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REWARDING YOUNG INNOVATORS

CHOOSING A DOMAIN NAME FOR YOUR BUSINESS

CULTURE AS A COMMODITY?

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

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Geneva,
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WIPO Conference on the Importance of Statistics on Patenting Trends Analysis and Projections

September 17, 2003
Geneva, Switzerland

An international conference organized by WIPO on September 17 will analyze the role of statistics in determining trends in patenting activity. It will explore how to improve patent-related statistics to better suit the particular needs of policy makers, patent offices, industry and professional advisers as an indicator of economic, technological and business trends.

Patents, as a primary source of technological information, offer a unique resource for analyzing the process of technological change and measuring the knowledge base and competitive position of a given industry or country. Data contained in patents and patent-related documents can be valuable in formulating effective technology policies in both private and public sectors at regional, national, and international levels. The Conference is designed to promote a better understanding of how patent indicators, and which ones, may be used as strategic economic planning tools to promote business development and assist companies in strengthening their patenting strategies.

The Conference will provide important feedback to WIPO regarding the needs of users of the patent system with respect to patent statistics, which will help in formulating adequate policies to meet those needs.

A flyer with the program and the registration form has been enclosed in this Magazine.
For further information, please consult WIPO's website at:
www.wipo.int/patent/meetings/2003/patent_statistics/ or contact:

PCT Strategic Management Division
Office of the PCT
World Intellectual Property Organization (WIPO)
Telephone: (+41-22) 338 9398
Facsimile: (+41-22) 338 7160
E-mail: pct.StrategicManagement@wipo.int

THE ENTERPRISE OLYMPICS 2003 – ENCOURAGING CREATIVITY AND INNOVATION IN YOUTH

Rising to the challenge to develop a working model of an innovative product that would improve the quality of life for the disabled, a team of high school students from

Photos Credit: Courtesy of Careers Scotland

The New Zealand team, winners for their Braille menu for fast food restaurants

New Zealand captured the top prize in the Enterprise Olympics 2003, sponsored by WIPO and Careers Scotland on June 19 at the Glasgow Science Centre.

Some 600 students from 50 schools in 14 countries participated in the event, which stresses the key role of science and innovation in society. Organizers present a specific problem to contestants and give them 24 hours to provide a solution. The British Chancellor of the Exchequer, Mr. Gordon Brown, announced this year's challenge, chosen in observance of the European Year of the Disabled, via the web from No 11 Downing Street. The New Zealand team responded well to the challenge with the winning entry: an easy-to-use Braille menu for fast food restaurants.

Scotland, the host country for this year's Olympics, had eight teams participating in the competition. They also hosted individual teams from Northern Ireland, Norway and Wales. Students from Australia, England, Germany, Iceland, New Zealand, Norway, Pakistan, Russia, South Africa, Spain, the United States of America and Wales also took up the challenge, participating via Internet from their home countries.

The students work in teams with a maximum of eight people, who ideally possess a broad range of complementary skills and knowledge (science and technology, business, marketing and communication). Participating countries around the world are required to have a venue with 24-hour access for the teams, e-mail capability, and Internet access. Many also use web streaming to show their progress with the challenge over the course of the 24 hours, via their website, which can also be linked to the Enterprise Olympics website. To compete in the challenge the teams had to submit, via e-mail, a 2-page mini-business plan by a set deadline and make a 3-minute presentation in English (interpreters could be used). Each country submits its winning invention on the national level to the international competition.

The Judging

This year's international judging panel comprised five senior officials from NASA: Chuck Lloyd, Head of Life Sciences (Chair), George Abbey, former Head of Manned Space Flight, Bonnie Dunbar, Astronaut, Mike Gernhardt, Astronaut, and Jon Clark, Flight Surgeon. They received the mini-business plans of each national winner before the presentations began. The presentations were made to them through pre-recorded and e-mailed FTP files or live through video conferencing or web streaming. Each presentation was seen by the judges in the same format in a dedicated room in Scotland.

The Winners

Team New Zealand was the Enterprise Olympic champion for the second year running. Some 80 students from 42 New Zealand schools participated in the qualifying event, with the creators of the Braille menu taking top honors. The winners received a WIPO Gold Medal Award, the Careers Scotland Trophy and £5000 towards an educational visit with a science and enterprise focus. WIPO also presented a Certificate of Merit to Team Pakistan, the first runner up for its invention "Aspiraments" – a range of musical instruments specially tailored to the handicapped. Careers Scotland presented Team Germany with a trophy for special achievement in Creativity and Innovation. Australia, Iceland and Spain received commendations from the judges.

The Enterprise Olympics provide an excellent example of intellectual property outreach with young people. This is a new event which arose from the Be An Inventor Challenge (see box), an initiative of a Scottish lawyer for local school children. Participating students use their natural creative ability and learn to recognize the value of intellectual property rights in their inventions, as well as the importance of a solid business plan. Competitions such as this form an important part of WIPO's work with its Member States in encouraging the development of grass-roots programs that promote the intellectual property system.

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The Enterprise Olympics 2004, again organized by Careers Scotland, will be held in London on November 15 and 16, 2004 as part of the 7th International Partnership Network Conference. For information on how to get involved in next year's event please contact Mr. Gordon McVie at: *gordon.mcvie@careers-scotland.org.uk*.

