

Geneva, January/February 2004

LEVERAGING IP

*Specialty Products and Branding
in Latin America and the Caribbean*



BREWING PROFITS IN THE COFFEE BUSINESS



WHAT TO DO IF YOUR IP RIGHTS ARE VIOLATED





Figures de Vol - Birth of an Invention

WIPO has joined forces with the *Institut national de la propriété industrielle* (INPI), France, to hold an exhibit on the invention of early flying machines. The exhibit, *Figures de Vol*, will run from January through March in the Information Center at WIPO headquarters in Geneva.

Like many other great inventions, such as photography, electric lights, cinema and the automobile, aviation was born at the turn of the 19th century. On April 19, 1890, Clément Ader filed a patent entitled "winged machine for aerial navigation that is to say: airplane". Almost 100,000 patents have been filed worldwide in the field of aeronautics. The exhibit presents a retrospective of the history of aeronautics, focusing on the most famous patents of inventors that allowed us to fly.



World Intellectual Property Day April 26

World Intellectual Property Day will be observed by WIPO on April 26. To mark the event the Organization has released three 30-second television spots centered on this year's theme of "Encouraging Creativity". The three spots will air in turn on CNN over the next year and are available for broadcast to all Member States.

An information kit, prepared by WIPO for use in observations of World Intellectual Property Day, will be sent to all Member States at the end of February. The kit contains a message from the Director General, a leaflet and order form for the Creative Planet video series, a World Intellectual Property Day poster and bookmarks. Two new guides for small and medium-sized enterprises (SMEs), "Making a Mark" and "Looking Good," will also be enclosed.

Table of Contents

- 2 ▶ ***Intellectual Property as a Lever for Economic Growth***
The Latin American and Caribbean Experience
- 6 ▶ ***IP and Development***
Coffee Exports, Product Differentiation and Branding
- 10 ▶ ***IP and Business***
Dealing with Violators of Intellectual Property Rights
- 14 ▶ ***Learning the Lessons of Traditional Knowledge:
Broadening the Base of Intellectual Property***
- 18 ▶ ***PAC Endorses Use of Intellectual Property
as a Tool for Development***
- 20 ▶ ***Outreach to Industry Leaders in LAC Region***
- 22 ▶ ***Standing Committees***
Revision of International Trademark Law Treaty
SCCR Makes Progress on Key Copyright Issues
Access to Digital Content by Visually Impaired
- 26 ▶ ***New Contracting Parties to WIPO-Administered
Treaties in 2003***
- 29 ▶ ***News Roundup***
Director General Holds High-Level Meetings in Geneva
Caribbean Governments Commit to Using IP as Tool for
Economic Development
Director General Meets with Romanian President
Support Pledged for Development of Africa
WIPO Signs Agreement with IFRRO
Economists Explore Link Between IP and Development
- 32 ▶ ***Obituary***
Professor André Françon (1926 - 2003)
- 33 ▶ ***Calendar of Meetings***
- 33 ▶ ***New Products***



Geneva,
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INTELLECTUAL PROPERTY AS A LEVER FOR ECONOMIC GROWTH

The Latin American and Caribbean Experience

"A rock pile ceases to be a rock pile the moment a single man contemplates it, bearing within him the image of a cathedral." - *Antoine de Saint-Exupery*

The above quote underscores the foundation of innovation and artistry - the ability to transmit a personal vision to others. It is this vision - this creation of the human mind - that the intellectual property (IP) system seeks to foster and protect.

This is the third in a series of articles highlighting specific examples of the use of IP to generate wealth. Each article examines one of the main regions of the world. The first two centered on Africa - this one centers on Latin America and the Caribbean (LAC).

Recognizing the Importance of IP

As Argentina's Foreign Minister Rafael Bielsa noted in December 2003, business requires an "extraordinary dose of creativity right now, a spirit of inquiry." This dose of creativity is not only needed to generate new intellectual assets - such as inventions, music, books, plays and designs - but also to identify, protect and extract value from existing intellectual assets.

It is a need that was also recognized by the governments of several Caribbean countries in November of last year when Ministers from Antigua and Barbuda, Barbados, Dominica, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and the Republic of Trinidad and Tobago signed a landmark multilateral, cooperation agreement with WIPO to promote the use of IP as a tool for economic growth and social benefit (see page 30 *Caribbean Governments...*).

Among the agreement's goals are promoting technology transfer, strengthening regional research and development initiatives, encouraging local invention and creativity, promoting an IP culture and fostering national and regional identity and branding.

Great potential exists in these areas in the LAC region. The exploitation of national identity and branding alone has had noticeable success, particularly in niche and specialty marketing. Product differentiation is increasingly linked to quality and origin and these elements, when creatively and strategically presented to the discerning consumer, can bring a considerable competitive advantage. This article will focus on the significant role IP protection can play in achieving and sustaining this advantage and highlights some astute uses of the IP system (principally trademarks and geographical indications, including appellations of origin) in marketing strategies.

Branding the Chuao Cocoa Bean

One such example can be found in a virtually sea-locked part of the Aragua valley in the north of Venezuela, whose climate, geography and human resources combine to produce a much sought-after product - first-class criollo cocoa, the basis of what is considered to be among the finest chocolate in the world. In the plantation of Chuao, unique soil conditions and a microclimate that includes high equatorial humidity and heavy rains (that wash rich and fertile silt down the mountainsides into the 140-hectare plantation) create perfect growing conditions. This enables a skilled, geographically-isolated population, whose life has centered on cocoa production for well over 300 hundred years, to coax a high-quality bean from the criollo, often referred to as the most noble of all genetic cocoa varieties¹. The human and geographic input is especially important with criollo trees as, although said to give the most subtle, sweet and complex beans, they are very difficult to farm and are particularly susceptible to disease. They are also the least productive of cocoa varieties².

The plantation, which is situated within the boundaries of one of Latin America's oldest national parks, *Parque Nacional Henri Pittier Rancho Grande*, is owned by the local community and managed by

¹ The species *Theobroma cacao* is split into two sub-species - *criolla cacao* in Central America and *forastero cacao* in South America. Cocoa was such a valued product that it was believed to be of divine origin with the cocoa tree forming a bridge between heaven and earth. The beans were also used as currency and as a tribute (tax) by peoples ruled by the Aztecs.

² *Criollo* and its hybrids account for only 5 to 10 percent of world cocoa production (and pure criollo is just 2 per cent). In Venezuela alone just 3 out of every 16,000 tons of cocoa is criollo cocoa.



Photo: Mercedes Martínez Dozal

the community's own cooperative, the **Empresa Campesina de Chuao**. The cooperative comprises around 100 farmers who tend the trees and harvest, dry, and ferment the delicate beans, carefully manufacturing cocoa paste and cocoa nuggets entirely by hand – with no artificial additives or flavorings.

In order to protect this considerable national asset, an application (No. 00-14373) for recognition of Chuao as an appellation of origin³ was filed in Venezuela on August 10, 2000 by Codet Aragua, **Empresa Campesina de Chuao y MPC Aragua**. The Declaration of Recognition was granted and published in the Official Journal of Industrial Property in November 2000. The grant protects the name Chuao and restricts its use to beans and cocoa products from that specifically defined geographical area, recognizing the influence of climatic and human factors⁴ on the quality of those products. Such an appellation of origin can be a very effective marketing tool as it denotes the unique character of the product, is a guarantee of quality and enhances consumer recognition – all important elements in the growing area of niche marketing and branding.

So attractive is the plantation's history and the quality of its product as well as the IP protection it now has to ensure it, that the **Campesina** has been able to negotiate a price for its products that is considerably higher than that which it was previously receiving. The strong interest in Chuao has reportedly allowed the **Campesina** to work out an agreement with a chocolate company in which it would not only benefit from increased earnings but its debts would be taken over and the company would also send one of its agronomists to work with the Chuao farmers to help increase productivity.

Recognition of the market potential of the special characteristics associated with the Chuao plantation and obtaining IP protection to safeguard their product has enabled the area's farmers to increase their income substantially. It has also brought an influx of additional know-how as well as foreign direct investment to the plantation, contributing to further wealth creation.

Chocolate has been compared to fine wine – with the physical context of its cultivation or *terroir* and handling of beans considered of prime importance. Experts say that many other small, little-known plantations could contain excellent genetic varieties of cocoa with prized aromatic characteristics impossible to find in more common varieties. As with wine – and olive oil – the characteristics of the product that stem from factors linked to its spe-

cific geographical location can be a powerful selling point. For example, it has been estimated that Italian **Toscana** oil has sold at a premium of 20 percent since it was protected as a geographical indication in 1998.

In Search of the Perfect Cup

Another example of IP providing not only product protection but also product enhancement in a niche marketing context can be found in Jamaica. The island's famous Blue Mountain coffee has a worldwide reputation and sells at a premium on the international market. Its reputation has been achieved through sustained activity to ensure its quality and guarantee its provenance. (For a broad overview of how IP is increasingly being used in the global coffee market, please see p. 6.)

The specific area in which coffee defined as "Blue Mountain" can be grown and how and where it is "processed or manufactured" is defined in regulations made under the Coffee Industry Regulation Act. The Blue Mountain area is special because of its altitude – its highest peak is 2,250 meters. It also has a perfect microclimate and soil structure for coffee, which was introduced to the island in 1728. The plants flourish there and give beans with an intense flavor and aroma, delicate acid balance and sweetness and good body. The beans are hand picked and hand selected.

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³ An appellation of origin is a specific form of IP right that is part of the broader, more encompassing concept of geographical indications, a term defined in the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as "indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin."

⁴ Among the ancestral techniques used by the farmers in Chuao are ingeniously improvised dams and irrigation systems constructed with banana leaves.

Already in 1944, the need for quality control was recognized and a Central Coffee Clearing House was set up where all coffee for export had to be delivered, cleaned, and graded. In 1950, the Coffee Industry Board (CIB) was established "to maintain and standardize the quality and consistency..." of exported coffee. The coffee cooperatives, through the Jamaica Agricultural Society (JAS) Coffee Growers Federation, have three members on the CIB Board. The CIB provides cooperative members with marketing arrangements, credit facilities and technical support, and issues a certificate guaranteeing the quality of coffee that conforms to its standards and specifications (certificate of authenticity). It is the only certifying agency for all Jamaican coffee and recognizes and licenses five "roasting" companies and twelve companies that grow/export coffee.

A CIB certificate of authenticity always accompanies true Jamaican coffee. In order to be able to use the Board's logo it must have passed all the necessary quality controls.

