

# LIVESTOCK, BIODIVERSITY, INDIGENOUS KNOWLEDGE, INTELLECTUAL PROPERTY

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Bellagio, Italy

# World Intellectual Property Organization (WIPO)

- established in 1970
- currently administers about 23 treaties
- became specialized agency of the UN in 1974
- prior to TRIPS Agreement, the principal organization dealing with IP
- To preserve relevance....WIPO entered into cooperation Ag. with WTO to provide technical assistance to WIPO members on TRIPS related issues

Today WIPO is the main organization involved in the development of IP standards many of them TRIPS plus

# WIPO CONVENTION

- **Art 3: Objectives of the Organization**
  - to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization

# Functions of WIPO

## Article 4 of the Convention

- promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonize national legislation in this field
- shall encourage the conclusion of international agreements designed to promote the protection of intellectual property
- shall assemble and disseminate information concerning the protection of intellectual property, carry out and promote studies in this field, and publish the results of such studies
- shall maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in this field and the publication of the data concerning the registrations

# WIPO-UN Agreement 1974

- The United Nations **recognizes** the World Intellectual Property Organization (hereinafter called the "Organization") as a **specialized agency** and as being responsible for taking appropriate action in accordance with its basic instrument, treaties and agreements administered by it, *inter alia*, **for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries** in order to **accelerate economic, social and cultural development**, subject to the competence and responsibilities of the United Nations and its organs, particularly the United Nations Conference on Trade and Development, the United Nations Development Programme and the United Nations Industrial Development Organization, as well as of the United Nations Educational, Scientific and Cultural Organization and of other agencies within the United Nations system.

# WIPO Criticisms

- The **mandate and functions of WIPO** as set out in the Constitution are **fairly narrow**.
- This has led to questions as to whether WIPO can take into account the development concerns that have been expressed by developing countries
- **Constant premise underlying WIPO vision** as set out by the Director General in the 1999 plan and in the subsequent plan has been
  - “maintenance and further development of the respect of intellectual property throughout the world. It means that any erosion of the existing protection should be prevented and that both the acquisition of protection and, once acquired, enforcement, should be simpler, cheaper and more secure.”
- **This vision of intellectual property is fairly narrow and raises questions about the ideological leaning of WIPO.**

# WIPO Criticisms

- Funding
  - Most of the funding comes from the users of the IP system and mainly from the patent applicants that use the WIPO system
- The WIPO Secretariat is extremely influential....plays a role in determining the vision of the organization, shaping the nature and final outcome of treaty and other negotiations and discussions, drafting the recommendations by various bodies on various matters, admitting observers to various WIPO bodies and in preparing the draft agenda for the General Assembly **raising questions of whether the organization is a "member driven organization"**
  - ( Multilateral Agreements and A TRIPS plus World by Musungu, S., Dutfield G., 2003 at [http://www.geneva.quno.info/pdf/WIPO\(A4\)final0304.pdf](http://www.geneva.quno.info/pdf/WIPO(A4)final0304.pdf) )

# WIPO Development Agenda (DA)

- Launched at General Assembly 2004
- Co-sponsored by Friends of Development :14 countries  
Argentina, Bolivia, Brazil, Cuba, the Dominican Republic,  
Ecuador Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa,  
Tanzania and Venezuela (WIPO Doc. WO/GA/31/11)
- **Aim:** To mainstream “Development” in all its activities.
- **Proposal outlines for main areas for reform:**
  - A review of the mandate and governance of WIPO
  - Promotion of pro-development norm-setting in WIPO including the review of existing treaties in WIPO
  - Establishing principles and guidelines for WIPO's technical assistance work and evaluation;
  - Establishing guidelines for future work on technology transfer and related competition policies.

# WIPO DA: Response

- **Developing countries:**
  - overwhelming support during the GA from a large number of developing countries, including the Africa Group, India, Pakistan, the Philippines, China, Oman, Senegal, Ethiopia, Benin, Peru, Colombia, El Salvador, Nicaragua, Uruguay, Trinidad and Tobago, and Jamaica.
  
