



WORLD
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IP AND PUBLIC POLICY ISSUES

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MUSIC “INSPIRED BY LIFE”

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IP OUTREACH

Cooperation Yields
Results in Romania

WIPO Conference on Building Partnerships for Mobilizing Resources for Development

Geneva, November 5 and 6, 2009

WIPO will host an international Conference on Building Partnerships for Mobilizing Resources for Development on November 5 and 6, at its headquarters in Geneva, to address Recommendation 2 of the WIPO Development Agenda:

“Provide additional assistance to WIPO through donor funding, and establish Trust-Funds or other voluntary funds within WIPO specifically for LDCs, while continuing to accord high priority to finance activities in Africa through budgetary and extra-budgetary resources, to promote, inter alia, the legal, commercial, cultural, and economic exploitation of intellectual property in these countries.”

The three main IP-related thematic areas the Conference will focus on are:

- Aid for Trade
- Science, Technology and Innovation for Development
- The Digital Divide

Target Participants

- Representatives of WIPO Member States, Paris Union and/or Berne Union, as well as Member States of the United Nations and its specialized agencies;
- Representatives of intergovernmental and non-governmental organizations with observer status in WIPO;
- The development community, in particular the bilateral and multilateral donor agencies, charitable foundations and organizations involved in public private partnerships

The provisional program and list of speakers as well as registration information is available on the WIPO website at: www.wipo.int/meetings/en/2009/res_dev_ge/index.html

Calendar of Meetings

OCTOBER 12 ■ GENEVA

■ *Ten Years UDRP: What's Next?*

The WIPO Arbitration and Mediation Center will host a conference in Geneva, Switzerland to mark the tenth anniversary of the Uniform Domain Name Dispute Resolution Policy (UDRP).

Invitations: Among the participants of this event will be numerous WIPO domain name panelists. The Conference should also be of interest to intellectual property counsel, UDRP and Domain Name System stakeholders, as well as authorities and individuals concerned with the implementation of dispute resolution mechanisms.

OCTOBER 13 AND 14 ■ GENEVA

■ *WIPO Advanced Workshop on Domain Name Dispute Resolution - Update on Practices and Precedents*

The evolving nature of the domain name registration system (DNS) is causing growing concern for trademark owners around the world, leading to a large number of cases filed with the Center under the Uniform Domain Name Dispute Resolution Policy (UDRP), and an increasing demand for training in this area. The Workshop will pay particular attention to the numerous developments in relation to UDRP decision precedent. Further info: www.wipo.int/amc/en/events/

Invitations: The target audience for this Workshop includes practitioners who already have some experience with the

UDRP through case filing or previous Workshops, as well as those who may become involved in UDRP proceedings. Registrars and ccTLD administrators may also take this opportunity to increase their knowledge of the UDRP process and current issues in the Domain Name System.

OCTOBER 15 AND 16 ■ GENEVA

■ *WIPO Arbitration Workshop*

The purpose of the Workshop is to provide intensive basic training of a practical nature for party representatives in arbitration and for arbitrators. The training, which will be conducted by experienced international arbitrators, will focus on the main principles of international commercial arbitration law and practice, with particular reference to the practical case application of the WIPO Arbitration and WIPO Expedited Arbitration Rules (as well as the WIPO Expert Determination Rules) in intellectual property and technology disputes. The arbitration rules of other arbitration institutions are also referred to for purposes of comparison. Further info: www.wipo.int/amc/en/events/

Invitations: The Workshop is designed for lawyers, patent and trademark attorneys, and others wishing to familiarize themselves with the international arbitration process and to receive training as arbitrators or party representatives.

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INTELLECTUAL PROPERTY AND PUBLIC POLICY ISSUES

Climate change, food security, access to medical technology and healthcare were on the agenda at WIPO's international Conference on Intellectual Property and Public Policy Issues, held on July 13 and 14 in Geneva. WIPO Director General Francis Gurry noted that the pressing nature of the challenges presented by these issues as well as the evolution of technology, involve IP in public policy as never before. WIPO must engage in these issues in new ways, he added, and use that engagement to inform policy development so that the creative process serves the needs of all countries, developed and developing alike.

The Conference attracted over 400 participants and 30 speakers, including the heads of the International Fund for Agricultural Development (IFAD), the World Health Organization (WHO), the World Meteorological Organization (WMO) and the World Trade Organization (WTO).

Discussion centered on the IP dimensions of climate change, public health, biodiversity and food security. It also highlighted WIPO's role as the multilateral forum where the challenge of using IP to drive innovation, creativity and transfer of technology is balanced with that of ensuring that the IP system produces social and economic benefit for all. Dialogue and collaboration between major stakeholders – international organizations, government, industry and civil society – are necessary to address these questions, and WIPO is the best-positioned and most appropriate venue to host and advance such discussions.

The Conference, held on the recommendation of WIPO's Standing Committee on the Law of Patents (SCP), represented progress toward WIPO's strategic goal of ensuring that the Organization is at the center of global policy debates on IP.¹

The key: international cooperation

A presentation on climate change issues by keynote speaker, U.K. Minister for Higher Education and

Intellectual Property, David Lammy, was among the highlights of the Conference. Mr. Lammy underlined the critical importance of the IP system in delivering a global solution providing for the widespread diffusion and transfer of climate change mitigating technologies, particularly to developing and least developed countries. All countries, rich and poor, he said, are suffering from the consequences of climate change. Mr. Lammy underscored that resolving the technology transfer issue was the key to the successful outcome of climate change negotiations.

Similarly, WMO Director General Michel Jarraud emphasized the importance of global cooperation and information-sharing in order to meet the challenges created by global warming, and that "intellectual property must be a catalyst, not an obstacle" to a successful global response.

During a panel discussion on July 14, the Directors General of WHO, Margaret Chan, and WTO, Pascal Lamy, also stressed the need for international cooperation. Dr. Chan called for "strong collaborative action" among international organizations to address questions relating to public health, trade and IP. She told participants that while innovation had a key role to play in new drug development, market forces alone were insufficient to ensure the delivery of affordable and universal public health solutions. "In short, market forces and the incentives, such as patent protection, that propel them cannot by themselves adequately address the health needs of developing countries," said Dr. Chan.

Further incentives, Dr. Chan continued, need to be found "to overcome the problems arising from this market failure." She said that much ground-breaking activity was underway to harness systems of innovation and IP to meet health needs in the developing world. Research and development, she stressed, can be "needs driven as well as profit-driven," adding that "international agreements that govern the global trading system can indeed be shaped in ways that favor health needs of the poor."

¹ A meeting on the subject of copyright protection and access to printed material by the visually impaired, which took place before the formal opening of the Conference, is covered in a separate item on page 4.

Seal the Deal

IFAD's Kanayo F. Nwanze, WHO's Margaret Chan, WIPO's Francis Gurry, WMO's Michel Jarraud, WTO's Pascal Lamy, and the U.K. Minister for Higher Education and Intellectual Property David Lammy joined an international campaign to galvanize public support for a successful outcome to UN-sponsored climate change negotiations by signing a global petition addressed to world leaders in the sidelines of the IP and Public Policy Issues conference.

Photo: Samar Shamoon



Mr. David Lammy, along with the heads of five international organizations, dipped the "People's Seal" in ink and added his stamp to the "Seal the Deal" petition.

The "Seal the Deal" global petition will be presented to world leaders at the meeting of the Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC) in Copenhagen in December. The petition will serve as a reminder that world leaders must negotiate a fair, balanced and effective agreement in Copenhagen, and that they must seal a deal to power green growth, protect the planet and build a more sustainable, prosperous global economy that will benefit all nations and peoples.

In a separate statement in support of the campaign, Mr. Gurry said, "the power of human ingenuity is our best hope for restoring the delicate balance between ourselves and our environment. It is our greatest asset in finding solutions to this global challenge, enabling us to move forward from the carbon-based, grey technologies of the past to the carbon-neutral, green innovation of the future. That is why WIPO is supporting the Seal the Deal Campaign. We encourage all

governments to work together to seal the deal on a fair, balanced and effective climate agreement in Copenhagen in December 2009."

Internet users can sign the petition at www.sealthedeal2009.org.

Mr. Lamy said that "coherence, cooperation and practical dialogue within the international system" were indispensable to address effectively the interdependent issues of public health, climate change, biodiversity and food security, all of which are global in dimension. He noted that "climate change will likely have a severe impact on disease patterns and on agriculture, so health, food security and adaptation to climate change are fundamentally interlinked. To retreat behind borders – whether they are national or formal boundaries between our institutions – is not an option."

"The effective use of the IP system and of TRIPs* flexibilities is important, but does not stand alone: IP law and policy must be harnessed with drug procurement policies, pro-competition safeguards, and regulation of drugs for safety and quality," Mr. Lamy said.

Regarding food security, IFAD President Kanayo F. Nwanze noted, "We urgently need an open debate on the elements, tools and limits of intellectual property protection in the agricultural sector, and the need to reconcile the commercial interests of the IPR holders with public concerns." Mr. Nwanze also recognized that "WIPO, which also

deals with issues related to patent harmonization, counterfeit and the protection of farmers' traditional knowledge" is the appropriate forum to host these debates.

Summarizing the Conference, SCP Chairman Maximiliano Santa Cruz from Chile said, "we have to acknowledge that intellectual property is not an end in itself, but an instrument to promote innovation, creativity and the dissemination of knowledge." He added that while the IP system may present some challenges, it can also be part of the solution to development questions.

In his closing remarks, Mr. Gurry said the Conference had "deepened the dialogue" on these important issues and reflected "the effort of the IP community to reach out to the social and economic contexts that IP is designed to address." He noted that innovation "is supposed to produce social and economic benefit, which is best perceived in areas where we face, as an international community, global challenges."

*The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights

IP CHALLENGES IN MEETING THE NEEDS OF VISUALLY IMPAIRED PERSONS

WIPO organized an event on “Meeting the Needs of Visually Impaired Persons: What Challenges for IP?” on July 13, preceding the WIPO Conference on Intellectual Property and Public Policy Issues, to draw attention to the urgency of providing visually impaired persons (VIPs) – including blind and reading impaired persons – with timely access to copyright-protected content. Also highlighted was the role the intellectual property (IP) system can play in this regard.

Attended by more than 150 participants, the meeting brought together representatives from WIPO Member States and organizations representing the reading impaired, publishers and a technology consortium. Discussions focused on the challenges this issue poses from diverse perspectives, and laid the groundwork for constructive and positive talks in the near future.

The current situation

According to the World Health Organization, there are around 314 million blind and visually impaired persons in the world, and more than 90 percent live in developing countries.

A WIPO survey published in 2006 showed that – out of 184 WIPO Member States – only 57 countries have copyright laws containing specific provisions to assist VIPs. The survey also pointed to a lack of clarity as to whether distribution rights allow the circulation of copies of works in accessible formats between countries. It is clear that, without contravening the legitimate interests of right holders, greater quantities of

copyright-protected material – both analog and digital – could be made available in accessible formats and disseminated across multiple jurisdictions in a timely way, enhancing VIPs’ opportunities for literacy, independence and productivity.