The CIB processes and commercializes the three types of coffees produced on the island: Jamaica Blue Mountain; Jamaica High Mountain Supreme; and Jamaica Prime. In addition to the trademarks used to protect the IP in this area, "Jamaica Blue Mountain Coffee" is registered with the United States Patent and Trademark Office as a certification mark (Registration Number 1,414,598). *(See box below)*

Jamaica is very active in putting in place ways to protect its national brands. The Protection of Geographical Indications Bill – which will protect names linked with a geographical origin of particular

goods – has been sent to Parliament for its approval. Mr. Burchell Whiteman, Minister of Information, said that "Jamaica is a brand in many areas. The intention is to ensure that we do not lose in the future and...detract from our potential to

A certification mark, under US law, is a special type of mark that may be used to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of goods or services or that the work or labor on the goods or services was performed by members of a union or other organization. For example, the US registration cited above bears the following statement: "The certification mark, as used by persons authorized by the certifier, certifies that the coffee in respect of which the mark is used is grown in the Blue Mountain area of Jamaica by a person registered to grow coffee in that area pursuant to the coffee industry regulations of 1953 of Jamaica; processed or manufactured at a coffee works to which a license has been granted pursuant to the coffee industry regulations 1953 of Jamaica; and in respect of which a certificate has been issued by or on behalf of the international coffee organization."



A flowering agave



The agave cactus

earn..." He noted that the country had missed out on millions of dollars in lost revenues from its IP rights in music and other art forms.⁵

Liquid Gold from the Agave

With its successful promotion and rigorous protection of Tequila, Mexico has shown skilful use of IP for wealth creation. Tequila became the country's first appellation of origin in 1977 and in 1978 was registered for protection under the WIPO Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

The appellation defines the area in central Mexico in which Tequila can be produced and which is home to the blue agave from which it is derived. It is linked to the Mexican Official Standard for Tequila, which sets out product specifications and includes testing methods; quality control; and labeling information.

Tequila is distilled from the fermented juices obtained from the hearts of blue agave plants and gets its name from the town of Tequila where production started more than 200 years ago. The Agave can live up to 15 years and a mature specimen is an impressive sight, being up to 12 feet in diameter, with leaves up to 8 feet tall – a powerful marketing image.

Through IP protection, quality control and creative marketing, Tequila has undergone a transformation – from a regional drink of the people to a world-famous, sophisticated beverage, associated with a famous cocktail. It is now being produced in an ever-widening range as product diversification aims at satisfying different tastes (for example, Tequila made with 100 percent agave sugar and of different strengths and colors). The development of the product has also included a design element with an increasingly creative range of bottles and packaging.

The Tequila Governing Council verifies compliance with the Official Mexican Standard and works with the National Chamber of the Tequila Industry to develop the industry, helping to protect its image and taking action against "pseudo-tequilas" and counterfeit products.

Recognizing the value of the traditions and culture linked to Tequila – and the need to protect these – while maintaining quality and commercializing the product, has resulted in Tequila becoming a major component in the country's range of products protected by geographical indications. These products have been called Mexico's "regional contribution from the past to the globalized world of the future."

Mexico is now applying the "Tequila magic" to the different (but related) drink of mescal. Production and marketing is being revolutionized

and a law passed in 1994 now protects the name, which can be applied only to products made from the approved plants – five different varieties of agave including some wild varieties grown without pesticides. Only six counties can legally manufacture mescal.

Conclusion

The above examples illustrate the benefits to be reaped from recognizing the increasing demands from certain consumer sectors for goods "with a soul"; products with attributes such as a colorful history, quality control that inspires confidence, or characteristics that cannot be found elsewhere. These give added value – "making commodities into specialties." Intellectual property tools, such as appellations of origin, geographical indications, certification marks, or a combination of these, are able to leverage and protect such assets by creating exclusive rights to and legal security for differentiation. In addition, they help increase the value of local products and, hence, the local economy (including enhanced employment) as well as boosting small producers and small and medium-sized enterprises (SMEs) and, often, promoting local traditions, craftsmanship and culture.



⁵ Jamaica Information Service: Wednesday, November 19, 2003.

COFFEE EXPORTS, PRODUCT DIFFERENTIATION AND BRANDING

This article is one of an occasional series of articles in the WIPO Magazine demonstrating how intellectual property (IP) can be used to stimulate economic development, particularly in developing countries. The current article highlights the use of the intellectual property system in the coffee industry.

Coffee is a widely traded commodity in the world with a market valued at US\$ 50 billion a year. Trade liberalization in many coffee-producing countries and the emergence of new production centers have led to a surplus coffee supply that is approximately eight percent above demand. This, in turn, has generated a severe drop in prices.

An estimated 20 million people – located mainly in developing countries – are involved in the growing of coffee beans. Market statistics show that most growers are currently getting rock bottom prices that barely cover production costs for their coffee. However, some growers have attracted premium prices for their high-quality specialty coffee beans.



How have they done so? By developing specialties and exploring niche markets, they have managed to avoid the mass-market trap. By using the trademark system, particularly collective and certification marks, as well as geographical indications, these growers have found a means of marketing and branding their high quality product and attracting premium prices.

A survey of the North American specialty coffee industry published in July 2001 states that specialty coffee “is the only segment of the coffee industry that has shown consistent and notable growth.”¹ Consumers are increasingly turning to specialty coffees, and are paying premium prices for these. The coffee market is saturated with conventional beans; therefore the price differential between those beans and the exotic specialty beans is very high. Thus coffee-producing nations can differentiate their product by becoming competitive in the promising niche for high-quality exotic specialty coffees. Coffee producers can ben-

efit from the higher returns offered in this expanding niche market, particularly through market and brand development.

Branding

A brand distinguishes a product or company from its competitors. The brand value reflects how a product's name, or company name, is perceived in the marketplace. To be legally protected, brands are usually registered as trademarks with a registration authority such as a national IP office. A trademark owner can prevent others from using the protected trademark.

In many countries the technology support for production and processing of specialty coffee is limited and expensive, therefore many producers work together in cooperatives. Building recognition and consumer loyalty for a coffee brand can be a difficult task for small-scale enterprises such as those run by coffee growers, given the cost of mass-media advertising and marketing. Hence, there has been an increasing tendency among coffee-producers to group together by region or country to establish their own brands of coffee and export under a common coffee label. **Collective marks** or **certification marks** are often used for this purpose.

¹ Sustainable Coffee Survey of the North American Specialty Coffee Industry, July 2001, Daniele Giovannucci.

Collective marks can indicate the geographical origin, material, mode of manufacture or other common characteristics of goods or services of the different enterprises using them. The owner may be either an association of which those enterprises are members or any other entity, including a public institution or a cooperative. **Certification marks** are granted for indicate compliance with defined standards and may be used by anyone whose products meet those standards. An association of coffee growers may could register a **collective mark** in order to jointly market their coffee and enhance product recognition or use a **certification mark** in order to market its coffee, to enhance product recognition and to certify that their coffee complies with a pre-established set of standards.

In particular, **certification marks** are often used to identify standards for specialty coffees such as:

- ▶ **organic:** coffee produced using methods that preserve the soil and prohibit the use of synthetic chemicals;
- ▶ **fair trade:** coffee purchased at a guaranteed minimum contract price directly from cooperatives; and
- ▶ **shade,** grown in shaded forest settings considered good for biodiversity.

The North American Survey mentioned earlier shows that these three specialty coffees consistently attract premium prices and that over 80 per-

cent of the businesses surveyed felt that certification was somewhat (44.5 percent) or very (37.6 percent) important to their business. Coffee vendors considered certification important for at least three reasons: to provide credibility and consistency of characteristics, to capture demand and price incentives of niche markets and to incite participants toward multiple objectives – commerce, conservation and social justice – by linking economic success to monitored certification principles.

One of the main goals of **fair trade** is to assist coffee growers to compete in the international markets. In 1996, **Union de Ejidos de la Selva**, the Union of Indigenous Communities of the Isthmus Region (UCIRI) in Mexico and Ucraprobex in El Salvador took steps in this direction: they launched their own brand of coffee. They roast, then sell the coffee in their own packaging. Coo cafe in Costa Rica initiated the trend a few years earlier and successfully penetrated the American market with its own brand of fair trade coffee. (For further information see www.eftafairtrade.org.)

In cases where the country, region or locality of origin is closely associated with the quality of the product being sold, a brand name that emphasizes the origin is essential. **Collective marks** are often used for this purpose. Examples at the international level² include, Café de Colombia, Java of Indonesia, Kona of Hawaii or Antigua of Guatemala. Many of these brands are in great demand as specialty coffees.

Geographical Indications

Geographical indications can also be used as marketing tools in the coffee industry. This particular type of indicator identifies goods as originating in a specific region, which is essential for a given quality, reputation or other characteristic of the good. Geographical indications are widely used for the promotion of agricultural products. This is because the quality of agricultural products typically depends on the area of their production. Specific natural and climatic factors may be the reason for individual product properties which, in turn, may be recognized in the market place.

A geographical indication could be used for coffees that have a specific quality that is exclusive to or essentially due to the geographical environment in which the products are produced. For example, Galapagos coffee has many factors that make it suitable as a geographical indication and prime niche market product:

- ▶ the coffee trees are a unique and robust variety of an antique Bourbon coffee planted over a hundred years ago;
- ▶ the legislation of the Galapagos islands prohibits the use of chemicals and other pesticides (ensured by regular inspections by the Organic Crop Improvement Association (O.C.I.A.);

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² www.sweetmarias.com/articles.shtml ("Sweet Maria's Coffee Cupping Reviews" provides information on the world most famous coffees mentioned in the present document).



- total production is limited by local regulations to some 6,000 bags per year to preserve the quality of the volcanic soil; and
- the existence of a favorable microclimate and unique ecosystem.

All these attractive features are marketable characteristics that are internationally promoted by Procafé, a subsidiary of EXPIGO, the producer and exporter of Galapagos coffee. Product quality, scarcity and uniqueness place Ecuador among the world's finest coffee growers.

In this regard, Jamaica is expected to have a Geographical Indications law in place by the end of March 2004. The Bill was passed in the Lower House of the Parliament on Tuesday, January 13, 2004, and will shortly be placed before the Upper House.

Jamaican coffee commands a high price and is in great demand around the world. It has *succeeded in establishing a reputation for consistent high quality*. (For more information on Jamaican Blue Mountain coffee see page 3)

Marketing and Brand Development

The success of all of the coffees mentioned in this article can be attributed to the existence of an active marketing plan that coordinates the promotion of specific brands from specific regions. To attract consumers, a brand – trademark – or geographic indication has to be developed and advertised. A recognizable image and reputation has to be created for the coffee or country. Entire countries are often promoted as high-quality coffee producers.

