

Committee on Development and Intellectual Property (CDIP)

Twenty-Fourth Session
Geneva, November 18 to 22, 2019

REPORT ON THE INTERNATIONAL CONFERENCE ON INTELLECTUAL
PROPERTY (IP) AND DEVELOPMENT – HOW TO BENEFIT FROM THE IP
SYSTEM (MAY 20, 2019)

prepared by the Secretariat

1. The Committee on Development and Intellectual Property (CDIP) at its 22nd session, based on a proposal made by the African Group, decided as follows:

“to convene three consecutive one-day biennial International Conferences on IP and Development on the first day within the CDIP week, starting from the 23rd session of the CDIP with the topic “How to Benefit from the IP System”. The second and third conferences are subject to the agreement on the topics by the Member States. The Committee tasked the Secretariat to implement the decision on the basis of the principles of balance and fairness, including in the selection of speakers and format.”¹

2. Accordingly, the first of these biennial conferences entitled International Conference on IP and Development: How to Benefit from the IP System was held on May 20, 2019, at WIPO headquarters in Geneva.

3. The event was open for participation by Member States, intergovernmental organizations (IGOs), non-governmental organizations (NGOs), members of academia and the civil society. It also provided the option to follow the deliberations live, via webcasting.

¹ The decision is reflected in para. 8.1 of the [Summary by the Chair](#) of the 22nd session.

4. The working languages were English, French, Spanish, Russian, Chinese and Arabic with simultaneous interpretation provided throughout the meeting.
5. Mr. Francis Gurry, Director General (DG) of WIPO, opened the Conference, followed by welcoming remarks by H.E. Mr. Hasan Kleib, Ambassador and Permanent Representative of the Republic of Indonesia to the United Nations and other international organizations in Geneva, and Chair of the CDIP. The audience was also addressed by a high level dignitary, Mr. Triawan Munaf, Chairman of the National Creative Economy Agency of the Republic of Indonesia.
6. Her Excellency Ms. Amina C. Mohamed, Cabinet Secretary, Ministry of Sports, Culture and Heritage of the Republic of Kenya delivered the Keynote Address.
7. Sixteen speakers, representing different geographical regions, contributed to the proceedings. The selection of speakers was made on the basis of the above-mentioned Committee decision and guidelines included in the proposal by the African Group (document CDIP/20/8), namely: geographical balance, appropriate expertise, and balance in perspective. The Secretariat also sought to introduce gender balance.
8. The speakers represented the following nationalities: Brazil, France, Indonesia, Jamaica, Kenya, Mexico, Poland, Russia, Senegal, South Africa, Switzerland, United Kingdom, and the United States of America. They addressed new challenges that are currently facing the IP system and provided ideas on measures to benefit from the IP system in different fields such as innovation, creativity and global issues. The Profile of Speakers of the Conference is available at:
https://www.wipo.int/meetings/en/2019/ipdevelopment_2019_speakers.html.
9. The Conference was structured around the following four sessions:
 - How the IP system benefits innovation;
 - How the IP system benefits creativity;
 - How the IP system benefits global issues; and
 - Open discussion on the challenges and opportunities of the IP system in the current world.
10. Each of these sessions was introduced by a moderator, addressed by the speakers and concluded with a “questions and answers” (Q&A) session, as time permitted. The format of the sessions was designed to maximize dialogue among the speakers, moderator, and participants, fostering opportunities for continuation of discussions on the sidelines.
11. The event registered some 260 participants, including delegates from over 100 Member States. The Member State participants included the 26 WIPO financed delegates to the twenty-third session of the CDIP held from May 20 to 24, 2019. Participants could register through the Conference webpage and in person on the day of the event. Over 250 views were registered via webcast and the videos-on-demand continue to register viewings. The videos-on-demand are made available at:
<https://www.wipo.int/webcasting/en/index.jsp?event=WIPO/IPDA/GE/19#vod>.
12. A dedicated webpage² on the WIPO website was established and made available in March 2019, providing all the relevant information on the Conference. The program of the event and the power point presentations (PPTs), where available, have also been made available through this webpage.

² The webpage is available at: https://www.wipo.int/meetings/en/2019/ip_development_conference.html

13. In addition to the above-mentioned webpage, the Secretariat reached out to a wider audience for promoting the event through internal newsletters, mailing lists and flyers, social media portals such as Twitter and Flickr, as well as through some IP related media portals.

14. A welcome pouch with promotional materials was distributed to all the participants. A USB key containing some of the speaker's presentations, information on the WIPO Development Agenda (DA) and WIPO services (Madrid, Hague, Arbitration and Mediation, PCT) was also provided.

15. During the day of the Conference and the week that followed, exhibitions and displays by Belarus, Japan, Pakistan, United States of America and MIKTA countries (Mexico, Indonesia, Republic of Korea, Turkey and Australia) on the theme "Intellectual Property and Sports" were displayed in the WIPO AB building lobby. The theme of the exhibitions was in line with this year's World IP Day's theme i.e. "Reach for Gold: IP and Sports". In addition, the Sultanate of Oman organized an exhibition on perfumes and daggars.

16. The Director General, Mr. Francis Gurry, hosted a well-attended reception after the Conference.

17. A satisfaction survey was distributed at the end of the event to all participants. The tabular summary of the results of the survey, contained in Annex II, and the formal and informal contacts with the participants suggested that the Conference was viewed as successful.

18. The highlights of the Conference and summaries of the speaker's presentations are contained in the Annex to this document.