The Be An Inventor Challenge

The *Be An Inventor Challenge* originated in Tayside in the east of Scotland as a local project for primary schools. Scottish Enterprise recognized the potential of the project, invested in classroom materials, and contracted the Glasgow Science Centre to manage the project for schools throughout Scotland.

The challenge has now been held for 4 years with sponsorship from The Patent Office (United Kingdom), Enterasys Networks, and Motorola Ltd. "This project raises the awareness of pupils, teachers and families to the exciting world of invention and releases the potential for scientific achievement within our young school community," explains Mr. Tony Joyce, Director of Communications and Public Affairs at Motorola U.K. Ltd.

The challenge asks pupils, from 7 to 12 years old, to invent something and develop it into a new product that can go to market. Projects are assessed on creativity, the development process of the product, and work on marketing and intellectual property rights. The Challenge runs through the school year until Easter. Local finals are held in 13 areas of Scotland and the winners of these go to Glasgow Science Centre for the national final. Winners receive cash prizes and a trophy and the winning school receives a WIPO Gold Medal and Certificate.

This year's winning invention was Floodbuster, a device to prevent the bath from overflowing if left unattended. The problem the students were trying to solve was one of filling the bath and getting children undressed. Parents are often distracted and the bath water can overflow with disastrous results. The students developed various ideas and finally arrived at the idea of using a float attached to the bath plug. The float is attached by means of a variable length chain so that when the water reaches a pre-determined level the float will pull the plug out and the bath will begin to empty. They used a Coke bottle as a prototype float, but envisioned a final product having an attractive, "fun" shape that the child could also use as a toy in the bath. Mr. Trevor Baylis, inventor of the wind-up radio designed for use in Africa where the use of batteries restricts the use of radios, presented the children with their trophy.

Winners of the 2003 To Be An Inventor Challenge, Netherlee Primary School, Renfrewshire, with the trophy and the WIPO Gold Medal Certificate pictured with Mr. Baylis, and Mr. Bill Miller, Vice President of Motorola UK Ltd.

DOMAIN NAMES: MAKING A GOOD CHOICE

IP AND BUSINESS

The Internet has brought a new dimension to competition by providing an opportunity to market goods and services to a potentially vast audience worldwide at a relatively low cost. As a result new businesses can effectively compete on almost the same level as existing businesses. Companies, large and small, are setting up websites to reach out to customers. They devote a lot of attention to the content, including layout, look and feel, and to cost-effectiveness in contributing to business objectives and results. Surprisingly, however, many otherwise astute companies fail to make an informed choice when selecting their Internet addresses, or domain names.

A domain name may be available and registerable, but that does not necessarily make it legally safe or practically useful. For example, the chosen domain name may conflict with the trademark rights or personality rights of someone else. There is more to making a prudent choice of a domain name than just the clash of interests mentioned above. Before establishing presence on the Internet for obtaining worldwide visibility, enterprises need to understand the domain name system *as such* and its *interface* with the trademark system.

How Does the Domain Name System Work?

Every computer connected to the Internet must have a unique address, which is a rather complicated string of numbers called the IP (Internet Protocol) address. While computers readily understand such naming conventions, human users prefer an easier method of identification. The Domain Name System (DNS) was created to meet this need. It essentially has a database to link these numerical addresses on a one-to-one basis with unique mnemonic alphanumeric equivalents called Internet Domain Names.

Every domain name has two parts: at the highest level is the top-level domain (TLD), while the section with the business name is called the second-level domain. TLDs are usually further divided into two categories: the generic top-level domains (**gTLDs**) and the country code top-level domains (**ccTLDs**). Domain names may be registered in either a gTLD or in a ccTLD.

Choosing the Top-level Domain

Some gTLDs are open, in the sense that there are no restrictions on who can register under them. These are *.com*, *.info*, *.net* and *.org*. For most profit-making businesses, offering goods or services on the Internet *.com* ("com" stands for commercial) is invariably the gTLD of choice. The *.net* gTLD is reserved for computer networks, but tends to be used for computer and Internet services as well. In principle, *.org* is for non-profit organizations, but it is sometimes used by profit-making businesses.

Other gTLDs are restricted, in the sense that only entities meeting certain criteria may be registered under them. These are *.int* (for international organizations); *.edu* (for accredited colleges and universities); *.gov* (for governmental institutions); *.aero* (for the aviation community); *.biz* (for business purposes); *.coop* (for cooperatives); *.museum* (for museums); *.name* (for personal names); *.pro* (for professionals); and *.mil* (for the US Army).

A small business may register a domain name under a ccTLD, which corresponds to a country, territory, or other geographic location and bears a two-letter country code, for example *.br* (Brazil) or *.it* (Italy). The rules and policies for acquiring domain names in the ccTLDs vary significantly from country to country. Some are **open**, and any enterprise may register under them. Others, such as *.us* (United States), *.fr* (France) and *.eu* (European Union), are **restricted** in that only companies satisfying certain criteria may register under them. An enterprise should take a careful look at the terms and conditions under which a registrar is offering ccTLD registration services. (For more information about registering under a ccTLD, including a complete database of designated ccTLDs and registrars/managers, visit *http://www.iana.org/cctld/cctld.htm*.)

Functionally, however, there is no distinction between the gTLDs and the ccTLDs. Even if ccTLDs are related to a physical space indicated by the national suffix, they generally provide exactly the same worldwide Internet access as gTLDs. For example, a user based in Australia can access the web page of a Brazilian SME with the *.br* suffix and purchase products.

