

INTELLECTUAL PROPERTY QUARTERLY UPDATE



AN INTERGOVERNMENTAL ORGANIZATION
OF DEVELOPING COUNTRIES



CENTER FOR INTERNATIONAL
ENVIRONMENTAL LAW

ACCESS TO KNOWLEDGE: OPEN ACCESS MODELS FOR INCREASED ACCESS TO EDUCATIONAL RESOURCES AND RESEARCH

For Developing Countries and Least Developed Countries, access to knowledge is a priority. There are a growing number of initiatives and models that promote collaboration and open access to knowledge as alternatives to traditional proprietary models that often over-emphasize the need to protect, rather than access, creative and innovative works to encourage learning. This article presents a brief background of some initiatives for access to digital content, and explores how they may support education and research in developing countries.

I. Introduction

The rapid advance of Information and Communications Technology (ICT) and digital technology has created unprecedented opportunities for the production, access and dissemination of knowledge. Digital technology and computer networks – particularly the Internet – allow for increased access to informative content and opportunities for learning. However, the potential of the digital revolution to support access to knowledge for developing countries is yet to be fully unleashed. The knowledge-gap is coupled with the wide “digital divide” that persists both in terms of access and diffusion of ICT among developed and developing countries.¹

¹ On quantification of the digital divide, see UNCTAD (2005), The Digital Divide Report: ICT Diffusion Index.

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The potential applications of ICT and digital technology for education and research in the developing world are enormous. Increased access to digital content and connectivity in developing countries could help tackle the critical problem of the lack of access to books and other materials for education and research.

Educational resources; scholarly literature and other writings and data are now increasingly available online. They can now be converted from print (digitized) and disseminated via computer networks, or created as digital content that can be indexed, manipulated, aggregated and decomposed, among others. In addition to the increased accessibility of the content, once digitized content is produced, it can quickly, easily and cheaply be reproduced, identical in quality to the original, and disseminated online. In contrast to traditional publishing, where paper copying, storage and distribution costs can be significant, the costs of making additional copies of digital works are close to zero and can be distributed widely via the Internet without causing any deterioration of the original work or reducing the possibility of access to others.

The problem for developing countries in taking advantage of such developments to promote education and research is two-fold. On the one hand, most developing countries lack adequate or sufficient access to ICTs and adequate research infrastructure. On the other hand, developing countries confront significant access barriers to digital content, including technical (i.e. technological protection measures- TPMs), legal (i.e. intellectual property rights,) and price barriers.

In parallel to the expansion of ICT and digital technology, there has been growing trend towards the privatization of knowledge that has increased the cost of knowledge goods. In response, a whole range of novel initiatives and alternative models for producing, accessing and disseminating knowledge are emerging. These include "Open Access" initiatives and models. The following sections present a description of two Open Access models that can promote education and research, and discusses how these seek to address access barriers.

II. Open Access Initiatives

Open access models and initiatives seek to promote creativity and innovation while at the same time contributing to the dissemination of knowledge at as low cost as possible.

There is no single definition of Open Access (OA), but rather particular elements that can be clearly associated with the concept and drive of the OA movement. OA seeks to 1) prioritize access, as opposed to protection or privatization of knowledge goods; 2) remove access barriers; 3) make knowledge available for free or at low cost to as many people as possible; 4) provide a working alternative to current proprietary models; 5) build upon existing knowledge and collaboration among creators and or researchers; and 6) constitute a viable business model.

Open Access Licensing and Open Access Literature (or publishing) are two examples of working open access models and initiatives.

II.1. Addressing Access Barriers

Open Access initiatives seek, first and foremost, to remove barriers to access, use and dissemination of digital works. Conditions for access are one of the key differences between content made available in print and digital content. While access to a copyright work in print requires only physical availability of the material (i.e. a book in print) that can then be shared, access to digital content requires that the content be reproduced, that is, a digital copy be made, every time it is accessed by a new user. This requirement makes copyright laws a concern for every user in the digital environment.

Copyright is a form of intellectual property right granted to authors over their original creative works for a limited time. Intellectual property rights seek to reward authors, creators and inventors for their works by granting them legal rights to control their inventions or works (proprietary rights). The overall purpose of such a system is to encourage innovation and the dissemination of knowledge for the benefit of society as a whole. However, over emphasis on protection, rather than access to knowledge goods may also hinder such goals.

Copyright is subject to certain limitations and exceptions, such as use for private and

educational purposes. While limitations and exceptions are critical in ensuring the balance between the rights of copyright owners and the public interest, their scope is limited and their application in the digital environment is unclear.

In the digital environment, any user when accessing or downloading content will copy, and thus potentially infringe, one or multiple sources of copyright. This may be so regardless of the intended use of the content and whether the user is aware of whether the content is protected by copyright or not. The burden is on the user; a researcher, a student, a library, and so on, to determine whether the content is protected and must clear such rights before access, which can be a costly and burdensome process. Yet failure to do so is sanctioned by law.

The process through which copyright content is disseminated is mainly through licenses. However, the negotiation of licenses for access may be lengthy, burdensome and expensive. This may be even more so, if it requires clearing different layers of copyright or if the work is a collection of different copyrighted works, as frequently is the case with books and archives. This problem is exemplified by the numerous copyrighted works that are currently left inactive in archives, (i.e. government, museum, libraries) because the process of clearing copyright for digitizing the works to make them available to the public, even when these have been produced with public funds, is too complex and expensive.

In addition to restrictions for access due to copyright law, digital content is often locked up behind TPMs. TPMs are technical tools that allow the copyright owner to control or block access to a digital work. The argument for allowing copyright owners (or third parties to which they have licensed their rights to, such as publishers and record labels) is the need to contain illegal use, copying and dissemination of copyright works in the digital environment.

In practice, TPMs become an additional protection granted to copyright owners, in addition to the exclusive rights of copyright, effectively strengthening the ability to control access to digital works. One of the main problems with the use of TPMs is that they may block access even when it would be le-

gal for a user to read, copy or download the product, either because the use falls under the scope of limitations and exceptions to copyright, or because the content that the TPM is protecting is free from copyright.

Open access initiatives seek to make digital content as free from copyright and technology-based restrictions as possible, building upon the basic premises of copyright.

II.2. Open Access Licensing

Open Content Licensing is an OA model that has emerged to facilitate access to digital copyrighted content. A license is the main means through which permission is granted by the copyright owner for the use of copyrighted works.

The model seeks to provide a means for works to be shared in the digital environment avoiding some of the obstacles created by copyright law and TPMs. In essence, the copyright owner voluntarily allows use of the copyrighted work beyond the scope of limitations and exceptions allowed under copyright law.

One of the most popular models of OA licensing is Creative Commons (CC) Licensing.² CC licenses are not anti-copyright, as they rely on copyright law to structure the licenses that provide open access to digital content. In contrast with the 'all rights reserved' model of copyright, a CC license allows any copyright owner to voluntarily allow for the copying, use, and/or sharing of their works to the public under certain conditions.