19. The CDIP is invited to take note of the information contained in the present document and its Annexes.

[Annexes follow]

Highlights of the Conference

Welcome Address

20. The welcome address was delivered by the Director General (DG) of WIPO, Mr. Francis Gurry. He noted a policy shift among many developing countries, away from looking at IP as a matter of mere compliance, to looking at it in a practical manner, on how IP could assist development and the objectives of various developing countries. He mentioned that the impact of IP on development was indirect, mainly through innovation, cultural and creative production. It contributed by securing or predicting the competitive advantage that innovation or new cultural and creative production conferred on enterprises. He mentioned the challenges faced by developing countries in seeking to benefit from IP, namely: (i) innovation and cultural production were surplus activities and there were many other urgent priorities for developing countries that had to compete for available resources; (ii) the commercial capacity for innovation or creative production was long-term; (iii) developing countries faced great challenges with the speed of technology change occurring in a globalized world; and (iv) the world was competitive with great disparities of available resources to devote to the question of innovation or cultural production and the role of IP in relation to each. WIPO's approach had been to offer a rich menu of services to address each of the components where and how IP contributed to the innovation ecosystem or the creative production ecosystem. The DG also highlighted that one of the greatest contribution that the WIPO DA had made to the Organization had been the mainstreaming of development in all its activities and programs, which was a major achievement.

Introductory remarks by H. Mr. Hasan Kleib, Ambassador, Permanent Representative of the Republic of Indonesia to the United Nations Office and other international organizations in Geneva, and Chair of the CDIP

21. The introductory remarks were delivered by H.E. Ambassador Hasan Kleib who welcomed the proposal to hold such a Conference. He highlighted the need to assess, discuss and converse within and between communities to allow for a much less restrictive flow of information and knowledge. The concept of IP rights was based on the idea that it would increase welfare and innovation. As the world continued to move towards greater integrations and everyone faced the pressing challenges posed by the co-dependencies on each other, including on global public health and climate change, the Conference would give the opportunity to also discuss on how to harness those innovations that had the highest value in terms of their contribution to addressing the global challenges faced by the society. He highlighted that the Conference provided for an open dialogue of significant value and importance to link IP and development.

Address by a High Level Dignitary, H. E. Mr. Triawan Munaf, Chairman, National Creative Economy Agency of the Republic of Indonesia

22. Mr. Triawan Munaf stated that such a Conference was extremely timely and it was an opportunity to reflect and discuss the changing environment in which IP was currently operating. He further highlighted that the drive for IP to evolve also persisted within the context of IP in the copyright and creative industries and presented the Indonesian perspective in this regard. He mentioned that Indonesia established its National Agency for Creative Economy (BEKRAF) in 2015 to coordinate national policy making and strategies to support the creation and marketing of national cultural goods and services, both domestically

and abroad. He mentioned that there was a need to address how to regulate copyrights and creative products of artificial intelligence (AI), and whether AI would have the same standard of originality as human authors and creators. The arrival of AI and new digital platforms with high-speed internet had changed the way copyright-based products were distributed and consumed, from books to movies and music. He encouraged discussion and exchange of perspectives under the session “How the IP system benefits creativity”, to give a better understanding on the role and relevance of the IP system as a means of harnessing the sector’s economic potential and its sustained growth in a complex fast-changing environment.

Keynote Address by H. E. Ms. Amina C. Mohamed, Ambassador, (Dr.), EGH, CAV, Cabinet Secretary for Sports, Culture and Heritage, Republic of Kenya

23. The Keynote address was delivered by Ms. Amina Mohamed, Cabinet Secretary for Sports, Culture and Heritage of the Republic of Kenya. She stated that the need for IP rights to protect inventions and creative works of individuals and firms had been recognized for centuries. That need acquired unprecedented importance in the current age, when knowledge capital, the product of the intellect, had increasingly become the basis of social and economic progress. As a consequence, issues of the generation, evaluation, protection, and exploitation of IP systems had become critically important. In that context, the role of WIPO in creating a robust IP rights regime that fostered an ecosystem conducive to innovation, was critical. The tremendous increase in IP applications reflected the growing importance of technology and innovation in the global economy and in our everyday lives, an importance in innovation and IP that will continue as humanity sought to respond to critical global challenges of our time. They could improve climate change, global health and food security. She highlighted that with the realities of today it was important to enrich further the cooperation between WIPO and its Member States. Resources devoted to technical assistance and capacity building should be enhanced and directed towards developing countries in order to create a seamless IP regime across the world which was the desirable outcome. Advancing the global agenda however, continued to face challenges due to the existence of the market failure, where individual or corporate innovators would only commit resources where they were assured not only of the protection of their investments, but also of good returns from that investment. She further gave some examples of existing challenges in the healthcare sector, climate change and food security. Ms. Mohamed highlighted the need to acknowledge and discuss the protection of traditional knowledge, cultural expressions and genetic resources. As the IP system continued to evolve in response to the changing global environment, considerable challenges and opportunities were emerging. First, the rapid emergence of disruptive technologies which had enormous impact on the existing IP regimes. These technologies presented unique challenges to policy formulation and enforcement. Secondly, a major challenge was the fact that IP was increasingly becoming global in nature, while the IP protection systems remained largely country and region-based. IP protection rights granted in one jurisdiction may not be applicable elsewhere, an eventuality that was not good for innovation, creativity and business. Thirdly, an underwhelming or an overwhelming IP protection regime could hinder innovation. Weak patent protection could lead to suboptimal innovation whilst too strong patent rights made successive innovative work more costly, making a good case for a Goldilocks approach to strike the right balance. Similarly, ambiguous or broad IP protection regimes were unsupportive of growth especially for software patents. Finally, the gender gap in access to and use of IP rights remained a significant challenge even though the world was benefitting from the work of women inventors, designers and artists. That gender gap mattered greatly not only because gender equality was a human right, but also because women’s full contribution to innovation and creativity, according to the statistics, was beneficial for everyone. Ms. Mohamed concluded by encouraging that the ideas that would be generated

in the course of the Conference would help in strengthening the IP system in a rapidly changing environment for the benefit of the global community as a whole.

Session 1 – How the IP system benefits innovation

24. The opening session was followed by Session One: How the IP system benefits innovation. Mr. Yoshiyuki Takagi, Assistant Director General, Global Infrastructure Sector of WIPO, moderated the discussion under that session. The speakers included Ms. Fernanda De Negri, Director of the Division of Production and Innovation Studies, Institute for Applied Economic Research of Brasilia, Ms. Marzenna Anna Weresa, Professor of Economics, Director of the World Economy Research Institute, and Dean of Collegium of World Economy, Warsaw School of Economics in Poland, and Mr. Dominique Foray Professor and Chair of the Economics and Management of Innovation in the École Polytechnique Fédérale de Lausanne (EPFL). They addressed the topic by describing the factors and conditions for innovation and innovation policies, and addressed the new generation of technologies and the combined dynamism in innovation and inclusion which is a challenge for development.