The National Federation of Coffee Growers of Colombia (*Federación Nacional de Cafeteros de Colombia*), which is entirely owned by over 500,000 Colombian coffee growers, has successfully promoted Colombia as a country for high-quality coffee. As a direct result of the National Federation's work Colombia coffee sells at a significant price premium on today's international coffee market. Colombian growers spend over US\$15 million a year promoting the country as a high-quality coffee producer in educational campaigns, television commercials, advertising campaigns, logo protection and by licensing. The successive promotional campaigns are intended to inform consumers that Colombian beans are grown and picked by dedicated workers, with little or no help from machines and are grown in excellent climatic conditions on rich volcanic soil.

The Juan Valdez logo, representing the Colombian *cafetero*, was first introduced on the market in September 1981. Its purpose is to identify and serve as a seal of guarantee for brands that consist of 100 percent





Results of survey of North American coffee retailers and importers on origin of the specialty coffees they purchase

Countries of origin for sustainable coffee			
	Organic	Fair Trade	Shade
Mexico	38.4%	27.2%	27.8%
Central America	58.0	53.0	59.4
Costa Rica	31.4	30.4	32.0
El Salvador	8.1	8.3	8.7
Guatemala	41.1	33.7	39.6
Nicaragua	14.4	13.9	16.4
Other Central America	3.3	3.7	5.7
South America	49.5	45.1	37.4
Brazil	10.8	14.1	8.0
Colombia	22.2	27.2	20.7
Peru	29.3	17.4	16.4
Other South America	4.1	4.3	3.3
Asia	25.4	15.8	15.9
Indonesia	24.0	15.4	14.7
Other Asia	1.9	.7	1.6
Africa	7.4	11.7	7.4
Other countries	6.2	5.7	4.5
Don't know/no answer	8.5	16.3	12.5

Source: Giovannucci, Daniele. 2001. *Sustainable Coffee Survey of the North American Specialty Coffee Industry*. Montreal, Canada: Commission for Environmental Cooperation and Long Beach, Calif.: Specialty Coffee Association of America.

ties, so that consumers are not deceived and the reputation for quality of a product is protected. Producers can suffer significant monetary losses because of the business lost due to a tarnished reputation (for information on enforcing IP rights against infringement see article page 10). This is particularly important in countries where goods bearing a geographical indication represent a substantial share of exports. WIPO's Standing Committee on the Law of Trademarks, Industrial Designs and Geographical indications explores new ways of enhancing the international protection.



Colombian coffee as approved by the National Federation. In 1965 the National Federation registered the Juan Valdez brand, which is used in Austria, France, Germany, Italy and Switzerland, in the international trademark registry of WIPO.

Valuable Tools

An appropriate exploitation and promotion of a developing country's natural and agricultural resources can serve as a determinant factor of economic development and foreign

direct investment. In this regard, a growing number of countries are recognizing that geographical indications, like trademarks, are valuable as marketing tools in the global economy. As Mr. Peter Van Ham from the Netherlands Institute of International Relations in The Hague wrote in an article "to stand out in the crowd, assertive branding is essential."³

Trademarks and geographical indications need adequate protection from unauthorized use by third par-

³ Peter Van Ham "The Rise of the Brand State-The Postmodern Politics of Image and Reputation", *Foreign Affairs*, Volume 80 No.5, September/October 2001.

DEALING WITH VIOLATORS OF INTELLECTUAL PROPERTY RIGHTS

Planning is the Key

Most successful businesses have a well-planned strategy for dealing with every contingency that can be reasonably foreseen. This is also true when it comes to safeguarding the intellectual property (IP) assets of a business. Having invested effort and expense to protect its brands, designs, trade secrets, inventions, and/or original creations, a smart business exercises due vigilance to determine whether competitors are free-riding on its valuable IP assets - that is, using them without seeking prior permission. This practice is called *infringement* of IP rights.

The first challenge to the business is to identify the nature and extent of the infringement of its IP rights. The next challenge is to identify and locate the infringers, their workplace, possible collaborators, and channels of distribution. All this may be particularly daunting as clever infringers often go to extreme lengths to cover their tracks; they often reach their target markets through an elaborate distribution chain, which may or may not crisscross with the normal channels of distribution of legitimately produced and distributed products.

Having identified the nature, source and extent of infringement, a business has to take stock of the situation to determine its likely implications for the business. The issue is

not simply one of lost income or a loss of market share by the siphoning away of sales, but also of tarnishing or losing one's image, credibility or reputation.

In many respects, the value of owning IP assets is directly related to the ability of the owner to enforce the property rights attached to such IP assets, i.e. the ability to take action against the infringer. IP rights that are blatantly infringed and cannot be enforced are worthless. Therefore, ***it is far more important for a business to prevent or limit the incidence of infringement than seek to deal with it later on when it becomes more complex and costly, and the outcome of the enforcement efforts become more uncertain.*** The ability to prevent and deal consistently with infringement of IP rights should be an important element of the IP strategy of an enterprise. If an enterprise is not prepared to devote attention and resources to prevent or deal with infringement, then it may be leaving too much to chance and good luck.

Despite the best efforts of a company, it may still find that a competitor is imitating, copying or otherwise infringing on its IP rights. If this happens then such an aggrieved company does not have to necessarily rush straight to court in order to defend its IP rights. On most occasions, alternative solutions may be more appropriate to deal with an infringement, as explained below.

This article gives some guidelines for enterprises in order to be better prepared against infringements of their IP rights.

Preventing Infringement

An enterprise may be able to avoid a lot of trouble by taking ***proactive steps to limit the incidence of infringement.*** For example, enterprises can use software access codes or passwords to limit the theft of trade secrets (see WIPO Magazine April/2002). They can use proper trademark, copyright, design or patent notices on products to deter potential counterfeiters. Enterprises should also make sure that their employees and anyone dealing with marketing, product development, research and development (R&D) and production be aware of the IP rights related to the products and services of the business.

Developing an IP Infringement Strategy

There are many ways to deal with infringement, however they all demand that the aggrieved company do a strategic assessment of the strength and value of its IP assets, analyze the different possible scenarios and courses of action, and carefully weigh the pros and cons of all the possible options and solutions, including converting an infringer into a business partner or a licensee of IP rights. Often a swift response is needed against the in-

fringement of IP rights; enterprises with a clearly articulated and coherent strategy to deal with infringement are better prepared to respond to the challenge.

First Steps once an Infringement is Noticed

Before deciding how to react, an enterprise should obtain enough relevant information to do a cost-benefit analysis of the possible options. It should:

- ▶ identify who is infringing; this includes the manufacturers and main distributors, and not merely the retailers;
- ▶ determine the extent of the problem;
- ▶ consider whether the problem is likely to increase; and
- ▶ calculate, if possible, how much direct or indirect loss the company has suffered or will suffer if not dealt with.

Once the facts are reasonably clear, the company should weigh the costs and benefits of its response.

Possible Responses to an Infringement

In some cases, it may be preferable to ***wait and watch*** and, therefore, ***tolerate the infringement for the time being***. For instance, if the loss of income, sales or profits so far appears to be negligible, is not likely to be-

come larger, and the perceived threat to the reputation of the company is insignificant, then it may be wiser to "accept" the violation of the IP rights rather than incur heavy expenses to defend those rights. Conversely, if the scale of violation is significant, then the company must identify and deal with those responsible expeditiously and methodically.

It is obvious that dealing with these kinds of situations requires a careful weighing of the pros and cons of the different alternatives. The company



will also have to assess the chances of winning the case in a court of law, the amount of compensation and damages that it can reasonably expect to get from the infringing party as well as the likelihood and extent of reimbursement of attorney's fees, in case the final decision is in its favor. Another thing to consider is the positive or negative impact of the publicity that may result from court proceedings.

If the dispute is with a company with which there is a signed contract (e.g. a licensing agreement), then first check whether there is an ***arbitration or mediation*** clause in the contract. It is advisable to include a special provision in contracts for the dispute to be referred to arbitration or mediation in order to avoid expensive litigation costs. On occasions it may be possible to use alternative dispute resolution systems such as arbitration or mediation even if there is no clause in the contract or no contract altogether as long as both parties agree

to it. (More information on arbitration and mediation can be found at arbitrator.wipo.int/center/index.html) If a company finds that someone is infringing its IP rights, then it may consider sending a letter (commonly known as a "***cease and desist letter***") to the alleged infringer informing him of the possible existence of

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a conflict between the company's IP rights and his business activity (identifying the exact area of conflict) and suggesting that a possible solution to the problem be discussed. This procedure is often effective in the case of non-intentional infringement since the infringer will in most such cases either discontinue such activities or agree to *negotiate a licensing agreement*.

Sometimes surprise is the best tactic. In some cases, giving the infringer notice of a claim gives time to hide or destroy evidence. In these circumstances, it might be appropriate to go to court without giving notice to the infringer and to ask for an *"interim injunction"* in order to surprise the infringer by a raid, often with the help of the police, at his business premises. The court may order that the alleged infringers stop their infringing action pending the outcome of a trial (which may take many months or years). Most importantly, the raid enables collection and preservation of relevant evidence concerning the alleged infringement. Furthermore, the infringer may be compelled to identify any third persons involved in the production and distribution of the infringing goods or services and their channels of distribution. As a deterrent to further infringement, the court may also order, upon request, that infringing goods be destroyed, disposed of outside the channels of commerce without compensation of any sort, or preserved at the expense of the alleged infringer.

CASE STUDY ***The Anywayup® Cup***

Mrs. Mandy Haberman, inspired by a friend's child spilling blackcurrant juice over a cream colored carpet, decided to design a leak-proof cup that seals between sips. She created the Anywayup® cup and filed for a first patent (GB-B-2266045) in 1992. The patent protected her idea that uses a slit valve to control the flow of liquid through the spout of the trainer cup. Additional patents, both for the United Kingdom (U.K.) and abroad, were later filed and granted.



Prototypes of the innovative product were offered for licensing to 18 companies that were manufacturing products for infants. Although their response was enthusiastic, no license was issued. Finally, in 1996, Mrs. Haberman decided to join forces with a Cardiff-based marketing company that specializes in marketing innovative products. As a result, the Anywayup® cup started to sell in unprecedented numbers - a rate of 60,000 a week. Shortly afterwards, a company in the United States of America signed an exclusive licensing agreement to manufacture and sell the product under the Tumble Mates® brand in its home market.

As is often the case, the Anywayup® cup became a victim of its own success. In 1998, just two and a half years after the product was launched, Mrs. Haberman discovered that one of the U.K. companies she had initially approached for licensing was making a very similar product to the Anywayup® cup. Mrs. Haberman decided to sue the other company and won the legal battle. The court ordered an injunction preventing any further infringement of the patent. The infringer appealed, but abandoned its appeal shortly thereafter as an out-of-court settlement was reached.