Through the CC license, the copyright owner can decide to grant some of their rights to the public, while retaining others. All CC licenses have some common features, including, that they grant the right to copy, distribute, display, digitally perform and make copies of the work into another format.³ They are irrevocable, apply worldwide and last for the entire duration of copyright. They cannot use TPMs to restrict access to the work, but attribution must be given.

² See www.creativecommons.org

³ For an explanation of each type of CC licenses, see <http://creativecommons.org/about/licenses/meet-the-licenses>.

The CC model facilitates and promotes collaboration in the creation of new works. In accessing and using a CC work, the user abides by the principle that any new work created must also be made available to others under a CC license. This way, the CC model ensures that work created under the open access model remains so, and that any new works built upon the model will also enrich the 'creative commons'.

II.3. Open Access Literature

Scholarly works and research outputs are shared via publishing. The main avenue for publishing research outputs is academic journals. The number of publications and academic journals available in a country is also one of the indicators commonly used to measure research capacity and competitiveness among countries. Journals, both in print and electronic form, are concentrated in developed countries. This reflects not only a lower level of research undertaken in the developing world, but also the lack of access to scholarly publications in developing countries to support research and the difficulties in adopting the traditional model of academic publishing via journals.

The system of journal publishing involves several steps: authors submit a paper; then it is peer-reviewed to check for quality in the research work; if the paper is accepted for publication by the journal, the author is generally asked to render copyright of the work to the journal for publication; the paper is then prepared for publication, involving formatting, and editing, among other processes; it is then published in a particular edition of the journal, which is then made available to users for a subscription fee.

One of the main obstacles for access in the current system of research publishing is the costs of the subscription fees. In developing countries, for individual researchers and academics, as for libraries and universities, the costs are often too high. The high subscription costs are also increasingly becoming problematic in the developed world. An additional obstacle for access is that authors are generally obliged to transfer copyright to publishers and thus cannot widely disseminate their works themselves. Authors seek to publish primarily for the purpose of the recognition of their work and to be influential in their field, as opposed to financial motives. Hence, authors' seek to be quoted by

peers as much and disseminate their works as widely as possible to increase their influence.

In the digital environment, some of these problems can be addressed, such as the extra cost involved in publishing print copies and in preparing content for publication, including peer-review. However, digital content can also be locked up with TPMs and other technical restrictions to access, that support the subscription-fee model of e-publishing scholarly literature. This poses a huge obstacle for the implementation of limitations and exceptions to copyright, as circumventing TPMs, even where permitted, can be very difficult. Moreover, it keeps digital content locked away from the many potential educational and research uses, including developing real-time collaborative works that the technology allows.

In response to the growing access problems to scholarly literature particularly in the digital environment in both developed and developing countries, the OA movement in this area is gaining strength among the research community. The OA movement in the area has been best defined by the Budapest Open Access Initiative.⁴ The initiative focuses on peer-reviewed journal literature and emphasizes completely free and unrestricted access to it by all scientists, scholars, teachers, students, and others. The free, unrestricted online availability of scholarly literature in digital form would eliminate the restrictions of the traditional publishing model, as well as harness the opportunities offered by digital technology, online free of charge and free of most copyright and licensing restrictions.

OA literature is compatible with copyright. As in the case of OA licenses, it works on the basis of the copyright owners' consent and doesn't require changing or infringement copyright laws. OA also relies on works that are in the public domain, that is, works that are not subject to or have lost copyright protection.

The main model through which OA literature operates is by ensuring that the costs of preparing, peer reviewing and distributing scholarly literature are not paid by the user,

⁴ See <http://www.soros.org/openaccess>.

therefore eliminating subscription-fees.⁵ Such price barriers are the main obstacles that OA removes. OA publishing mainly relies on the author paying a fee for the publication, rather than the user. It is intended that the authors would make payment out of their research budget. However, in the case of developing countries, researchers often are not supported by large research budgets granted on the part of the academic institutions they may be associated with, and even publicly funded research is scarce. In recognizing these limitations, many OA journals currently waive fees for authors from developing countries.⁶ OA initiatives are also rapidly expanding in developing countries.

One example of an OA initiative in developing countries is the Access to Global Online Research in Agriculture (AGORA) Project.⁷ It offers tiered pricing to over 400 scientific journals specializing in food, nutrition, agriculture, biology and environmental science. A number of well-known international publishers participate in the project, including Blackwell, Oxford University Press and Nature Publishing Group.

Another OA initiative that allows wider distribution of works at no cost to users are online repositories or archives.⁸ Authors and researchers participating in the OA movement increasingly are asking journals to allow them to self-archive copies or earlier versions of their works in OA online repositories or archives that are free and open to the public. While having the benefit of eliminating intermediaries in the on-line publishing process, some have argued that repositories do not guarantee quality of the material made available and cause information overflow. To remedy this some include peer-review processes or minimum requirements such as author's references, links to other publications, among others.

III. Open Access Model and the Multilateral Debate

OA has been largely the initiative of researchers, society publishers, scientific communities, academics, librarians and universities. The initiatives receive strong support from development funding agencies. The OA model is also receiving considerable attention from commercial publishers.

The public policy debate on promoting and supporting the open access model has resulted in some developments. The debate circles around mandating OA in publicly funded research projects, exceptions and limitations for libraries, archives and museums, and recently the rights of search engine operators and others to digitize content for OA.⁹ The OECD has adopted a declaration on access to research data generated with public funding.¹⁰ Yet meaningful policy development in promoting and supporting the OA model, and reducing the tension among IP right holders and content technology developers remain critical.

In this regard, important contributions are made by developing countries in engaging the World Intellectual Property Organization on the issues of OA under the Development Agenda for WIPO. Some of the related developments achieved during the third meeting of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) include the proposal that WIPO considers the preservation of the public domain within WIPO's normative processes and deepen the analysis of the implications and benefits of a rich and accessible public domain.¹¹

However, important proposals directly related to the OA are to be considered by the fourth meeting of the PCDA in June 2007. The proposals cover the main public policy debate with respect to the mandating of OA

⁵ See Peter Suber, "Open Access Overview", last accessed 14.04.2007. <http://www.earlham.edu/~peters/fos/overview.htm>.

⁶ For a listing of projects that bring free or affordable journal access to developing countries, see <http://www.gdnet.org/middle.php?oid=247..>

⁷ See www.aginternetwork.org/en/.

⁸ See for example, the Scientific Electronic Library Online, SciELO project. <http://www.scielo.org/index.php?lang=en>.

⁹ See for example, Report of the European Research Advisory Board on Scientific Publications: Policy on Open Access, EURAB: 06.049, December 2006.

¹⁰ See, OECD, 2004, Science, Technology and Innovation for the 21st Century: Meeting of the OECD Committee for Scientific and Technological Policy at Ministerial Level, 29-30 January 2004 - Final Communiqué, Annex I.