25. Ms. De Negri's presentation focused on drivers of innovation. She provided a comprehensive overview of the existing empirical literature on this subject and highlighted that the first attempts to assess the impact of IP rights on innovation were made using surveys. She gave examples of the literature which was trying to assess the impact of major policy changes in terms of the results and in terms of the increasing R&D or patent investments; studies that used cross-country panel data in order to assess the importance of IPR to innovation; the literature on the extent IP codes hampered the diffusion of new technologies; and other approaches such as some researches on how to assess the effects of patent systems in simulating R&D investments, focusing on: (i) how the disclosure function of the patent system affect R&D investments, and (ii) to what extent patent protection was stronger in terms of length and breadth, and effective in inducing more R&D. Ms. De Negri further presented the case of Brazil and highlighted some conditions that were as important as patents, in order to encourage innovation in Brazil. Those are: (i) human capital; (ii) research infrastructure and facilities; (iii) good business environment in the country; and (iv) public policies. Those conditions, together with a good patent law and IP protection, were very important factors. (The presentation by Ms. De Negri is available at: https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=443915)

26. Ms. Weresa focused her presentation on digital revolution and invention. She focused on Europe, in particular on European inventions registered and applied for at the European Patent Office, and on Central and Eastern Europe, in particular Poland, using it as an example to show how the digital revolution affected patenting and what kind of implications for innovation it could have. Her presentation had two objectives: (i) to show the dynamics of different technology fields and how those were related to the fourth Industrial Revolution, and (ii) to show the performance and the specialization profiles of the EU Member States and some other European countries in terms of patenting and patents related to the fourth Industrial Revolution, using data from the European Patent Office. She further highlighted some challenges in the IP protection in the current era, such as: (i) innovators might not be interested in patenting their new solutions due to the amount of time needed to finalize patent procedures, whereas the field of technological and digital technologies were changing at a fast rate; (ii) sometimes protection of digital innovation (for example big data) might not be possible; and (iii) diffusion and imitation of innovation was faster than before. There was a need to protect innovators, but at the same time, there was a need to reduce the digital divide globally and in Europe. Thus, there was a need to compromise to protect, but also to allow for diffusion. (The presentation by Ms. Weresa is available at: https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=443932)

27. Mr. Foray highlighted how the patent system, innovation, competition and human capital policies, were challenged by the new coming revolution. Big data and AI were core technologies that were qualified by economists as general purpose technology (GPT) such as generic technology, or as called in the EU, key enabling technology. GPT was a technology which was not only improving, but was diffusing across sectors. The productivity growth expected would not only come from the vertical improvements of AI, but from all propagations, meaning that AI was having applications in many sectors such as healthcare, transport, R&D, marketing, big data, etc. This was called externalities or spillovers, external benefits from the development of AI, which would benefit other sectors of application. He emphasized the need to find a good balance between incentives to innovate and generating benefits for innovators, and maximizing spillovers and diffusion. The general purpose technology was highly disruptive, with most of the producers and inventors of AI entering application markets. He provided as an example, the company Google, which was developing AI and also applications in healthcare, mobility, financial services and others. The champions in AI and big data were also moving towards application sector, which in his opinion, represented an issue. The second challenge was that the technological content of the innovations based on AI were challenging the IP policy as they did not clearly indicate that patents were central. Finally, AI was a research tool. While addressing these challenges, it was important to highlight how less developed countries could use AI and contribute to innovation and growth. First, data was becoming very important, and all issues about data privacy and security were becoming a big challenge for all countries because data was becoming the sources of competitive advantages for many companies. Second, strategies which combined dynamism and inclusion were important. Building microsystems of innovation where there could be dynamism and the two sectors, high tech and traditional sectors, could talk together and be connected. Innovation was not only about high tech, but also about skills formation, better management capacities and diffusion. (The presentation by Mr. Foray is available at: https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=443931)

28. The presentations were followed by discussions. A few participants made comments. Some highlighted the importance of education and to invest in youth with the inclusion of AI tools and to incorporate them into the long-term goals of education and developing foundations. Others raised questions on the concept of de-linkage in the context of access to medicines, TRIPs plus provisions on data exclusivity and how technology diffusion played out using the foreign AI technologies that were being developed in a developing country context.

29. The speakers explained that de-linkage was the disconnection between price and cost. It was very difficult to have a clear idea about R&D costs in the pharmaceutical industry, and if the costs were high, then the prices had to be at least higher than the cost to allow the companies to recover costs to innovate again. Having a clear figure about R&D costs in the pharmaceutical industry was important also to analyze how those costs could be minimized. With regard to TRIPs plus provisions, the speakers stated that was a challenge for any developing country to think of new mechanisms to access innovative medicines and some new mechanisms like for example, nonexclusive licensing to all generic companies to produce medicines at marginal costs and with low prices, could be a good mechanism.

Session 2 – How the IP system benefits creativity

30. Session Two: How the IP system benefits creativity was moderated by Ms. Sylvie Forbin, Deputy Director General, Copyright and Creative Industries Sector of WIPO. The

speakers included Mr. Vanus James, Former Professor, University of Technology, Kingston, Jamaica, Ms. Ruth Towse, Professor, Bournemouth University, Co-Director, Centre for Intellectual Property Policy and Management, United Kingdom, and Mr. Aziz Dieng, Principal Technical Adviser, Ministry of Culture, Creative Industries and IP of the Republic of Senegal. The speakers presented both policy and economic views with respect to the role of copyright in the creative economy, as well as how copyright contributed to the development of cultural industries and also for the development of the economy of a country.

31. The discussion under this session was based on questions that were addressed to the speakers by the Moderator. Each speaker had three questions that they covered in their presentations. There were no power-point presentations made during this session.