- **Developed countries:**
  - Not supportive of Development Agenda
  - WIPO has already been doing Development work
  - sees the Development Agenda more in the context of technical assistance
  - keen on pushing the DA to another WIPO body that is traditionally dealing with technical assistance and known to be ineffective

# Current Status of DA Debate

- 4 Meetings have been held in Geneva in a Intergovernmental Intersessional body/Provisional Committee that has been set up to discuss the DA
- Over 100 specific proposals are on the table for discussion....
- Positive Aspect of DA
  - Encouraging debate on the thinking behind intellectual property rights....Are more rights better!
  - Encouraging debate over what is the objective of WIPO....ie that it cannot simply be limited to promoting IPR
  - It is a wider agenda that developing countries can use to either halt new standard setting exercises such as the Drat SPLT treaty and/or also review existing treaties
- Uncertain:
  - How far the process will go
  - To what extent it will reform WIPO
  - Whether the body set up to discuss DA will be renewed at the next WIPO GA

# Intergovernmental Committee TK, GR and Folklore (IGC)

- In 2000, WIPO Members States set up the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore
- An ad hoc committee set up for an initial period of two years..... and there are usually two meetings every year....
- Has met for about 8 times thus far and towards the end of April this year it will be meeting for its 9th session
- set up a forum to discuss on “intellectual property issues that arise in the context of
  - (i) access to genetic resources and benefit sharing;
  - (ii) protection of traditional knowledge, whether or not associated with those resources; and
  - (iii) the protection of expressions of folklore

## ■ General Direction envisioned by the developing countries....

- when setting up the IGC was that it should examine the links between IP and GR, TK and folklore....and find solutions to satisfy Member States as well as indigenous peoples and local communities (WIPO/GRTKF/IC/1/5, Annex 1 Proposal by GRULAC)
  - **Africa Group proposal** (WIPO/GRTKF/IC/IC/I/10, Annex)
- examine the extent to and the means by which IP systems could be adapted to improve their protection of GR, TK and expressions of folklore
- look at new disciplines and provisions needed to be developed for a comprehensive protection of GR, TK, expressions of folklore
- look at new disciplines and provisions needed to be developed for a comprehensive protection of these resources at the international level
- devise and draft the necessary international instruments and model provisions for national legislative texts.
- submit its work to the governing bodies of WIPO for discussion and adoption

**BUT PROGRESS HAS BEEN LIMITED**

# IGC Mandate Broadened

- 5th IGC meeting.....Member States could not agree on the future direction of WIPO's work.....there were differences between developed and developing countries....and the Committee was unable to agree on its future mandate to the WIPO General Assembly
- But the WIPO General Assembly in 2003, broadened the mandate of the Committee

In its "new work will focus, in particular, on a consideration of the international dimension of those questions, without prejudice to the work pursued in other fora" and "no outcome of its work is excluded, including the possible development of an international instrument or instruments"

- To operationalize this mandate, in 2004, the Africa Group submitted a paper proposing that a new international instrument, or instruments, be set up for intellectual property protection of genetic resources, and traditional knowledge (TK) and folklore.

# Where Are We Now?

- There isn't much movement towards the direction of an international instrument .....although thick documentation repeatedly prepared by the Secretariat.
- At the last meeting, in June 2005 (before the WIPO General Assembly in 2005)
  - frustrated developing countries called an end to the endless discussion and for work to begin on a binding international instrument
  - the developed countries feel that it is generally premature to have such a discussion and more exploratory work needs to be done
    - They are also saying this in the CBD and in the TRIPS Council
- WIPO General Assembly 2005 extended the mandate for another 2 years
- The next IGC meeting.....24 -28 April 2006

Question:

**Is WIPO an Appropriate Forum!**