¹¹ WIPO (2007), Summary by the Chair, Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), Third Session, Geneva, February 19 To 23, 2007, Para. 10.

for publicly funded research outputs, limitations and exceptions to copyright and norms on access to knowledge. These proposals require the examination of the OA model itself and include proposals:

1. To promote models based on open collaborative projects to develop public goods, as exemplified by the Human Genome Project and Open Source Software;
2. To negotiate a multilateral agreement where signatories would place into the public domain, or find other means of sharing at modest cost, the results of publicly funded research. The objective would be to set out a mechanism for increasing the international flow of technical information, especially to developing countries, through expansion of the public domain in scientific and technological information, safeguarding, in particular, the public nature of information that is publicly developed and funded without unduly restricting private rights in commercial technologies;
3. To examine non-intellectual property type and/or non-exclusionary systems for fostering, creativity, innovation and transfer of technology (e.g., free software development and creative commons models);
4. To establish a Treaty on Access to Knowledge and Technology; and
5. To establish in WIPO an area of analysis and discussion of incentives promoting creative activity, innovation and technology transfer, in addition to the intellectual property system, and within the intellectual property system, for example emerging exploitation models. This could be achieved through either of two mechanisms:
 - i. An electronic forum maintained by WIPO for the exchange of information and opinions. It could have a limited duration (e.g. one year), after which proposals and discussions could be summarized in a document. If there is interest and critical mass, we would analyze if and how to proceed. Discussions in the forum could be organized under the following sections: Tools within the intellectual property system (e.g. utility models, systems of free and open licenses and creative commons), and those complementary to the intellectual property system (e.g. subsidies,

Treaty on Access to Knowledge, Treaty on Medical R&D);

- ii. To include this issue as a permanent item in the agendas of the WIPO Committees.

Considering the contribution of OA for education and scientific research, it is imperative to develop public policies both at the national and international level. Normative developments on what have been largely the initiatives of universities, libraries, academicians and other interest groups would help to harness the benefits of OA and provide support to the private initiatives.

IV. Conclusions

Open Access initiatives and models are proving to be viable alternatives to proprietary models for promoting creativity and innovation. Open Access licenses and Open Access literature are two examples of how such models can work in practice to promote production, access and dissemination of research outputs and educational materials while eliminating many of the cost and technical access barriers.

Science, education and research, particularly in developing countries, stand to benefit greatly from Open Access initiatives, while not replacing or causing any disturbance to the current copyright system. Open Access models are an alternative for information management in the digital environment that prioritizes access to knowledge; a clear priority and pervasive gap in developing countries. Such models are an example of how the interests of intellectual property rights holders to control their works can be reconciled with the interests of users and society at large in the distribution and dissemination of works, and how the opportunities that the digital revolution present for learning and knowledge creation can be harnessed.

AN OVERVIEW OF RELEVANT DEVELOPMENTS IN THE VARIOUS IP FORA

The following is an overview of the developments in the various fora dealing with intellectual property issues in the First quarter of 2007.

World Trade Organization

The highlight of the first quarter of 2007 was a statement by WTO Director-General Pascal Lamy to the WTO General Council, which met on 7 February 2007, announcing the resumption of the stalled trade negotiations under the Doha Round. According to Mr. Lamy's report, "political conditions are now more favourable for the conclusion of the Round than they have been for a long time. Political leaders around the world clearly want us to get fully back to business, although we in turn need their continuing commitment".¹²

WTO Council for TRIPS

Differences between developing and some developed countries continued to be reflected during the formal meeting of the TRIPS Council which took place on 13th February 2007. This meeting focused mainly on the relationship between TRIPS and the Convention on Biological Diversity (CBD) and on Enforcement issues.

On the relationship between TRIPS and the CBD, no progress has been achieved. The sponsors of the proposal for the amendment of Article 29*bis* of the TRIPS Agreement, supported by a number of other developing countries, restated the argument for a disclosure requirement and emphasized that the time was ripe to hold text-based negotiations.¹³ Norway provided further detail on its proposal to introduce a mandatory obligation to disclose source and origin of genetic resources and traditional knowledge in patent applications (IP/C/W/473). A number of African countries took the floor to support the disclosure of origin proposal, and said they were considering becoming co-sponsors. During the first quarter of 2007

Venezuela has joined as co-sponsor of the proposal. Some developed countries continue to argue that negotiations on such an amendment were premature while others stated that the WTO was not the appropriate forum.

The United States (US) submitted document IP/C/W/488 on enforcement of IP rights.¹⁴ Statements of support were received from Australia, Canada, the EU, New Zealand, Japan and Switzerland. China, supported by India, Argentina, Cuba, South Africa and Brazil, stressed that the submission is only a temporary agenda item and the discussion on the submission shall not be considered to form a permanent agenda item of the Council. Several countries stressed that the Council for TRIPS does not have a mandate to develop best practices on enforcement of IP rights. These countries emphasized the right of member states, under the TRIPS Agreement, to determine for themselves appropriate measures for IP enforcement, and the need to consider other provisions of TRIPS when dealing with enforcement issues, including those on non-discrimination and on avoiding the creation of unnecessary barriers to trade.¹⁵

The chairmanship of the TRIPS Council was handed to Ambassador Yonov Frederick Agah of Nigeria.

WTO members also met informally, under the chairmanship of WTO Deputy Director-General Rufus Yerxa, to address "outstanding implementation issues".¹⁶ Members continue to disagree on how best to deal with geographical indications and the relationship between biodiversity conservation and intellectual property protection.

The next formal meeting of the TRIPS Council is scheduled for 5-6 June 2007.

¹² Report by the chairman of the Trade Negotiations Committee, 7 February 2007, available at http://www.wto.org/english/news_e/news07_e/gc_dg_stat_7feb07_e.htm.

¹³ WTO documents IP/C/W/474 and IP/W/473. See also Brief TRIPS Council Gives way to Informals, ICTSD Bridges Weekly Volume 11 No. 6, 21 February 2007, available at <http://www.ictsd.org/weekly/07-02-21/story1.htm>.

¹⁴ See WTO document IP/C/W/488.

¹⁵ Ibid.

¹⁶ Members pick up where they left of on GIs TRIPS-CBD-Still Stuck, ICTSD Bridges Weekly Volume 11 No.5, 14 February 2007, available at <http://www.ictsd.org/weekly/07-02-14/wtoinbrief.htm>.

World Intellectual Property Organization (WIPO)

First Special Session of the Standing Committee on Copyright and Related Rights (SCCR)

The First special session was characterized by the active engagement and intervention of the Chairman, Jukka Liedes from Finland. The agenda was limited to addressing the proposed broadcasting treaty in accordance with the decision of the General Assembly to:

“agree and finalize, on a signal-based approach, the objectives, specific scope and object of protection with a view to submitting to the Diplomatic Conference a revised basic proposal, which will amend the agreed relevant parts of the Revised Draft Basic Proposal referred to in Paragraph 2. The Diplomatic Conference will be convened if such agreement is achieved. If no such agreement is achieved, all further discussions will be based on Document SCCR/15/2.”