Addressing the problem

During the meeting, Member States expressed openness to further discuss the issue, in particular the international exchange of adapted materials across different jurisdictions. Ambassador Mario Matus (Chile) said governments not only could but must play an active role in this regard. Ambassador Babacar Carlos Mbaye (Senegal) emphasized the need for multilateral cooperation and reminded stakeholders that, while VIPs worldwide face similar disadvantages, those in least developed countries might need different solutions as technological tools were not available to them. Mr. Douglas George (Canada) stressed the importance of creating international, flexible solutions and adopting a broad, inclusive approach.

Mr. Chris Friend, of the World Blind Union, underlined that a binding, international instrument on the needs of the visually impaired would complement all current efforts. Blind readers across Latin America would have access to Braille or audiobooks produced by the organization for the blind in Spain. Francophone Africans could do the same with French collections from Canada, France, Belgium, Luxembourg and Switzerland. Portuguese organizations could share copyrighted works in accessible formats with Brazil, Angola and Mozambique.

Mr. Herman Spruijt, of the International Publishers Association, urged parties to adopt a flexible approach in working towards a common goal. Mr. Dipendra Manocha, of the Digital Accessible Information System Consortium, said standards were key in developing technology-based solutions to improve disability access. While thousands of works in accessible formats are already sitting in the collections of libraries or charities in industrialized countries, that content cannot be shared with counterparts in the developing world due to legal restrictions, and instead limited resources are wasted in recreating masters which already exist.

WIPO’s current work in this area encompasses two strongly complementary elements: a Stakeholders’ Platform, dealing with the numerous technical complexities involved; and a recent proposal for an international treaty on specific limitations and exceptions. The aim of the first is to put into place operational and practical arrangements within the context of the second. WIPO Director General Francis Gurry announced the launching of a website – www.visionip.org – dedicated to attracting support, exchanging views and disseminating information to all interested parties.

Participants in both this meeting and the WIPO Conference on Intellectual Property and Public Policy Issues were invited to a performance by Nigerian singer-songwriter Cobhams Emmanuel Asuquo, who was born blind, on the evening of July 13 (interview on facing page).

MUSIC “INSPIRED BY LIFE”

Cobhams Emmanuel Asuquo



Photo: Cobhams Emmanuel Asuquo

WIPO had the pleasure of hosting on July 13 a performance by Nigerian musician, songwriter and producer Cobhams Emmanuel Asuquo. Born blind in Lagos in 1981, Mr. Asuquo overcame the challenge of being visually impaired to gain international recognition as a songwriter and music producer.

Although he trained to become a lawyer, Mr. Asuquo chose a career in music, his first love, instead. In 2005, Sony ATV London signed the then 24-year-old musician as a songwriter. He founded his own production company CAMP – Cobhams Asuquo Music Productions – in 2006. He is probably best known for the hit single “Fire on the Mountain,” which he

wrote, and co-produced, for singer Asa’s debut album. He has worked with Asa since 2004.

Following his performance, Mr. Asuquo agreed to be interviewed for the WIPO Magazine. He spoke about copyright, piracy, his inspiration, being visually impaired and much more.

Learning to play

“I play classical music by hearing. I’ve learnt to listen and reproduce. In some cases it may not be 100 percent accurate but it gets the job done, especially because I pay attention to detail in music. My fingering is a bit tricky because I didn’t learn how to play formally. I may not have some of the techniques to run some of the notes with the required speed. I’ve devised my own technique and it pretty much works for me. I listen, I listen over time, I love and then I play.”

Finding inspiration

“I’m greatly inspired by someone I don’t see. It sounds nearly foolish but it’s the truth for me. I’m greatly inspired by God. I think about the things that I have read in the Bible and it just inspires me.

“I’m greatly inspired by certain environments, by a certain ambiance. For instance, the bathroom is probably one of my favorite places in the world because that’s where I get to be an astronaut, a physicist, an army general, a preacher, a musician.

“I’m inspired to write when I’m not very happy about the situation around me. I see myself in a

lot of senses as a social commentator and there’s a lot that comes out of society that grieves me. When this happens, I’m inspired to write.

“I like long bus or train rides; they inspire me to write too. I like taking trips to foreign places, places I’ve never been before. I realize that once I’m cut out of my usual regular habitat, I get quite creative and I write. I get inspired by conversations – deep and wide, sensible conversations that get to the core of things, conversations that bring out the reason behind certain things. I’m inspired by life, by people’s testimonies, by my experience, by love. I’m quite a romantic; the experience is very inspiring and I take advantage of it to create.

“I’m also inspired sitting at my piano: I love to play. I love to play. I love to play. I find music just by tinkering on the keys. Music comes to me naturally sometimes.”

“I’ve been influenced musically by tons of people: I grew up listening to all kinds of music. I listened to hip hop in detail, to jazz in detail, to the classics of the Sufi mystics, Hilda Garn, to a lot of traditional Nigerian music from highlife to juju, to fuji, to akbala – my musical influences are very, very, very wide.



“There’s a healthy, vast amount of talent coming out of Nigeria... We can become a supplier as an industry of international material to the rest of the world.”

“I’ve been greatly inspired and influenced by Stevie Wonder. Stevie Wonder is an icon. Stevie Wonder is phenomenal. However, I choose to see me as me. I have a clean sheet in front of me. I have a new course to chart,

and that’s precisely what I’m doing with my life. There’s a lot to learn from the likes of Ray Charles and Stevie Wonder. But I’m not sure I want to be another Stevie Wonder or Ray Charles. I think I just want to be me, because I’ve got something to say. I’ve got something to offer. I want to share my thoughts about life, about social issues, about values. My opinions may not necessarily be the same as Stevie’s or Ray’s. I’m one out of 6 billion people in life with something to say, with a different course to chart and with a different print to leave on the sands of time.”

Nigerian music on the international scene

“The main source of income from my production company comes from the work we do for advertising agencies and artists. We work with a lot of advertising agencies in Nigeria, and we work with artists in Nigeria and outside our shores. It’s lucrative, it’s sensible, it keeps us going.

“Quite a number of Nigerian musicians have been able to break into the international scene, and that’s very encouraging for me. We can tell that the industry is beginning to blossom. Ours is a music industry that is coming out of years and years of successive military rule, and things are beginning to happen. Having an international platform is definitely a good thing – it means that there is more to come. There’s a healthy, vast amount of talent coming out of Nigeria. The industry needs to build a structure that would help it turn out more, so that it interrelates sensibly with the international scene, so that its success is not seen as a fluke.



Photo: WIPOL/Mercedes Martinez Dozal

“I think that we can create a platform to just create international material. We can become a supplier as an industry of international material to the rest of the world. Part of what we do at CAMP is to create that atmosphere. My

garage is a rehearsal studio and I like to hang out with people and make music. You’d be amazed at the things that come out of a little jam session in a garage playing music. These are potentials – materials that are capable of going out there and making a mark on the international scene. So if in our little garage we’re doing that, imagine what would happen if the industry builds a structure that supports that on a larger scale.”

Copyright: strengthen awareness

“We have to deal with a number of issues as regards copyright where I come from. One of them is awareness, then there’s piracy and structure in general. I think that awareness is very, very important. Not many musicians, artists or people creating works of art are aware of the importance of copyright. We have the [Nigerian] Copyright Commission, but not too many people are aware of the benefits of the Commission, what they’re there to do, what they’re available to do. People are not sensitized enough to take advantage of copyright. That in itself is a situation.

“Artists do not get to enjoy their rights to the full, because a lot of the materials that they create are pirated and the benefits don’t necessarily come to them. Royalty checks don’t come to them. The culture in some places is for artists to actually hand their works over to pirates because they’re the ones who have reasonable distribution outlets. I think the danger of doing that is something that should be brought to the fore so that they realize they should oppose these people. Working

with pirates creates an unhealthy system.

“We don’t have a structure yet that fully supports protection of works in terms of copyright. The government needs to see the creative sector in industry as lucrative, as any other viable source of income for the country. They may then enact more effective copyright laws. I think that we also need to make decrees that protect copyrighted works and decrees that come down hard on pirates. Piracy needs to be taken more seriously.

“We should go back to the foundation, build a more sensible system that is based on a new distribution outlet altogether – a new, sensible, integrated network where people are aware of their responsibilities as artists to deal with the right kind of people.”

Challenges of the visually impaired

“Being blind is one of the best things that happened to me, because I’ve been challenged – I’ve been challenged to get up and go. I realize the importance of making things happen and the results of a lack of action. One challenge I’ve had to face being a blind person working in the music industry is, for want of a better way to describe it, the loneliness. I have to deal with a lot of the challenges all by myself.

“I have become a voice on behalf of other aspiring blind persons who want to come into the industry. Can you trust a 17 year-old doctor? Can you trust a blind driver? It can be that way with trusting a blind musician or producer who is not able to keep up with the changing times because he doesn’t have as much access as far as running interfaces and running sequences are concerned. That’s something I’ve managed to deal with to a point where I’m trusted for the work I do. But I’m hoping that this doesn’t just start and end with me. I’m hoping that same amount of trust is giv-



WIPO Assistant Director General Geoffrey Onyeama greets Mr. Asuquo after his performance.

Photo: WIPO/Samar Sharmoon

en quite as freely to any other visually-impaired person who gets into the industry to do what I do.

“The main challenge facing visually-impaired people in the field of music would be access. To take advantage of technological advancement, they need to know how to manipulate, how to run, whatever interface it is. Then, how to get materials that would help them improve their art, better their skills. These materials are

available but not put out in Braille or in talking versions.

“I do more reading by hearing than I do in Braille because there is not enough Braille material out there. Braille equipment is generally expensive in Africa. You can get a Braille Note, equipment you can use to read, for what? About £4,000, which would be about 1 million Naira? It’s just too expensive. I’m fortunate to afford it but the same does not go for every other blind person who lives and works in Nigeria.

“The Internet has sort of made things easy, but there’s a lot of stuff on the Internet that’s not properly licensed. That makes it all the more difficult... or easy for anyone who doesn’t have scruples. The Internet doesn’t favor people from the developing world in terms of using a credit card to buy software, books, an interface or a sequencer, so it is a problem. It’s a problem, and I think that in Africa and in other developing countries it’s even worse.

“For other visually-impaired people who want to take up music as a career, my advice would be to get up and go. Whatever it is you have been thinking of doing, there are 300,000 people thinking of doing the same thing and 10,000 people already making moves to do it. It’s more than just wanting to do it, it’s about taking the bold step of going out there and doing it.”

HIGH-LEVEL FORUM DISCUSSES THE IP NEEDS OF LDCs

Overcoming the development gap separating least developed countries (LDCs) from the rest of the world was at the heart of discussions during a WIPO high-level forum held on July 23 and 24 in Geneva. The forum brought together ministers and other high-level officials from LDCs to discuss the strategic use of intellectual property (IP) for national prosperity and development. Discussion covered a wide range of topics, including the need to bridge the technology gap and the importance of integrating IP into national development policy.

LDCs – aRD_i (Access to Research for Development and Innovation). aRD_i will provide LDCs with free access to a series of important scientific and technical journals (see box). He also drew attention to a major WIPO conference to be held in November, designed to mobilize extra-budgetary resources from around the world to finance activities such as capacity building for LDCs, enhancing their ability to leverage such technical information in line with their national requirements.

