Intellectual Property Rights and ICT

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The World Intellectual Property Organization (WIPO) supports the objectives of the World Summit on the Information Society (WSIS), as expressed in the WSIS Plan of Action and Declaration of Principles. Delegations from both developed and developing countries in the WSIS processes have pointed out that effective, balanced protection of intellectual property rights (IPRs) is an essential component of the Information Society. As shown by the WIPO Digital Agenda adopted in 1999,[1] WIPO plays a leading role in developing the technical and legal infrastructure to provide a balance between the rights of creators, inventors and other owners of IPRs, on the one hand, and the legitimate needs and expectations of users of subject matter protected by IPRs, on the other. In this way, WIPO is striving to ensure that the IPR system continues to encourage creativity and innovation in the networked age, contributing to economic development and reducing the Digital Divide in ways consistent with the "Action Lines" in the WSIS Plan of Action.

ICT infrastructure: an essential foundation for the information society

The Plan of Action correctly points out that infrastructure is central to achieving digital inclusion and enabling access to information and communications technologies (ICTs) by all, particularly developing countries and countries in transition. At WIPO, we have been at work actively to assist IP Offices in using ICTs to gain efficiency in their routine work and serve their societies better. Under its *WIPONET* project, WIPO is providing basic IT infrastructure and connectivity to the Internet to IP Offices in many developing countries. A data center has also been established at WIPO headquarters in Geneva, which, in addition to offering Internet-based services to the IP Offices in all WIPO member states, provides opportunities to develop web sites and establish IP databases. WIPO also provides IP Offices with a comprehensive automation solution for the modernization of their business processes, complemented by appropriate infrastructure, training and strategy-development assistance that builds upon WIPO's collective knowledge and promotes self-reliance.

Communication with users is a fundamental component in all ICT activities, and WIPO reinforces its own planning mechanisms through regular contact with key stakeholders through its Standing Committee on Information Technologies (SCIT) and the Committee's two working groups which deal, respectively, with monitoring major projects and issues of standards and documentation. The debates within the SCIT serve to ensure that WIPO is implementing a robust ICT vision, while the two-way flow of information allows WIPO to manage evolving business needs within its user community and helps users manage their own ICT activities by factoring in WIPO's ICT products and services.

Access to information and knowledge

The intellectual property system helps to ensure that individuals, organizations and communities benefit from access to knowledge and information. For example, international publication of patent applications filed under the WIPO Patent Cooperation Treaty (PCT,

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[1]   http://ecommerce.wipo.int/agenda/index.html

1970) provides a rich source of publicly available scientific and technical information that can be accessed and used to further technological development.

Likewise, copyright provides a framework for making knowledge available based on rights incorporated in international treaties that have been accepted by developed and developing countries alike - for example the 1994 World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the two "Internet" treaties, namely the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, which were concluded in 1996 and entered into force in March and May 2002, respectively.

Contrary to what has been argued by some, copyright is not an obstacle to knowledge sharing in the digital age, but rather provides the legal certainty and flexibility necessary for the development of new, innovative business models by publishers, software developers and other producers of educational and cultural content in digital form. Just to give one example, computer software is protected by copyright law, which provides a critical underpinning for the development of both proprietary and open source software.

Copyright protects the exclusive right of producers of proprietary software to prohibit unauthorized reproduction of their source code; at the same time, the GNU General Public License (GPL) requires open source users to allow free modification and redistribution of their code, and users who contravene the GPL in this respect are deemed infringers of copyright in the original software. While the approaches to proprietary and open source software are fundamentally different, existing copyright law is sufficiently flexible to embrace them both. WIPO is uniquely positioned to contribute to research and awareness-raising concerning the possibilities offered by the different software models that are based on copyright.

The international copyright infrastructure also facilitates careful balancing and re-balancing, in the light of rapid technological advances and shifting market conditions, of the scope of economic rights in relation to limitations on those rights established in the public interest. Such limitations include fair use and other privileges that enable user groups to access and use content under certain conditions, without authorization by the owner of rights. Within the framework of its Standing Committee on Copyright and Related Rights (SCCR), WIPO has begun to examine the scope of limitations and exceptions to copyright in the digital environment, including how limitations can co-exist with use of digital rights management (DRM) technologies that create conditions on access to and use of content. The SCCR is also considering international protection of non-original databases, which would recognize and protect the substantial investment in the creation and maintenance of such databases, while maintaining affordable access to scientific and technical journals or other sources of information in the public domain.