As an initial step the Chair introduced a non-paper aimed at defining the concept of a ‘signal-based approach. There were no significant responses to the non-paper and, at his own discretion, the Chairman introduced further non-papers addressing other issues in the treaty. Several delegations expressed discomfort with this approach pointing out that there existed official negotiating documents, namely the revised draft basic proposal (SCCR 15/2)¹⁷, from which a signal-based approach should be drawn. Much of the meeting was conducted in informal sessions, but without any agreement on the non-papers and without addressing the revised draft basic proposal. There was also no agreement on the definition of a signal-based approach. All the non-papers by the Chair presumed that post-fixation rights were to be included within that definition.

Towards the close of the meeting, some delegations pointed out that the non-papers had no legal status and could not form the basis for further work without formal agreement. The Chair distributed draft con-

clusions for the meeting but these elicited little response or agreement from the delegations. The Committee ended by requesting the Chair to prepare a consolidated non-paper reflecting the different approaches and comments at the meeting to be ready for the Second special session.

On 16 March 2007, the Chair released first draft of the non-paper for comments¹⁸. The deadline for responses was March 28th, 2007.

The final draft of the non-paper will be released on 1 May 2007.

The Second Special Session of the Standing Committee on Copyright and Related Rights (SCCR) will be held from 18-22 June 2007 in Geneva, Switzerland.

Provisional Committee on Proposals related to the WIPO Development Agenda (PCDA)

The PCDA held its third session 19-23 February 2007. This was the first of two 5-day sessions scheduled for 2007 to have in-depth discussion on all 111 proposals made during the 2006 session. This was as a result of the General Assembly decision to continue the work of the PCDA:

- (a) to narrow down the proposals, in order to ensure that there is no repetition or duplication;
- (b) to separate the proposals, which are actionable, from those which are declarations of general principles and objectives; and
- (c) to note those proposals, which relate to existing activities in WIPO and those, which do not.

The General Assembly also decided to group the 111 proposals into two under Annex A and Annex B of its report. Annex A consisted only 40 of the proposals. Each Annex is further divided in to six clusters consisting of: Cluster A- Technical Assistance and Capacity Building; Cluster B- Norm-Setting, Flexibilities, Public Policy and Public Domain; Cluster C- Technology Transfer, Information and Communication Technologies (ICT) And Access to Knowledge; Cluster D- Assess-

¹⁷ Available at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=64712

¹⁸ Available at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75352

ment, Evaluation and Impact Studies; Cluster E- Institutional Matters Including Mandate and Governance; and Cluster F- Other Issues.

The chair of the General Assembly, Ambassador Enrique A. Manalo, prepared a working document comparing the various proposals in each cluster and under Annex A and Annex B of the report of the General Assembly (PCDA/3/2). The third session of the PCDA discussed the working document prepared and decided to use it as its working document. The discussions in this session addressed Annex A to the General Assembly report, i.e. the Kyrgyzstan proposal which contained the former PCDA Chairman's rejected proposals. Ambassador Trevor Clarke of Barbados (formerly Chair of the TRIPS Council) was elected to chair the committee. Opening statements from members emphasized the need for tangible results to come from this meeting and working in a constructive spirit to achieve results.

After a series of discussions during the plenary session as well as informal consultations, the third session of the PCDA agreed on various proposals under Annex A of the report of the General Assembly of WIPO. The committee had narrowed down the forty proposals in Annex A to twenty-four in the final drafts, yet still including most of the substance of the earlier forty proposals, with some changes in language. The committee succeeded in reaching consensus on a set of recommendations to go forward.¹⁹ Under Cluster B, the PCDA agreed that norm-setting activities shall:

- be inclusive and member driven;
- take into account different levels of development;
- take into consideration a balance between costs and benefits;
- be a participatory process, which takes into consideration the interests and priorities of all WIPO Member States and the viewpoints of other stakeholders, including accredited inter-governmental organizations and non-governmental organizations; and
- be in line with the principle of neutrality of the WIPO Secretariat.

The proposals to consider the preservation of the public domain within WIPO's normative processes and deepen the analysis of the implications and benefits of a rich and

accessible public domain was adopted with a reservation by Colombia. Other proposals were agreed under Cluster A, C-F.

The meeting concluded with no opposition to Brazil's statement that the outcome of this session would only be adopted after the conclusion of the fourth PCDA session. Thus the recommendations from this first session are not considered as going forward to the 2007 WIPO General Assembly, separately from recommendations forthcoming from the fourth session. The draft report from the meeting will contain the summary and recommendations and be approved at the fourth session of the PCDA.²⁰

The list of proposals adopted during this session will form a part of the final list of agreed proposals, to be recommended for action to the 2007 General Assembly, after the June 2007 session of the PCDA.

The Fourth Session of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) is scheduled to take place from 11- 15 June 2007 in Geneva, Switzerland.

Global Congress on Combating Counterfeiting and Piracy

The Third Global Congress on Combating Counterfeiting and Piracy took place in Geneva from 30- 31 January 2007. The Congress was co-organized by WIPO, the International Criminal Police Organization (Interpol) and the World Customs Organization (WCO), with the support of the Global Business Leaders Alliance Against Counterfeiting (GBLAAC), the International Trademark Association (INTA), the International Chamber of Commerce (ICC), and the International Security Management Association (ISMA). The purpose of the meeting was to enable participants to take stock of progress made and suggest actions oriented towards the remaining challenges in each of the priority areas.²¹

The congress focused on five priority areas namely: raising awareness; improving cooperation and coordination; building capacity;

¹⁹ Available at http://www.wipo.int/pressroom/en/articles/2007/article_0011.html#pcda

²⁰ Available at http://www.wipo.int/edocs/mdocs/mdocs/en/pcda_3/pcda_3_3_prov.pdf

²¹ See Third Global Congress on Combating Counterfeiting and Piracy website at <http://www.ccapcongress.net/archives/Geneva.htm>.

promoting better legislation and enforcement; and health and safety risks associated with counterfeiting and piracy. Various suggestions and proposals were tabled with respect to the five focus areas and on how stakeholders can effectively and collectively combat and reduce global counterfeiting and piracy.²² These included:

- Strengthening regional processes and stronger cooperation between national authorities in different countries;
- Criminalization of 'commercial scale' IP violations;
- Increasing penalties for violations of IP to deter IP violators;
- Developing an international treaty on the manufacture and distribution of counterfeit and pirated goods;
- Encouraging government to devote more resources to IP enforcement
- Build capacity for IP enforcement; and
- Increasing awareness of counterfeiting and piracy by focusing on the role of organized crime in such activities

The World Customs Organization will host the Fourth Global Congress on Combating Counterfeiting and Piracy in the first quarter of 2008.

Standing Committee on Patents

On 16 February 2007, WIPO held its third colloquia on "Flexibilities in the Patent System." The speakers were Professor Joseph Straus, Director of Max Planck Institute for Intellectual Property, Competition and Tax Law and Professor, and Dr. N. S. Gopalakrishnan, HRD Chair on IPR, School of Legal Studies, Cochin University of Science and Technology, Kerala, India.²³ The speakers emphasized the need to reconsider the balance in the patent system under the TRIPS Agreement.