IP for sustainable development

During the forum, Mr. Dilip Barua, Bangladesh's Minister for Industries spoke in his capacity as Chairman of the Coordination Council of the LDCs. Ministers from Benin, Ethiopia, Lesotho, Madagascar, Mali, Maldives, Nepal, Tanzania and Uganda also addressed the meeting, touching on a wide range of issues and concerns.

The view was expressed that, while LDCs once regarded the IP system as a monopoly tool, they now saw it as "an instrument for sustainable development." However, they faced huge challenges in building IP institutions and systems and developing the necessary human resources in order to benefit fully from IP.

The need to formulate national development policies that integrate the strategic use of IP was underscored. The goal should be to achieve the effective use of all aspects of IP for national wealth creation. Several ministers noted that comprehensive IP legislation was being put into place in their countries, helping both to protect domestic creativity and innovation but also encourage technology transfer, adaptation and use, and foreign direct investment.

Many references were made to the critical challenges LDCs face regarding science and technology and, in particular, to the need to facilitate access to technological information contained in patent databases and scientific journals. Ministers called



WIPO Director General Francis Gurry and International Publishers Association Secretary General Jens Bammel signing the aRD_i Partners' Statement of Intent.

Opening the forum, WIPO Director General Francis Gurry stressed that access to technological information, and acquiring the human capital to use it, was key to realizing the creative potential of LDCs and to speeding their integration into the global knowledge economy. He underscored the importance of databases such as WIPO's Patentscope[®], which offers free access to the accumulated knowledge contained in some 1.6 million patent documents.

Noting that concrete steps in bridging the technology gap were needed, Mr. Gurry announced the launch, during the forum, of a new service for

aRD*i* – a new partnership for development

Access to Research for Development and Innovation (aRD*i*) is a new public-private partnership involving WIPO and leading science and technology publishing companies including the American Association for the Advancement of Science, American Institute of Physics, Elsevier, Institute of Physics, John Wiley & Sons, National Academy of Sciences, Nature Publishing Group, Oxford University Press, Royal Society of Chemistry, Sage Publications, Springer Science+Business Media, and Taylor & Francis.

The aRD*i* program will support least developed and developing countries in realizing their creative potential and facilitate their integration into the global knowledge economy. It provides industrial property offices, universities and research institutes in least developed countries with free access and industrial property offices in certain developing countries with low-cost access to selected on-line journals whose subscription cost would normally exceed US\$400,000 a year.

The aRD*i* program was launched with the support of WIPO's sister UN agencies – the World Health Organization; the Food and Agriculture Organization; and the United Nations Environment Programme – who offer access to journals in their respective fields of activity through the *Health InterNetwork Access to Research Initiative* (HINARI), *Access to Global Online Research in Agriculture* (AGORA) and *Online Access to Research in the Environment* (OARE) programs, respectively, as well as the International Association of Scientific, Technical and Medical Publishers. aRD*i* complements the valuable access to technical information contained in patent documents, which WIPO's PATENTSCOPE® search service already provides.

on WIPO support in bridging this technology gap and welcomed the launch of the new aRD*i* service.

The need to protect and leverage the wealth of traditional knowledge, traditional cultural expressions and genetic resources to be found in LDCs was heavily underscored. Several ministers also made reference to the possibility of adding value to national products, for example, in the agriculture and handicraft fields, through the use of such IP tools as trademarks, geographical indications and industrial designs.

Presentations given during the forum included: the strategic importance of technology transfer and technological capacity-building; the contribution of copyright and collective management societies for LDC economies; protecting and preserving traditional and cultural assets; regional cooperation in IP; linking universities and research centers to the public and private sector for

the management, promotion and commercialization of IP assets; and public policy issues.

Ministerial Declaration

A Ministerial Declaration adopted at the end of the meeting urged WIPO to intensify its capacity-building assistance for LDCs and to support LDCs in improving the competitiveness of their enterprises through regular access to new technologies. The Declaration appealed to development partners to make more funds available for LDC-specific projects. It also requested WIPO to cooperate fully with LDCs for the preparation of the Fourth United Nations Conference for Least Developed Countries, regarding the use of IP as a tool for development.

CAPACITY-BUILDING

Intellectual Property and Traditional Knowledge

It may seem, at first glance, that WIPO's work on intellectual property (IP) and traditional knowledge (TK), traditional cultural expressions (TCEs) and genetic resources (GRs) concerns mainly the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). But, in fact, WIPO's extensive capacity-building program occupies most of its Traditional Knowledge Division's time!

Amidst growing concerns over the continued misappropriation of TK, GRs and TCEs, stakeholders wish to take the practical and immediate steps available to them now to protect and derive benefit from these valuable resources. Such steps include using existing IP systems to the extent possible, creating policies and special legal measures, developing cultural protocols and model contracts and establishing effective institutions. These are the kinds of requests for capacity-building that WIPO receives.

WIPO's range of unique policy materials and specialized practical tools in the area of TK, TCEs and GRs – including guidelines, toolkits, training programs and databases – is in great demand, and this demand is growing and diversifying. Government officials, indigenous and local communities, non-governmental organizations (NGOs) and research and cultural institutions from around the world all benefit from this capacity-building program, which draws from a wide portfolio of expertise, practical experience and collaboration in the field. The program remains rooted in the needs and expectations identified by the Organization during its 1998 and 1999 fact-finding missions.

Provided upon request, WIPO's assistance includes facilitating national and regional consultations, providing legislative and policy guidance, organizing study visits, undertaking research and offering support for awareness raising and training.

Activities: 2008-2009 Biennium

WIPO is currently supporting on the regional level, the work of:

- the Caribbean Working Group of Experts, in developing a regional instrument for protecting TK, TCEs and GRs;

- the Pacific Islands Forum Secretariat (PIFS) and the Secretariat of the Pacific Community (SPC), in executing a "Traditional Knowledge Action Plan" in six Pacific Island countries, based on the "Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture" that WIPO helped draft in 2002;
- the 2012 Festival of the Pacific Arts, due to take place in the Solomon Islands, in developing IP guidelines and licenses; and
- the African Regional Intellectual Property Organization (ARIPO) and the *Organisation de la Propriété Intellectuelle* (OAPI), on developing regional instruments.

In the last few months alone, the TK program also has been active in or supported work at the national level in Argentina, Azerbaijan, Brazil, Bulgaria, Fiji, India, Iraq, Guatemala, Kenya, Kyrgyzstan, Malaysia, Mongolia, Peru, Russian Federation, Solomon Islands, South Africa, Sudan, Syria, Thailand, Trinidad and Tobago and Venezuela.

The Creative Heritage Project

WIPO's Creative Heritage Project is developing an integrated set of practical resources and guidelines for cultural institutions – such as museums and indigenous communities – on managing IP options when documenting, digitizing and disseminating intangible cultural heritage. The Creative Heritage Project recently collaborated with the IP Registry of Guatemala to develop a national inventory of Guatemala's intangible cultural heritage and address the corresponding management of IP issues.

The Organization has published several surveys of existing IP-related protocols, codes and guidelines related to the recording, documentation and digitization of intangible cultural heritage, and established a searchable database comprising samples of resources and practices. A compendium for museums, libraries and archives on managing IP interests in indigenous collections will soon be published.



Chief Morias Ole Kisio of the Laikipia Maasai community receiving formal hand over of the digital recording equipment from Mr. Wend Wendland (WIPO TK Division).

WIPO Inaugurates its Indigenous IP Law Fellowship Program

WIPO has launched its new Indigenous IP Law Fellowship Program. The successful applicant for the Fellowship, selected from among 60 strong applicants, is Mr. Eliamani Isaya Laltaika, a Maasai from Tanzania. He took up his Fellowship at WIPO Headquarters in Geneva in August 2009.

The Fellowship offers a new valuable opportunity to indigenous experts to be actively and effectively involved in the work of the Organization, including in its wide range of capacity-building activities and in sessions of the IGC. The Fellowship is for a limited period of six months.

Mr. Laltaika is a Maasai lawyer from the Nainokanoka village in Tanzania and a Doctoral Candidate at the Max Planck Institute for Intellectual Property, Competition and Tax Law, in Munich, Germany. He obtained his LL.B. in 2003, a LL.M. in Environmental Law in 2004 and a LL.M. in Intellectual Property in 2007.

For more information see www.wipo.int/tk/en/fellowship/index.html.

Training program

As part of the Creative Heritage Project, WIPO helps indigenous communities to document and preserve their own cultural traditions while simultaneously managing their IP interests.

New technologies provide communities with fresh opportunities to document and digitize expressions of traditional cultures. Yet, these new forms of documentation and digitization can also leave cultural heritage vulnerable to unwanted exploitation beyond the traditional circle. By empowering communities themselves to record their traditions and creative expressions, the training program allows them to create their own IP in the form of photographs, sound recordings and databases. The IP training component enables communities to make informed decisions about managing IP assets in a way that corresponds to their values and development goals.

The training program also stimulates creativity within communities, can promote local economic and cultural development and helps to bridge the "digital divide," responding to key objectives of both the Millennium Development Goals and WIPO's Development Agenda. In the case of the Maasai community, training enabled two Maasai to acquire technical skills to use the equipment provided by WIPO (a digital camera, sound recording equipment and a durable state-of-the-art laptop computer) to document their cultural heritage on an ongoing basis. WIPO will continue to provide IP advice and technical support to the Maasai community.

Readers may recall that, in September 2008 (see "Digitizing Traditional Culture" WIPO Magazine 3/2008) when the training program was initially launched, the Maasai community was invited to appoint two participants, Mr. John Ole Tingoi and Ms. Ann Sintoyia Tome,



Ms. Florence Tampushi, Ms. Ngoto Koisani and Ms. Kashui Maiyani took part in the hand over ceremony.

for training. During a follow-up course in July this year, both were instructed to use the recording and other equipment as they will not only oversee the community's documentation activities but also do the actual documentation themselves.

The training program is offered by WIPO in partnership with the American Folklife Center at the Library of Congress (AFC) and the Center for Documentary Studies at Duke University (CDS) in the U.S. A representative of the National Museums of Kenya, Mr. Kiprof Lagat, also participated both as a trainee and trainer in the program tailored to the Kenyan Maasai community.

Further Resources

In collaboration with Russian indigenous NGO "Lauravet'an Information & Education Network of Indigenous People" (LIENIP), WIPO recently published a joint bilingual publication on "Traditional Knowledge and Indigenous Peoples" (WIPO publication number 1014E/R). The Organization is also offering support to the IP Office of Mongolia in developing a DVD of Mongolian folklore, and collaborating with the Office of the National Culture Commission of Thailand in translating certain core WIPO materials into Thai.

For regular information on the activities of WIPO's Traditional Knowledge Division, sign up to its electronic Newsletter and Updates by registering online at www.wipo.int/tk or sending an e-mail to grtkf@wipo.int.

