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Frank talking

Francis Gurry is widely regarded as one of the world's foremost authorities on intellectual property. He was appointed director general of the World Intellectual Property Organization (WIPO) in September of this year. He has occupied various positions at WIPO since joining in 1985, most recently deputy director general. Prior to that, he practised as an attorney in Melbourne and Sydney and taught law at the University of Melbourne. Here he discusses his plans for taking WIPO forward and the challenges that the organization must overcome in the face of increasing demand for IP protection from developed nations and the growing spectre of mistrust in developing nations.



Francis Gurry

You have taken the helm at WIPO at a time of reported strife within the organization. What are your strategies to calm the waters?

The key strategies internally are to focus on a culture of service orientation and to be forward-looking. We are here to provide certain services – to the users of our systems, to the member states and to the general public - and that is what we should be focusing on. In other words, we should focus the staff on the external world that we are serving, rather than on our internal problems. We should also be looking to the future rather than the past. These are the two main ways in which I hope to cultivate cohesion and coordination among the staff, and to align them behind a common vision.

Does this relate to what the chairman of the General Assembly said last month when he spoke of your vision of “a WIPO ready to tackle the big questions”?

Absolutely. It is linked in the sense that we need to have a common strategic vision as an organization. That doesn't just cover the secretariat, of course, but also covers the member states, and I think that will be quite a long-term process - building consensus around a common strategic vision.

And just what are those big questions?

There are a number of major questions out there. Everywhere you look in the field of intellectual property, you see fundamental challenges. Firstly, there's the incapacity to manage demand in the patent system at the moment. How do we build a functional international patent system in which we do not have a 3.5 million patent application backlog?

Another major question surrounds digital technology and the Internet. What sort of position should the organization be taking in relation to peer-to-peer file sharing, secondary liability and user-generated content, which are three major issues in the copyright area? Then we have a major question, which is linked to what I've just said, about counterfeiting and piracy. What is the role of this organization here? Are we simply going to collect and exchange information and have an educational role, or is it going to be a more robust role?

There is also the issue of enabling greater participation and buy-in to the IP system from the developing world. For that, we need to have a successful development agenda. This leads to a series of questions arising from the intersection of intellectual property with other areas of public

policy. The general background to this is that technology has become so pervasive in society that questions of property rights concerning technology are creeping into all sorts of areas, whether it be health, environment, freedom of speech, educational materials, biodiversity, climate change – we are seeing it all over the place. So another major challenge for this organization is to engage with the outside world in relation to these global themes and their intersection with intellectual property.

You mentioned the need to develop a coherent strategy for bringing developing nations to the table. What is the best way of allaying their concerns that at first glance there may not be that much in it for them, in contrast to the benefits for big rights holders in developed countries?

I think that's certainly the perception in many developing countries. On the other hand, developing countries are rich in culture, so they are an important source of content and therefore an important source of potential for copyright. Their access to distribution channels may be limited, but that is something to work on. In the field of technology, there is indeed a huge gap. There we have to focus on the social benefits of the patent system. Why do we have a patent system? One of the reasons is to get technology disclosed and out into the open. The patent system has put together a systematic and comprehensive record of humanity's technology. We need to enable better access to this record for developing countries and research institutions in developing countries.

We also have to address the resource base of developing countries by asking how intellectual property can help agricultural economies and how their resource base in terms of traditional knowledge, traditional cultural expressions and folklore can be addressed. These are the types of strategies that we need to adopt to encourage greater buy-in to the system by developing countries.

What you've just said perhaps underlines the traditional view that IP legislation is intended as a spur to creativity, but many now suggest that it is threatening to throttle innovation rather than encouraging it. What are your views on this?

We have witnessed a period of expansion of the protection of intellectual property - there is no doubt about that. I don't think that it's the case just for industrialized countries. There is a strong demand for strengthened protection from industrialized countries, but traditional knowledge is an expansion of intellectual property and the demand there is coming from developing countries. The connections with genetic resources – again, the demand is from developing countries. So right across the world, we are seeing an expansion of intellectual property and growing demand for it.