The fourth colloquium, held on 14 March 2007, was focused on the "Technology and Policy Information Available in the Patent

System." The discussion was based on the presentation by Mr. Wolfgang Pilch, Principal Director, Patent Information Head of European Patent Sub-Office (Vienna), and Mr. William Meredith, Head, Patent Information and IP Statistics Section of WIPO.²⁴ The discussion revealed patent information as untapped resources. The WIPO and developing countries have allocated limited resources to its utilisation. WIPO is currently undertaking training for developing countries and is planning to include it in the program and budget for 2008/2009.²⁵

Other upcoming WIPO Meetings

- The Seventeenth Session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications will be held from 7-11 May 2007;
- Patent Colloquium No. 5 will be held on 18th June, and
- The Eleventh Session of the Program and Budget Committee will be held from 25-28 June 2007 in Geneva, Switzerland.

Other Multilateral Fora

World Health Organization

The 120th session of the WHO Executive Board held 22 -30 January 2007 had a report from the WHO Intergovernmental Working Group on Public health, Innovation and Intellectual Property (IGWG) on its agenda. The follow-up report indicated that a revised working document containing the draft global strategy and plan of action which will be made available to Member States **in July 2007 for their review** followed by **regional consultations in August and September**. A second web-based public hearing to solicit additional inputs and comments to the working document could also be held in **August and September**. It is intended to hold the second and final session of the Working Group in **October 2007**

²² See "Suggestions extending from the Third Global Congress" available at http://www.ccapcongress.net/archives/Geneva/Files/Congress%20Recommendations_Geneva%20Jan%202007.pdf

²³ WIPO (2007), WIPO Hosts Colloquium on "Flexibilities in the Patent System", Press Release WIPO/MA/2007/26, Geneva.

²⁴ WIPO (2007), WIPO hosts Colloquium on "Technology and Policy Information Available in the Patent System", Press Release, WIPO/MA/2007/27.

²⁵ Intellectual Property Watch (2007), WIPO Address Rapid Rise in Patent Information Use", 19/3.2007, available at www.ip-watch.org.

in order to finalize the draft global strategy and plan of action.²⁶

On the first day of the meeting of the Executive Board, Kenya and Switzerland²⁷ submitted a resolution aimed at early harvest elements of the IGWG. However, at a lunch-time meeting held by the two countries, it was clear that consensus could not be reached on the approach taken. In particular, concerns were expressed about preempting deliberations within the IGWG itself and with the 'early harvest' approach taken by the submission. When the IGWG agenda item came up for discussion, the submission was withdrawn. Kenya and Switzerland stated their intention to resubmit a modified version at the World Health Assembly in May 2007. Thailand also attempted to introduce a submission relating to the IGWG but delays and procedural constraints meant that it could only be entered into the process as an informal paper. The Executive Board therefore noted the report on the progress report (compiled by the secretariat) from the IGWG²⁸ and took note of the presentation from the secretariat²⁹ on their progress in addressing some of the issues raised in the IGWG. In general there was confusion among member states about the role and functioning of the IGWG and its relationship to the Executive Board and the WHA which contributed to the lack of any recommendations or statements from the Executive Board.

The Executive Board also adopted a Resolution on Health Technologies. The scope of essential technologies pertaining to health is clarified by the Secretariat Report.³⁰ Both the report and the resolution do not discuss the relation between access to essential health technologies, R&D tools and IP rights. The Director-General is requested to de-

velop guidelines and tools including norms and standards, relating to health technologies in consultation with interested parties and to work jointly with other organizations of the United Nations system, international organizations, academic institutions and professional bodies. **The Director-General is expected to report on implementation of this resolution to the Sixty-second World Health Assembly.**³¹

The Sixtieth World Health Assembly will be held from 14 – 23 May, 2007 in Geneva

United Nations Conference on Trade and Development (UNCTAD)

UNCTAD and the Stockholm Network organized a panel titled "Debating Pharmaceutical IPRs" in Geneva on 20 February 2007. The panel was primarily constituted as pro-industry vs. industry-sceptics. The debaters on the industry-sceptic side were James Packard Love from Knowledge Ecology International, Graham Dufield from Queen Mary, University of London, and on the pro-industry side, Eric Noehrenberg from IFPMA and Meir Pugatch, University of Haifa. The debate's most extended discussions centred on two issues: the role and relevance of alternative incentive systems such as prize funds; and the appropriateness of recent use of compulsory licenses by the Thai government.

The industry-sceptic side pointed to the failure of the existing patent system to provide drugs and medicines for diseases that disproportionately affect developing countries, while the other argued that the prize fund idea was untested and could not serve as a replacement for the IP system. On the issue of the compulsory licenses, the pro-industry side questioned the motives of the Thai government in issuing the licenses and questioned the legality and frequent use of such licenses, while the industry-sceptic side pointed to the frequent use of such licenses in the US and other developed countries, questioning why Thailand was being singled out. The debate ended without any particular consensus.

The eighth session of the Intergovernmental Group of Experts on Competition Law and Policy is will be held from 17-

²⁶ WHO (2007), "Follow-up to the first session of the Intergovernmental Working Group: Report by the Secretariat," *Public Health, innovation and intellectual property: towards a global strategy and plan of action*, EB120/INF.Doc./5, Executive Board, 120th Session.

²⁷ Available at <http://lists.essential.org/pipermail/ip-health/2007-January/010423.html>

²⁸ Available at http://www.who.int/gb/ebwha/pdf_files/EB120/B120_I D1-en.pdf and http://www.who.int/gb/ebwha/pdf_files/EB120/B120_I D5-en.pdf

²⁹ Available at http://www.who.int/gb/ebwha/pdf_files/EB120/b120_id 4-en.pdf

³⁰ WHO (2006), Report by the Secretariat, Essential health Technologies, *Draft resolution deferred from the Fifty-ninth World health Assembly and the 118th Session of the Executive Board*, EB120/13, par. 1

³¹ WHO (2007), "Health Technologies," *Resolution EB120/R.21*, para. 2.

19 July 2007, at Palais des Nations, United Nations Office, Geneva.

The tenth session of the Commission on Science and Technology for Development (CSTD) will be held in Geneva from 21-25 May 2007.

United Nations Committee on Economic, Social and Cultural Rights (CESCR)

The Convention on the Rights of Persons with Disabilities was opened for signature on the 30th of March 2007. The Convention requires state parties to

To take all appropriate steps, *in accordance with international law*, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials. More than 40 countries have already deposited full powers to sign the Convention.

The 38th Session of the CESCR will be held from 30 April – 18 May 2007.

The UN Internet Governance Forum

A stock-taking session on the IGF,³² created by the UN World Summit on the Information Society, took place in Geneva on 13th February 2007. The objective of the meeting as underscored by Nitin Desai, chair of the Internet Governance Forum "is to take stock of the Athens Forum and to make an assessment of the extent to which it met expectations..." as parties prepare for the second IGF annual meeting which is scheduled to take place on 27 November in Rio de Janeiro, Brazil.