Choosing a Good Second-level Domain

A good domain name should enable customers to find easily the relevant business website on the Internet. What is a good domain name and how does one create it? The following basic suggestions may help in choosing or creating a good domain name:

- Select a domain name that is the **same as or similar to the company's business or product name**. As a general rule, a domain that is directly linked to the business or products will be easier for clients to remember. If a company owns a known trademark, then using it as, or in a second level domain is a wise choice.

- A business should choose a second-level domain that is **distinctive or capable of becoming distinctive** of its business or products as such a domain name may be more easily protected under trademark law. Using a word that is descriptive of the business may have advantages, but such a domain name could not be made into a trademark at a future date, as it may never become distinctive of the goods or services of the business concerned.

- A company should never choose a domain name that is the trademark of another company. In most countries registration of another's trademark as a domain name is considered to be a violation of trademark rights. Such domain names are liable to be transferred to the trademark owner, and the courts may levy damages. Various databases, such as the WIPO Trademark Database Portal (*http://ecommerce.wipo.int/databases/trademark/index.html*) may help in determining if a second-level domain being considered is a registered trademark.

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- It is wise to **avoid** domain names that include **controversial words** such as geographical terms (e.g. Champagne, Beaujolais), names of famous people, names of generic drugs, names of international organizations, and trade names (e.g. name of another person's business).

- **Suffix:** Of all the TLDs, *.com* is generally considered to be the most valuable. It is the best known category around the world and the most sought after. Nevertheless, a small business, with a national market in mind, may prefer a national TLD.

- **Short** domain names are generally considered the best as they are easier to pronounce, remember, spell, and type into a browser. Even though domain names can have up to 67 characters, it is advisable to select shorter ones.

- **Hyphens are undesirable,** as most people will not remember them.

- **Market research:** It is advisable to test the domain name with co-workers, friends and people on the street before registering it.

Trademark - Domain Name Conundrum

The trademark and domain name systems are very different, but in certain situations the two may overlap with unpredictable consequences. This problematic overlap occurs when a trade name or trademark is used in or as a part of a second-level domain name. When a domain name as a whole is used as a trademark or trade name, it rarely poses a problem. In fact, the perceived cachet of the domain names, in terms of their symbolic, semiotic or brand value, has given sought-after domain names much more importance than their original and primary role as mere navigational conventions on the web.

In the real world two identical trademarks may happily coexist and be owned by different companies for identical products in separate geographical areas under relevant trademark laws. In fact, the trademark system allows for the registration and use of an identical or similar trademark for different classes of goods or services in the same geographical area or country, provided the trademark in question is not a well-known trademark. For example, the trademark LIFESAVERS for confectionery is owned in Australia by Nestle and in the United States by Nabisco; the trademark PETERS is a trademark for ice-cream owned by one company in western Australia, and, in the rest of Australia, by other companies.

In contrast, the domain name system allows the use of one name by only one registrant. Unlike trademarks, domain names create a monopoly right on a name or word, independent of the goods or services the website offers.

As domain names are generally registered on a **first-come, first-served basis**, the owner of a trademark may find that another person has registered a domain name that is the same as, or confusingly similar to his trademark. Therefore, the owners of many trademarks, especially well-known ones, have registered as domain names a large number of variants of their most valuable well-known trademarks, so as to avoid problems of trademark infringement, and also to assist customers to reach the correct website or its mirror website(s).

Owners of certain types of trademarks may find that they are not permitted to register their trademarks as domain names in some countries because of applicable domain name policies that restrict registration of geographic names or generic/descriptive names. For example, in Spain, the trademark MADRID owned by a private publisher, and, in Italy, the trademark ROMA owned by an Italian newspaper, cannot be registered as ccTLDs (*www.madrid.es*; *www.roma.it*). Therefore, considering the diversity of naming rules amongst registrars of domain names, it is prudent to verify the rules of the national domain name registering authority before applying for registration of a domain name.

Who can Register a Domain Name?

Anyone, whether an individual, organization, or company can register a domain name. Anyone who currently wants, or is thinking of acquiring, a **distinctive**, **individual** presence on the Internet should register a domain name.

Domain names are **essential** for enterprises, big and small, as they can reduce advertising costs and allow businesses to have a "virtual" presence in the market, which can complement real world shops or avoid the need for real world shops at all, thereby overcoming bureaucratic problems (administrative allowances, incomes, etc.)

Whoever registers a domain name is its exclusive owner and **anyone typing that domain name into a web browser will automatically reach only that particular website**. This unique characteristic of a domain name makes it impossible to copy. Another important aspect of domain names is that their duration is unlimited. As with trademarks, you can hold a domain name for as long as you continue to pay the renewal or maintenance fee.

How to Make Your Domain Name More Visible

Having registered a domain name, it is important to make the existence and content of the site visible so that you can attract visitors. A first step is to register the domain name with search engines, such as *www.yahoo.com*, *www.google.com*, and *www.altavista.com*. Search engines are specific tools that search web pages and documents all over the Internet for specified keywords or phrases and return a list of documents where the keywords or phrases can be found. Before registering the domain name with a search engine, one should understand the ranking system followed by different search engines. For example, a domain name based on a key word generally performs better in search engines, as do shorter or descriptive ones. However, as search technology evolves, many of these requirements will also evolve.