Today, Mrs. Haberman is a successful entrepreneur with over ten million of her Anywayup® cups sold worldwide each year through licenses.



Finally, there will be cases where the company may decide to initiate **civil proceedings**. Bringing legal proceedings against the infringer will only be advisable if (a) the company can prove the existence and ownership of the IP rights; (b) it can prove there is an infringement of its rights; and (c) the value of succeeding in the infringement action outweighs the costs of the proceedings. The courts generally provide a wide range of civil remedies to compensate aggrieved owners of IP rights. These include damages, injunctions, orders to account for profits, and orders to deliver up infringing goods to the IP right holders. The IP law may also contain provisions that impose **criminal liability** for making or commercially dealing with infringing objects. The penalties for infringement may be a fine or even imprisonment.

It is also important to know that many countries have implemented **border enforcement measures** in ac-

cordance with their obligations under the World Trade Organization (WTO) Agreements. In most cases, a company can request the assistance of customs authorities by lodging notices, generally on payment of a prescribed fee, of their registered trademarks and goods subject to copyright protection. When a notice has been lodged, the customs authorities are able to detain unauthorized copies of trademarked goods or goods subject to copyright protection.

In situations where there is an alleged infringement or a dispute, it is advisable for a company to seek legal counsel from a competent IP professional to more accurately assess the most favorable option before taking any formal action, at the lowest possible cost. Furthermore, in some countries, there are industry associations that assist their members in enforcing their IP rights (see www.bsa.org or www.riaa.com/index.cfm).

Conclusion

More and more businesses today are focusing on exports. There is also greater use of e-commerce and more reliance on digitized products and services. This brings new and more daunting challenges in identifying and dealing with infringement of IP rights as the modalities of the infringers have become internationalized, sophisticated and diversified. A key challenge for enterprises is to **devise strategies to take adequate measures to prevent infringement of their IP rights, for early detection of any infringements that could not be prevented, and to be ready to judiciously respond and deal with an infringement**, in a timely and cost-effective manner which is in the best interests of the business.



For more information on various practical aspects of the IP system of interest to business and industry, please visit the website of the SMEs Division at www.wipo.int/sme/. The next article in the IP and Business series will discuss the proper use of trademarks.

LEARNING THE LESSONS OF TRADITIONAL KNOWLEDGE: BROADENING THE BASE OF INTELLECTUAL PROPERTY

This commentary concludes a series of articles on the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC). It takes stock of the IGC's work so far, reviews the debate about the interaction between intellectual property (IP) and traditional knowledge and cultures, and reflects on possible future directions for WIPO's work. The renewed mandate for the IGC brings with it the possibility of an emerging international consensus in this challenging area. Previous articles in this series have discussed background issues, and specific challenges of protecting traditional knowledge (TK) and expressions of folklore (also termed 'traditional cultural expressions' (TCEs)).

The debate about protection of TK and TCEs was perhaps destined to be a difficult one. There is much at stake: strong aspirations, political and legal issues well beyond the scope of IP, deep-rooted concerns about the appropriation and misuse of TK, apprehension about the erosion of cultural identity, and concerns that established balances in existing IP systems may be disturbed. The sweep of technical, legal and administrative issues is broad and complex.

Traditional knowledge systems and traditional cultures are inherently diverse. Maintaining this diversity in the face of globalization is a critical need voiced by indigenous and local communities. Legal systems to protect TK and TCEs are themselves diverse, and hard to lump together as a single set of detailed rules. This means that one single template for protection may not be appropriate. It is hard to see how one universal mechanism could purport to meet the needs of all traditional communities who wish to prevent the appropriation or misuse of their TK and TCEs.

There are strong calls for concerted international action and a harmonized approach. Communication, dissemination, and potential misuse of TK and TCEs transcend national boundaries – this seems to make concerted international action essential. Many take the view that only with new international law, perhaps a new treaty, would TK and TCEs be given adequate protection. Yet a top-down, prescriptive approach may be seen as inappropriate by the very traditional communities it is intended to serve. And this work has to fit within a much broader international policy context. The work of the IGC has therefore brought to light some implicit tensions:

- ▶ Is it possible to harmonize a common international conception of traditional knowledge, when diversity is its very lifeblood?

- ▶ Is the IP system fundamentally at odds with the values and interests of traditional communities, or can it operate to meet their needs?
- ▶ Is the concept of IP too narrow to accommodate the protection of TK and TCEs, as community goods?

Taking stock of the IGC

Framing these questions reveals the valuable function the IGC has served: beneath the formal debate has been a process of rethinking the very basics of the IP system, of reviewing the core principles of IP law, and of assessing how those principles have been applied (and should be applied) in the interests of the equitable protection of TK and TCEs. In response to critical concerns about the relevance and legitimacy of IP system for traditional communities, the IGC has encouraged deep reflection on the nature of IP, its objectives, its assumptions, its limitations and its boundaries. Representatives of indigenous communities have, in particular, articulated searching critiques of the IP system.

The IGC dialogue has constituted a timely process of collective review and reflection. It has deepened understanding of the needs and concerns of traditional communities, and brought their concerns to the very center of IP policymaking – an ongoing (and unfinished) process of validation and inclusion. It has



broadened the conception of the IP system and its capacity to adapt, evolve and respond to new constituencies. Where holders of TK and TCEs have themselves chosen to use IP tools, it has shown how those tools can be adjusted and recalibrated as necessary, and better applied to meet their needs.

And perhaps surprisingly the IGC has brought to light areas of convergence and common understanding that could form the basis of future consensus. The IP system has been criticized for appropriating TK and TCEs by exercising illegitimate rights, and for neglecting the interests of indigenous and local communities. These very concerns, however, are often expressed in terms that echo some of the core principles of the IP system:

- ▶ promoting equity and balance;
- ▶ reconciling private and collective interests;
- ▶ recognizing distinctive origins and the legitimate source of innovation and creativity;
- ▶ suppressing free-riding and unjust enrichment;
- ▶ defending distinctive reputations from illegitimate exploitation; and
- ▶ providing for rights of attribution and integrity.

Indigenous and local communities continue to innovate and create within their traditions, and seek recognition for their past and continuing contribution to humanity's cultural and intellectual heritage. They also call for greater respect for their customary laws. IP systems may offer partial, practical responses to

these needs, although only as one element of a broader, holistic approach. One pathway towards consensus may be to return to these basic principles, to examine them from the point of view of the needs of indigenous and local communities, and to consider how they can be better adapted and applied to meet those needs – fully realizing these principles, rather than seeing them as mere abstractions. Bridging the gap between principle and actual experience requires comprehensive action: a clearer legal framework, greater capacity to give actual effect to core principles, and the right mix of legal and practical tools that holders of TK need to identify and safeguard their interests.

Bridging the gap

Due respect alone would suggest that any action be guided by the needs and expectations voiced by traditional communities. The WIPO program began not with the IGC but with visits to over 3,000 individual stakeholders and community representatives in 60 locations around the world. Their insights and perspectives still guide WIPO's work, and help shape the work program and proposals put to the IGC. The continuing need for an enhanced role for indigenous and local communities in the work of the IGC has been stressed by the IGC itself, and by the WIPO General Assembly. As one indigenous representative put it to the IGC, 'nothing for us, without us.' There is already a better, if incom-

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plete, foundation of increased understanding and a broadening policy perspective. As this international work evolves and takes shape, the voices of TK holders and traditional communities will be of increasing importance.

Some TK holders have chosen to draw on the IP system to meet their needs, and this has illustrated some untapped potential. For example, China's Traditional Chinese Medicine Patent Database contains thousands of patented traditional medicine innovations. Traditional creators have benefited from copyright and design protection, and collective copyright management systems are applied to indigenous artworks. The WIPO Performances and Phonograms Treaty (WPPT) protects the performances of expressions of folklore, potentially giving traditional performers control over songs, chants and recitations that are the customary means of transmitting and preserving cultural heritage. Geographical indications and collective or certification marks protect distinctive reputations associated with a traditional process or culture. Roquefort cheese, a true product of TK, enjoys widespread IP protection through a reputation built on traditional know-how. In Mexico, the 'Arte Seri' trademark protects the innovative ironwood handicrafts of the Seri people and the 'Olinalá' appellation protects traditional wooden artifacts crafted from endemic biological resources.



Recognition of TK holders' concerns has also sparked evolution in the mainstream of IP policy: provisions to protect morality and public order are an avenue to remedy offence to indigenous communities; courts have acknowledged collective ownership and equitable interests in IP and weigh indigenous law in assessing damages; falsely passing off products as authentically indigenous has been made a specific offence; TK and customary law have been recognized through contract, the law of confidentiality and in IP ownership and enforcement issues; and contracts for access to genetic resources can require respect and recognition for TK. The IGC initiated practical steps to improve recognition of TK when patent applications are assessed – the International Patent Classification and Patent Cooperation Treaty documentation are evolving to take explicit account of TK.

Continuing attention to such practical experience helps link the policy debate to the kind of workable, real-world mechanisms that can actually be used by indigenous and local communities. Case studies and surveys of actual experiences are therefore useful for policymakers, legislators, administrators and legal representatives of traditional communities.

This work also includes: ongoing legislative assistance and capacity building; studies on technical issues such as the relationship between IP and customary law; patent disclosure obligations relevant to TK and genetic resources; guides and model contracts for cultural heritage archives and institutions; and guidelines for licensing genetic resources. For protection of TCEs, a practical guide will draw together previous experiences in the form of best practices and guidelines as a resource for traditional communities, policymakers, legislators and other stakeholders.

A Forward Look

The WIPO Assembly urged the IGC to accelerate its work and to address directly the international dimension. This poses the challenge of building on the IGC's existing achievements to reach concrete, tangible outcomes that offer real prospects for greater recognition and protection of TK and TCEs. Many participants perceive a major gap in current IP law, and argue for new rights to pro-

protect TK and TCEs, instead of relying on conventional IP rights. A number of countries have introduced such laws, and this is a diverse and dynamic area of IP norm building. The IGC has analyzed many of these *sui generis* approaches, to reach a better understanding of the policy and legal options that have been used. While the needs and options are diverse, a number of national and regional representatives call for a new body of binding international law to protect TK and TCEs.

The IGC's updated mandate excludes no outcome, but doesn't provide for any specific result. Various suggestions include:

- ▶ a draft treaty or treaties, or protocols or subsidiary agreements under existing treaties;
- ▶ 'soft-law' outcomes like guidelines, recommendations or model laws, to promote convergence and compatibility between current national and regional initiatives; and
- ▶ a declaration of core principles and commitment to enhanced protection of TK and TCEs, building capacity to support TK holders, and coordinating national and regional initiatives.