COOPERATION YIELDS RESULTS IN ROMANIA

This article was prepared by **BOGDAN BORESCHIEVICI, MARIANA MOȘOIANU, ȘTEFANA TEODOROV** and **MARIA-MAGDALENA DOBRE** of the Romanian State Office for Inventions and Trademarks. They were eager to record their outreach experience and share it with other industrial property offices in emerging economies and developing countries which also face the formidable challenge of promoting the industrial property system with limited or no dedicated personnel and even more limited budgets – with a bit of cooperation, it can be done.

In 1836, the U.S. Patent and Trademark Office hired an impressive number of copyists to transcribe patent documents in order to make them available to the public through all the major U.S. public libraries. An astonishing number of patent documents are also listed in the catalogue of the British Library.

This information came as a surprise to the staff of the Romanian State Office for Inventions and Trademarks (OSIM) when it was brought to their attention by Romania's National Association of Public Librarians and Libraries (ANBPR).

Why the interest of the Association in patent matters? They wanted to cooperate

more closely with OSIM in promoting and disseminating industrial property information. That was back in 2002.

The role of public libraries in Romania

Two years earlier, ANBPR had invited OSIM to a five-day seminar on the workings of the country's public library system: each of Romania's 41 counties has a county library that coordinates from 30 to over 100 city and communal public libraries – a total of some 3,500 libraries, receiving over 1,000 visitors daily. Most are young people; the youngest library card holder on record is a one year old.

The County Libraries subsist on monies provided by the local community and, as a result, are under an obligation to provide a service to that com-

munity – a mission they live up to. For years County Libraries have survived on meager funding, exacerbated by difficult economic conditions in the countryside. So what community service could they offer without having a computer with Internet access? Simply put, they provided access to knowledge.

In a country where neither parents nor schools can afford the books children need to acquire a basic education, public libraries have bridged the gap. Librarians – working in cooperation with schools, teachers, local administrations and parents – have taken on a supplementary role by making available to children, and guiding them through, the books and materials they need. Thanks to this cooperation, children have not been deprived of their fundamental right to an education and have gained access to culture.

County Libraries are constantly seeking ways to serve the community, and inhabitants adopt the habit of going to the library at a very young age. But at the time, librarians were reluctant to add industrial property protection to their long list of responsibilities.

A turning point

In 2002, OSIM organized an international seminar, with WIPO's support, at the County Library of Cluj. OSIM describes it as the turning point in their relationship with County Libraries. It was at this event that ANBPR sought out closer cooperation with OSIM.

OSIM discovered that County Libraries had reached a critical juncture and were becoming the agora of



Courtesy: OSIM/Carmen Lazar

Scenes from *The Cricket and the Ant* the OSIM-produced cartoon which highlights the risks inherent in counterfeiting.

local society, a position for which they sought recognition. Although books were still a primary focus, County Libraries had also begun to apply marketing techniques to identify local needs, had started to use new managerial techniques and – most revolutionary of all – had decided to look for ways to integrate industrial property related-activities into their busy schedules. Librarians received no additional pay for the extra work, and even gave of their personal time to further the project. Their reward was in responding to the growing need in the community, and in the partnership formed with OSIM.

Launch of cooperation

ANBPR libraries had adopted a new three-fold structure, reflecting the libraries' roles in the local community: traditional library activities; community information services; and a recreational center. OSIM immediately realized that industrial property protection could find a home within library information services.

Each County Library designated a Project Coordinator for basic training at OSIM on industrial property protection. On their return from OSIM, Project Coordinators would make OSIM publications available to those interested, guide them in accessing industrial property databases and offer general information on industrial property laws as well as technical assistance. Most important, Project Coordinators would in turn train a colleague from each library in the county on industrial property protection. Project Coordinators would also promote industrial property in the local media; keep abreast of changes in industrial property laws; and organize special days and seminars.

Using Giurgiu County as an example (see map), it is easy to see how the project works in practice. Starting from the town of Giurgiu, the county capital, a minimum of effort enables information to reach faraway points in the county. The OSIM-trained Project Coordinator in Giurgiu is the industrial property focal point for local library users and trains collaborators from libraries around the county.

After training, librarians return to city and communal libraries with promotional materials that are then made available locally.

It is an effective system: librarians are trained at a central point, and outreach materials are distrib-



uted at minimum cost. But it is not quite as simple as that; training of Project Coordinators is complex. All of them are university graduates but with diverse qualifications: lawyers, engineers, philologists, to name but a few. It takes effort to find a common language, avoid information overload and focus the enthusiasm and interest of Coordinators.

After training, the Coordinators' responsibility for information dissemination is limited and monitored, and more complex questions are handled by OSIM. OSIM staff cannot help but be excited when an e-mail arrives from a remote part of the country requesting information on the registration of a trademark, or details on how to gather information on a patent. Such interest is highly rewarding to both Library Coordinators and OSIM – the more remote the origin of the request, the greater the satisfaction.

Targeting young people

OSIM identified a second important function of libraries: their relationship with young people – from providing a recreational center to methodological guidance as a complement to the school curriculum. The I.N. Roman Library in Constanța gives the following statistics for users enrolled in 2007:

■ Pupils (under 18)	38.10%
■ Students (university)	20.37%
■ Professionals	8.80%
■ Workers (blue collar)	7.07%
■ Retirees	4.80%
■ Others	20.06%

These numbers are typical of most libraries. They show the potential of libraries to reach hard-to-access parts of the population: almost 40 percent of users are under 18.

OSIM and ANBPR launched a second project aimed at youth. They invited a group of 10 and 11-year-olds to learn about industrial property issues. What seemed a daunting task to OSIM staff – talking to children about a somewhat dry subject – suddenly became possible when someone suggested the WIPO "Patent" and "Trademark" comics be used as a learning tool. Remarkably successful, the comics were projected as a slide show and eventually shown to pupils from grades three to seven in Bucharest, Constanța, Vaslui, Slatina, Galati and Ramnicu Valcea, among others.

Much was learned from the experience – by both OSIM and students. Children responded very dif-



IP Outreach in Practice

A search in the IP Outreach in Practice database, launched by WIPO in 2008, yields 168 records of outreach programs aimed at young people from grants, scholarships and award programs to science and creativity competitions, games, mentoring, educative tools for teachers – the list is long. Space allows us to highlight only a few:

- Argentina's cultural-education initiative *Todo empieza con una canción* (Everything begins with a Song) for high school students includes an education video and material for teachers.
- Australia's Big Ideas educational game has two versions: Ippy's Big Ideas for those aged 9 to 11 and Big Ideas Network for those 11 to 13.
- The European Union's 2009 – European Year of Creativity and Innovation, which targets young people, teachers, SMEs and the general public, includes brochures, exhibitions, videos, newsletters, spokespersons/characters, web tools and a website. Materials are available in 21 languages.
- Mexico enrolls children from its annual drawing competition *Por el respeto a las ideas... los niños contra la piratería* (For the respect of ideas... children against piracy) to spread anti-piracy messages within their communities.
- Shell LiveWIRE International helps young adults explore the idea of starting their own business. The program – run in countries in Africa, South America, Asia and the Middle East – includes entrepreneur awards, training and workshops, information and advice, mentoring, case studies, discussion forums, social networks and blogs.

Find out more at www.wipo.int/ip-outreach/en/

ferently from adults. For one, they were already much more informed and the issues involved were not new to them. However, presenting the information in a systematic way provided them with a basic understanding of industrial property and its relevance to their own lives. Teacher feed-

back after three months showed the presentation had clearly had a positive impact on the children. There are numerous requests to repeat the exercise in the upcoming school year.

Meanwhile, OSIM has created its own comic strip: *The Cricket and the Ant*, which highlights the risks inherent in

counterfeiting. The film has two variants: a cartoon and a puppet show. The puppeteers are children from the Licurici puppet theater in Bucharest. Both variants can be viewed on OSIM's website at www.osim.ro/bibl/pag_copii.htm.



The Cricket and the Ant

The results

Seven years of cooperation between OSIM and ANBPR has produced results: industrial property-related articles and interviews regularly appear in local media; seminars are organized on industrial property issues; industrial property elements are incorporated into local events; and there is increasing interest in learning about industrial property. OSIM receives more and more questions that Project Coordinators cannot answer. And, to top it all, the number of applications for industrial property titles is on the rise.

OSIM plans to further develop its information dissemination program to better reach smaller localities. The Office also aims to make its work with young people a regular part of the national industrial property strategy. OSIM would like to develop an outreach program for youth similar to that of the U.K.'s Think Kit™, which combines playing games, creative activities and industrial property. Perhaps the children of today will use the knowledge thus acquired to open the businesses of tomorrow.

COLLECTIVE MANAGEMENT OF AUDIOVISUAL WORKS

Facing the challenges, then and now

Each time a film is retransmitted on cable, or similar means, royalties may be owed to the producer. The Association of International Collective Management of Audiovisual Works (known by its French acronym AGICOA) undertakes the often complex and time-consuming task of obtaining payment of these royalties from operators and redistributing them to entitled right holders.

AGICOA regularly sees conflicts arise when right holders register works, and has set up a conflict resolution procedure for such occasions. However, in order to have more time to focus on its core competencies, in early 2008 the Association requested the WIPO Arbitration and Mediation Center (WIPO Center) to develop an arbitration procedure tailored to the particular features of disputes between its right holders.

This article, prepared by **CATALINA SAFFON** and **CORINNE CHANTRIER** of AGICOA, looks at the history and work of the Association before zeroing-in on its conflict resolution procedure and WIPO's contribution to it.

Genesis of cable television

Cable retransmission rights are granted to right holders in the Berne Convention for the Protection of Literary and Artistic Works, in particular Article 11*bis*, which states that when a work is distributed by a means other than the original broadcast, there is a liability issue with respect to copyright when that distribution is done by an organization not responsible for the original broadcast. The Berne Convention refers to "an organization other than the original one." Cable operators do not form part of the same "organization" since they have no relationship with the broadcasters whose programs they retransmit. That is why they need the authorization of all right holders in a broadcast program.

Many European countries started building cable systems in the 1960s and 1970s to eliminate unsightly aerials from crowded rooftops, but savvy entrepreneurs soon saw a new commercial opportunity. Cable operators began retransmitting programs for a fee to consumers who had difficulty tuning into weak television broadcast signals. These operators did not agree that legislation obliged them to honor the claims of right



The Canadian animated cartoon Franklin is one of the many productions enjoying worldwide popularity for which AGICOA collects royalties for redistribution to the right holders.

holders whose works they distributed. They argued that a cable system was only an extra technical support system for existing broadcasting networks – and further claimed right holders would be remunerated twice if cable operators had to clear the rights.

The Dutch Supreme Court issued a judgment in a lawsuit brought by a number of U.S. film producers and the Dutch Cinema Association against the cable network of the city of Amstelveen, a small town south of Amsterdam (Case No. 12.281). The decision, handed down in 1984, left no room for doubt: Cable retransmission of existing broadcasting programs is a new communication to the public and, as such, is subject to copyright. A number of similar judgments followed in other European countries.

