

Assemblies of the Member States of WIPO
Fifty-Fourth Series of Meetings
Geneva, Switzerland
September 22 - 30, 2014
General Statement of the United States of America

Thank you, Madame Chair.

The United States is pleased to see you again chairing the General Assembly, and also welcomes back your vice chairs. We are confident that through your leadership our discussions will be productive during this meeting.

We also thank the Secretariat for the timely presentation and comprehensiveness of the working documents.

The United States fully endorses the statement delivered earlier by the distinguished delegate of Japan on behalf of Group B.

Normative Work

The United States is pleased with recent normative outcomes at WIPO. In the past two years, WIPO Members successfully concluded the Beijing Audio-visual Treaty and the Marrakesh Treaty for the blind and visually impaired. The United States is working towards implementing these treaties and looks forward to their entry into force at the earliest possible time.

We have made excellent progress on the draft Design Law Treaty, and the United States fully supports the convening of a Diplomatic Conference to conclude this treaty. We believe that any outcome relating to technical assistance for this treaty should be decided at the Diplomatic Conference and not at this General Assembly session. It would be very unfortunate if any Member or Members block the treaty on the grounds of having a pre-determined outcome on technical assistance before the Diplomatic Conference can be convened. Throughout the discussions over the last year, the United States has been very clear in its position that while we believe a resolution is a much more effective and timely vehicle for the delivery of technical assistance, we are willing to enter the diplomatic conference with an open mind as to the ultimate form of the provision. Others, unfortunately, do not share our level of flexibility. The time has come to dispense with the idea of setting preconditions and move forward to the diplomatic conference for a treaty that holds significant promise for designers in both developed and developing countries.

The United States also welcomes progress being made in discussions of the proposed Broadcasting Treaty and we will continue to engage constructively in these discussions. We also favor work aimed at developing shared principles and objectives and improving national limitations and exceptions for libraries and archives as well as educational and research institutions and for persons with other disabilities. We do not, however, support binding norm-setting in these areas.

Regarding discussions in the Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge, and Folklore (IGC), we are willing to continue the discussions next year. Despite the diligent efforts of the IGC, including the Chair, his vice chairs and facilitators, it is abundantly clear that Members are far from agreement on even the most fundamental provisions in the draft texts. In fact, there are over 300 brackets in the three draft texts indicating a complete lack of maturity of all three.

Madame Chair, the United States would like to reiterate its long-held position that consideration of a Diplomatic Conference on the IGC texts is premature.

Therefore Madame Chair, the United States opposes any General Assembly decision that would set any specific timeframe or date for a Diplomatic Conference on any of the three IGC draft texts.

WIPO Management, Including Management of Meetings

On the topic of meeting management, the United States believes that WIPO convenes too many meetings at too great an expense to the organization and to Member States. Given the breakdown of several committee meetings this year and the overall lack of progress in most, we would propose that WIPO convene fewer meetings next year. Too many meetings lead to no outcomes, involve discussion solely on process, or degrade to the point where members cannot even agree on adoption of the agenda for the meeting. Reducing the frequency of meetings (e.g., from two to one per year) would decrease the amount of funding spent by WIPO and Member States on travel (and time away from the office), and could create a more issue-focused environment. WIPO could redirect funds from meetings to establishing such things as additional Technology and Innovation Support Centers, improved databases, and other improvements to WIPO services. We welcome the willingness of the PBC Chair, Ambassador Duque, to conduct informal consultations on this very important issue following the Assemblies.

The United States welcomes the selection of the new proposed WIPO Senior Management Team (SMT). We recognize it represents an impressive range of experience and expertise from across the globe, and are pleased that it includes Mr. John Sandage, who is highly-regarded both domestically and internationally. We are confident that he will bring great talent and make significant contributions to the Organization. We would like to express our appreciation to the outgoing SMT for their accomplishments and excellent service to WIPO and its Member States. And, we thank Deputy Director General Pooley for his many positive contributions to this Organization over the past six years, and we wish him the very best in his future endeavors.

Madame Chair, our delegation will have many interventions in the Audit and Oversight portion of this meeting. We will make proposals to further improve the strength of these WIPO functions.

U.S. Highlights on IP

Madame Chair, I'd now like to offer some brief highlights on IP in the United States:

On the patent side, legislative activity in the current Congress has focused on consideration of proposals to address abusive patent infringement litigation practices and the mailing of vague letters to small businesses claiming patent infringement and threatening lawsuits unless the recipients pay a settlement amount. A responsive bill was passed by the House in December 2013 and consideration of a comparable bill by the Senate may occur this fall or in the next Congress.

The White House, the Department of Commerce and the U.S. Patent and Trademark Office also have been engaged in addressing those issues. Last June, the White House issued five executive actions and seven legislative recommendations designed to protect innovators from frivolous litigation and ensure the highest-quality patents in our system. Updates to those executive actions were announced in February 2014. These include:

1. Crowdsourcing Prior Art to ensure that patent examiners have the best prior art upon which to make their determinations;
2. More Robust Technical Training for patent examiners on fast-changing technology by experts in field; and
3. Expanding Pro Bono and Pro Se Assistance programs to all 50 states

On the copyright front, like many countries, the United States has been engaged in a process to ensure that its laws reflect changes and developments in digital technology. In early 2013, the U.S. Register of Copyrights testified before the United States Congress recommending a review of provisions of U.S. copyright law in light of technological change. Since then, the U.S. House of Representatives has conducted fifteen congressional hearings on a wide array of copyright issues. The U.S. Copyright Office has supported the ongoing congressional review through various formal studies, including the release of reports in 2013 on resale royalties and small copyright claims. The U.S. Copyright Office is also engaged in several ongoing studies, including pending studies on Orphan Works and Mass Digitization, the "making available" right, and the effectiveness of the existing U.S. music licensing regime.

