as directed by Member States.”

Do not settle for the appearance of activity

The recommendations provide ample opportunity for busy-work that can provide the appearance of activity without accomplishing anything, e.g., facilitating partnerships among donors and governments needing assistance, country lists of IP related development needs, available assistance resources, a roster of consultants; all this displayed on a website.

This sounds like the Integrated Framework — a joint effort of the WTO, the World Bank, International Monetary Fund (IMF), United Nations Conference on Trade and Development (UNCTAD), Interna-

tional Trade Center (ITC) and United Nations Development Programme (UNDP) which has consumed its resources in multiple levels of administration, “needs assessments,” a Geneva-based staff and a website. Least developed countries have been disappointed by how little it has provided for development.

Development requires advancement of developing country private interests

Defense of the public domain is important. HIV-AIDS medication is a matter of life or death for many people in developing countries, and developing country governments have had considerable success at rolling back TRIPS constraints on compulsory licensing of patents on such medications. Additionally, several pharmaceutical manufacturers have made medications available in Africa at reduced prices.

We should, however, be careful not to accept defense of the public domain as the entirety of IP’s role in development. Much of development is a matter of advancing private interests, those of citizens of developing countries. Development is in significant part a matter of developing country enterprises moving up value chains. WIPO’s website reports that intangible assets make up almost three-fourths of the value of modern companies. Hyundai and Samsung are examples. Half-a-generation ago, they produced “commodities” that were sold under other firms’ nameplates. (A television for which Samsung received US\$ 19 retailed under Sears or Wall-Mart label for US\$ 125.) Today, they have their own identities as innovative producers of front-line products.

Development means using the business and legal tools of IP to exploit in rich markets knowledge that is generated in developing countries and the identity of developing country products. It can be done, and it need not involve giants like Hyundai and Samsung. In 1998, a cooperative of African cocoa growers — aware that the money was in chocolate rather than in cocoa — decided to set up a chocolate company in the United Kingdom (UK). The company, now called the Divine Chocolate Company, mastered not only the technicalities of producing a chocolate bar but also the intricacies of copyright, trademark, endorsements, advertising — all the elements of identity management. They have successfully launched a product line, in an industry where they have to compete with giants such as Nestle and Hershey.

Ethiopian coffee is another example of the use of IP tools to advance the interests of relatively poor people. The Ethiopian Intellectual Property Office,

assisted by Light Years IP (a non-profit consulting company specializing in IP management) has successfully launched a programme to capture the commercial value of the name identities of several fine coffees: Sidamo, Yirgacheffe and Harar/Harrar. One step is to obtain trademarks in major markets, another to enlist and to license distributors in these markets, who will share in an advertising programme to publicise the quality of these coffees and to expand their sales. At the same time, quality control systems are being put in place among producers, along with networks for bringing coffee expeditiously to market.

Will civil society advance developing country interests?

The Argentina-Brazil proposal that initiated consideration of a WIPO Development Agenda emphasised the role of civil society. The proposal envisaged technically competent organisations of IP users as a counterbalance to the representatives of IP owners who now dominate WIPO proceedings. The Argentina-Brazil proposal devoted a major section to this topic; the recommendations take it up cautiously:

To enhance measures that ensure wide participation of civil society at large in WIPO activities in accordance with its criteria regarding NGO acceptance and accreditation, keeping the issue under review. (Recommendation number 42).

We should be careful here to distinguish between whom we can call on to support a development agenda and whom we should allow to define it. Technically competent civil society organisations (CSOs) draw their support in significant part from established companies, e.g., pharmaceutical and software companies concerned that patents and copyrights are being used by competitors to control use of the basic tools of research and development so as to shut them out of competitive innovation. They probably have less interest in helping Divine Chocolate or Ethiopian coffee growers master the skills of identity management. Moreover, developed country citizens have as much or more at stake in defending the public domain as do developing country citizens. To identify development exclusively with CSOs defending the public domain would spend the force of moral suasion that the term “development” provides on an issue where developed country citizens are the larger stakeholders — and allows established interests to present the issue in domestic forums as foreigners’ interests versus “our own”, rather than as one domestic interest versus another. Developing country commercial interests will have to advance their interests

for themselves, through their own national delegations. They cannot depend on civil society observers at WTO meetings to do this for them.

A somewhat cynical note here, again the appearance of doing something versus having an impact comes into play. Having a lot of non-governmental organisation (NGO) observers will win web-page kudos — particularly from these observers — but the most vociferous ones may not have the needed technical competence.

Add developing country cases to WIPO's training programme

The current WIPO website (20 August 2007) advertises two courses, Strategic Intellectual Property Management and Strategic Intellectual Property Finance. The faculty listed are all from established multinational companies or US business schools. The examples in the materials cited are exclusively from established developed country companies, e.g., Deutsche Telecom, Thomson France, Yamaha and Coca Cola. WIPO should be encouraged to include cases such as Divine Chocolate and the Ethiopian coffee growers. What problems did they face and how did they overcome them? This might involve support for pulling together appropriate case materials — as these cases would be used in a school of business. This could help a new generation of developing country business school professors to establish themselves, allow developing country universities to be active creators of education materials rather than passive relays for the experiences of established companies, prepared by the developed country universities they support. This will not immediately even up the imbalance TRIPS has created but in the longer run, it will have an impact (*See the details of this matter in the author's another paper "Implementation and imbalance: dealing with hangover from the Uruguay Round". Oxford Review of Economic Policy. Volume 23. Number 3, 2007, pp.1-21*).

CONCLUSION

TRIPS is about developed country enterprises making money in developing countries. A complementary agenda would be about developing country enterprises making money in developed countries. The WIPO Development Agenda should focus on helping new developing country private enterprises to make their way in international markets. Development is in large part a matter of their success; for a WIPO Development Agenda to be effective, they will have to drive it. ■

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ABOUT US

Launched in December 1994 at Nagarkot, Nepal by a consortium of South Asian NGOs, South Asia Watch on Trade, Economics & Environment (SAWTEE) is a regional network that operates through its secretariat in Kathmandu and 11 member institutions from five South Asian countries, namely Bangladesh, India, Nepal, Pakistan and Sri Lanka. Registered in Kathmandu in 1999, the overall objective of SAWTEE is to build the capacity of concerned stakeholders in South Asia in the context of liberalisation and globalisation.