Advantages of a Domain Name

Many businesses have decided to adopt an e-business strategy due to the rapid growth of the Internet and the very low management costs of e-shops. The registration and renewal fees for a domain are relatively low, generally under US$50. In the foreseeable future business and trade will continue to shift from the real word to the virtual world. Furthermore, by acquiring a domain name a business can enjoy worldwide visibility that would be difficult and very expensive to achieve in the real world through advertising.

Many businesses use the Internet highway in diverse ways. The main driving force is the low cost of the Internet mentioned above; however, the absence of middlemen, which also further reduces the cost, makes it an even more attractive option for many businesses. Relying on the Internet also forces a business to be globally competitive, even if most sales are to a local clientele, as clients can compare quality and prices of products and services with those of competitors worldwide. At the same time, the Internet provides the possibility of accessing the global market through the virtual window.

For more information on various practical aspects of the IP system of interest to business and industry, please visit the website of the SMEs Division at *http://www.wipo.int/sme/en/case_studies/index.htm*.

The next article in the IP and Business series will discuss IP Valuation.

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IP AND BUSINESS

The Problem of Cybersquatting

At the beginning of the Internet boom, the uniqueness of the domain names system generated a struggle for the acquisition of generic and famous domain names. Some clever people registered generic domain names and then resold them for large sums of money, for example *loans.com* sold for US$3 million; *business.com* for US$7.5 million; and *wireless.com* for US$15 million. These are exceptional cases; most good domain names sell for much smaller amounts, which rarely exceed several thousand dollars.

Even so, the uniqueness of the system has also been the cause of its distortion. Many otherwise forward-looking companies failed to recognize the potential of the Internet as a crucial tool for their business development. To their utter dismay, they later found their trade name/mark had been registered by speculators with the intention of reselling it to them for huge amounts of money. Such behavior, commonly known as **cybersquatting**, had many well-known companies/brands as its victims: McDonald's, Marks & Spencer, MTV, Hasbro, etc. To avoid an uncertain outcome of a challenge before a court for trademark infringement, many of these companies preferred out of court settlements and agreed to pay considerable sums for such domain names.

In order to protect trademark owners and legitimate domain name registrants, the Internet Corporation for Assigned Names and Numbers (ICANN), WIPO and national Internet authorities have put in place certain measures for the protection of the interests of trademark owners. Hence, if a trademark or service mark is cybersquatted, there is a simple online procedure where an independent expert will decide whether the domain name should be returned to the trademark owner. The registrars of TLDs in particular jurisdictions are required to follow the decision.

Generally, such action requires that the trademark owner demonstrate that

- the domain name is identical or confusingly similar to the trademark in question;
- the trademark owner has a right or a legitimate interest in the domain name, and the domain registrant does not; and
- the registrant registered or is using the domain in bad faith.

Many cases of cybersquatting involving well-known marks and names have been solved by this procedure, in particular: *microsoft.org*, *juliaroberts.com*, and *sony.net* (for more information visit *arbiter. wipo. int/domains/*). Such procedure can be used solely for gTLDs and a few ccTLDs for which States have adopted the WIPO Uniform Dispute Resolution Policy. Other countries generally have other alternative dispute resolution procedures. For further information on these, see *ecommerce.wipo.int/databases/cctld/output.html*.

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CULTURE AS A COMMODITY? INTELLECTUAL PROPERTY AND EXPRESSIONS OF TRADITIONAL CULTURES

Photo: Mercedes Martinez-Dozal

Representatives of the Saami Council participating in an IGC session

This article is the second in a series highlighting the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). It discusses the protection of expressions of traditional cultures ("expressions of folklore"). With reference to community, national and regional experiences, it explores relevant conceptual issues and public policy objectives in relation to cultural heritage, and identifies the main trends and approaches among states, custodians of traditional cultures and other stakeholders.

Introduction

Australian indigenous paintings are copied onto carpets and greeting cards; traditional music from Ghana and the Solomon Islands is fused with techno-dance rhythms to produce best-selling world music albums; a process for making a traditional musical instrument, the steel pan from Trinidad and Tobago, is patented; the bust of Egypt's Queen Nefertiti is lowered onto the headless bronze statue of a scantily-clad woman to create a controversial work of contemporary art; the words and fables of the Maori are used in connection with a range of toys; Iranian hand-woven carpets and handicrafts are inexpensively reproduced using industrial processes and inferior materials; the art of lace-making, dating back to the 1500s in Belgium, Italy and France, declines with the introduction of machine lacing.

What these examples have in common is that in each case, an aspect, manifestation or expression of a nation's or community's cultural heritage has been reproduced, adapted, or adopted, and in some cases commercialized, outside the traditional or customary context in which the traditional culture originated and is preserved and practiced. Some say folklore becomes "fakelore". In certain cases, it may be the expression itself that is copied, while in others it could be its method of manufacture that is adopted or usurped. In other cases, it may be the reputation, distinctive character or "style" of the traditional cultural expression that is appropriated. These are the kinds of cases that fuel the concern of many indigenous peoples and traditional communities that the distinct and diverse qualities of the world's multiple cultural communities are threatened by uniformity brought on by new technologies and the globalization of culture and commerce.