Debate has focussed on the form and legal status, rather than the substance of any IGC outcome. There is a working consensus on substance, barely acknowledged, implicit in the IGC's work: acceptance that TK and TCEs merit effective and

appropriate protection for the benefit of traditional communities; respect for the cultural, customary and spiritual concerns that are integral to TK and TCEs; recognition that communities need a greater say in the way their TK and TCEs are used and an equitable share of any benefits; and support for international efforts to coordinate national and regional initiatives. Such shared interests and common purposes may become more apparent as the IGC focuses on substantive policy and legal options, and works towards a stronger international framework for



TK and TCE protection – an approach that clearly respects and values the TK and TCEs, and is flexible and accommodating enough to respond to the diverse and evolving needs of the holders of TK and TCEs.

Finding Common Ground

The IGC needs to respect the very diversity of TK and TCEs, different legal approaches already taken at the national and regional levels, and existing international law concerning biodiversity, genetic resources and cultural heritage. One way forward could be to frame the core principles that should underpin the

protection of TK and TCEs. This could facilitate further development of an international consensus on the more detailed aspects of protection, as the lessons of practical experience in achieving these principles are better understood and shared. It could help build a bridge between the needs and interests of traditional communities, and the key principles of the IP system. There may be more compatibility at the level of basic principle than is apparent from the minutiae of detailed laws and regulations.

Legal and policy evolution is still fast-moving in this area, and will benefit from practical understanding about how best to put broad principles into practice in a meaningful way. A statement of core principles could put international cooperation on a clearer, more solid footing, but also clarify what details should remain the province of domestic law and policy. It could build common ground, and promote consistency and harmony between national laws, without imposing a single, detailed legislative template. A significant step forward in itself, it could pave the way for future cooperation.



PAC ENDORSES USE OF INTELLECTUAL PROPERTY AS A TOOL FOR DEVELOPMENT



The Policy Advisory Commission

A number of present and former Heads of State and government, joined by other eminent persons, endorsed on November 14 the vision of WIPO Director General Kamil Idris to use intellectual property (IP) as a tool for development. Meeting in Sinaia, Romania, at the invitation of President Ion Iliescu, the members of WIPO's Policy Advisory Commission (PAC) discussed the importance of cultural industries to national economies and the strategic exploitation of IP for development.

The meeting focused on two papers presented by PAC members. Mr. Bruce Lehman presented a paper on the management of cultural assets and Mr. Hisamitsu Arai introduced a study on the steps that Japan has taken to develop innovative strategies for the creation, protection and exploitation of IP.

Mr. Lehman stressed the importance of the creative industries as a source of national wealth in the information-based global economy. He explained that, provided an effective legislative and administrative environment exists, such industries can lead to international competitive advantage. In this regard, Mr. Lehman referred to the experience of the United States of America where in 2001, core copyright industries contributed an estimated US\$ 535.1 billion to the economy, accounting for approximately 5.24 percent of GDP. Copyright-based industries contributed more to the U.S. economy and employed more workers than any other single industrial sector, he pointed out.

Mr. Lehman noted that copyright-based industries are flourishing not just in the United States, but also around the world. He said that in order to capture the full economic

value of these industries for local development, developing countries and countries in transition need to establish appropriate IP infrastructures and enforcement mechanisms. Such measures would ensure that a country's cultural assets realize their full economic potential. In this regard, Mr. Lehman underlined that a major task for national authorities in the future is to educate the public, particularly children and students, about the relationship between authors' rights and a robust culture and healthy economy. He pointed to WIPO's role, as a respected international institution with global reach, in facilitating this educational process.

Mr. Arai emphasized the importance of innovation in the knowledge-based economy and discussed the IP experiences of both Japan and the United States to illustrate the importance of developing and implementing a national IP strategy to revitalize and achieve long-term national economic growth. He explained the Japanese Government's commitment to making Japan "an intellectual property-based nation" and outlined its policies for "achieving a dynamic economy and vigorous society through the strategic creation, protection and exploitation of intellectual property." Mr. Arai accentuated the need to promote the creation of high-quality IP in the research and development sector and the contents businesses and to obtain prompt legal protection to maximize the added value in the indus-

try and establish an intellectual creation cycle. Such measures, he said, would make it possible to revitalize the manufacturing sector, restore its competitiveness, strengthen technical capability and create new job opportunities. Mr. Arai also underlined the importance of developing a national IP culture, saying broad-based policy approaches are necessary so that everyone is able to enjoy the benefits of IP.

The PAC, a purely advisory body to the Director General, was established in 1999 and has been instrumental in raising awareness among policymakers and the public at large of the role and importance of IP as a tool for economic development, wealth creation, social progress and cultural enrichment. This message is captured in the World Intellectual Property Declaration (see *WIPO Magazine* November/December 2000) issued by the PAC in September 2000, which was designed to send a strong message about the universal value of intellectual property.



Policy Advisory Commission - LIST OF MEMBERS

- Mr. Fayza Aboulnaga, Minister of State for Foreign Affairs, Arab Republic of Egypt
 Mr. Jorge Amigo Castañeda, Director General, Mexican Industrial Property Institute, Mexico*
- Mr. Hisamitsu Arai, Secretary-General, Secretariat of the Intellectual Property Strategy Headquarters, Cabinet Secretariat, Japan
 Mrs. Alison Brimelow, Chief Executive of Patents, Designs and Trade Marks, The Patent Office, United Kingdom of Great Britain and Northern Ireland
 Mr. Guido De Marco, President of the Republic of Malta
 Mr. Mayer Gabay, President, United Nations Administrative Tribunal, and Chairman, Patent and Copyright Laws Revision Committees, Ministry of Justice, Israel
- Mr. Abdelbaki Hermassi, Minister for Culture, Tunisia
 Mr. Ion Iliescu, President of Romania
 Mr. Lakshman Kadirgamar, President's Counsel, Member of Parliament and former Minister for Foreign Affairs, Democratic Socialist Republic of Sri Lanka
 Mr. Bernard Kessedjian, Ambassador and Permanent Representative of France, Permanent Mission of France in Geneva
 Mr. Alexander Korchagin, Director General, Russian Agency for Patents and Trademarks (Rospatent)
 Mr. Bruce Lehman, President, International Intellectual Property Institute, and former Assistant Secretary for Commerce and Commissioner of Patents and Trademarks, United States of America
 Mr. Petru Lucinschi, former President of the Republic of Moldova
 Mr. Sergio Marchi, Ambassador and Permanent Representative of Canada, Permanent Mission of Canada in Geneva, and former Trade Minister for Canada
 Mr. Federico Mayor, President of the Science Council, Ramon Areces Foundation, and former Director General of UNESCO*
- Dr. S. Narayan, Economic Adviser to the Prime Minister, India
 Mr. Henry Olsson, Special Government Advisor, Ministry of Justice, Sweden, and former Director of Copyright Department, WIPO
 Mr. Marino Porzio, attorney, Adviser to the Ministry of Foreign Affairs, Chile
 Mr. Fidel Ramos, former President of the Republic of the Philippines
 Mr. Ahmed Salim Salim, former Prime Minister of the United Republic of Tanzania, and former Secretary General of the Organization of African Unity
 Mr. Jorge Sampaio, President of the Portuguese Republic*
 Mr. Jacob S. Selebi, National Commissioner, South African Police Service, South Africa*
- Mr. Jian Song, Vice-Chairman of the People's Political Consultative Conference of China, and former State Councilor in charge of science and technology development, People's Republic of China
 Mr. Petar Stoyanov, former President of the Republic of Bulgaria.

(* Unable to attend November meeting of Policy Advisory Commission.)

OUTREACH TO INDUSTRY LEADERS IN LAC REGION

The WIPO Latin America and Caribbean (LAC) Industry Outreach roundtable, the first WIPO event of its kind to take place in a develop-

The objective of both events was to exchange views on relevant IP issues with key Brazilian and LAC industry representatives and with Brazilian government authorities, as well as to explore ways to re-launch the WIPO Industry Advisory Commission (IAC).

the importance of international IP protection for her company's products. She highlighted the importance of the Madrid system as a tool for developing countries in exploiting IP assets, noting the low costs and simplified procedures provided. Representatives of the confectionery and food and beverage industries (ARCOR International and Polar Enterprises Venezuela) also described their success in using the IP system to better compete in international markets.



Using IP in Business

The roundtable consisted of five sessions, covering public awareness, WIPO's cooperation activities, the role of IP in competitiveness, its value for SMEs, and the importance of public-private partnerships.

Discussions at the roundtable led to the release of a roundtable statement by participants (see box). As an outcome of the events an informal network of Latin American and Caribbean industry focal points was developed. WIPO aims to expand its outreach activities by organizing similar events through public-private sector partnerships.

WIPO Deputy Director General Rita Hayes (Center), FIESP First Vice-President Carlos Roberto Liboni (at her left) and other roundtable participants

ing country, drew some 300 entrepreneurs and key industry representatives from seven LAC countries to Sao Paulo, Brazil, on October 14 and 15. The roundtable discussions centered on the role of intellectual property (IP) in the competitive global market and the challenges of building public awareness in IP. A one-day Forum on Intellectual Property as a Tool to Support Innovation, Competitiveness and Sustainable Economic Development followed the roundtable.

In the opening session, WIPO Deputy Director General Rita Hayes stressed the need to create greater awareness of IP in all sectors of society and to reach out to the IP community at large to disseminate information on the benefits of the IP system. Several participants noted that despite WIPO's efforts, more outreach activities are needed to educate the public and, in particular, small and medium-sized enterprises (SMEs) on the benefits of IP. They stressed that other stakeholders, such as chambers of commerce and industry, legislators, and the media should be active participants.

The Federation of Industries of the State of Sao Paulo (FIESP) – the largest industry and private sector business association in the region – and the Brazilian Ministry of Development, Industry and Foreign Trade jointly organized the events with WIPO. FIESP's corporate members and associates together represent approximately 45 percent of the Brazilian GDP.

The third session highlighted the experience of various users of the IP system in the global market. Ms. Marvia Williams, Company Secretary for J. Wray and Nephew Limited (makers of Appleton Rum and other brands) of Jamaica, discussed



Statement on the Latin American and Caribbean Industry Outreach Roundtable

The World Intellectual Property Organization (WIPO), in cooperation with the Federation and Center of Industries of the State of São Paulo, Brazil (FIESP-CIESP), and the Ministry of Development, Industry and Foreign Trade of Brazil (MDIC), organized the Latin American and Caribbean Industry Outreach Roundtable on October 14 and 15, 2003 in São Paulo, Brazil. Private sector representatives from seven Latin American and Caribbean countries took part in the event, which provided a forum for sharing views on the rapidly changing field of intellectual property (IP).