32. Ms. Forbin addressed three questions to the first speaker, Mr. Dieng, namely:

- Development of cultural industries is a priority at the highest level in Senegal. How is this expressed in policies? Could you, as one of the leading actors in your role within the Ministry of Culture and Communication, share what shape this takes in Senegal?
- Is Senegal expecting that creative industries play a determining role in the economic development of the country?
- What are the main elements of an effective working environment in the sector of creative industries?

33. Mr. Aziz Dieng mentioned that in Senegal they were trying to include issues with regards to culture at national level, and in recent years they were trying to include cultural policies regionally, as part of the West African Economic and Monetary region. Senegal started to take an economic approach to culture and saw the important role that IP played in promoting economic and cultural development. In addition, it tried to understand the importance of traditions in Africa, how artists traditionally lived and how they were remunerated, as Western Africa faced caste divisions. He further mentioned that infrastructure was key in developing countries, when considering the territorial role of such policies. Training was also very important, because in an information and knowledge society there was a need to capitalize on all the consequences thereof. One of these consequences was that IP knowledge and creativity would play an essential strategic role if one knew how to make the most of them. Africa had incredible creative potential. It was on equal footing with the rest of the world but had to make the most of that creativity. As for cultural funding, the State's actions to promote culture were essential, and there was a need to stress the importance of statistical data. There was a lack of such data in Africa, and in the absence of statistics, it was difficult to understand how to move forward.

34. Ms. Forbin addressed the following questions to Ms. Ruth Towse, namely:

- It is not easy to measure the relationship between copyright and creativity. What in your view as an economist, are the most important functions of copyright in the creative economy?
- On May 15, 2019, the work of Jeff Koons "The Rabbit" was sold in an auction organized by Christie's in New York for the record amount of 91 million USD. No work of art by a living artist has ever been able to fetch this kind of money in an auction. What is your view of this unprecedented event? To what extent can it be attributed to copyright or to other factors? Is this event good news for the creative community in the world?
- In your research you have pointed out that artists face challenges when negotiating with big corporations. How can one improve the bargaining position of creators? What is the role of collecting societies in this regard? What would be your advice to creators in the developing world?

35. Ms. Towse stated that the establishment of property rights for authors and performers was necessary for any trade. Economists had always supported having property rights. The question was what type of property rights, and how they should work, because if there were property rights, there was a need for institutions for exercising and enforcing those rights. She believed that copyright and authors' rights were there for the creative and performing artists of all kinds to enable them to deal in the market with the users of all kinds, ranging from concert promoters to games industry. It was also worth noting in this context, that copyright was a bundle of rights. It was a large and increasing number of rights, as new technologies developed, there was a need to deal with those as they applied in different media with different results and different economic value in various markets in which they operated. In her view, copyright helped creators to earn from their work but it did not ensure that they did so. In addressing the second question, she mentioned that usually, auctions were for works that were sold by owners of art, not producers of art. In that case it was artist resale rights or *droit de suite* which applied, and in many countries that was not part of the copyright law, as was the case in the United Kingdom. She further mentioned that research that has been done on artists resale rights had always shown that it was not living artists who benefited from that. It was normally the heirs and because copyright lasted a long time, the heirs could be great grandchildren and so on. Responding to the third question, Ms. Towse mentioned that any organization that collectively negotiates rates for the use of members' work such as trade union or professional association, was clearly in a stronger position than an average artist on their own. Collective Management Organizations (CMOs) were vital for the collection licensing and enforcement of the various rights in copyright. CMOs were dealing with different kinds of rights, therefore it was more efficient if they specialized in a specific set of rights. Copyright was not a policy for correcting inequality between publishers and authors. The imbalance of bargaining power was due to the organization of markets and they are subject to monopolization, especially in the digital world. It was time to understand the platform economies. It was important that people had rights and that those rights were properly legislated, but it did not deal with the inequalities in the market. The only way they could be dealt with, was through competition policy.

36. Ms. Forbin addressed three questions to Mr. Vanus James, namely:

- What is the role of copyright in small countries like Trinidad and Tobago where creativity, especially in music, has great potential?
- Did the policies undertaken so far in the copyright legal framework have any social or economic impact that boost the development of the country?
- For a small market such as Trinidad's, to what extent do you think that copyright could play a role in building a scalable creative economy benefitting from market advantages based on a regional dynamic?

37. Mr. James addressed the questions, and stated that the core Caribbean economic development problems were structural unemployment and brain drain, combined with a high degree of import dependence. In order to solve the first problem, there was a need to accumulate capital, raise productivity, grow outputs, grow income and create good jobs. However, when investment and income grew, they translated directly, due to import dependence, into rising imports that created deficits in the balance of payments and mounting foreign debt. To solve that part of the problem, there was a need to contain expenditure and to reduce income growth to keep imports in line with the export capacity. That was the fundamental contradiction of development and the solution to it was only one, to produce a substantial share of the capital that was used for local use and for exports. A small country in that scenario could compete using its culture, creative talents, local knowledge and so on. IP was a critical institution in that competitive practice because once there was IP, creators had a significant chance of converting their creations into income. It was important to remember that markets were institutions in which property rights were traded. He further mentioned that, the main forms of capital that the Caribbean economies

could produce competitively, were human capital and IP associated with innovation. The main industries with capacity to produce, use and export such capital, were not the traditional exporters of agriculture, mining and manufacturing but rather the service industries such as education, healthcare, the creative (copyright-based) industries, ICT and tourism-related activity. This capital-producing cluster was also the main engine of Caribbean growth. As part of the wider process of institutional progress, harmonised international development of the IP protection system was a significant inducement to the production and employment of IP assets by these industries. By protecting the IP assets of creators in all markets, harmonised IP protection helped turning local innovative ideas into commercially viable capital assets that then could be traded in local and global markets. Harmonised IP protection: (i) provided helpful technical information; (ii) increased the value of assets usable in investment financing; (iii) increased access to productivity-enhancing imports by giving certainty to foreign rights holders when making trading decisions and by increasing the inward transfer of technology and skills through FDI; (iv) boosted exports by increasing the confidence of IP asset owners in bringing their innovations to market; and (v) facilitated product differentiation that promotes intra-industry trade. Harmonized IP protection also facilitated institutional development and reduced asset inequality. It worked best when combined with inclusive measures to increase access to investment financing. Such financing was not inflationary. Once the IP assets were put to work, they grow the productivity of resource use, increase output, and lower the price level as part of the general solution to the development problems.