These kinds of examples are also sometimes used to argue that existing intellectual property (IP) laws do not adequately protect expressions of traditional cultures and traditional forms of creativity and innovation. Is this the case? To whom, if anyone, does a nation's cultural heritage "belong" – by whom and in which circumstances may cultural heritage and traditional cultures be used as a source of legitimate inspiration and commodification? Do the basic tenets and principles of current IP systems, as some argue, fail developing nations, indigenous peoples and other cultural communities by not adequately protecting their rich cultural heritage? Or are IP systems, adequate in principle, simply not used effectively by the custodians of traditional cultures? Are IP systems a tool for misappropriation, or conversely, can their full use contribute towards the preservation of cultural heritage, the promotion of cultural diversity and the stimulation of tradition-based creativity and innovation as components of sustainable economic

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development? Is cultural diversity best served by preserving existing cultures or by allowing cultures to mix and influence each other?

These and other questions move within the deeper philosophical currents flowing through WIPO's work on traditional cultural expressions (TCEs), or "expressions of folklore". They tend to emerge in the shallows of a debate over whether existing IP systems adequately protect TCEs, or whether new, stand-alone *sui generis* systems are needed.

WIPO's work on TCEs began several decades ago, leading *inter alia* to an amendment to the Berne Convention in 1967 which provides a mechanism for the international protection of unpublished and anonymous works and, in 1982, to Model Provisions for national laws, developed jointly by WIPO and the United Nations Educational, Scientific and Cultural Organization (UNESCO). More recently, the IGC has made progress in surveying community, national and regional experiences with the protection of TCEs, and, on the basis of these, developing a range of policy options and concrete and practical tools for better understanding and managing the relationship between IP systems and TCEs. This article briefly reviews some of these developments.

Describing traditional cultural expressions

The term "traditional cultural expressions" (or, "expressions of folklore") and other terms referring to more or less the same subject matter such as "indigenous culture and intellectual property" and "intangible and tangible cultural heritage" potentially cover an enormous variety of customs, traditions, forms of artistic expression, knowledge, beliefs, products, and processes of production that originate in many communities throughout the world.

The terms "traditional cultural expressions" and "expressions of folklore" are used synonymously in this article. "Traditional cultural expressions" (or TCEs) is used as a neutral working term because some communities have expressed reservations about the negative connotations of the word "folklore."

TCEs may be either intangible, tangible or, most usually, a combination of the two. For example, the Mardi Gras "Indians" of New Orleans exhibit a true example of tangible (costumes, instruments, floats) and intangible (music, song, dance, chant) elements of traditional culture that cannot be separated. In some cases, TCEs may be associated with technical know-how (referred to as "traditional knowledge" in the IGC), but this is not always the case.

For present purposes, TCEs could be described broadly as productions consisting of characteristic elements of the traditional cultural heritage developed and maintained by a community or individuals, including verbal expressions, such as folk tales, folk poetry and riddles, signs, symbols and indications; musical expressions, such as folk songs and instrumental music; expressions by actions, such as folk dances, plays and artistic forms or rituals; and, tangible expressions, such as drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket-weaving, needlework, textiles, carpets, costumes, crafts, musical instruments and architectural forms.

Key concepts

"Protection" and "preservation/safeguarding"

It has been necessary to clarify and articulate the distinct notions of "IP protection" and "preservation/safeguarding" when applied to cultural heritage. The term "protection" is widely used, but this can mask a whole range of potential objectives. In some cases, it appears that the needs of indigenous and traditional communities are perhaps more concerned with preservation and safeguarding than IP protection. While "IP protection" and "preservation/safeguarding" are distinct notions, there is a relationship between them, which requires greater understanding, balance and coordination.

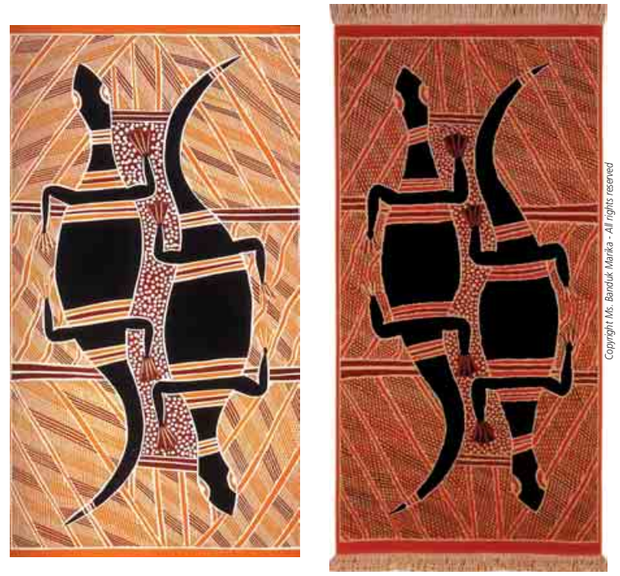
WIPO's work has also led to a finer calibration of the varied IP-related needs and strategies of the custodians of traditional cultures. While some communities wish to claim and exercise IP in their tradition-based creations and innovations to enable them to exploit them commercially, others may wish to claim IP in order to prevent the use and commercialization of their cultural heritage and TCEs by others, including culturally offensive or demeaning use. On the other hand, some communities may wish only to prevent others from gaining or maintaining IP rights over derivations and adaptations of TCEs (so-called "defensive protection").