Positive and constructive discussions confirmed a common understanding among participants that IP can be used as an important tool for promoting economic, technological and social development. The conferees recognized the key role played by IP in helping enterprises compete in the global marketplace, and explored ways to promote a broader awareness of the value of IP among government institutions, industry, and other stakeholders.

Discussions on how to demystify IP for its users, potential users, and beneficiaries were wide-ranging and fruitful. Participants noted the importance of WIPO's role in capacity building in promoting IP awareness, and endorsed the use of distance learning modules on developing IP assets for small and medium-sized enterprises (SMEs), as well as the use of successful case studies drawn from the region. They stressed the importance of promoting research and development activities. Participants encouraged WIPO to continue its exploration of IP aspects of traditional knowledge, folklore, and genetic resources, as well as its efforts to encourage greater awareness, development and use of geographical indications for economic growth.

Participants stressed their commitment to work on the national level to strengthen the protection of IP rights in their respective countries. Efforts would include promoting better awareness of existing international IP protection systems such as the Madrid Protocol, the Hague Agreement and the Patent Cooperation Treaty (PCT).

The roundtable participants also recognized the importance of WIPO's role in building partnerships between the public and private sectors. The need for greater financial resources, as well as the positive synergies created by these partnerships, was seen as essential in narrowing the global knowledge gap. To that end, participants suggested that a Latin American and Caribbean (LAC) working group within WIPO's Industry Advisory Committee (IAC) be formed, with the aim of increasing participation of the region's private sector in potential partnerships with WIPO and its Member States.



REVISION OF INTERNATIONAL TRADEMARK LAW TREATY

The WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), meeting in Geneva from November 10 to 14, made headway in discussions to further simplify and streamline procedures for obtaining and maintaining a mark. The meeting, which was attended by 79 Member States, 3 intergovernmental organizations and 10 non-governmental organizations, also addressed the protection of Geographical Indications (GIs) and domain names.

Trademarks

Discussions on trademarks focused on the revision of the Trademark Law Treaty (TLT). In order to keep pace with technological developments and other legislative improvements adopted in the framework of the Patent Law Treaty (PLT), the revision of the TLT includes provisions on electronic filing of trademark applications and associated communications, relief measures when certain time limits have been missed, the establishment of an assembly, and the possibility to incorporate the provisions contained in the Joint Recommendation on Trademark Licenses.

SCT members considered the possibility of holding a Diplomatic Conference to consider the revision of the TLT in 2005 as outlined in the Program and Budget for 2004-2005. A decision on this matter is expected at the next meeting of the SCT in April

The SCT approved the proposal on communications which envisages that "any Contracting Party may choose the means of transmittal of communications." This means that the trademark office of any Contracting Party may choose whether to accept filings on paper only, by electronic means only, or both on paper and by electronic means.

It was also agreed to reduce and simplify requirements regarding the language of communications. Although the treaty mentions the principle according to which no Contracting Party may require the attestation, notarization, authentication, legalization or any other certification of any signature in a communication, offices which receive communications in more than one language may require a translation by an official translator or a representative. There is flexibility as to the actual presentation of a communication, as long as it corresponds to the contents of the relevant Model International Form provided for in the Regulations. The objective of these forms is to establish greater clarity for an applicant by outlining a list of maximum details to be supplied to the Office.

The provisions on signature accommodate recent developments such as the increasing acceptance by Offices of electronic signatures or other types of identification. Contracting Parties, however, remain free to require the original paper copy of any electronic communication transmitted to the office, within a reasonable period of time.

The SCT also approved, in large part, a provision on measures in case of failure to comply with time limits. The provision requires Contracting Parties to provide at least for one of three possible types of relief, namely extension of the time limit, continued processing or reinstatement of rights. The number of exceptions to the possibility of obtaining relief is limited, and Contracting Parties may not make demands beyond those contained in the treaty or in the regulations.

The Committee's discussions on Trademark Licenses reflected divergent opinions about whether or not to include the relevant provisions in the draft revised TLT. Many delegations and all private sector representatives, supported inclusion of the provisions contained in the Joint Recommendation on Trademark Licenses, adopted by the WIPO and Paris Assemblies in September 2000. Some delegations, however, opposed their incorporation into the draft revised TLT. The SCT decided to continue this discussion at its next session.

The SCT also noted the December 2003 deadline for replies to the questionnaire on Trademark Law and Practice. This survey will help identify issues for the further development of international trademark law, and promote the convergence of international trademark law and practice, by fostering a common approach to the examination of trademark applications. The survey's preliminary results will be presented to Member States in 2004.

Internet Domain Names

The SCT also finalized its discussion of a number of issues relating to Internet domain names, specifically in relation to the Second WIPO Internet Domain Name Process. WIPO initiated this Process in July 2001 to examine whether, in addition to trademarks, a number of other identifiers should be protected against their abusive registration as domain names. In September 2002, WIPO's Member States recommended that the scope of the Uniform Domain Name Dispute Resolution Policy (UDRP), which is currently limited to trademarks, be extended to protect the names and acronyms of international intergovernmental organizations (IGOs) and country names. WIPO has transmitted these recommendations to the Internet Corporation for Assigned Names and Numbers (ICANN) which is responsible for adopting any amendments to the UDRP. ICANN is currently in the process of considering their implementation.

WIPO Member States had, also in September 2002, identified three other issues in the area of country names where they felt further discussion was necessary in order to decide whether additional recommendations should be made to ICANN, as follows:

- ▶ **Whether protection should be extended to names by which countries are commonly known:** To date, WIPO Member States have



recommended protecting the long and short names of countries, as outlined in the United Nations Terminology Bulletin, in the six official languages of the United Nations as well as the official language(s) of the country concerned. The SCT has now decided not to recommend extending this proposed protection also to names by which countries are commonly known;

- ▶ **Whether to establish an arbitral appeal mechanism for country name disputes:** Under the current UDRP, a complainant is required, when filing the complaint, to submit to the jurisdiction of the national courts either at the registrar's principal office or at the domain name holder's address. This requirement is meant to facilitate a losing respondent's recourse to a national court of justice. Since sovereign States might find it difficult to submit to the jurisdiction of another country's courts, Member States discussed whether States should instead submit to a special *de novo* arbitration appeal procedure, i.e. a

judicial non-court procedure to decide the dispute anew. The SCT has now decided, however, not to recommend the establishment of such a mechanism.

- ▶ **Whether protection should be extended retroactively:** The September 2002 recommendations to ICANN proposed that country names be protected against future domain name registrations only and had deferred the question of retroactivity. The SCT decided, at its previous (tenth) session, not to recommend that protection of country names be extended retroactively.

Thus, with regard to country names, there is no present intention to make additional recommendations to ICANN. ICANN will be informed accordingly.

Geographical Indications

The SCT also discussed the protection of geographical indications against their abusive registration as domain names, and agreed to continue to do so at its next session.



SCCR MAKES PROGRESS ON KEY COPYRIGHT ISSUES

The WIPO Standing Committee on Copyright and Related Rights (SCCR), held in Geneva from November 3 to 5, made progress in talks to update international standards on the protection of broadcasting organizations in order to bring them in line with the realities of the digital age. The participants agreed that a consolidated text of treaty proposals would be discussed at the June 2004 meeting of the SCCR. It was also agreed that the Committee would assess any progress made and on that basis would decide, at that time, whether to recommend to the WIPO General Assembly that a diplomatic conference be organized to conclude a multilateral treaty on protection of broadcasting organizations.

The Committee also took note of a number of studies prepared by the WIPO Secretariat including one on current developments in the field of digital rights management and the WIPO Guide on Surveying the Economic Contribution of the Copyright-Based Industries.

Talks to update the intellectual property rights of broadcasters, which are currently dealt with by the 1961 Rome Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, began in earnest in 1997. The advent of radically new types of communications for radio and television programs and of content distribution over the Internet

have made it necessary to review and upgrade existing international standards. A growing signal piracy problem in many parts of the world has also generated a need to discuss the nature and scope of protection for broadcasts.

Audiovisual Performances

The meeting of the SCCR was followed by an *ad hoc* informal meeting to relaunch international discussions on outstanding issues relating to the protection of audiovisual performances. The meeting included an initial information session at which four speakers discussed their personal creative experience in performing and producing. The speakers were Ms. Melissa Gilbert (actress - USA), Mr. Richard Holmes (producer - UK), Mr. Jorge Sánchez (producer - Mexico) and Mr. Gérard Essomba (actor - Cameroon). To facilitate discussions the Secretariat also provided a number of studies which are all available online from www.wipo.int/copyright.

During the extensive debate, many participants expressed their interest in making headway on these issues. The Chairman of the WIPO General Assembly, Ambassador Bernard Kessedjian of France, who chaired the discussions, declared that informal consultations with WIPO Member States would be held in the coming months to decide on how to proceed further.



Melissa Gilbert, actress, USA



Gérard Essomba, actor, Cameroon



Richard Holmes, producer, UK



Access to Digital Content by Visually Impaired

WIPO held a meeting in conjunction with SCCR on November 3 that focused on how the visually impaired can access copyrighted materials in the online world in a legally-acceptable way. The meeting reviewed the current situation regarding the provision of copyrighted works to visually impaired people, and considered the technical, economic and legal aspects of ensuring access by the blind and partially sighted to written works in the online environment.

There are an estimated 180 million blind and partially sighted people in the world who, in order to access reading material, may be required to copy a protected work to alternate formats such as Braille, large print, talking books or sign language if the work is not commercially available in the alternate format. The copyright exceptions written into many national laws mean that such copying can be undertaken in the offline world without infringing the author's rights. The challenge today is to achieve common international approaches to exceptions to the exclusive rights of copyright holders in the online environment, to make it easier for alternative format producers to share resources and help reduce the gap between what is available to sighted people and what is available to the visually impaired.

International treaties governing copyright, such as the WIPO Copyright Treaty (WCT) which sets out the legal framework to safeguard the interests of creators in cyberspace, permit individual Member States to introduce exceptions into their copyright legislation for the benefit of groups such as the visually impaired under specific circumstances. The application of limitations and exceptions under the WCT is subject to what is known as the three-step test. In the first instance, the application of an exception or limitation only applies in certain cases, e.g. for people with disabilities; secondly, it must not affect the "normal exploitation" (i.e., it must not compete in the market place with a standard work) and thirdly, it must not unreasonably prejudice the interests of the author. In cases where the first and second steps are satisfied, but the author's interests are considered to be prejudiced, a licensing scheme would typically be established.