Consequently, cable operators were obliged to seek right holders' permission before retransmitting their programs – in practice, an impossible task. To find a workable solution, right holders began to form organizations specifically dedicated to dealing with cable rights and started negotiations with cable operators. The first contract between right holders and cable operators, concluded in Belgium in 1984, covered all right holders:



authors, composers, photographers, broadcasters, producers of audiovisual works and films, etc. It guaranteed their rights on the one hand, and, on the other, protected cable operators from potential claims by right holders who did not feel bound by the global licensing agreement.

Many other countries followed suit. In order to standardize all these global agreements, the European Commission published Council Directive 93/83/EEC of September 27, 1993, on the coordination of certain rules concerning copyright and related rights applicable to satellite broadcasting and cable retransmission. It expressly states that right owners cannot exercise their rights individually vis-à-vis cable operators, but that the services of a collecting society must be used. The Directive confirmed existing practice in many European countries and gave further protection to cable operators against possible claims from individual right holders. Broadcasters fall outside the scope of this obligation, and retain the right to negotiate individually with cable operators.

AGICOA: How it works

The administration of secondary property rights across a kaleidoscope of languages, registrations, rules, formats, ownership and time periods is difficult and complicated – and the end result is that many right holders give up, leaving revenues uncollected and returns on creative investment much lower than they should be.



Since 1981, AGICOA provides a simple alternative for right holders and cable operators, offering both parties one point of contact. The single registration of an audiovisual product with a company of the AGICOA Alliance avoids right holders having to register country-by-country. For retransmission operators, agreeing terms for a wide range of programming through a blanket license (a single, binding contract) is preferable to negotiating separate contracts with many different program makers and is far more efficient.



AGICOA's monitoring system takes over global tracking responsibilities, handles negotiation and collection of all retransmission rights and main-

tains detailed records of use, royalty allocation and payments that can be consulted by any client at any time. These operations deliver multi-country economies of scale beyond the reach of national operations. Registration is free for right holders; the Association is financed by a fee (7.82% in 2009) charged on the royalties collected.

AGICOA's repertoire covers all audiovisual works produced by independent producers (i.e. a producer that is not a broadcaster). Audiovisual works produced by the broadcaster being retransmitted by cable, such as news programs, live retransmission of sports and other events, infomercials and commercials, are usually excluded.

Conflicts between right holders

Conflicts arise when two or more right holders register a work with a partner company of the AGICOA Alliance, declaring the same rights, for the same territory, the same language version, or for the same television channel and resulting in an overlapping percentage of rights (higher than 100%).

When a declaration generates conflict, right holders are informed by the portfolio manager and invited to check the declared rights. If the conflict persists at the time of payment, AGICOA blocks the remuneration. Payment is released only once the right holders agree to update their rights and settle the conflict. Thanks to this simple conflict resolution procedure – launched in 2003 – AGICOA released and distributed some €7.5 million to legitimate right holders.

But as the market for audiovisual products becomes increasingly global and complex, the number of competing claims on a given audiovisual work has also risen. If, after the simple resolution procedure, the conflict remains unresolved, AGICOA provides additional data and offers further facilitation processes to help resolve the issues: this represents an important part of its right holder management services – real added-value for right holders.

Once right holders have been informed of the conflicting claims, the following procedure is started:

1. Direct contact is established among the parties involved in the conflict, and they are encouraged to settle the conflict amicably. If one of the parties does not respond to an attempt to resolve the conflict, article 13 of AGICOA's Conflict Rules provides a mechanism for resolving the conflict in favor of the solution-seeking right holder(s).

What is AGICOA?

“At AGICOA we are committed to obtaining, collecting and distributing the royalties that lie beyond the reach of individual right holders,” says the Association’s Chief Executive Officer Paul Duggan. The international, not-for-profit organization was established in 1981 to track and distribute royalties on re-transmissions of audiovisual products by independent producers. Since 2000, AGICOA has collected and distributed over half a billion euros in royalty payments for a portfolio of more than 700,000 audiovisual products.

The Association is directed by, and accountable to, an international board of directors, including right holders’ representatives as well as individuals with a range of professional skills and experience relevant to its activities. This form of governance offers two significant advantages: the organization is truly “neutral” – without any national bias – and all right holders are treated equally, regardless of their commercial weight and importance.

International operations are facilitated through the AGICOA Alliance, a network of associates in key media markets focused on the retransmission, and other secondary uses, of audiovisual works on television channels. Through such local partners, right holders can access the advantages of local languages, market insight and negotiating skills.

2. If both parties respond but fail to resolve the conflict on their own, procedures have been put in place for:
 - 2.1 Small and non-evolving conflicts – defined as conflicts with frozen royalties of €200 or less not linked to a broadcast of the work in the previous five years or more. Once informed of the conflict, should right holders fail to find a solution, the conflicting rights are canceled.
 - 2.2 High-value conflicts – for which AGICOA’s Legal and Business Department launches a Conflict Resolution Procedure (CRP) according to the Conflict Rules. The parties are invited to analyze the conflict and decide whether they maintain or withdraw the rights at issue. If the conflict persists, AGICOA makes recommendations on how to resolve the conflict, based on the evidence provided during the CRP.



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CORUS is a trademark of Corus Entertainment Inc.

Expedited Arbitration Rules for AGICOA, which were approved by AGICOA’s Executive Board on September 30, 2008. This set of Rules, based on the standard WIPO Expedited Arbitration Rules, has been specially adapted to respond to the specific characteristics of AGICOA right holder disputes.

Submission of disputes to WIPO Expedited Arbitration for AGICOA is facilitated as follows:

- The procedure can be used by AGICOA right holders when they conclude an arbitration agreement stipulating that any dispute would be submitted to the WIPO Expedited Arbitration Rules for AGICOA; or
- Where no such arbitration agreement exists, claimants can simply notify their intention to file a request for arbitration, upon receipt of which the WIPO Center enables the parties to sign an arbitration agreement.

It is widely recognized that the effectiveness of arbitration depends primarily on the quality and expertise of the arbitrator. For AGICOA disputes, the WIPO Center has therefore identified a special

In the event AGICOA’s final recommendation is rejected, the parties can opt either to go to Court or to initiate arbitration, in particular under the “WIPO Expedited Arbitration Rules for AGICOA.”

WIPO’s role

In order to concentrate on the CRP itself (and, of course, on its principal licensing activities), in early 2008 AGICOA decided to outsource the optional arbitration part of the conflict resolution procedure – formerly administered internally – to the WIPO Center.

In collaboration with AGICOA’s Legal and Business Department, the WIPO Center drafted the WIPO



panel of highly qualified and well-known copyright and entertainment law arbitrators from various jurisdictions. Parties in WIPO Expedited Arbitration for AGICOA are free to choose an independent and impartial sole arbitrator from this panel, or to agree on a person outside the panel. The sole arbitrator decides the dispute after having given the parties equal opportunity to present their factual and legal arguments. Parties can opt for electronic online case communication, using the WIPO Electronic Case Facility (WIPO ECAF).

The procedure is flexible, allowing parties to file submissions in AGICOA's official languages – English or French. Choosing the language of the procedure is at the discretion of the sole arbitrator and depends on case circumstances and parties' observations.

Cost-effectiveness is a concern for parties, especially in times of economic recession. As some AGICOA conflicts involve only small royalty amounts, the WIPO Center created an adapted Schedule of Fees with appropriate rates for AGICOA conflicts. The schedule provides that, unless the parties agree otherwise, the arbitrator's fees shall not exceed USD 300 per hour and are capped at a maximum of USD 20,000.

Arbitration is effective only if the arbitrator's decision (the arbitral award) can be executed. The WIPO Expedited Arbitration Rules for AGICOA pro-

vide that AGICOA will implement the award by updating the rights and releasing the corresponding royalties blocked by the conflict. The arbitral award is also internationally enforceable under the 1958 New York Convention.

Tomorrow

AGICOA's *Annual Report 2008* shows that the number of countries in which the Association collected revenues tripled from 2000 to 2008, increasing from 13 to 36, while the number of rights holders doubled from 3,118 to 7,220 and number of works soared from 400,000 to 854,000. During that same period, AGICOA steadily decreased its fees. "Currently, digital technology is transforming the media landscape and adding new dimensions to broadcasting in choice, content and rebroadcast platforms," says CEO Paul Duggan. "This offers huge potential for growth and revenue opportunities, and the associated challenges for right holders in tracking secondary use of their products."

Having prepared a strategy to face the challenges of the global marketplace, AGICOA stands ready for the promising future ahead.

For more information visit www.agicoa.org and www.wipo.int/amc/en/arbitration/agicoa/.

The Setting-up of New Copyright Societies

In line with the evolution of digital technology, the advent and increasing pervasiveness of the practice of downloading music, films and other works protected by law, the collective management of copyright and related rights remains one of the simplest and most reliable means for collecting and distributing royalties to rights owners for the use of their protected works, especially in the field of music.

A new CD-ROM published by WIPO, with the financial support of the Korean Fund-in-Trust, "The Setting-up of New Copyright Societies," is designed to enable users to have a better understanding of the complexities of collective management of copyright and related rights, and of the concrete steps to be followed to appropriately administer the rights of music composers, authors and publishers, through the establishment of collective management organizations and their strengthening in countries where they already exist.

The CD-ROM contains a useful and practical workplan that sets out a time-line for the different steps to be taken in setting-up collective management organizations. The plan can be chronologically adjusted to suit local circumstances. It provides links to extensive documentation contained in the CD-ROM and information that provides users with the possibility of accessing supplementary information at websites on the Internet.

The CD-ROM targets a large audience, including governmental officials, owners of copyright and related rights, specialists and non-specialists in the field of copyright and the collective management of rights, lawyers and staff of existing collective management organizations.

The CD-ROM is in English and available free of charge on the WIPO website or on request from the WIPO E-Bookshop.

FEELING GROOVY

MUSIC THERAPY

The effect of music on the human spirit has been known for centuries. Its power to heal afflictions of mind and body, however, are only now becoming clearer. Journalist **JO BOWMAN** reports that the commercial possibilities of new styles of music therapy raise complex IP issues.

It does not take an expert in either music or the mind to recommend a hot bath and some Pachelbel to help cure a mild case of stress. But a growing body of research being done around the world suggests there is a far stronger link than was previously thought between mental and physical health, and music.

Music therapy that encourages patients to express themselves by joining in and playing musical instruments has had well-documented success with people suffering from dementia, adults and children with learning difficulties, and in palliative care.

But the notion that simply listening to certain kinds of music can also have a significant effect not only on mood but on medically verifiable health is one that is generating increasing interest. There are those who suggest that in the treatment of some kinds of illness, a dose of the right music avoids the need for drug treatment altogether.

The power to heal is also the power to make money, and therapists, musicians and technicians succeeding in this field are not leaving the complex subject of intellectual property (IP) rights to chance.

Twice a day, after meals

Ms. Vera Brandes, a respected Austrian music producer, composer and academic, describes herself as the first “musical pharmacologist.” The company she co-founded, Sanoson, plans to launch a prescription-only course of music therapy she believes is so powerful in the treatment of disorders such as depression, that doctors may see it as a real alternative to drugs. The treatment will be available initially in Austria but later in other European countries and in the U.S. Patients will be given specially produced listening devices and a headset programmed with selected pieces of music. Their prescription tells them when to listen, and how often.

