

Frontier Technologies and IP – WIPO 4th Conversation

South Centre Statement, 23 September 2021

The South Centre is an intergovernmental think tank of 54 developing countries working across various policy areas, including health, intellectual property, and the impacts of the 4th Industrial Revolution. The following remarks focus on the discussions pertaining to data governance, its interface to IP and the necessary attention that should be laid out to the specific status of developing countries.

From the outset, it should be recalled that the technological divide between industrialized countries and most of the global south drastically limits the *de facto* conditions to accrue benefits from data-intensive economies. This should not be understated in policy discussions on data governance.

The second point is how the IP system may reinforce this technological gap by creating unsurmountable barriers to entry by new market players, research institutions and individual innovators from developing countries. For example, a dataset may be protected by *sui generis* rights in the EU, and via various forms of IPRs directly and indirectly (trade secrets, patents); a key software for data analytics may be protected by copyrights; an AI system may be itself protected by a patent, etc.

Without affordable and reasonable licensing and pro-active technology transfer policies by companies that hold such technologies, we all face the risk of '**data colonialism**': developing countries provide only raw data and are not able to turn them into intelligence and fulfil the promises of the 4th Industrial Revolution. In other words, how would intellectual property rights support technological catch-up, if restrictive licensing and ownership over big data software and other core technologies impede them? This also runs counter to the TRIPS Agreement's mandate to promote "technological innovation and [...] the transfer and dissemination of technology" as objectives (Article 7), and to address anti-competitive licensing as part of its principles (Article 8).

Another key area with respect to the interface of data and IP from a global perspective is how to address the issues of **equity, discrimination, and human rights** that underpin the use of big data and other frontier technologies. Algorithmic discrimination and bias are real problems that, while not restricted to the IP system, should also be part of its broader discussions. In this context, 'innovation' cannot become a trump card against all fairness, equity and redress issues that should integrate global policy discussions on data governance and IP.

There are many unsolved issues, and for this reason we may conclude with the following four suggestions:

1. No discussions with a normative aim should take place at WIPO regarding frontier technologies at this point, given the limitations to developing countries to fully participate in this.
2. Discussions on technology transfer and facilitated licensing mechanisms, including FRAND licensing for SEPs, and the role of antitrust laws and policies to

address developmental concerns related to data governance, should be undertaken.

3. Discussions on IP exceptions and limitations, including the use of public order exceptions in patent law in relation to AI-related patent applications, could be explored in substantive WIPO committees.
4. Finally, more participation of developing countries to ensure, as the South Centre noted in a previous statement, a system based on (i) real inclusivity, (ii) balance between protection of rights and access, (iii) development, and (iv) human rights is needed.