Conclusions

A number of governmental delegates said that WIPO should assist in advising governments on the implementation of national legislation that strikes a balance between the interests of the rights owners and those of the visually impaired people. They stressed that international cooperation is essential to the successful implementation of the relevant standards cited to facilitate access by the visually impaired to digital content. Several speakers at the meeting said that the advent of digital rights management and technological protection measures can create barriers to accessing digital content. They urged that such mechanisms should not act as an inadvertent block to accessing digital content.



NEW CONTRACTING PARTIES TO WIPO-ADMINISTERED TREATIES IN 2003

During 2003 the international community continued to recognize the importance of intellectual property (IP) rights. As in previous years this was reflected by the significant number of countries that signed on to treaties administered by WIPO. During the year some 52 instruments of accession to or ratification of treaties administered by WIPO were deposited with the Director General.

An important development during the year was the deposit by the Government of the United States of America, on August 2, of its instrument of accession to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol). Other relevant developments were the adoption by the Assemblies of certain amendments to the WIPO Convention, the Paris Convention and other WIPO-administered treaties, at their meeting in September 2003, and the entry into force of the Geneva Act of the Hague Agreement, on December 23.

A summary of the conventions and new adherences follows.

INDUSTRIAL PROPERTY

Paris Convention

The Paris Convention for the Protection of Industrial Property was concluded in 1883 and is one of the pillars of the international IP system. It applies to industrial property in the widest sense, including inventions, marks, industrial designs, utility models (a kind of "small patent" provided for by the laws of some countries), trade names (designations under which an industrial or commercial activity is carried on), geographical indications (indications of source and appellations of origin) and the repression of unfair competition.

In 2003, Namibia and Saudi Arabia (2) adhered to the Paris Convention, bringing the total number of contracting States to 166.

Patent Cooperation Treaty (PCT)

The Patent Cooperation Treaty (PCT) was concluded in 1970. The PCT makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application. Such an application may be filed by anyone who is a national or resident of a contracting State. The Treaty regulates the formal requirements with which any international application must comply.

In 2003, Botswana, Egypt, Namibia, Papua New Guinea and the Syrian Arab Republic (5) became party to the PCT, bringing the total number of contracting States to 123.

Madrid Agreement and Madrid Protocol

The Madrid system for the International Registration of Marks (the Madrid system) is governed by two treaties: the Madrid Agreement Concerning the International Registration of Marks (Madrid Agreement) and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol).

The Madrid Agreement was concluded in 1891, and the Madrid Protocol was concluded in 1989 in order to introduce certain new features into the Madrid system. Those features address the difficulties that prevent certain countries from adhering to the Madrid Agreement by rendering the system more flexible and more compatible with the domestic legislation of those countries.

In 2003, Cyprus and Iran (Islamic Republic of) (2) adhered to the Madrid Agreement, bringing the total number of contracting States to 54.

In 2003, Albania, Croatia, Cyprus, Iran (Islamic Republic of), the Republic of Korea and the United States of America (6) adhered to the Madrid Protocol, bringing the total number of contracting States to 62.

Nice Agreement

The Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks was concluded in 1957. The Nice Agreement establishes a classification of goods and services for the purposes of registering trademarks and service marks. The Classification consists of a list of classes (based on types of products and services) of which there are 34 for goods and 11 for services and an alphabetical list of the goods and services.

In 2003, Albania and Azerbaijan (2) adhered to the Nice Agreement, bringing the total number of contracting States to 72.

Locarno Agreement

The Locarno Agreement Establishing an International Classification for Industrial Designs was concluded in 1968. The Locarno Agreement establishes a classification for industrial designs, which consists of 32 classes and 223 subclasses based on different types of products. It also comprises an alphabetical list of goods with an indication of the classes and subclasses into which these goods fall. The list contains some 6,600 indications of different kinds of goods.

In 2003, Azerbaijan and the United Kingdom (2) adhered to the Locarno Agreement, bringing the total number of contracting States to 43.

Strasbourg Agreement (IPC)

The Strasbourg Agreement Concerning the International Patent Classification was concluded in 1971. The Strasbourg Agreement establishes the International Patent Classification (IPC), which divides technology into 8 sections with approximately 69,000 subdivisions. Each of these subdivisions has a symbol that is allotted by the national or regional industrial property office that publishes the patent document.

In 2003, Azerbaijan (1) adhered to the Strasbourg Agreement, bringing the total number of contracting States to 54.

Budapest Treaty

The Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure was concluded in 1977. The main feature of the Budapest Treaty is that a contracting State which allows or requires the deposit of microorganisms for the purposes of patent procedure must recognize, for such purposes, the deposit of a microorganism with any "international depositary authority," irrespective of whether such authority is on or outside the territory of the said state. This eliminates the need to deposit in each country in which protection is sought.

In 2003, Albania, Azerbaijan and Kyrgyzstan (3) adhered to the Budapest Treaty, bringing the total number of contracting States to 58.

The Hague Agreement

The system of international deposit of industrial designs is governed by the Hague Agreement Concerning the International Deposit of Industrial Designs which dates from 1925 and has been revised at various times, in particular in London (1934 Act) and the Hague (1960 Act). The Geneva Act of the Hague Agreement was adopted in Geneva on July 2, 1999, and came into effect on December 23, 2003.

In 2003, Belize, Georgia, Gabon and Kyrgyzstan (4) adhered to The Hague Act and the Complementary Act of Stockholm, bringing the total number of contracting States to 29.

The *Geneva Act of the Hague Agreement* is aimed at making the system more responsive to the needs of users and facilitating adherence by countries whose industrial design systems do not permit them to accede to the 1960 Hague Act.

In 2003, Georgia, Kyrgyzstan, Liechtenstein and Spain (4) adhered to the Geneva Act of the Hague Agreement, bringing the total number of contracting States to 11. The Act entered into force on December 23, 2003.

Patent Law Treaty (PLT)

The Patent Law Treaty was concluded in 2000. The purpose of the PLT is to harmonize and streamline formal procedures in respect of national and regional patent applica-

tions and patents. With a significant exception for the filing date requirements, the PLT provides maximum sets of requirements which the office of a contracting party may apply: the office may not lay down any other formal requirements in respect of matters dealt with by this Treaty.

In 2003, Estonia and Ukraine (2) adhered to the PLT, bringing the total number of contracting States to 7. The PLT will enter into force three months after ten instruments of ratification or accession by States have been deposited with the Director General.

COPYRIGHT AND RELATED RIGHTS

Berne Convention

The Berne Convention for the Protection of Literary and Artistic Works was concluded in 1886. The Convention sets out and defines minimum standards of protection of the economic and moral rights of authors of literary and artistic works. Similar to the Paris Convention, Berne is at the core of the WTO standards on IP and is likely to continue as a point of reference in dispute settlement in the WTO context, giving WIPO a particular significance as the organization responsible for the administration of the Convention. Subsequent treaties negotiated within the framework of Berne, such as the WCT, have also been drawn on in interpreting TRIPS provisions.

In 2003, the Democratic People's Republic of Korea, the Federated States of Micronesia and Saudi Arabia (3) adhered to the Berne Convention, bringing the total number of contracting States to 152.

Rome Convention

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, concluded in 1961, secures protection in performances of performers, phonograms of producers of phonograms and broadcasts of broadcasting organizations.

In 2003, Belarus, Kyrgyzstan, the Russian Federation, Serbia and Montenegro and Togo (5) adhered to the Rome Convention, bringing the total number of contracting States to 76.

Geneva Convention (Phonograms)

The Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms was concluded in 1971. The Geneva Convention obliges each contracting State to protect a producer of phonograms who is a national of another contracting State against the making of duplicates without the consent of the producer, against the importation of such duplicates, where the making or importation is for the purposes of distribution to the public, and against the distribution of such duplicates to the public.

In 2003, Belarus, Serbia and Montenegro and Togo (3) adhered to the Geneva Convention, bringing the total number of contracting States to 72.

WIPO Copyright Treaty (WCT)

The WIPO Copyright Treaty was concluded in 1996. It extends copyright protection to two additional subject matters: (i) computer programs and (ii) compilations of data or other material ("databases") in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations.

In 2003, Cyprus, the Former Yugoslav Republic of Macedonia, Poland, Serbia and Montenegro and Togo (5) adhered to the WCT, bringing the total number of contracting States to 44.

WIPO Performances and Phonograms Treaty (WPPT)

The WIPO Performances and Phonograms Treaty was concluded in 1996. The treaty deals with intellectual property rights of two kinds of beneficiaries: (i) performers (actors, singers, musicians, etc.), and (ii) producers of phonograms (the persons or legal entities who or which take the initiative and have the responsibility for the fixation of the sounds). They are dealt with in the same instrument because most of the rights granted by the treaty to performers are rights connected with their fixed, purely aural performances (which are the subject matter of phonograms).

In 2003, Poland, Serbia and Montenegro and Togo (3) adhered to the WPPT, bringing the total number of contracting States to 42.



Director General Holds High-Level Meetings in Geneva

WIPO Director General Kamil Idris held individual meetings at WIPO headquarters on December 11 with President Alexander Lukashenko of Belarus, President Stjepan Mesic of Croatia, President Boris Trajkovski of the Former Yugoslav Republic of Macedonia, and Vice President José Rizo Castellón of Nicaragua to discuss the strategic importance of intellectual property (IP) as a tool for economic, social and cultural development in the knowledge economy.

Belarus - The meeting with President Lukashenko took stock of existing cooperation activities between WIPO and Belarus, in particular in the context of a Memorandum of Understanding signed between the Organization and Belarus earlier in the year. WIPO has welcomed Belarus' efforts to modernize its legislative IP framework and other initiatives to ensure that the IP system is more effectively used to leverage the vast human capital of the nation to promote economic growth and development.

Croatia - President Mesic and Dr. Idris discussed the possibilities for strengthening collaboration between WIPO and Croatia and the Director General pledged the Organization's continued support to Croatia in terms of providing legal and technical as-

sistance to further strengthen Croatia's IP system. Dr. Idris said WIPO would support Croatia in its efforts to modernize its legislative and administrative IP framework and to establish an IP culture in that country. WIPO is prepared to provide assistance to Croatia in upgrading enforcement mechanisms, and strengthening the role of IP in the country's scientific, technological and economic activities. The Director General underlined the importance for transition countries like Croatia to fully integrate IP into their wider economic policies.

Former Yugoslav Republic of Macedonia - Dr. Idris told President Trajkovski that WIPO applauded the efforts by the Former Yugoslav Republic of Macedonia to upgrade its IP infrastructure, including the recent adoption of several laws relating to industrial property and copyright. Dr. Idris pledged WIPO's support to the Former Yugoslav Republic of Macedonia in further modernizing its IP framework to ensure that the IP system is more effectively used to leverage the nation's vast human capital to promote economic growth and development. The Director General said WIPO is prepared to assist in the implementation of a range of activities and training programs to modernize IP legislation and upgrade enforcement mechanisms as well as to help in promot-

ing awareness and use of the IP system by small and medium-sized enterprises (SMEs), which are the backbone of most economies.