Some of the issues addressed during this session included: the role of the IGF as a pure discussion forum, whether or not to place the management of internet infrastructure resources more prominently on the IGF agenda, and the inclusion of security on the Rio agenda. Multi-stakeholder dynamic coalitions such as the A2K@IGF Dynamic Coalition continued to highlight concerns regarding unbalanced IP laws on access to

³² See IP Quarterly 4th Quarter of 2006 for further information

knowledge. In particular, the coalition indicated its focus on the establishment of "methodologies or best practice norms for the implementation of laws dealing with technological protection measures (TPMs) and digital rights management (DRM) restrictions..."³³

The chairman in his concluding remarks recognized that there are many corrections, adjustments, and modifications that need to be made to the basic structure of the multi-stakeholder forum and the Advisory Group. He also highlighted questions related to participation, including the extent to which there is an appreciation of these issues at policy-making levels in developing countries, issues of remote participation, and the possibility of asynchronous participation in the process. In order to provide a basis for the discussions in the meeting, the Chairman proposed that the IGF should have a report on what happened to the Internet over the previous year, the incident in East Asia, and the profile of internet users, among others. With respect to substantive issues, he noted that the developmental dimension should focus on governance issues rather than everything to do with development. The focus on user interest should reflect the concerns of the lay user. In addition, he pointed out that there is nothing in the mandate which precludes any issue from being discussed in the IGF. However, if the IGF is to discuss controversial issues, it should discuss them within a framework of a debate in good faith. With respect to 'best practice' the Chairman proposed a focus on 'access' as an issue.

On the relationship of the IGF with WISIS, the Chair stated that the IGF -presumably the IGF Advisory Group- can articulate its view and communicate it to the higher body. In this particular case, the higher body would be the economic and social council. Another round of IGF open consultations is scheduled to take place in Geneva, at the ITU Tower, Room C, on the 23 May 2007. The purpose of these consultations is to address the agenda and the programme of the Rio de Janeiro meeting.

The second annual meeting of the IGF will be held in Rio de Janeiro, Brazil, from 12-15 November 2007.

³³ See Statement of A2K@IGF Dynamic Coalition at IGF Open Consultations, 13th February 2007, available at <http://ipjustice.org/wp/2007/02/13/a2kigf-dynamic-coalition-at-igf-open-consultations/>.

Convention on Biological Diversity (CBD)

A meeting of technical experts on an internationally recognized certificate of origin/source/legal provenance took place in Lima, Peru from 22-25 January 2007. It is mandated to provide input to the ad hoc open-ended working group on access and benefit-sharing, on several issues such as: 1) considering the possible rationale, objectives and the need for an internationally recognised certificate of origin/source/legal provenance; 2) defining the potential characteristics and features of different options of such an internationally recognised certificate; 3) analysing the distinctions between the options of certificate of origin/source/legal provenance and the implications of each of the options for achieving the objectives of Articles 15 and 8(j) of the Convention; and 4) identifying associated implementation challenges, including the practicality, feasibility, costs and benefits of the different options, including mutual supportiveness and compatibility with the Convention and other international agreements.³⁴

The international certificate of origin has been considered within the framework of the CBD as a mechanism that has a potential to assist member states in the implementation of the ABS provisions of the CBD.³⁵

During the meeting, the participants addressed various issues such as what a certificate of compliance should be and what it should be comprised of, whether such a certificate system should be voluntary, mandatory or a combination thereof, taking into account factors such as its scope, costs, feasibility, process, institutional measures and consequences.³⁶ The meeting also discussed the use of checkpoints which could be applied to complement such a certificate, and

ensure compliance with the obligations attached to such a certificate.³⁷

The Fifth meeting of the ad hoc open-ended working group on access and benefit sharing will be held in Montreal, Canada from 15-19 October 2007.United Nations Educational, Scientific, and Cultural Organization

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted on 20 October 2005, has entered into force on 18 March 2007 upon its ratification by 52 countries.

Regional and Bilateral Trade Agreements with Intellectual Property Provisions

The following section highlights the latest developments in the bilateral and regional trade negotiations of the United States and Europe with developing country counterparts in the first quarter of 2007, with specific focus on IP issues.

Free Trade Agreements involving the United States

The deadline for the conclusion of negotiations for free trade agreements to be approved by the 2002 Bipartisan Trade Promotion Authority (TPA), fast-track approval, was 1 April 2007, in order to give Congress the required ninety days to consider an up or down vote on the texts. Whether or not TPA will be renewed is still under debate. This quarter saw a major push by the USTR to conclude trade negotiations with multiple trading partners. Although some trade agreements did not conclude by the deadline, failure to conclude negotiations before the 1 April deadline does not mean failure for free trade agreements. FTAs can still be ratified by Congress without fast track authority if it is not renewed in July, but the ratification will follow the slower procedure meaning that the texts will be subject to amendment and possibly further negotiation before finalization.

³⁴ See Report of the Meeting of the Group of Technical Experts on an Internationally Recognized Certificate of Origin/Source/Legal Provenance, UNEP/CBD/WG-ABS/5/2, 20 February 2007, available at <http://www.biodiv.org/doc/meetings/abs/absgte-01/official/absgte-01-01-add1-en.pdf>.

³⁵ See Consideration of an Internationally Recognized Certificate of Origin/Source/Legal Provenance, Note by the Executive Secretary, UNEP/CBD/WG-ABS/5/2, 28 November 2006, available at <http://www.biodiv.org/doc/meetings/abs/absgte-01/official/absgte-01-02-en.doc>.

³⁶ *Ibid.*

³⁷ See ABS Experts Flesh Out Certificate of Origin, ICTSD Trade BioRes, Volume7, 2 February 2007, available at <http://www.ictsd.org/biores/07-02-02/story4.htm>.

Democrats proposed a new trade policy for the U.S. in a letter released 27 March 2007 from the House Ways and Means Committee.³⁸ Among the principles set forth upon which Democrats could reach an agreement on pending FTAs is a request for the re-establishment of a fair balance between promoting access to medicines and protecting pharmaceutical innovation in developing countries.³⁹ The reaction of USTR Susan Schwab after talks in Congress suggested that the Administration may adopt certain aspects of the plan. She commented that, "...this is another step in what has been a good faith effort in a continuing dialogue by all sides ...we have a historic opportunity to create a path forward at this critical point in US trade policy and I remain committed to a bipartisan solution as soon as possible".⁴⁰

CAFTA-DR

On 1 March 2007, the U.S. President issued the proclamation to implement the U.S.-Central America-Dominican Republic Free Trade Agreement with respect to the Dominican Republic.⁴¹ Current ratifications to CAFTA-DR are: Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the U.S. Costa Rica has still not ratified CAFTA and protests continue against the free trade agreement.