38. The presentations were followed by discussions. Some participants raised questions with regard to the fact that in the context of some African countries, there was already an impetus for creativity as there was a lot of negative literature on IP and that was an impediment to the creation of a market for local creativity. Other questions referred to the fact that big companies had a better hand in terms of controlling IP, and whether in the period where the market was developing and before institutions could be set up in order to foster development, it could be better putting IP aside.

39. In response, Mr. Dieng stated that African countries were becoming aware of both, the importance and the consequences of IP. They were also becoming more aware of the fact that some Western societies were very powerful and managed part of their rights in a rather dubious way, for example, satellite rights. Mr. James in turn, stated that in the context of the Caribbean countries, once the TRIPS Agreement came into force and the whole effort to collect royalties across the world was harmonized, there was a massive net outflow of royalties to the North Atlantic, to the big societies, and very small inflows coming into the Caribbean. There was a massive deficit. To fix that problem, there was a need to develop the same domestic capital capacity that he had identified in his presentation, and that could be done with a lot of collaboration and coordination from the rest of the world. Such a collaboration would deliver capacity to innovate in domestic terms rather than on international terms. Ms. Towse added that very few European countries in very few areas were net exporters. Sweden and the United Kingdom were the only net exporters of music, for example. In practically every other area, everything went mainly to the United States, which was a big economy. The speakers mentioned in conclusion, that subsidies to cultural outputs were important, and there was a need to resolve the lack of credibility in the copyright system that was there today. They also mentioned that capacity building of artists and creators was important.

Session 3 – How the IP system benefits global issues

40. The third session was moderated by Mr. Minelik Alemu Getahun, Assistant Director General, Global Issues Sector, WIPO. The speakers were Mr. Peter K. Yu, Professor of Law, Professor of Communication, Director, Center for Law and Intellectual Property, Texas A&M University School of Law, Fort Worth, United States of America, Ms. Caroline Ncube,

Professor, University of Cape Town, South Africa, Mr. Xavier Seuba, Associate Professor of Law of the University of Strasbourg, and Academic Coordinator and Scientific Responsible of the Centre for International Intellectual Property Studies (CEIPI), Strasbourg, France, and Ms. Suerie Moon, Director of Research, Global Health Centre Graduate Institute of International and Development Studies, Geneva. This session addressed practical ways in which IP could benefit development, and in particular global issues.

41. Mr. Yu made a presentation on international IP negotiations with UN Sustainable Development Goals (SDGs). He mentioned that IP was positive for development as it was needed to attract investments. However, whether stronger protection of IPRs was needed to attract more foreign investments depended on two factors, namely: (i) to have imitative capacity; and (ii) to have a sufficiently large market. Without those precondition it was difficult to just say that IP was good or bad for development as it depended on the local context of a country. Therefore, it was important to understand how we could customize the IP system based on local conditions. His presentation further aimed at tying together the discussion of how to develop the IP System on negotiating the IP agreements in light of the 17 SDGs. He further mentioned that there were different ways in which IP negotiations could be realigned or design the IP System based on the SDGs. Those strategies were as follows:

- to enhance the flexibilities within the IP System, whether those were based on the TRIPS standards or on the TRIPS plus IP Agreements.
- to advance pro development proposals at the international level, such as for example the Marrakesh Treaty.
- to ensure mutual supportiveness with other international agreements. IP could not be in clinical isolation from other international agreements, and it was quite useful to be able to link together the IP agreements with other agreements.
- to ensure a transparent process of trade agreements, as transparency was a very good way to provide inclusive involvement.
- to introduce complementary measures. A lot of times the focus was on the current IP standards but it was also quite important to think about other things that were IP related which were not necessarily within the current standard.
- to allow countries to undertake selective adaptation.

(The presentation by Mr. Yu is available at:

https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=443916)

42. Ms. Ncube made a presentation on the topic of IP in the context of trade and regional initiatives. She brought as an example Africa, which had more than fifty countries at various levels of socio-economic development. Thirty-three of those countries were least developed countries, and even though they attempted to address global issues at a regional level, it was important to align the fact that there were national and local variances that should be borne in mind, and any regional initiative should be customizable to the local context at all stages. She further referred to the African Continental Free Trade Agreement, set to come into force on May 30, 2019 for the 22 countries who ratified it. The second phase of the negotiations of this agreement would turn to IP. She pointed out that in the African continent, there were moves to talk about IP in a regional trade platform. The IP provisions in trade agreements had an impact on how innovation could be harnessed to address global issues because they were an important policy instrument in promoting innovation, technology transfer, research and development (R&D) and more broadly, economic growth. Having said that, it was important to acknowledge that IP was not the sole determining factor and there were several other factors that affected a country's achievement of its socio-economic developmental goals. Examples of such other factors included infrastructure, domestic industry, education, training and innovation systems. Although it was one of many other factors that influenced and shaped responses to global issues, IP was a very significant factor due to its direct impact on innovation. In that regard, it was important to bear in mind that when IP provisions

were crafted, they ought to align with human rights obligations, ethical considerations and binding obligations that states had either to other states in terms of international agreements, or obligations that they owed to their citizens based on their domestic legal frameworks. Further, these provisions must be context sensitive and appropriate for the socio-economic setting and national innovation systems. She mentioned, that the human rights framework's significance was that it brought such rights as the right to health to bear on IP frameworks. She mentioned the following main ways through which IP could benefit innovation to meet global challenges, namely: (i) through incentivizing and rewarding innovative solution; (ii) supporting further innovation; (iii) facilitating access, dissemination & transfer of technologies. She further brought some examples selected from the WIPO Green database. Technologies that provided innovative solutions to problems, ought to be encouraged and supported. The coverage of innovation and IP provisions in Regional Trade Agreements (RTAs) was growing, and therefore, IP provisions in RTAs should be innovation supportive, pro-development, context appropriate and principles-based. Ms. Ncube concluded by saying that to be supportive of innovative attempts to meet global challenges in areas such as global health and food security, IP provisions must be informed by justifiable and clearly articulated policy choices, binding internal and external obligations, human rights and ethical considerations as well as national priorities. (The presentation by Ms. Ncube is available at: https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=443917)