Nicaragua - Dr. Idris commended the Nicaraguan Vice President Rizo Castellón on his country's efforts in bolstering the IP system and also pledged WIPO's continued support in promoting full use of the IP system in Nicaragua to enable nationals to leverage their innovative and creative assets to foster wealth creation and social well-being. WIPO's support covers assistance in modernizing the legislative and administrative IP framework, promoting awareness of the benefits of IP protection, upgrading enforcement mechanisms, and strengthening the role of IP in the country's scientific, technological and economic activities. Dr. Idris also pledged WIPO's support in promoting awareness and use of the IP system by SMEs in Nicaragua.



Caribbean Governments Commit to Using IP as Tool for Economic Development



Governments of several Caribbean countries have committed to using intellectual property (IP) as a tool to promote economic development in the region with the signature of a landmark multilateral agreement. During the WIPO Ministerial Level Meeting on Intellectual Property for Caribbean Countries organized in cooperation with the Ministry of Justice and Legal Affairs of Antigua and Barbuda at St. John's, November 27 and 28, WIPO Director General Kamil Idris and ministers from nine Caribbean countries signed a landmark multilateral agreement to promote the use of IP as a tool for economic growth and social benefit.

The agreement provides a framework for activities to be undertaken in the Caribbean region by WIPO in cooperation with regional governments. The agreement establishes the terms of the project that is designed to support a more effective integration of the region into the global economy by fostering technological innovation, creativity and competitiveness through intensive and effective mobilization and use of IP. The project will support ongoing regional initiatives for economic development and integration of IP policies and strategies into government economic and social development plans at regional and national levels. It will also promote technology transfer, strengthen regional research and development initiatives, encourage local invention and creativity, promote an IP culture and national and regional identity and branding.

The signatory governments, so far include: Antigua and Barbuda, Barbados, Dominica, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and the Republic of Trinidad and Tobago. It is expected that other governments in the region will sign the agreement in the next three months.



Director General Meets with Romanian President

The strategic importance of intellectual property (IP) in promoting national economic objectives was the focus of discussion between WIPO Director General Kamil Idris and President Ion Iliescu of Romania on November 14 in Sinaia, Romania. President Iliescu outlined his country's commitment to the use of IP to promote sustainable national economic, social and cultural development and made particular reference to the Romanian Government's adoption on November 13 of a national IP strategy. The President also underlined the importance of developing Romania's knowledge and cultural assets to promote sustained economic growth and improve Romania's competitiveness in the global marketplace.

Dr. Idris welcomed the adoption of the national IP strategy as an important initiative that promises to boost levels of investment and thereby promotes national economic, social and cultural development. He added that it would further enable Romania to reap the vast economic potential of its extensive cultural wealth and advance Romania's economic, social and cultural development goals. Dr. Idris pledged WIPO's continued support in promoting greater use of IP in Romania to foster economic, social and cultural development. Dr. Idris said that Romania's achievements in integrating IP into its national planning processes would serve as a model for other countries in the region.



Support Pledged for Development of Africa

WIPO Director General Kamil Idris has reaffirmed the Organization's full support for the African Union (AU) to promote the economic, technological and social development of the continent. This came in a meeting between Dr. Idris and the Chairman of the Commission of the African Union (AU), Professor Alpha Oumar Konaré, at WIPO's Geneva headquarters on December 10.

Dr. Idris and Professor Konaré discussed the strategic importance of intellectual property (IP) in promoting national economic objectives and agreed on the importance of the IP system in advancing a country's national economic strategy. The meeting concluded with a commitment by WIPO to provide practical support to the AU in implementing its vision for the promotion of accelerated socio-economic integration of the continent. This will lead to greater unity and solidarity among African countries and peoples and to their improved competitiveness within the global marketplace.

In addition, Professor Konaré accepted an invitation by Dr. Idris to become a member of the WIPO Policy Advisory Commission (PAC).

WIPO Signs Agreement with IFRRO

The General Assembly of the International Federation of Reproduction Rights Organisations (IFRRO), held in Brussels from November 11 to 14, applauded the signing of an agreement between WIPO and IFRRO on October 20. This agreement, aimed at reinforcing activities relating to the collective management of reprographic reproduction rights, reflects the desire at WIPO to improve awareness of such rights in its Member States and to improve the deployment of adequate structures to protect the interests of rights owners. IFRRO underlined the importance of this agreement in view of the implementation of the WIPO Internet Treaties, the increased emergence of digital reproduction and the problems encountered in the changing marketplace.



Economists Explore Link Between IP and Development

A number of leading economists have agreed on the potential of intellectual property (IP) as a powerful tool for economic development, particularly in today's knowledge-based economy. The economists, meeting on November 18 with WIPO officials responsible for advising Member States on the integration of IP into economic policies, noted that IP rights could affect economic growth through a multitude of simultaneous mechanisms. These were related to trade, foreign direct investment, research and development and investment in human capital, which could be measured using a range of economic indicators. The experts encouraged WIPO to provide comprehensive and comparable data across countries on the domestic use of IP rights and to analyze the underlying characteristics of countries that support innovation to assess the impact of IP on economic growth.

The meeting suggested a role for WIPO to provide economists with statistical data for further research and to explore formulation of a new methodology, as well as identify relevant economic benchmarks to measure the impact of IP on economic development. This would help policymakers around the world to understand their level of national IP development and enable countries to identify their strengths and weaknesses in the knowledge-based economy. The economists also endorsed WIPO's vision that in the knowledge-economy of the 21st century, IP and the intellectual capital it encapsulated, was the principle currency.

OBITUARY

Professor André Françon (1926 - 2003)



The world of intellectual property is in mourning over the death of Professor André Françon on October 11 at his home in Aix-les-Bains, the town in which he was born in 1926.

Professor Françon became a fervent advocate of intellectual property after a brilliant student career led him to the *Agrégation* examination in private law and criminal science, in which he headed the list for his year. He was a disciple of Professor Henri Desbois, and lectured in the Universities of Dijon, Nanterre (Paris X) and Panthéon-Assas (Paris II).

His powers of analysis, his erudition, his clear-sightedness and his knowledge of legal literature and case law are evident in the many works that he authored: reference works, several hundred articles, legal opinions, chronicles and commentaries on legal rulings, and the materials for his numerous university courses.

André Françon was an eminent expert on comparative law, and often referred to the laws in force in a number of countries and explored the parallels between them. This inclination towards comparative law had already been apparent in his thesis, which was on literary and artistic property in Great Britain and the United States. In 1966 he wrote the entry on international conventions for the "*Juris-Classeur*" or law manual on literary and artistic property, and in 1976 added a remarkable work, produced in collabora-

tion with Henri Desbois and State Councillor André Kéréver, entitled "*Les conventions internationales du droit d'auteur et des droits voisins.*" More recently, in 1990, he published "*Le droit d'auteur : aspects internationaux,*" which was based on a lecture course given in Quebec that year.

His knowledge went far beyond the confines of national law in the same way as his fame had gone far beyond the frontiers of his country. Like Henri Desbois, his mentor, he had become a key reference in doctrinal matters. France honored him with the celebrated distinctions of Knight of the Legion of Honor and Commander of the National Order of Merit.

Openness of mind was reflected in his works on comparative law, and also manifest in his work in international institutions and organizations. He presided over the French Legal Association for the International Protection of Copyright (AIFPIDA), the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP) and the French Association for the Study of Competition (AFEC).

His convictions and his concern to defend the values of copyright found expression above all in the work that he did as Secretary General of the International Literary and Artistic Association (ALAI). It was in that capacity, and as expert member of the French Delegation, that he took part in a great many meetings held under the aegis of WIPO.

Over and above his considerable doctrinal legacy, he leaves us two institutions: the Diploma of Specialized Studies (*Diplôme d'études approfondies* or DEA) in the law of literary, artistic and industrial property, which he created at the University of Panthéon-Assas in 1974, and the Henri Desbois Institute of Intellectual Property Research, of which he was one of the main founders. Both bear witness today to the openness of mind, altruism and passion for copyright that he showed in passing on research tools to all students, lawyers, colleagues and friends intent on defending the true values of intellectual property throughout the world.

The sculptor Auguste Rodin said, "art is man's most sublime mission, as it is the exercise of the mind that seeks to understand the world and make it understood." The work of Professor André Françon is itself an illustration of that thought, and constitutes a sum of knowledge of perennial value to coming generations.



CALENDAR of meetings

JANUARY 26 TO 30

GENEVA

Standing Committee on Information Technologies (SCIT) - Standards and Documentations Working Group (SDWG) (Fourth session)

The Working Group will continue its work in the revision of WIPO standards and will receive reports from the different SDWG task forces that have been established for that purpose.

Invitations: As members, the States members of WIPO and/or the Paris Union; as observers, certain organizations.

FEBRUARY 23 TO 27

GENEVA

Standing Committee on Information Technologies (SCIT) (Eighth Plenary session)

The Plenary will receive reports from its Working Groups on Standards and Documentation and Information Technology Projects, and will review other activities related to the IT program.

Invitations: As members, the States members of WIPO and/or the Paris Union; as observers, certain organizations.

MARCH 1 TO 5

GENEVA

Committee of Experts of the IPC Union

The Committee will consider amendments to the seventh edition of the IPC proposed by the IPC Revision Working Group and will discuss remaining tasks of the IPC reform in preparation for the publication of the next edition of the IPC.

Invitations: As members, the States members of the IPC Union; as observers, States members of the Paris Union, which are not members of the IPC Union, and certain organizations.

NEW PRODUCTS

Overview - Intellectual Property: A Power Tool for Economic Growth

Arabic 888.1(A), Chinese 888.1(C), English, 2nd Edition 888.1(E)
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Guide to WIPO Domain Name Dispute Resolution

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Guide on Surveying the Economic Contribution of the Copyright-Based Industries

English 893(E)
50.00 Swiss francs (plus shipping and handling charges)

IP Assets Development and Management: a Key Strategy for Economic Growth

English 896(E)
15.00 Swiss francs (plus shipping and handling charges)

CD-ROM WIPO Handbook 2003

CD208/2003
100.00 Swiss francs (plus shipping and handling charges)

Norwegian Small and Medium-sized Enterprises and the Intellectual Property Rights System: Exploration and Analysis

English 890(E)
25.00 Swiss francs (plus shipping and handling charges)

Ventajas del Tratado de Cooperación en materia de Patentes (PCT) para los Agentes de Patentes de los Países en Desarrollo

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