Capacity Building

WIPO agrees that developing the skills necessary for individuals to benefit from the Information Society is a major challenge for governments, civil society and international organizations. Activities and programmes aimed at awareness-raising and training in use and management of intellectual property rights figure prominently in the WIPO Program and Budget for 2004-2005. For example, the WIPO Small and Medium-Sized Enterprises (SME) Division is funded to provide education and skills training to improve the competitive

performance of SMEs, particularly in developing countries. Likewise, distance-learning programs developed by the WIPO Worldwide Academy are used to reach out to librarians, scientists, teachers, inventors and other professional groups to build skills in use of the IP system. WIPO's technical assistance has also produced pioneering regional infrastructure for collective management of copyright, such as the Caribbean Copyright Link, which harnesses ICTs to centralize data-processing functions to maximize the distribution of royalties to rights owners among fledgling copyright societies in that musically rich region.

Building confidence, trust and security in the use of ICTs

Confidence, trust and security of both networks and information are among the main pillars of the Information Society, as stated in the Plan of Action. In the area of trademarks, confidence in the Internet is undermined by 'cybersquatting', the bad-faith registration of trademarks as domain names by third parties who do not have rights in those names. The First WIPO Internet Domain Name Process resulted in the creation of the Uniform Domain Name Dispute Resolution Policy (UDRP) in 1999. The UDRP provides an administrative mechanism for efficient resolution of disputes that entails cancellation or transfer of domain name registrations that are found abusive.

The WIPO Arbitration and Mediation Center (AMC) was the first domain name dispute resolution service provider to be accredited by ICANN (the Internet Corporation for Assigned Names and Numbers), and the UDRP has built a record of success in ensuring the authenticity and legitimacy of Internet identifiers: since commencing this service for the *.com*, *.net* and *.org* domains in December 1999, the AMC has received thousands of UDRP cases from parties in more than 100 countries. It also administers specific dispute resolution policies involving newer domains such as *.aero*, *.biz*, *.coop*, *.info*, *.museum*, *.name* and *.pro*. The Second WIPO Internet Domain Name Process considered the relationship between the domain name system and non-trademark-based identifiers, and WIPO Member States have now recommended to ICANN that names and acronyms of international organizations and country names should be protected against abusive registration as domain names.

An environment to enable

Providing a transparent and non-discriminatory legal, regulatory and policy environment is critical to the development of the Information Society. In the field of intellectual property, the international treaty framework provides the basic rules to maintain a fair balance between incentives for innovation and creativity, on one hand, and knowledge sharing, on the other. As noted above, in the Information Society this requires constant balancing of the rights of IPR owners and the needs of users. WIPO is the appropriate forum for discussions aimed at striking the right balance, as evidenced by the recent *Information Meeting on Digital Content for the Visually Impaired* that took place in November 2003. The Meeting examined the special needs of visually impaired persons, evaluating whether access to digital content is best provided under copyright licensing mechanisms managed by rightsholders or, rather, through new or expanded exceptions to rights provided under national laws.

In the area of traditional knowledge (TK), WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is working actively to develop the enabling environment necessary for protection against misappropriation of TK belonging to indigenous groups and local communities. This

important work has two objectives: defensive protection of TK (measures that ensure that third parties do not obtain IP rights over pre-existing TK), and positive protection of TK (the use of existing IPR mechanisms to protect and promote TK).

The Information Society also requires that governments provide laws and procedures that enable IPR owners to protect themselves against infringements of their rights, including commercial piracy. For example, "peer-to-peer" (P2P) file-sharing systems enable the unauthorized swapping of music and video files among online users, a phenomenon which has reached epic proportions particularly in the case of music. The ability of IPR owners to enforce their rights is an essential condition for future availability of broad-based and demand-driven knowledge assets, since widespread infringement and piracy slice into revenue that would otherwise contribute to generating new content. At the same time, the use of DRM technologies that, *inter alia,* enable rightsowners to monitor online usage of copyright content must be applied in ways that do not unreasonably intrude on individual privacy rights or freedom of expression.

Standardisation is also an essential building block of the Information Society, in the IPR field as elsewhere. In 2001, WIPO published a standard for the electronic filing and processing of international patent applications filed under the PCT, leading to the creation of the PCT-SAFE procedure that enables eletronic data exchange between the applicant, different patent offices and the WIPO Secretariat. And in the copyright area, a few months ago WIPO published *Current Developments in the Field of Digital Rights Management*, a study which shows that there is little harmonisation of the legal, technical or policy approaches being taken with respect to development and deployment of DRM technologies across national jurisdictions. The study points out that lack of a common approach to DRM standards may inhibit the interoperability between digital devices and copyright-protected digital content that is essential to making such content legally available on the Internet.

Conclusion

The World Summit on the Information Society is making a major contribution to the development of the Information Society. WIPO's vision is to ensure that the intellectual property system contributes to economic growth and development and to reducing the Digital Divide. We are pleased to contribute to WSIS 2003, and look forward to contributing to the work that leads up to WSIS 2005.