Director of the research program in music and medicine at the Paracelsus Private Medical University in Salzburg, Ms. Brandes says the music



Photo: iStockphotos

The notion that simply listening to certain kinds of music can also have a significant effect not only on mood but on medically verifiable health is one that is generating increasing interest.

prescribed was composed by her and her team and is based on research on the neurological effects of different musical stimuli. The fact that patients tend to like the therapy makes them more likely to stick with it, she says – unlike psychotherapy, which has a high drop-out rate. “It does involve time,” she says. “Patients have to have at least half an hour a day when they can do this and nothing else, so it’s more time-consuming than taking a pill, but not more time-consuming than seeing a psychiatrist.”

Listening therapy is also at the heart of the launch in the U.S. this year of an Internet-based service by music research company Sourcetone. Director of marketing Luis Araten-Castilla says the company has been studying the effects of music on the mind for five years, working with scientists at Harvard Medical School.

The web service – currently available only in the U.S., although the company has global aspirations – allows users to listen to streamed music of their choice, rather like having their own iTunes playlist. None of the music is specially composed or recorded but, unlike a regular playlist based on album or artist, users choose the emotion they want to feel – calm, for instance – and can combine that with certain genres of music – so calm, plus jazz or hip-hop – and a playlist is created for them. “The music we play has a deep emotive



quality and is selected for the kind of mood-altering experience we want to deliver," says Mr. Araten-Castilla. He says such targeted listening can benefit those suffering from anxiety, depression, high blood pressure and memory loss.

Is the music still under copyright protection?

When deciding whether music is still protected, one has to distinguish between the musical work and the recording. The work, that is, the composed music and the possible lyrics, is normally protected at least 50 years after the year in which the author died, in an increasing number of countries even 70 years after. The term of protection of the recording is normally calculated from the year in which the recording was made or published, and the term can vary between 20 and 95 years. In any case, it is therefore highly recommendable to check out the national law in the country where the music is used.

Tuning in

In the Internet age, IP rights relating to music can be a contentious issue. Add to that specific ways of using or creating musical works – and special listening devices – and it becomes even more complicated.

Even using music that is no longer copyrighted is not without potential headaches. Professor Ruth Soetendorp, joint director of the Centre for Intellectual Property Policy & Management at Bournemouth University in the U.K., explains that using Beethoven's Fifth in music therapy won't infringe on the composer's copyright, "but if it's the Berlin Philharmonic's recording from last year, you need permission for that."

In sessions where patients change an existing musical work in some way, permission needs to have been granted by the copyright holder of that music. If it is Mozart, you are in the clear as it is no longer copyright protected. If it is Oasis, you need to ask first or risk breaching copyright.

Creating original pieces of music for therapeutic listening gets around the copyright issue, provided the composers commissioned to write the music assign copyright to the therapy company involved or agree to license the use of the music.

At Sanoson, Ms. Brandes and her team are going beyond copyright protection for the pieces of music they are inviting doctors to prescribe – they are seeking patents in the U.S. and Europe to protect the service they are offering.

"Listening to music to help people with depression is not new... but the whole model is com-

pletely new – how it's presented, and all the elements that are included," Ms. Brandes says. The patent applications, she says, cover the music, the therapy – called Music-Focused Auditory Therapy – and the listening device itself, which has a memory function allowing doctors to check whether patients are taking their musical medicine as prescribed. The device, which is rented to patients rather than sold, has other qualities not available in commercial music players, says Ms. Brandes, with a broader frequency range and different sound quality.

Fair play

Prof. Soetendorp says protecting new forms of music therapy raises issues that apply to other forms of therapy and personal services. "You can't patent a method of treatment," she says. "You can't patent ideas, and you can't patent therapies. If you invent a wooden stick that could be used in a course of Swedish massage to give a deeper, more effective massage, that would be patentable. The notion of Swedish massage in itself is not patentable." Not in Europe at any rate, though the laws on patents in the U.S. are far more flexible, even if only enforceable in the U.S.

The name of a type of therapy could, however, be protected by a trademark. Prof. Soetendorp says the creator of music that achieves a particular effect would be wise to ensure copyright on the music is widely documented, thus allowing the brand of the organization creating or delivering it – that could be protected by a trademark – to be promoted.

As a user of existing music rather than creator of its own, Sourcetone faces a different range of IP issues, not unlike those affecting online radio stations. The company pays royalties to artists whose music it uses, as do radio stations. Users listen to the music free of charge, and the site is supported by advertising. Mr. Araten-Castilla says royalty payments for online streaming are much higher – as much as double – per play in the U.S. than for terrestrial radio stations playing the same piece of music.

Unlike some popular web radio services that are fully interactive, Sourcetone's streaming is designed with built-in copyright safeguards so that listeners cannot record the tracks and cannot rewind or select a specific track, click and play. What they can do is skip forward if they do not like a particular piece of music. While the music itself is not Sourcetone's to protect, the software used to select and deliver the music – called Music Classification System Technology or MCST – is, and is patented. MCST, which takes into ac-

count rankings of how the music makes listeners feel, also analyzes features of music such as rhythm, the number of beats per minute and harmonies, to reach an “understanding” of the effect music may have on people.

The complexity of dealing with recording artists’ copyright in multiple countries, as well as the task of protecting their own IP, is hampering Sourcetone’s global rollout, Mr. Araten-Castilla says. The company is therefore looking at working with local partners in other markets to help it expand beyond the U.S.

Name that song

Meanwhile, in the U.K., where music therapy focuses primarily on encouraging patients to participate in creating music, there is a completely different set of IP rights to consider. The first, unique to the U.K. though soon to be introduced in Austria, is the legal restriction on who can be described as a “music therapist.” That title is protected by the Health Professions Council, whose minimum standards for registered practitioners cover the level of patient care provided and the standard of training and education required. Improper use of the title music therapist – or titles such as physiotherapist, dietician, art psychotherapist and radiographer – can attract a fine of up to £5,000.

“Music therapists in the U.K. have never said ‘we own music,’ but what we have been successful at is helping music to be used positively, safely and successfully in contexts where people can be very vulnerable, for instance if patients are non-verbal,” says Mr. Stephen Sandford, Chair of the Association of Professional Music Therapists U.K. “There are different schools you can train in to be a music therapist, but the registration means that no matter what the flavor of the therapy is, you know that your therapist will meet recognized standards of proficiency which will protect the public.”

The law covers only the term music therapist, however, and not “music therapy” – a point tested when U.K. station Radio 4 launched a comedy show called “Music Therapy” which it was deemed did not break the rules and was allowed to continue.

Sounds like a business plan

In the case of patients taking part in creating music, it is always possible that a session will originate a musical masterpiece with commercial potential. If that work is guided by a music therapist and involves a room full of patients, who, then, would own what?

Mr. Sandford says that in the British National Health Service (NHS), music therapy usually focuses on musical improvisation by patient and therapist, and can include composition and song writing techniques. Musical works created during

Obtaining rights for musical works

When using music outside the confines of the private home, and particularly in commercial contexts, it is normally necessary to obtain the rights of public performance, at least for the musical works. For most musical works this is done through national collective management societies which represent the overwhelming majority of authors of protected music. In the relatively rare cases where such authors are not members of these societies, or have been able to opt out regarding certain works, permissions for the use must be obtained directly from the authors or their representatives. Not all countries grant rights to performers and producers of sound recordings for the playing of their records in public places, but where this is the case, just as in the case of musical works collective management organizations frequently are authorized to manage the rights on behalf of most, if not all, the right holders.

therapy are treated as part of a patient’s medical records, which patients have the right to access. And, as in the case of saleable works created during art therapy, patients have the right to make money from their music.

Prof. Soetendorp says that, generally, copyright ownership lies with whoever creates and contributes to a piece of music. If a therapist leads a session but without actually making the music that goes on to become a chart-topper, they would not get a share of the royalties. “[Being an] inspiration is not really part of creation,” she says. “You get this issue in universities where researchers are working on things that perhaps lead to a patent. What’s the input of the professor; is there a joint patent?”

If a patient and instructor produce a work of music together then it is protected by a joint copyright if they have both had input, says Prof. Soetendorp. The law does not assign copyright to each contributor according to how much they have put into it. So, even if one does 90 percent of the work, the copyright is split down the middle. If the music was created by 10 people in a group therapy session and they all make a contribution, the copyright is split equally among them. Unless, that is, patients assigned copyright to the therapist or to their company, which then becomes a question of medical ethics rather than IP.

DESIGN FOR THE DISABLED

How difficult is it to open a jar without the full use of one's hands? How safe is it to step into the shower when one has arthritis or a knee injury? Is getting into a car always as simple as one-two-three, or could it take more planning for someone with an injured back? Asking these kinds of questions – and many more – is part of a new and growing dimension of design. The trend in making products – and information – more accessible to those with any kind of disability is gathering momentum. Interestingly, seeking design solutions that meet the needs of the disabled results in a better overall design, benefitting both the able and disabled.

New terminology has been coined to describe more inclusive design processes, including terms such as accessible design, barrier-free design and assistive technology. Universal design is a relatively new approach that has emerged from these models and describes the design elements of buildings, products and environments that allow for the broadest range of users and applications. The Center for Universal Design at North Carolina State University in the U.S. developed *Principles of Universal Design*,¹ which guide a wide range of design disciplines. The Center defines universal design as designing products and environments in such a way that they are usable by all people, to the greatest extent possible, without the need for adaptation or specialized design for particular users.

Creating awareness among designers

Sometimes, all it takes to spur designers on to find better solutions is becoming aware of the shortcomings of a particular design. During a visit to a rehabilitation center for children and teenagers, designer Shabtai Hirshberg witnessed a boy on crutches refuse help from a physical therapist as he tried to mount a tricycle, only to get his leg caught on the seat. Mr. Hirshberg, an industrial design graduate from Hadassah College in Jerusalem, spent the next few months working

with physical therapists and a rehabilitation psychologist on building a better tricycle, the A2B, for disabled children. The tricycle allows independent use for play, while also providing rehabilitation solutions. For now, it is just a prototype. But there is perhaps a wider market for it. Many of the design features – such as the two wheels in the front and the chest plate, which one could imagine lowering for a racing car effect – would be fun and functional for any child.

Functional limitations in vision, hearing and mobility interact and often aggravate each other. Poorly designed products and environments that may merely inconvenience users normally become insurmountable with such limitations – potentially transforming someone's everyday world into an unsafe and insecure place. Rani Lueder, president of Humanics ErgoSystems consulting firm in Encino, California, has taught human factors classes to industrial design students at the Art Center College in Pasadena. To help students expand their notion of designing for all people, she required them to simulate physical disability as part of their design projects.²

For example, one student evaluated entry into different vehicles with a metal bar strapped onto his back to model the physical restrictions associated with back injuries. Others tried creative approaches such as restricting joints with bandages to simulate arthritis, adding bulky layers to imitate obesity and developing contraptions that limited peripheral vision. The exercise brought home the meaning of functional impairment to healthy, young design students. Many of them reported it had permanently changed their understanding of design implications for this vulnerable group of users.