"Traditional"

The term "traditional" has also been discussed and elucidated within the IGC. While the cultural heritage of a community or nation lies at the heart of its identity and links its past with its present and future, cultural heritage is also "living" – it is constantly recreated by nations and communities in response to their environment, their interaction with nature and their historical conditions of existence. As the Japanese industrial designer Sori Yanagi has said, incorporating the element of traditional folk craft into modern design can be more valuable than imitating folk craft itself. While it is often thought that tradition is only about imitation and reproduction, it is also about innovation and creation within the traditional framework. Thus, the term "traditional" does not mean "old" but rather that the cultural expressions derive from or are based upon tradition, identify or are associated with an indigenous or traditional people and may be made or practiced in traditional ways.

From an IP perspective, a contemporary literary and artistic production based upon, derived from or inspired by traditional culture that incorporates new elements or expression is a "new" work, which is generally protected by existing copyright. For example, the Australian case *Milpurrurru v Indofurn Pty Ltd (1995) 30 IPR 209* involved carpets which reproduced (without permission) either all or parts of well-known works, based on traditional creation stories, made by indigenous artists. The artists successfully claimed infringement of copyright [**see photo above**]. Similarly, a new design, although tradition-based, can receive industrial design protection. For example, Mr. Cun Fablao, a designer from the Yunnan Province, China received industrial design protection for his tradition-based silver-plated tea-set [**see photo on page 13**].

However, the law makes no distinction based on "authenticity" or the identity of the author. The originality requirement of copyright would be met by an author who is



Copyright Ms. Banduk Marika - All rights reserved

The indigenous artist of this well-known work based on traditional creation stories successfully claimed infringement of copyright against the maker of the carpet at right.

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not a member of the relevant community in which the tradition originated or has been preserved. Ironically, the greater the borrowing and adaptation (or "distortion", depending on one's perspective) made to the TCE, the greater the chances that the derivative product will emerge as a "new" IP-protected creation. This is the root of the complaint by communities who wish to prevent or control the use of their cultures as sources for "new" creations by third parties operating outside the traditional or customary context. However, not only third parties can benefit. Indigenous and traditional communities and individuals can also receive IP protection for their tradition-based creations and innovations as a contribution to their economic development. This, it could be argued, is how the IP system properly functions – not to reward the mere preservation of the past, but rather as a tool to revitalize it and incentivize tradition-based creativity for economic growth.

The "public domain"

Clarity on the appropriate role, contours and boundaries of the "public domain" are also integral to developing an effective conceptual framework for the protection of TCEs. While contemporary tradition- based creativity appears more or less protected by conventional IP laws, pre-existing cultural heritage *per se*, as well as mere imitations and recreations of it, are regarded by the IP system as "public domain." Some argue that the public domain character of pre-existing cultural heritage does not hamper its development – on the contrary, copyright encourages members of a community to keep alive pre-existing cultural heritage by providing individuals of the community with copyright protection when they use various expressions of it in their present-day creations or works. A robust public domain approach allows too for the kind of cultural flows and exchanges that have forever marked music and other cultural forms. Musical traditions such as jazz emerged in the early twentieth century in cultural crossroads such as New Orleans, combining elements of African American, Afro-Caribbean and European cultures. Rock music evolved from blues, valuing or rewarding imitation, revision and improvisation. So too, cultural expressions and practices from "dominant cultures" continue to be absorbed and popularized in less dominant cultures. Is it intended to control or levy compensation for all these kinds of flows and exchanges? What of the development of a Brazilian style of *jujitsu*, introduced into Brazil by a Japanese national?

Indigenous and other cultural communities, however, challenge the "public domain" status of traditional cultures under IP law. They argue validly that the "public domain" is purely a construct of the IP system and that it does not take into account private domains established by indigenous and customary legal systems. Their TCEs, they argue, were never protected and are thus not part of a "public domain". Furthermore, they question whether the "public domain" status of cultural heritage, as seen through the eyes of the IP system, offers the greatest opportunities for creation and development. Should all historic materials be denied protection simply because they are not recent enough? Providing IP protection only for contemporary tradition-based creations is an inappropriate "survival of the fittest" approach that does not best serve cultural diversity and cultural preservation, it is argued. Almost everything created has cultural and historic antecedents, this line of thinking holds, and systems should be established that yield benefits to cultural communities from all creations and innovations that draw upon tradition. These are also forceful arguments pulsating through the IGC's work.

Trends and experiences at local, national and regional levels

One of the deliverables of the IGC's work so far has been the gathering, analysis and publication of extensive information on actual community, national and regional experiences. Building on previous fact-finding and consultations on TCEs, this information includes a full report on the results of a questionnaire issued to all states in 2001; a practical study, written by an Australian indigenous lawyer, on the actual experiences of indigenous Australians with the current IP system; a report on national experiences in India, Indonesia and the Philippines; and, presentations on existing or proposed *sui generis* systems and mechanisms for TCEs protection (all available at *www.wipo.int/globalissues/cultural/index.html*).

These information sources evidence a wide diversity of approaches to the legal protection of TCEs. For example, several states already provide specific legal protection for TCEs principally within copyright legislation. In most of these cases, the provisions are based, to differing degrees, upon the Model Provisions, 1982. However, it appears that there are few countries in which such provisions are actively utilized. In this respect, the IGC has endorsed enhanced legal-technical cooperation for the strengthening and more effective implementation of national systems. Many states have also suggested that it would be desirable to provide states and regional organizations with updated and improved guidelines or model provisions for national laws.

Photos Wend Wendland

Mr. Cun Fablao, a designer from the Yunnan Province, China, received industrial design protection for his tradition-based silver-plated tea-set.