US-Panama

The U.S. Congress was notified on 30 March 2007 of the intention of the U.S. President to sign a free trade agreement with Panama.⁴² Rep. Charles Rangel (Democrat), Chairman of the Ways and Means Committee of the House of Representatives, and Democratic Rep. Sander Levin said Democrats expect to use the 90-day notification period for discussions on trade deals with Panama, Peru, and Colombia with the administration over "incorporating necessary

changes on outstanding issues such as labour, environment and intellectual property that must be addressed before the bills will receive broad bipartisan support in Congress."⁴³

Andean countries

Peru and Colombia

Both the US-Peru and US-Colombia FTAs are pending before Congress. Democrats are demanding tougher labour, public health, and environmental provisions in the Peru, Panama, and Colombia trade pacts.⁴⁴

A study was undertaken in Colombia by Mission Salud and Fundacion IFARMA on the impacts of its US FTA on medicine consumption and the Colombian generic industry. The study concluded that the total effect of all the USFTA provisions is to require an extra US\$1.5billion to be spent on medicines every year by 2030, if this extra money is not spent, Colombians will have to reduce their medicine consumption by 44% by 2030.⁴⁵ It will also cause Colombian medicine manufacturers to lose 64% of their market share by 2030.⁴⁶

Middle East

US-Kuwait

U.S. Undersecretary for International Trade Frank Lavin announced this quarter that he expects a US-Kuwait FTA to be signed between the two countries by 2013, using as a basis the US-Kuwaiti Trade and Investment Framework Agreement of 2002.⁴⁷

US-UAE

The US has been in talks trying to secure a bilateral FTA with the United Arab Emirates (UAE) since 2004. This quarter, UAE Economy Minister Sheikha Lubna Al-Qassimi said

³⁸ See A New Trade Policy for America, available at <http://www.cpath.org/sitebuildercontent/sitebuilderfiles/wmanewtradepolicyforamericasheet.pdf>.

³⁹ *Id.*

⁴⁰ Democrats push for labour friendly rules, available at: <http://www.sunsonline.org/>

⁴¹ U.S. Government Export Portal, <http://www.export.gov/fta/>.

⁴² Bush Notifies Congress of Plans to Sign Panama Free Trade Deal, International Herald Tribune, 30 March 2007, available at http://www.bilaterals.org/article.php3?id_article=7713.

⁴³ *Id.*

⁴⁴ Doug Palmer, *Labor Sees Bush Trade Talks with Congress Failing*, Reuters, 23 February 2007, available at http://www.bilaterals.org/article.php3?id_article=7249.

⁴⁵ Colombian study on impact of US FTA on medicine, p37, available at: http://www.bilaterals.org/article.php3?id_article=7412

⁴⁶ *ibid*

⁴⁷ *Kuwait-US FTA Likely by 2013*, *Gulf Daily News*, Bahrain, 16 March 2007, available at http://www.bilaterals.org/article.php3?id_article=7473.

in a speech at the U.S. Chamber of Commerce that, "we are committed on both sides [to concluding a deal]." ⁴⁸ The countries plan to resume talks whenever the White House wins new "fast-track" trade negotiating authority. ⁴⁹

Asia

US-Malaysia

USTR Susan C. Schwab and Vietnam's Deputy Prime Minister and Foreign Minister Pham Gia Khiem met on Friday 16th March 2007 and announced the launch of negotiations to conclude a Trade and Investment Framework Agreement (TIFA), which will serve as a platform on which the two countries will work to further strengthen their trade and investment ties. ⁵⁰ The TIFA will establish a formal dialogue under which the two countries intend to discuss new initiatives to deepen their trade and investment ties. It will also provide a forum for monitoring Vietnam's implementation of its WTO and Bilateral Trade Agreement commitments.

US-South Korea

The U.S. and South Korea reached a free trade agreement after almost 10 months of negotiations, just minutes before the U.S. deadline imposed by the TPA. Seoul will introduce a system that calls for assessing the violation of patents when it reviews applications by local drug makers for the sale of 'copied drugs'. ⁵¹ Regarding patents generally, the agreement provides for the extension of patent terms to compensate for delays in granting the original patent, assures protection for newly developed plant varieties and animals, clarifies that test data will be protected against unfair commercial use

⁴⁸ Doug Palmer, *US, UAE Say Still Hope to Reach Free Trade Deal*, Washington Post, 12 March 2007, available at

http://www.bilaterals.org/article.php3?id_article=7413.

⁴⁹ *Id.*

⁵⁰ U.S. Trade Representative Schwab Meets with Vietnamese Deputy Prime Minister Pham Gia Khiem, available at: http://www.ustr.gov/Document_Library/Press_Releases/2007/March/US_Trade_Representative_Schwab_Meets_with_Vietnamese_Deputy_Prime_Minister_Pham_Gia_Khiem.html

⁵¹ *Summary of S. Korea-US Free Trade Agreement*, Seoul, Yonhap News, 2 April 2007, available at http://english.hani.co.kr/arti/english_edition/e_business/200430.html.

for five years for pharmaceuticals, and requires measures to prevent the marketing of pharmaceutical products that infringe patents. ⁵² The South Korean summary regarding copyright, stated: "The two sides agree to extend their copyright protection period from 50 to 70 years after the author's death, but the agreement will go into effect two years after the implementation of the FTA." ⁵³ Additionally, the agreement protects music, videos, software, and text from widespread unauthorized sharing via the Internet, establishes strong anti-circumvention provisions, and provides rules for the liability of Internet Service Providers (ISPs) for copyright infringement. ⁵⁴ Proponents of the agreement project that sales of pharmaceuticals will increase 0.5% in year-on-year growth to 2011. ⁵⁵ However, serious opposition to the agreement remains in Korea, especially among farmers. ⁵⁶

US-Taiwan

Taiwan officials are hoping to begin FTA negotiations in the near future. Vice-Minister of Economic Affairs Fadah Hsieh said that due to the extremely close economic relationship that Taiwan has with the U.S. as well as Taiwan's efforts to address related U.S. concerns over the past few years, very few outstanding issues remain in the sphere of U.S.-Taiwan trade. ⁵⁷

US-Vietnam

The U.S. announced on 19 March 2007 that the beginning of trade talks with Vietnam

⁵² *US-Korea FTA (2007): US Summary of Agreement*, Office of the United States Trade Representative, April 2007, available at http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2007/asset_upload_file649_11034.pdf.

⁵³ *Summary of S. Korea-US Free Trade Agreement*, Seoul, Yonhap News, 2 April 2007, available at http://english.hani.co.kr/arti/english_edition/e_business/200430.html.

⁵⁴ *US-Korea FTA (2007): US Summary of Agreement*, Office of the United States Trade Representative, April 2007, available at http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2007/asset_upload_file649_11034.pdf.

⁵⁵ *FTA Boosts Pharmaceutical Market*, Bus. Monitor Pharm. & Healthcare Insight, 1 May 2007, 2007 WLNR 6412882.

⁵⁶ *FTA Protester who Immolated Himself in Serious Condition*, The Hankyoreh, 3 April 2007, available at http://english.hani.co.kr/arti/english_edition/e_national/200538.html.