Design for the elderly

Demographic trends show that the over-60 group will keep increasing to encompass an ever larger percentage of the population of Australia, Europe, Japan and North America, with significant impli-

1 © 1997 NC State University, The Center for Universal Design (www.design.ncsu.edu/cud)

2 See Rani Lueder, "Expanding the Demographics of Human Factors," *Industrial Engineer*, October 2008.

cations for the world of design. Objects and environments designed for the aging have tended to look less appealing than other options on the market. But unaesthetic designs are not a necessary evil for older persons.

Kitchens, for example, can be made accessible to people with the disabilities associated with aging and yet look bright, modern and welcoming. The design team of German kitchen manufacturer Alno created a new kitchen for older customers by focusing on bringing kitchen units to the user, thus avoiding their having to bend over. The result is a fluid kitchen – *My Way* – that uses an electronically based tracking system to allow cabinets, appliances and even the sink to meet the user. With the push of a button, the kitchen countertop can be raised or the stovetop lowered to the height of a wheelchair. What's more, people of all ages – and heights – could also enjoy cooking in such a customizable environment.



The A2B Tricycle prototype designed for disabled children would be fun and functional for any child.

Courtesy of medgadget.com

could also significantly lower product costs making the toys more affordable.

In communications

Designing information systems is another area where the needs of the disabled are increasingly being taken into account. And communication being the wave of the present – and future – it is vital that telecommunications and Internet services be made accessible to all users. In a move to

follow the guidelines of the Web Accessibility Initiative,⁴ WIPO installed software for the visually impaired on its public computers. The software allows a visually-impaired person to navigate through sites while web pages are read aloud – making vast quantities of information on the Web accessible auditorily.

Similarly, telecommunications systems that take into account the needs of the hearing impaired might incorporate a cap-

tioned telephone facility – a system that uses speech recognition technology to convert an operator's voice into text. How does this kind of environmental design yield benefits for those without disabilities? By providing a more level playing field for all members of society and bringing more people into the arena where knowledge is shared and contacts are made.

Education, awareness, empathy

Recent books on designing for the disabled shine a light on this evolution in the design world. *Ergonomics for Children: Designing Products and Places for Toddlers to Teens* edited by Rani Lueder as well as design professor Don Norman's *The Design of Future Things* are a few of the latest works. Norman says "The disabled are not just some small, disenfranchised group: they represent all of us. So the first step is education, awareness and empathy."

The good news is that considering the needs of the disabled will ultimately lead to designs that are safer, more flexible and more attractive for all consumers. We are hopefully working towards a world where design solutions are found for people of all degrees of ability.

Let's play

Children with disabilities often have far fewer opportunities to play than other children do, not only because their abilities are limited but because those limitations are barely, if at all, taken into consideration in play product design. Institutional appearance, high cost and low entertainment value are common drawbacks in products designed only for disabled children. Through programs such as "Let's Play," based at the University of Buffalo (New York), which collaborates with manufacturers to optimize universal features in toy design, children with disabilities can be included in the design process.

By expanding the "ability range" of toys to include features that disabled children can master, more children benefit (known as the from-able-to-disabled universal design approach). On the other hand, the from-disabled-to-able³ approach can broaden play options for children without disabilities. Therapeutic toys with greater play possibilities mean children without disabilities can also enjoy the entertaining elements of the toys while at the same time working on skill development. The larger production volume from a wider market, which would include all children,

³ See Tsai Lu Liu, "A From-Disabled-to-Able Approach to the Universal Design of Children's Play Products," Department of Industrial Design, Auburn University.

⁴ The Web Accessibility Initiative (WAI) develops strategies, guidelines, and resources to help make the Web accessible to people with disabilities. See www.w3.org/WAI/

WHERE THERE'S A WILL, THERE'S A WAY!

Malaysia's efforts to put a break on the illegal trade in fake goods within its borders is a shining example of what can be achieved with a good dose of political will. In its endeavor to do battle with the "syndicated crime lords" that are fuelling the alarming global escalation in counterfeiting and piracy, Malaysia has put into place the elements of a robust legislative framework, including a well developed judicial system with specialized intellectual property (IP) courts and an effective IP enforcement strategy. According to Associate Professor Rohazar Wati Zuallocobley, Deputy Director General (Industrial Property), Intellectual Property Corporation of Malaysia (MyIPO), it is the "political will shown by the Minister for Domestic Trade, Cooperative and Consumerism that led to strengthening of Malaysia's enforcement regime" – proof that "Where there's a will, there's way!"

In just three years, Malaysia has succeeded in transforming its IP enforcement landscape, introducing many legislative changes to curb the illegal trade in counterfeit and pirated goods. Various deterrent measures have been introduced in the copyright area. For example, a fine – varying from a minimum of RM2,000 (US\$565) to a maximum of RM20,000 (US\$5,660) – is applied for each infringing copy or title, and offenders risk being sent to prison for up to five years. Repeat offenders may incur fines of up to RM40,000 (US\$11,330) per infringing copy or title.

Border provisions have also been introduced to curb copyright and trademark infringement. These provisions support right holders who seek to stop counterfeit or pirated copies of their IP-protected goods from being imported into Malaysia.

The above measures supplemented legislation passed in 2001 that ensures that counterfeiters and pirates draw no financial benefit from their illegal activities. Under the Anti-Money Laundering and Anti-Terrorism Financing Act passed by Parliament in 2001, violations under the Copyright Act 1987 (Section 41) and the False Trade Description Act of 1972 are classified as serious offenses, triggering the freezing of accounts and seizure and forfeiture of assets.

Strengthening the courts

Within an impressive 12-month period, MyIPO, with the support of WIPO and other partners, set up 15 IP Session Courts primarily for criminal prosecution of cases involving counterfeiting and piracy. After a year in operation, the specialized IP courts had dealt with 68 percent of cases as compared to only 14.6 percent the previous year. The six dedicated IP High Courts recorded a 38 percent increase in cases after the first year.

Clearly, the foresight of Malaysia's IP decision-makers is paying dividends by offering more timely and efficient treatment of IP infringement cases. This is good news in terms of instilling business confidence both at home and in the international marketplace, attracting increased foreign direct investment and recognition of Malaysia as a trusted steward of IP rights.

IP enforcement in practice

Malaysia has also taken a number of additional practical steps to beef up IP enforcement measures and reduce the trade in fake goods. These include the establishment of a Special Task Force on Counterfeiting and Piracy at the ministerial level and bolstering the Ministry's Enforcement Division with the addition of the Putrajaya Intelligence Unit. The 15 officers in the Unit are "trained to use tactical moves to nab those in the upstream piracy business," says Assoc. Prof. Wati. Inter-agency cooperation has also been strengthened to foster more effective collaboration among the police, customs, Attorney-General's chambers, local authorities and right holders. Various public advocacy programs have also been launched to inform and warn traders about the risks they run if caught selling counterfeit or pirated goods, and to persuade them to run legitimate businesses.

In spite of the significant achievements of MyIPO, there is no room for complacency, and work is already underway to anticipate emerging challenges, such as the growth in fake pharmaceuticals, and to further hone the country's IP

enforcement capabilities to address these challenges. “We are now amending again all the IP rights legislation,” says Assoc. Prof. Wati. “Intensive IP courses, which include three modules totaling 90 hours of lectures, are being conducted to strengthen the IP knowledge of the session court judges, the enforcement officers and the deputy public prosecutors.” Last year the program produced 34 graduates, and the 55 people currently signed up should complete training by year’s end.

While MyIPO is clearly making headway in tackling the illegal trade in fake and pirated goods, the impact of this insidious trade is still keenly felt. According to the Intellectual Property Alliance Report 2009, Malaysia’s music industry lost some US\$26.2 million in revenue, and losses of US\$180 million were suffered in the business software industry. Such hemorrhages of revenue, on top of those experienced by legitimate businesses in the film, leather goods, watch, apparel and publishing sectors are stinging the national economy and striking at the heart of Malaysian industry. The consequences: reduced tax revenues and job losses, with all their wide-reaching implications.

A country must build respect for IP

So what are the key lessons Malaysia has drawn from this experience? “One of the most important lessons is that political will goes a long way to supporting enforcement of IPRs,” says Assoc. Prof. Wati. “Another is that a country must build respect for IP... this effort must be continuous, and no segment of society must be left out.”



Photo: iStockphotos

The Suria Kuala Lumpur City Centre shopping complex at the foot of Malaysia’s famous Petronas Towers is home to a number of Malay and world famous brands, the owners of which are working with the Malaysia IP authorities to stop the flow of counterfeit goods into the country.

This reflects a belief gaining widespread currency among those engaged in the battle against IP crime: effective IP enforcement is securely anchored in building respect for IP rights. This conviction underpins WIPO’s approach to building respect for IP which, in the spirit of the WIPO Development Agenda (recommendation 45), aims to enhance international cooperation and calls for the creation of “an enabling environment” and “balanced approach” to IP enforcement “in the context of broader societal interests and especially development-oriented concerns.” This with a view that “the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and

to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations” in accordance with article 7 of the TRIPS Agreement.

Malaysia’s achievements in the field of IP enforcement, in sensitizing businesses and consumers to the negative impact of IP crime and generally promoting greater respect for IP rights, are an outstanding illustration of what can be accomplished in a relatively short time with the commitment and vision of government and the support of WIPO and its international partners. It offers an interesting and insightful case study of the measures that can be taken to effectively do battle against the criminal element that is fuelling the rapid growth in the global trade in fake and pirated goods.

HOW CAN TECHNOLOGY HELP TO FIGHT COUNTERFEITS?

The European Union reports that, compared to 2005, seizures of counterfeit drugs at EU borders increased by 380 percent in 2007. The World Health Organization (WHO) brochure "IMPACT – International Medical Products Anti-Counterfeiting Taskforce" reports on "a trail of death in Argentina" in 2004; tells the story of a 22-year old Argentine woman who died of liver failure after being injected with a highly toxic counterfeit; and notes that over 100 patients were killed in Panama by counterfeit glycerin. The danger is worldwide.

Counterfeit drugs, including counterfeit medical devices, have been made to look so similar to the genuine products that even health professionals cannot tell them apart. The article provides an overview of counterfeit medicines in the global marketplace, and identifies some of the technologies manufacturers employ to keep counterfeits out of distribution chains. It was adapted for *WIPO Magazine* from a longer version by **JEAN-MARC BOBÉE** originally published in *STP Pharma Pratiques*, Volume 19, number 1, January-February 2009.

The World Health Organization (WHO) defines a counterfeit medicine as one that is deliberately and fraudulently mislabeled with respect to its identity and/or source, and this can apply to both branded and generic products. Counterfeits may include medicines with the correct ingredients, the wrong ingredients, no ingredients, insufficient active ingredients or fake packaging. In all cases,

however, counterfeits are illegal. They are also dangerous and deadly products as they mislead patients into believing they are taking a medicine to preserve or improve their health while, in reality, they are not getting what they need.

WHO estimates that from 7 to 10 percent of the world's pharmaceuticals are counterfeit. In developing countries where criminals can exploit weaker regulatory systems, this rises to 25 to 50 percent of the pharmaceutical market.