A few states, such as Panama and the Philippines, have established stand-alone *sui generis* systems. For example, Panama's law, the "Special Intellectual Property Regime on Collective Rights of Indigenous Peoples for the Protection and Defense of their Cultural Identity as their Traditional Knowledge" of 2000, provides perpetual and collective IP-type protection, based upon registration, for the handicrafts and other creations of its indigenous peoples. The Bangui Agreement of the African Intellectual Property Organization (OAPI), as revised in 1999, also establishes *sui generis* protection for TCEs. More recently, the Secretariat of the Pacific Community has developed a *sui generis* model law for Pacific Island countries.

However, there are other states that argue that no specific protection for TCEs is necessary or desirable. They argue that existing and conventional IP systems are adequate, if their full potential is explored. Members of cultural communities as well as others are free to create and innovate on the basis of their cultural traditions, and acquire and benefit from any IP that may subsist in the creations and innovations (as the copyright and industrial designs examples on page 11 show). Interestingly, quite a number of countries from all regions regard folklore as part of the "public domain" (as discussed on page 12). For example, the copyright law of one country expressly considers "folklore works and traditions of unknown authors" to be in the public domain. Another article of the same law states: "Indigenous art in all its forms, including dances, songs, handicraft, designs and sculptures, shall belong to the cultural heritage."

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It should be noted, however, that not only copyright and industrial designs are relevant to TCEs. Australia, Canada, New Zealand and Portugal have provided examples of the use of trademarks, particularly certification marks, to ensure the authenticity and quality of indigenous arts and crafts. Unfair competition is another part of the IP system that could be useful, particularly to combat false and misleading indications as to the authenticity of certain creations, notably arts and crafts. And, the WIPO Performances and Phonograms Treaty (WPPT) of 1996 provides international protection for the performers of "expressions of folklore."

Some states consider that adaptations to existing rights and/or some special measures within the IP system may be necessary to meet specific needs – for instance, copyright protection for collective works, or works that have not been fixed (e.g. works that have been passed only in oral form), as well as special remedies for copyright infringement that is also culturally offensive. In the trademark area, the United States of America has, for example, established a database that may be searched to prevent the registration of a mark confusingly similar to an official insignia of a federally or state-recognized Native American tribe. In New Zealand, a recent amendment to the Trade Marks Act allows the Commissioner of Trade Marks to refuse to register a trademark when its use or registration would be likely to offend a significant section of the community, including the Maori people.

Concluding comments

While the deeper questions underlying the IGC's work may emerge in the form of two seemingly opposed views, one in favor of new *sui generis* systems and the other supporting extended use of existing rights, it is likely that in the longer term, solutions will be found in a range of options, drawing from existing rights, adapted or enhanced existing rights and, where necessary, new, stand-alone systems. It is unlikely that one single form of TCE protection will meet all the positive and defensive protection needs of a traditional community. Non-IP laws and tools, such as cultural heritage and "truth-in-marketing" laws, are also highly relevant and useful.

Based upon the wealth of legal analyses, national and regional submissions, reports and other materials considered by the IGC so far, it is perhaps possible to begin to distill and annotate the various policy and legislative options available to states and their communities for the effective and appropriate protection of TCEs. These may in due course form the basis for recommendations, guidelines, model provisions or frameworks for the effective national, regional and international protection of TCEs.

As a complement to such policy development, work is also continuing on concrete capacity-building tools that can be no less valuable in a practical context. A practical guide is being developed which will draw together previous experiences in the form of best practices and guidelines as a resource for national and regional policymakers, legislators, legal draftsmen, communities and other stakeholders. WIPO continues to provide, upon request, legislative advice and information and contributed, for example, to the development of the South Pacific model law that addresses TCEs in particular. Work is also being undertaken on a customary/indigenous law study as well as on the development of model licensing agreements and codes of conduct for use by documentation centers, museums, archives and other cultural heritage institutions to assist them in managing the IP aspects of their collections.

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EXPLORING GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE IN ISFAHAN

Isfahan, the ancient capital of Safviyeh Dynasty in Iran, an historic treasure house of cultural heritage and still a thriving workshop of creativity and artisanship, recently played host to the first Interregional Seminar on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore to be held in the Islamic Republic of Iran.

WIPO cooperated with the State Organization for Registration of Deeds and Properties and the Iranian Handicrafts Organization to convene the Seminar, which drew participants and speakers from 28 countries across Asia, the Arab region, Africa, Latin America and Europe, as well as the Economic Cooperation Organization and the United Nations Permanent Forum on Indigenous Issues. Those taking part included senior community representatives and government officials who brought to the seminar a diverse array of practical and policy experience concerning genetic resources, traditional knowledge and expressions of traditional cultural expressions (or folklore), especially handicrafts.

The Seminar reviewed current regional and international developments and analyzed the practical and policy options for custodians of genetic resources, holders of traditional knowledge and folklore, and other stakeholders. A particular focus was the range of intellectual property issues and practical initiatives under discussion in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). The Seminar included a ground-breaking workshop on a practical policy tool under development by WIPO in consultation with stakeholders and Member States, a draft Practical Guide for the Legal Protection of Traditional Cultural Expressions.

The meeting issued the Isfahan Declaration as a statement of recommendations for future international work in this area, including proposals for WIPO's work and the future of the IGC. This Declaration was subsequently presented to the IGC at its fifth session in July 2003.