In July 2013, the Department of Commerce, led by the USPTO and National Telecommunications and Information Administration (NTIA), issued a green paper on Copyright Policy, Creativity and Innovation in the Digital Economy.

The Green Paper provided an overview of how U.S. law has adapted to digital technology over the past twenty years, and identified three areas on which the Department of Commerce is undertaking further work:

- One: making recommendations on several policy issues relating to the legal framework for the creation of remixes; the relevance and scope of the first sale or exhaustion

doctrine in the digital environment; and the appropriate calibration of statutory damages in certain specific contexts;

Two: establishing a private sector, multi-stakeholder forum to agree on ways to improve day-to-day operation of the Digital Millennium Copyright Act's (DMCA) notice and takedown system for removing infringing content on the internet; and

Three: determining an appropriate role for the government to facilitate the further development of the online licensing environment.

On the design front, the United States has been actively working on accession to the Geneva Act of the Hague Agreement. The United States has made significant progress in the implementation process, and we are hopeful we will be able to deposit the United States' instruments of ratification with the Director General later this fall or early next year. We would like to thank WIPO for its collaborative efforts in working with the United States in preparation for U.S. membership to the Hague Agreement.

Development Agenda

Over the course of the past year, we've heard a number of delegations speak of the need to further integrate the Development Agenda (DA) into all aspects of WIPO's work. Several have even questioned WIPO's overall focus on IP protection. The United States would like to note that, as stated in the WIPO Convention, WIPO was created "to promote the protection of intellectual property throughout the world through cooperation among States".

As Member States, we agreed on the DA recommendations so that we can work collaboratively to support development through the use, protection, and enforcement of IP. However, what we have seen lately is the DA being used to block progress in a number of WIPO bodies. For example, the Committee on WIPO Standards – a highly technical committee – has been unable for the past three years to adopt new standards or even adopt its special rules of procedure because of the insistence of some that the committee report on its DA implementation.

Furthermore, the GA has on three occasions been unable to convene a diplomatic conference for the Design Law Treaty because some delegations are demanding an article on technical assistance as a precondition.

It is unfortunate that over the last several years the positive efforts of this organization – many of which directly benefit developing and least developed countries – have been impeded by mischaracterization of the DA.

WIPO's role as spelled out in the WIPO Convention is "to promote the protection of IP". This objective has not been changed by the DA. Instead, the DA was intended "to ensure that development considerations form an integral part of WIPO's work", not to obstruct such work.

The United States has long asserted that Development Agenda implementation should not negatively impact the substantive work of WIPO committees. It may be time to collectively

rethink the function of the DA if it continues to be an obstacle to WIPO's substantive work towards its primary objectives.

The Expansion of the Lisbon Agreement

The United States remains strongly committed to the issue concerning the relationship of trademarks vis-à-vis geographical indications (GIs). However, the U.S. is very concerned that recent work to update the Lisbon Agreement has complicated that relationship even further. Procedurally, we are surprised that the Lisbon Union Assembly went ahead with approving the convening of a diplomatic conference for the adoption of a revised Lisbon Agreement without first seeking the advice of other interested Member States, pursuant to Article 8 of the WIPO Convention and Article 9 of the Lisbon Agreement. The manner in which this proposed diplomatic conference is being handled is a significant departure from WIPO process and procedures, which are designed to ensure that the interests of all Members are respected. The United States is concerned that the proposed Lisbon Agreement expansion raises significant legal and economic consequences that will negatively impact the exporting markets of many countries. Unfortunately, for countries like the U.S. that are not members of the Lisbon Assembly, preparations for a diplomatic conference are occurring despite numerous objections made.

Specifically, while the Lisbon Working Group has added options to the existing treaty text to give the impression that the revised Lisbon Agreement will be flexible enough for any national GI protection system to join, it is very clear that trademark systems simply will not be in a position to accommodate these onerous new requirements. The provisions of the amended Lisbon Agreement prevent and otherwise interfere with the ability of contracting parties to apply their own national laws and processes to international registrations under the Lisbon Agreement system. Further, the inclusion of geographical indications to the system, not only exceeds Lisbon's mandate under a mere revision exercise, but the draft revised agreement also provides an international mechanism to phase out prior trademarks or generic uses in a marketplace. Such costs would all be for the exclusive benefit of a small number of Member States.

The United States has asked that an agenda item at this week's Coordination Committee (CoCo) meeting so that relevant governing body can provide advice to the Lisbon Union Assembly regarding the convening of a Diplomatic Conference for the adoption of a revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015. We look forward to further discussions on this issue with the Secretariat and Member States when we get to that agenda item this week.

Closing

The United States will continue to work with the Secretariat and other Member States to create a better functioning, more transparent, and effective World Intellectual Property Organization. We will continue to ensure that WIPO services are world-class and that promotion of appropriate protection and respect for Intellectual Property Rights continues to be the major emphasis of the Organization.