Regrettably, counterfeit medicines have become big business: WHO puts the global value of trade in counterfeit pharmaceuticals at between US\$32 and 46 billion. (WHO, Fact sheet No. 275, 2003).

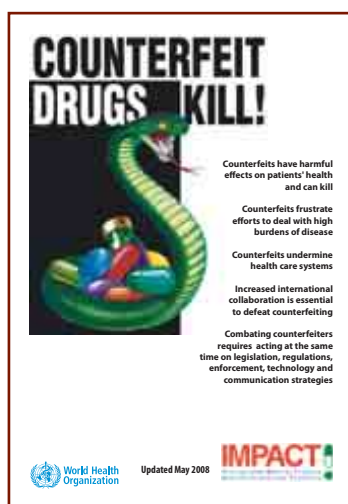
Why counterfeit pharmaceuticals?

Counterfeiting, especially of high-end products such as medicines, tends to be an extremely lucrative criminal activity. Law enforcement and prosecution of alleged perpetrators can be challenging, and penalties often lenient – hence the growing involvement of organized crime in counterfeit medicines.

More sophisticated technology for copying legitimate labels and packages is now available and facilitates the distribution of fake products that are made to look indistinguishable from legitimate ones. And the growth of e-commerce, allowing the purchase of prescription medicines online, is a key factor in increasing counterfeit trade as it connects consumers directly with suppliers of controlled products outside the legal distribution chain, and outside the regulatory authority of government agencies.

Technology for the fight against counterfeiting

While technology can sometimes add to the problem, it also provides tools that help manufacturers keep one step ahead in combating counterfeiters. Three key principles make up an efficient technological anti-counterfeiting strategy:



- Use of harmonized and standardized coding and identification systems for secondary packs of pharmaceuticals;
- Use of overt and covert features to authenticate products; and
- Guarantees as to the integrity of the original manufacturer's packaging throughout the entire supply chain.

Packaging – Maintaining the integrity of the original manufacturer's packaging throughout the entire supply chain is of paramount importance. It provides a guarantee that the packaging code applied by the original manufacturer is unchanged, making it easier to spot if goods – packaging – have been tampered with. Using tamper-evidence technologies to secure secondary packaging (i.e., the packaging of the pills themselves inside the box) also helps uphold the integrity of the contents. For example, product packages can be fitted with security seals or glued with perforated cartons. Another option is to design carton folding boxes in such a way that they break (tamper evidence) when the package is first opened.

Special markings – Overt or visible markings allow authentication of products at every stage along

Quality of counterfeiting improving

Sometimes, the copy is of such good quality it is impossible to tell the difference between the fake package and the genuine one – thus requiring a physicochemical pack analysis to compare the suspicious sample with a reference sample kept by the company. As is clear from this example from Peru, a visual examination of the packaging alone is not likely to help in identifying the counterfeit.

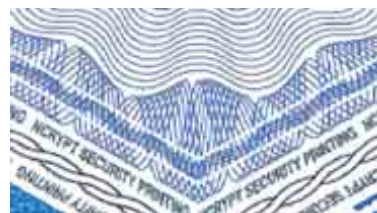


Credit: STP Pharma Pratiques

Can you tell the fake Novalgina from the real product?

Standardized and serialized coding and identification systems – In addition to sophisticated inner and outer packaging, and overt and covert markings, manufacturers can implement a third step: a standardized coding and identification system. Traceability and security of medicines can be controlled using specific codes imprinted on internal packaging, especially if pharmacies are equipped to interpret the codes.

While this technology already exists and is used to identify batches, or large quantities, of products, it can and should be deployed at the pharmacy level.



Credit: STP Pharma Pratiques

Examples of special markings (from left to right): holograms, color shifting inks/films, guilloches.

the supply chain (e.g., wholesalers, pharmacies, hospitals, etc.). Several security features are available on the market – among which are holograms, color shifting inks and guilloches (also used for banknotes). Covert or hidden markings are used by manufacturers to authenticate genuine products and detect counterfeits. Examples are chemical tags, such as ink, which constitute a chemical signature that can be embedded in different elements of the packaging.

The choice of authentication technologies should always be specific to each manufacturer in order to reduce the risk of copying by counterfeiters. If each company had its own proprietary system, counterfeiters would have to try to copy as many types of markers as the number of products they are trying to counterfeit.

For example, pharmacies could use a barcode reader to verify a product's authenticity – including other information in the barcode on the product such as the batch number and expiry date. Scanning each pack at the dispensing point and linking it to e-prescription systems guarantees that each patient receives the right product, and expired products, as well as counterfeits, are automatically detected. In addition, attributing a specific, randomized number per box can prevent the dispensing of counterfeits.

Counterfeiters also keep up with the latest technological developments, meaning continued efforts to improve them are needed. However, the good news is that these technologies can make an effective contribution to building efficient anti-counterfeiting strategies, especially in the areas of authentication and traceability.

EVENT GALLERY

WIPO Director General Makes Official Visit to Singapore

Singapore Prime Minister Lee Hsien Loong and WIPO Director General Francis Gurry, on an official visit to Singapore on July 28, discussed issues relating to Asia's growing importance in the international intellectual property system; WIPO's capacity building activities in the South East Asian region; climate change and the role of IP; and the role of balanced national IP regimes in promoting development and growth. The Director General and the Prime Minister emphasized the fruitful cooperation between WIPO and Singapore, as evidenced by the recent strengthening of the WIPO Singapore Office.

Photo credit: Singapore Ministry of Information, Communication and Arts



Mr. Gurry described Singapore as an excellent model for establishing a close correlation between the strategic use of IP and economic development. He added that the WIPO Singapore Office, drawing on Singapore's excellent infrastructure, would also enable WIPO to engage closely with other countries in the region, understand their needs and provide targeted and effective development assistance.

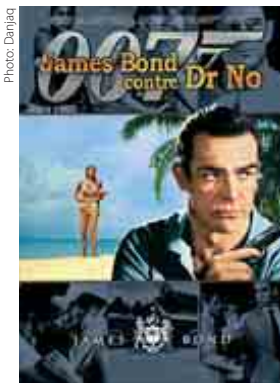
Earlier in the day, the Director General signed an agreement with Singapore to establish the Singapore Office of the WIPO Arbitration and Mediation Center, and a memorandum of understanding to establish the international WIPO Mediation and Arbitration Scheme for Film Related Disputes to be developed by WIPO and Singapore.

Following the meeting with the Prime Minister, Mr. Gurry delivered an address at the Lee Kuan Yew School of Public Policy.

IN THE NEWS

“Dr No” – No Trademark for James Bond

An eight-year legal battle over trademark rights to both Dr No and Dr NO came to end on June 30 with the ruling of the European Court of First Instance in Luxembourg that the instantly recognizable name is not trademark protected. The German media group, Mission Productions, is now free to register the trademark in the European Union.



Danjaq, the U.S. media firm that manages IP rights in the Bond movies, claimed a risk of confusion because of the association of Dr No with James Bond, Agent 007. However, the Court decided that the use of Dr No in films, on DVDs and video cassettes was artistic, not commercial. The evidence showed that signs such as James Bond or 007 were instead used as commercial identifiers on DVD and video cassette covers. “In those circumstances,” said the Court, “the signs Dr No and Dr NO cannot be regarded as well known trademarks or non-registered trademarks that could be relied on in order to oppose the registration of a Community trademark.”

When Danjaq's first attempt to block the registrations was rejected in 2001, the media firm immediately started to register EU trademarks for all the Bond film titles. Of the 22 films in the series – Dr No, the first, was released in 1962 – 18 have been registered. Registration of Casino Royale, Octopussy and Golden Eye has been challenged. ■

Paperless pleading proposed for UDRP

WIPO's Arbitration and Mediation Center, the leading service provider for domain name disputes filed by trademark owners under the Uniform Domain Name Dispute Resolution Policy (UDRP) has submitted a proposal to the Internet Corporation for Assigned Names and Numbers (ICANN) to move the UDRP to a system of electronic, paperless pleadings. Through targeted amendments to the UDRP Rules, WIPO's "eUDRP proposal" offers a practical and fair solution particularly fitting for a dispute resolution process concerning online identifiers.

In order to avoid any potential prejudice to domain name registrants (the respondent in a case), a "safety-valve" in the proposal will ensure that respondents receive effective notice of the existence of a dispute. This notice will continue to be sent to respondents by post, fax and e-mail. However, the pleadings themselves will be sent by e-mail only. WIPO's re-

search indicates that its eUDRP proposal will yield clear time, cost and efficiency gains, while continuing to provide uniformly accessible means to participate in proceedings.

Already experienced in electronic communications, WIPO has previously used its Electronic Case Facility (ECF) to facilitate such communications successfully in complex intellectual property arbitration cases under the WIPO Rules. WIPO has already this year instituted e-mail notification of Panel Decisions under the UDRP.

WIPO's further proposals for additional dispute resolution mechanisms under ICANN's planned expansion of the number of Top Level Domains in the future also foresees an increased reliance on information technology in case communications. ■

The King of Pop's IP Legacy

The estate of Elvis Presley, the King of Rock 'n' Roll, generated US\$55 million in revenue in 2008, over 30 years after his death. The purchase of 85 percent of Elvis Presley Enterprises, which manages his IP rights and Gracelands, cost US\$100 million in 2004. The estate of Michael Jackson, the King of Pop, is expected to dwarf those figures.

Mr. Jackson's 50 percent stake in the music publishing partnership Sony/ATV, which owns the rights to the Beatles catalog, is estimated to be worth US\$500 million. There is his own song catalog, which is expected to earn hundreds of millions; a film deal and merchandising contracts that have already earned US\$100 million; and additional merchandising deals are expected to bring another US\$100 million by the end of the year.

This is just a beginning and these amounts do not include the value of Neverland, which may turn into a theme park for his fans, and his huge art collection. ■

Biking Green - A civic pride



Over the summer, Montreal, Canada, launched Bixi, a bike-sharing program such as is seen in many big cities – but with a difference. Montreal's system is solar-powered, WiFi-enabled, accessible by credit card and entirely modular. The design requires no underground wiring or construction, so it is easy to move docking stations from one place to another and to store the entire system indoors for the winter.

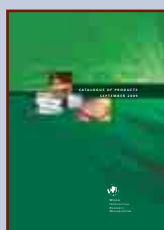
None of those involved in the project will receive pay increases or any other benefits; they claim to have been motivated by civic pride. Three civil servants, employed by the city's parking authority, had the idea of taking the computerized, solar technology used in parking meters and applying it to bikes. A renowned Montreal industrial designer, Michel Dallaire, created Bixi then signed over the four commercially valuable patents that resulted from his work to the non-profit Public Bike System Company, which runs the program.

Ottawa, Canada's capital, is already operating a Bixi pilot project. By 2010, London will create a Bixi network of 6,000 bikes with 400 docking stations and 10,000 docking points. Boston also plans to set up a Bixi network. New York, Seattle, Toronto and Vancouver have expressed interest.

NEW PRODUCTS



The WIPO Guide to Intellectual Property Outreach
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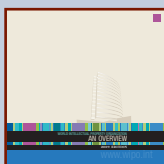
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