Is that throttling innovation and creativity? That's a big issue – and one that probably needs to be unpacked. One of the things that might throttle creativity and innovation is too much complexity in the system. We are finding that with the expansion of intellectual property, the system is becoming quite complicated. We have to ask whether it is still accessible to the ordinary person in the street. If it's not, then something is wrong and we have to address that. We do not want to have a system that is too complicated and too inaccessible. That would have an adverse impact on innovation and creativity. People wouldn't know where to go, what their room for manoeuvre would be, what their freedom to operate would be. So we do need to keep it simple as a system.

The extent to which the increased level of protection throttles innovation and creativity is another issue. This is something that has to be closely and continuously monitored. The system is designed to balance the rights of the general public - who might be interested in a vibrant culture or having a healthy public domain, to which the patent and copyright systems contribute - with the rights of creators, to make sure they are remunerated and rewarded for their creativity and their efforts. So it's a system designed to be in balance and we have to be vigilant to ensure that the balance never tips too far in one direction.

But is there only so much that WIPO can do on the ground in each country? How difficult is it to persuade countries to sign up to agreements and tackle these problems on an international scale?

I don't think it's too difficult at all. There are two separate things out there. On the one hand, I'm deeply convinced that the demand for assistance and capacity-building activities in the area of intellectual property from developing countries is overwhelming, and I've seen this in the short time that I've been in office. There really is a genuine demand. They want to find out what the system is about and use it in the ways in which it suits them - whether it is for music, geographical indications in the area of agriculture or branding agricultural produce.

On the other hand, it is true to say that in some parts of the developing world intellectual property has a bad press, and that is something we have to address. We do that by showing ways in which intellectual property can be relevant, as I've said.

One international treaty grabbing headlines at the moment is the Anti-counterfeiting Trade Agreement, which covers several topics that might be considered to fall under WIPO's remit. Taking them outside the organization into this new agreement seems quite an aggressive move on the part of the developing nations...

I think the larger issue is one of multilateralism. This is not just an IP question: there is a dimension that concerns trade and the whole of the international economic system. In the course of the last 20 years, we have seen an increased tendency towards bilateralism and plurilateralism, and the Anti-counterfeiting Trade Agreement can be seen in that context. Why that is the case is a very important question for us to address. What is wrong with the multilateral system that people need to be going outside it?

So rather than focusing on whether it is a good or bad thing that they are working on the agreement, the larger question for us as an international community is: what is wrong with the multilateral system that is undermining people's confidence in being able to advance issues within it? I think that's what we have to address.

I don't have the answers to that – it's a complex issue, with multiple dimensions. Unfortunately, the multilateral process is a slow, painstaking process and you can really only measure progress in the long term. You can see the progress as tangible on some occasions. For example, the Asian financial crisis in the late 1990s did not become a crisis of the trading system. Why not? Because since the Great Depression - which did become a crisis of the trading system - the World Trade Organization and General Agreement on Tariffs and Trade systems had been put in place, preventing it from being translated into the trading system in terms of protectionist responses and reactions. So that is the sort of progress that you can see in a multilateral system and it really does take decades.

But in a world that demands immediacy - which has immediacy of communications and demands immediate responses - it is a very cumbersome, slow process and that is part of the problem.

Is the failure to get the WIPO Broadcasting Treaty going a further illustration of the fact that these things do take time - particularly to hammer out a solution with which everyone is happy?

That's right, and methodologically, there is a bit of a question out there, which is that the normal way of proceeding multilaterally is to find the lowest common denominator and this may not always be the best methodology to apply to state-of-the-art technology. So we have that problem as well.

So in this fast-changing environment, the bilateral and plurilateral approach may be the best way to plug emerging holes?

That's right. That's the current thinking.