43. Ms. Suerie Moon focused her presentation on the relationship between IP, public health and access to medicine by providing two examples of new implemented business models. She further drew some conclusions on the changing role for IP in the pharmaceutical sector, where patents in particular have been the central incentive over the last fifty to sixty years. When talking about IP and access to medicines there were two key questions to address: (i) how IP impacted on medicines process, and (ii) how IP impacted research and development. In that regard, she mentioned the old thinking about IP and medicines, that was defined as a monopoly allowing to charge monopoly rents and that in turn would deliver innovation; a tradeoff of access for innovation, and as a result of the need to tradeoff the two objectives, there was a need to strike an appropriate balance. In addition, the traditional way of looking at IP was seeing it as a reward for innovation and incentive for innovation. However, the new ways of thinking about IP and medicines was not necessarily as granting monopoly, but as a way of delineating units of knowledge. There were ways to jointly achieve innovation and access, and not necessarily have to tradeoff. IP could be also seen as reward for innovation separately from the price per patient. She further presented the new business models of pharmaceutical R&D on how to achieve both together, bringing the example of Drugs for Neglected Diseases initiative's (DNDi) strategy for Hepatitis C and the Australian Netflix model. In conclusion, she mentioned that there was growing worldwide concern about innovation and access to medicines, which led to increased concern about IP related monopolies, and the scrutiny of the IP system was not disappearing. However, the new and the "outside the box" thinking on IP and access to medicines that was needed and had been implemented, as demonstrated by the now real-world evidence. IP could be thought of as a way to delineate control over units of knowledge, not necessarily as always requiring the granting of a monopoly or the maintaining of a monopoly, and there was growing willingness to use the flexibilities as such an important part of IP laws everywhere. (The presentation by Ms. Moon is available at: https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=443919)

44. Mr. Xavier Seuba made a presentation on the way that IP enforcement impacted global health and food security by referring to traditional remedies and automated enforced mechanisms. Norms on enforcement set up the mechanisms that enabled the effectiveness of the norms that created substantive rights and obligations. Without remedies, IP rights were worthless. Enforcement norms were comparable to the gearwheels of a clockwork: substantive rights and obligations were subject to the provisions found in enforcement sections of national statutes and treaties, which determined the method of implementation

and the scope of protection. IP enforcement was better understood as a weighing and balancing process for the implementation of IP rights. While the right to exclude was the most visible aspect of IP rights, under an instrumentalist understanding of IP exclusion was a mechanism for the fulfilment of broader policy goals. Contextualization within the broader legal framework, and due consideration of public interest, fundamental rights, competition and free trade principles were key in the weighing and balancing process implemented by courts and national authorities. Injunctions in the IP and the health domain were a good example of the relevance of a dynamic approach to IP enforcement, since the use of negative injunctions was very much part of the way IP rights were exercised. The award of an interim injunction had far-reaching consequences, thus it may prevent an imminent infringement from taking place or impede the continuation of an allegedly infringing activity. However, unduly granted, interim injunctions may also stop legal activities of all sorts, whereas the award of both final and interim injunctions may impact the public interest. Present and prospective scenarios must consider digitalization and the current process of automation, centralization and delegation of authority in IP enforcement. The expansion of automated algorithmic enforcement, the application of big data analytics, the promising applications of distributed ledger technologies and the development of devices that automatically enforce IP, are all meant to boost the efficiency of IP enforcement. At the same time, AI raised profound challenges to the concept of enforcement, largely based on the centrality of human intervention, and obliged to reflect about authority, due process and accountability. One among the areas of practical application of new technological solutions based on automation was food security. Distributed ledger technologies improve the control of products transiting the supply chain. By doing so, they enhanced food security and the fight against illegal pesticides, herbicides and fertilizers, in particular if products are equipped with RFID chips, QR codes or crypto-anchors. IP protection was an important element in that equation, both as instrument to enhance food security and as a direct beneficiary of digitalization. However, technical and infrastructure challenges persisted. 70% of the African population living under US\$1.25 per day was engaged in smallholder farming. Ensuring the quality and originality of products used for farming purposes would enhance productivity, safety and, as consequence, development. However, application of distributed ledgers technologies required Internet access, and roughly four billion people presently did not have access to the Internet. An inclusive perspective was most useful when addressing the contribution of IP to food security, global health and, more broadly, international public goods. Norms integrating the global regime for the enforcement of IP rights leave national authorities space for adjustment. Even if bilateral and plurilateral norms might create difficulties, it was still possible to develop an IP legal framework that contributed to the objectives and principles announced in TRIPS Articles 7 and 8. Reliance on comparative IP law and due consideration of the interaction between IP and other legal regimes would be helpful, accompanied by the policy guidance provided by Recommendation 45 of the WIPO Development Agenda and the consideration of due process and fair trial as principles of international law and international IP law. (The presentation by Mr. Seuba is available at: https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=443920)

45. The presentations were followed by discussions. Participants addressed questions on the new model for combating neglected disease by using IP, such as investing in prophylactics to prevent people from getting sick in the first place and to carry out hygiene checks in places that people receive treatment. Other questions referred to the flexibilities in the IP system, and sought advice for the less powerful countries with complications to withstand the political pressure that surrounded the talks on flexibilities as well as what could WIPO do with regards to accepting flexibilities to be part of the IP system. Participants also enquired about the definition of counterfeiting in the healthcare sector.