⁵⁷ Tsai Hui-ju & Deborah Kuo, *Taiwan Confident of Winning U.S. Private Sector's Support for FTA*, Central News Agency, available at http://www.bilaterals.org/article.php3?id_article=7712.

could lead to a FTA between the two countries.⁵⁸

US-Philippines

The Philippines and the U.S. have agreed to pursue negotiations for a comprehensive FTA.⁵⁹ Trade Secretary Peter B. Favila said prior to the talks that the U.S. planned to conduct a "thorough consultation with NGOs and all sectors concerned."⁶⁰

US-Russia

Although Russia and the US reached a bilateral deal on IP protection last year, Russia has yet to fully comply with its obligations under the agreement. The deadline for implementation is 1 June 2007.⁶¹ The obligations include strengthening the licensing regime for optical media plants licensed to produce copyright material. The USTR has argued that implementation of the IP rights commitments "will be essential" to completing Russia's WTO accession.⁶²

Free Trade Agreements involving the European Union

EU-ASEAN

The foreign ministers of the EU and the Association of Southeast Asian Nations (ASEAN) met in mid-March, marking the 30th anniversary of EU-ASEAN relations, to draft a road map for deepening political and economic relations.⁶³ The EU and ASEAN have still not begun formal negotiations for a trade deal, the key obstacle being the political situation in Burma.⁶⁴

⁵⁸ Steve Hirsch, *US Eyes Vietnam Trade Accord*, The Washington Times, 20 March 2007, available at <http://washingtontimes.com/business/20070319-100720-2138r.htm>.

⁵⁹ *Philippines Pursue US Free-Trade Accord*, ISSA News (Singapore), 28 February 2007, available at http://www.issa.com/news/news_detail.jsp?typeld=102&newsid=1455&page=1&startPage=1.

⁶⁰ *Id.*

⁶¹ *Russia Unlikely to Meet Deadline for Enacting IPR Legislation*, Inside U.S. Trade, Vol. 25, No. 8 – February 23, 2007.

⁶² *Id.*

⁶³ Saeid Najar Nobari, *EU-ASEAN Meeting to Chart Out Road Map for Deepening Ties*, Islamic Republic News Agency, 12 March 2007, available at <http://www2.irna.ir/en/news/view/menu-239/0703128010203449.htm>.

⁶⁴ *Id.*

ACP

Intellectual Property remains a low profile element of the EPA negotiations with the African, Caribbean and Pacific countries. Nevertheless, the various regional negotiating secretariats have begun the process to identify sectors of interest and to develop further language. The Caribbean group remains the group with the most advanced texts. New proposed EU texts with respect to the ECOWAS and CEMAC groups of countries reveal a similar approach to that of the Caribbean.

With respect to the general approach to EPAs, the EU has attempted to make its offer of Economic Partnership Agreements (EPAs) with ACP countries more appealing by offering to open up its markets to virtually all of their agricultural goods, with the exception of sugar and rice which will be phased in sometime in the next ten years.⁶⁵ EU Trade Commissioner Peter Mandelson said he expected EPAs to be concluded with the Caribbean nations in July and with the other regions before the end of the year.⁶⁶ Regarding the ACP regional setup, the EU has demanded a fresh regional configuration of negotiating groups in Africa for the ongoing Economic Partnership Agreements (EPA) negotiations.⁶⁷ This means that Tanzania may have to pull out from the Southern Africa Development Community (SADC) to negotiate under the East African Community (EAC) or possibly the East and Southern Africa (ESA) grouping; and Kenya and Uganda may quit the Common Market for Eastern and Southern Africa (COMESA) and negotiate EPAs under the EAC.⁶⁸ Tanzania has resisted suggestion of withdrawal from SADC. The European Union Commissioner for Trade Peter Mandelson and the EU Commissioner for Development Louis Michel met trade ministers from the EU Member States and ACP countries for an informal development minister's meeting in Bonn, Germany recently where Mr. Mandelson said ACP countries are committed to a consensus on Eco-

⁶⁵ David Cronin, *EU Makes Tricky Offer More Tempting*, Inter Press Service, 4 April 2007, available at <http://www.ipsnews.net/news.asp?idnews=37210>.

⁶⁶ *EU Wants New Deal with ACP Partners*, Jamaica Observer, 17 March 2007, available at http://www.bilaterals.org/article.php3?id_article=7501.

⁶⁷ Wilfred Edwin, *EU Wants Dar to Decide Under Which Regional Bloc it Will Negotiate EPAs*, The East African, Tanzania, 2 April 2007, available at http://www.bilaterals.org/article.php3?id_article=7727.

⁶⁸ *Id.*

conomic Partnership Agreements before the end of the year.⁶⁹ This was not entirely echoed by statements from the ACP participants in the meaning.

ECOWAS

West African countries agreed in February to conclude a trade deal with the EU by the end of the year and drop demands for a two-year extension for the deadline.⁷⁰ In a joint statement with the EU, they said the decision to set an end-2007 deadline was made on condition that an agreement is reached on compensatory funding by the EU and a calendar for opening up markets is established.

SADC

The EU officially responded to the framework proposal from the SADC region. It does not differ substantially from the unofficial response previously discussed in the Fourth Quarter 2006 IP Quarterly. However, on intellectual property and other trade-related measures, the EU has proposed flexibility on the timelines and specific issues.⁷¹ The SADC group maintains its opposition to any negotiations on these issues under the existing EPA framework. Reports suggest that the SADC region will not complete negotiations before the 31 December 2007 deadline.⁷²

⁶⁹ "EU, ACP have agreed on EPAs", available at: http://www.bilaterals.org/article.php3?id_article=7602

⁷⁰ Ingrid Melander, *W. Africa Accepts Year-End EU Trade Deal Deadline*, 7 February 2007.

⁷¹ See <http://epa.tralac.org/scripts/content.php?id=6215>

⁷² See <http://www.tralac.org/scripts/content.php?id=62>

ABOUT THE IP QUARTERLY UPDATE

The IP Quarterly Update is published on a quarterly basis by the South Centre and the Center for International Environmental Law (CIEL). The aim of the Update is to facilitate a broader understanding and appreciation of international intellectual property negotiations by providing analysis and a summary of relevant developments in multilateral, plurilateral, and bilateral fora as well as important developments at the national level. In each IP Quarterly Update, there is a focus piece analysing a significant topic in the intellectual property and development discussions.

Today, in addition to the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO), there are other multiple fronts of discussion and negotiation on intellectual property. These other fora range from international organisations, such as the United Nations Educational and Scientific Organization (UNESCO), the Food and Agriculture Organization (FAO), the World Health Organization (WHO), the United Nations Conference on Trade and Development (UNCTAD), the World Customs Organization (WCO), INTERPOL, and the UN human rights bodies to regional and bilateral fora such as in the context of free trade agreement (FTAs) or economic partnership agreements (EPAs). In some cases, national processes or decisions, for example, invalidation of a key patent may have important international ramifications.

Consequently, all these processes constitute an important part of the international intellectual property system and require critical engagement by developing countries and other stakeholders such as civil society organisations. Multiple fronts of discussions and negotiations require a coordination of strategies and positions that is not always easy to achieve. The Quarterly Update is meant to facilitate such coordination and strategy development, and is therefore a vehicle for awareness raising as well as capacity development.



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