46. Ms. Moon reiterated that flexibilities were part of the IP system, and provided as an example, the case of Malaysia with the compulsory license that was issued and encouraged by the public health community. At the same time, it was acknowledged that the

Government came under some pressure, and there were some limits on what could be done. In intergovernmental politics there was pressure put by private firms on governments for taking certain decisions. For that reason, she highlighted the following considerations. First, there was an interesting recommendation in the UN Secretary General's High-Level Panel on Access to Medicines, suggesting that the TRIPS Council at WTO consider such kind of pressure to be a violation of TRIPS. Putting pressure to a member to avoid the use of flexibilities would be considered a violation that could be raised in the TRIPS Council or through dispute settlement proceedings. The second was the issue of information and evidence and the impact of the lack of information in different countries, including in high, middle, and low-income countries. Flexibilities were often referred to as a tool of the South that countries in the North did not support.

47. Mr. Yu provided some advice that could be of use to less developed countries in negotiation processes. Those were: ensuring policy symmetry; eliminating the divide between Geneva and the capital-based professionals; and knowing what to ask. In addressing the policy symmetry issue, there were three important factors to take into consideration, namely: regional coalition building; looking for alternative models that were not as polarized; and looking at examples of laws that could emphasize flexibilities in those countries. With respect to the second and the third type of challenges, it was important to change the culture in order to educate both the capital and the negotiators in terms of how to go further in terms of negotiation. Another good example would be to locate good examples from neighboring countries that have been successfully fighting off the pressure and use that as a backup.

48. Mr. Seuba highlighted the frequency of debates around the topic of flexibilities and indicated that did not mean that the same types of provisions do not exist in the EU or the US. For instance, the most extensive provision on patent exceptions was found in the Agreement of the Unified Patent Court, containing fourteen or fifteen different types of patent exceptions. The point to consider was that they were not called flexibilities. The flexibilities language was sort of a gauge that encapsulated something that elsewhere just functioned normally as rights of right holders. Changing the language would not be a bad idea because these were just normal provisions that existed elsewhere. Then, regarding the question on changing the patent system, he stated that the patent regime had not been so responsive to change as copyright, but noted that there were some changes. For instance, at the EU level, there was a new regulation that qualified two new exceptions in the context of supplementary protection certificates, that is to say, patent extensions. Those two new exceptions allowed to stockpile, before the expiration of the supplementary protection certificate, the term of protection, and to manufacture for export to countries where there was no protection. In that regard, the patent system responded to new needs and new situations.

49. Ms. Ncube addressed the issue on how to withstand pressure against using flexibilities. The state would say that the use of these flexibilities relied on human rights, which must be respected, protected, and fulfilled amongst citizenry. Hence, the use of flexibility.

Session 4 – Open Discussion on the Challenges and Opportunities of the IP System in the Current World

50. The fourth session was moderated by Ms. Binying WANG, Deputy Director General, Brands and Designs Sector, WIPO. The final session addressed the challenges and opportunities currently facing the IP system, and the discussion was triggered by speakers representing IGOs, NGOs as well as industry, namely: Mr. Vladimir Lopatin, Chief Executive Officer, Chairman of the Board, Republican Scientific Research Institute of IP (RSRIIP), Moscow, Russian Federation, Mr. Yushi Torigoe, Deputy to the Director, Telecommunication

Development Bureau, International Telecommunication Union (ITU), Geneva, and Mr. Fernando Cano Treviño, Representative for Europe, Tequila Regulatory Council, Geneva.

51. Mr. Lopatin stated that IP could and should produce income for individuals. He then presented the aim of the Russian Republican Scientific Research Institute of IP, which was to increase the effectiveness of the IP market and to propose rules to make that market civilized. He further highlighted the importance of consensus on IP in the 21st century, and mentioned that with regard to patents, the IP market represented 15% of Russian GDP. Russia made great investments in R&D on patent applications. Nevertheless, as regards the effectiveness of results and the innovations of products produced, the results ranged between 1% and 2%, placing Russia at the level of some developing countries. These results also applied to most of the Commonwealth of Independent States (CIS) countries. That was considered as a paradoxical situation because in 27 years, 1.4 million patents were granted but only less than a third of them were still valid, and less than 2% were sold. He mentioned that a patent was useful for generating income. Thus, when considering to draw up a list of services or a menu of services and goods, it was important to note that countries had different levels of opportunities and possibilities. The system for measuring indicators changed a lot and it did not work when referring to the added value provided by patents. In the transition to a digital economy, the share of that added value was doubled, affecting all areas of economy, including the services sector, and databases which were an integral part of the global IP system. There were real risks and challenges in the digital economy when talking about IP and economic relations. In the digital economy the IP market was missing. There was also a gap in the use of IP, and that gap was broadening. Therefore, when talking about developing the IP system, the following had to be taken into account. First, how to improve the IP system at the international level, as differences between laws and the treaties among countries was growing. Second, there was a problem of parallel imports at the national level, particularly on trademarks and copyright and the exhaustion of rights at the national, regional and international levels. In Russia, to overcome the conflicts of interests they were using the principle of exhaustion of rights regarding transport or movement of goods. Moving from IT to economic indicators, competitiveness had to be taken into account. If a price had to be put on economic turnover, including IP, the attribution of R&D and IP to service sectors were a major obstacle to the formation and development of the IP market. All services were subject to taxes. However, IP and its operations were not subject to tax. With regard to commercialization, the interstate standardization should be put on the agenda for developing the IP system as a whole. One of the most important issues was combating counterfeit, which has led to a contradiction because it had not created fair competition; meanwhile, other countries apply sanctions. In that regard, there should be a single methodology under the aegis of WIPO to combat counterfeit, in order to work according to the same rules and from the same starting position. The intellectual legal protection system had to be reviewed in order to raise the level of minimum standards of legal protection at the intergovernmental and national levels. (The presentation by Mr. Lopatin is available at: https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=443921)

52. Mr. Torigoe focused his presentation on the status of Internet, activities of the ITU, and standards in IPR and collaboration. He stated that about 51% of global population was connected to Internet, meaning that nearly half of the population was nowadays still missing Internet connection. He then gave an overview and provided some examples on the work of ITU in its key areas of work, namely: climate change; innovation; technology and network development; emergency telecommunication; LDCs and SIDs; digital infrastructure; cyber security; ICT applications; capacity building; regulatory and market environment broadcasting; and ICT statistics and indicators. ITU organized regularly various events, such as, the World Telecommunication ICT symposiums, in which the information society report together and the ICT Development Index were published, with data collected from Member States. Innovation was a new and demanding area, and in that regard ITU published a toolkit containing a database for the use of Member States. Addressing the topic on

standards and patents, he noted that standards were set for the public good and patents offered some temporary exclusive rights for use of the patent. ITU, along with other organizations had Licensing Declaration Options, comprising the following: Option 1 was free of charge license to an unrestricted number of applicants on a world-wide non-discriminatory basis; Option 2 was prepared to grant a license to an unrestricted number of applicants on a world-wide non-discriminatory basis and on reasonable terms and conditions; and Option 3 – unwilling to grant licenses. He concluded by highlighting the importance of multi-stakeholder cooperation. (The presentation by Mr. Torigoe is available at: https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=443935)

53. Mr. Trevino's presentation focused on IP as a fundamental tool for selling an authentic product from Mexico related to the denomination of origin. Tequila was a regional drink, used a unique raw material, considered as the most expensive in the world, Agave. Since 2006 Tequila was inscribed in the Cultural Heritage of UNESCO. It was also based on a key concept known as branding. The collaboration between the private sector and the Mexican government allowed to create a unique model for managing and branding a denomination of origin. The tequila industry generated more than 70,000 jobs, making it a driver in the economy and highlighting the importance of IP. There were 36 companies producing tequila in 1995, and in 2018, there were more than 155. There were more than 1,700 brands of tequila in the world, and there was a close collaboration to produce effective information to ensure responsible consumption, to reach out to millennials to use technologies and all of the necessary tools to combat abusive use of alcohol. To produce a liter of tequila, the blue Agave had to grow for five to ten years. However, thanks to innovation, current tools and an increasing trend in the use of IP, drones were used in the farming of agave. In Mexico, there were more than 800,000 involved in the tequila making industry, making it a major value chain. He further referred to the challenges and opportunities for the industry, where the CRT considered important to continue to use the international IP system. Nowadays tequila was protected in more than fifty countries, comprising denomination of origin and trademarks. Another important element to note was the relevance of sustainability in such industry. From the environmental point of view, it was important to work with a Mexican study center, to estimate the carbon footprint of tequila. The third key element was innovation and the idea of branding tequila and marketing due to the creation of branding. Concerning international protection, tequila had a number of Geographical Indications or marks in different countries. It was first recognized in 1979 in Canada and most recently in the United States in 2017 as a certification mark. He further highlighted the importance of combating falsification and counterfeit to ensure food safety and authenticity of the product and the sector. Therefore, the tools that WIPO created to facilitate the registration of marks, for example, the Madrid System and the Lisbon System, were key elements. Cooperation with other stakeholders and similar organizations, to exchange best practices and strategies, was important. He further provided some examples of successful collaborations of the CRT. Marketing was a key asset because the creation of brands, the wealth and the jobs, remained in Mexico. He concluded by stating that this was a robust industry, with over 400 years of history and fully in line with IP prerequisites when it came to respect for trademarks and the designation of origins. (The presentation by Mr. Trevino is available at: https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=443936)

Closing remarks

54. Mr. Matus, Deputy Director General, Development Sector of WIPO delivered closing remarks. He pointed out some of his observations and conclusions drawn from the discussions during the day. First, he highlighted the importance of having gathered in such a dialogue different stakeholders, such as Member State representatives, members of the academia, industry, NGOs and IGOs. Second, he pointed out what was highlighted by many

speakers namely, the need to have a balanced IP system. The word “innovation” was present in speeches of all ministers and prime-ministers around the world, but not everybody was connecting the idea of innovation with technology and technology with IP. A balanced IP system granted recognition for creators and inventors thus, the main question was on how to balance the issue of protection and enforcement. The next conclusion was that, since the adoption of the TRIPS Agreement, many of the new developments related to IP had taken place in FTAs around the world. He further mentioned that some of the global issues were highly connected with IP, such as health, climate change, food security, social, economic, cultural development. There was the gap or divergence in terms of the knowledge of IP not only around the world, but also across regions. A challenge that was mentioned during the discussions, was that digitalization was generated to all of us in the same way as big data and AI. Among the solutions mentioned to tackle these challenges, were the services provided by WIPO, such as assisting Member States in developing their national IP strategies and to align it with their national development plans, its assistance provided to upgrade their rules and regulations regarding IP, upgrading their IP infrastructure, capacity building, and so on. One of the most important remarks was however, the need to maintain such discussions and the dialogue for the benefit of everyone.

[Annex II follows]

Result of the Satisfaction Survey (based on 132 evaluation forms)

	Government/IP office	Academia	NGO/IGO	Private	Other
Business field*	78	15	27	9	3
	Extremely satisfied	Satisfied	Not sure	Partially satisfied	Not at all satisfied
1. Overall, how satisfied are you with the Conference?	43	78	6	2	2
2. How would you rate the design of the Conference based on the following: Aspects of the organization (logistics)	Excellent	Good	Average	Fair	Poor
Content / Program of the Conference	73	52	4	3	N/A
3. Which themes did you attend?	58	55	16	3	1
	Theme 1	Theme 2	Theme 3	Theme 4	N/A
4. Which of the panel discussions you enjoyed the most?*	108	105	120	112	N/A
5. How would you rate the usefulness of your participation in this Conference	41	30	80	21	N/A
6. Would you recommend other colleagues to attend, if a similar event is organized in the future?	Extremely useful	Useful	Not Sure	Not very useful	Not at all useful
7. How did you hear about the Conference	31	79	16	3	N/A
	Extremely likely	Likely	Not Sure	Unlikely	Extremely Unlikely
	53	62	12	2	1
	WIPO Website	Social Media	E-mail/circulars	Colleagues	Others
	43	5	55	14	23

[End of Annex and of document]