The Seminar was inaugurated by H.E. Ayatollah Akbar Hashemi Rafsanjani, former President of the Republic and Chairman of The Expediency Council of the Islamic Republic of Iran, as well as other officials from Iran, the region, WIPO and other UN organizations.

IP and Islamic Jurisprudence

In his inaugural speech, Mr. Rafsanjani set out a strong rationale for the protection of intellectual property rights from the point of view of a political leader in terms of Islamic values and jurisprudence. He suggested that Islamic jurisprudence should have a role in the development of intellectual property law. "I take it as a movement aimed at reviving values as well as seeking justice and development," he said. "I believe that the attempts made by WIPO to institutionalize intellectual properties should be considered seriously."

"I believe that defending intellectual properties should be valued and no effort should be spared from achieving such a goal," Mr. Rafsanjani added.

Photo courtesy of the Islamic Republic of Iran

H.E. Ayatollah Akbar Hashemi Rafsanjani inaugurates the seminar.

"Defending intellectual properties, which were plundered at various historical points rather than being acknowledged as properties, prevents harm to the history of mankind," he added. "This is comparable to inventions, initiatives and modern knowledge which should not be exclusive to any individual, city or country."

The Expediency Council Chairman pointed out that promotion of science, art and literature is one of the decisive factors contributing to development of the human community and world states. He added that to achieve such a development, the human community should respect individual achievements and rights, which is also justifiable under Islamic law.

Mr. Rafsanjani stressed that a community or nation that values intellectuals' initiatives, art and craftsmanship is well on the way to encouraging development.

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CREATIVE PLANET – SADIKA, GLASS ARTIST

Sadika Kamoun, a Tunisian glass artist, lights up the screen in the second film from Creative Planet (see WIPO Magazine May/June 2003), a series produced by WIPO to explore the work and motivations of creative artists and innovators. This soft-spoken woman conveys a deep passion for her work and creations in simple, clear expressions. Her words describe her art and demonstrate the close relationship between an artist and her creation.

Sadika's works, sold out of her workshop in Tunis, have been exhibited in galleries and exhibitions in Europe and around the world. Sadika tries to transmit the love of her art through the delicate beauty of her works, so that those who purchase them will enjoy them as she enjoys making them. It is arduous and tiring work – a glass blower's oven must be on 24 hours a day throughout the year - but as Sadika's words explain below, for her it is a labor of love.

On her medium

Glass is a living matter, especially when you shape it. Of course, since glass is a transparent, delicate matter, it can break within a

second. But at the same time, you need strength to shape it. Shaping glass is a difficult job, it's true, because you have to work in a very hot environment. But when you're passionate – I mean, when you really love your job – you cannot get away from it.

I chose glass because it is, beyond any doubt, the material that most helps me communicate my feelings.

On the heritage of glass

The history of glass is a very rich one, and almost as old as man's history, I would say. Creation cannot start from nothing, it's impossible. Everyone has to work using existing matter, things from their heritage, traditional forms – even though we evolve in a contemporary world.

Sometimes, an artist's ambition is to achieve what nobody else has ever achieved. His contemporary world is not enough, which is why his imagination pushes him towards what is yet to come.

On the act of creation

The artist himself when he undertakes a piece of work doesn't know where it will take him. But sometimes, certain elements help him achieve something, and it can take just a second, then it goes away just as quickly. That's why creation is such a difficult and stringent process – it really is. I sometimes wait till the children are asleep, till it's all quiet, till the circumstances are favorable, to think about certain things, write, make drawings, go back to some of my old ideas, conceive a technique and develop it – for the day after, if it's possible.

Every time I go to my studio, I'm in a festive mood, I feel happy. I'm always happy in my studio, because my whole life is there. Anything that keeps me away from it worries me and even makes me a bit tired. Creativity is life. I'd rather die than become unable to create. It is passion. I mean that when you really love your job, you cannot forsake it. It is like your own child: you cannot forsake your own child.

I think that as an artist, my dream is to devote every minute of my life to creation and creativity.

On her works

The most important thing to me is that I end up creating a beautiful piece of work, an object filled with beauty. So long as an object is beautiful, it becomes a work of art. Of course, when you create a functional object, you don't know whether people appreciate it for its beauty or for its usefulness. For instance, when people see a chandelier, they say: "Wow, it's beautiful!" They don't say: "Wow, it gives a good light!" And I think it's an instinctive reaction. The beauty of an object outmatches its functionality.

On the concept of protecting works

I started signing my works in order to protect myself. Protecting artistic works and creations is the most difficult thing.

If your work is copied by other people, it's as if you were creating

things within a school. If those who copy your work do it moved by a new kind of creativity, in schools or universities, for the purpose of developing your original idea and taking it further, then it's great. But if they copy your work for purely materialistic and commercial reasons, then it's worrying, because they lessen your vital resources and deprive you of the means which enable you to keep creating.

It's true - my works end up in the hands of people I don't know at all. But I'd like to tell them that I experienced lots of sensations while creating those works. In each of the objects I create, I put a piece of myself. I hope people feel for my works the same sensations I felt while creating them. If somebody can experience and develop that feeling, then I'll be satisfied…

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SHORING UP PROTECTION FOR BROADCASTING ORGANIZATIONS

COMMITTEE MEETINGS

The WIPO Standing Committee on Copyright and Related Rights

Photo: Mercedes Martinez-Dozal

(SCCR), which met in Geneva from June 23 to 27, made progress in identifying the scope of the rights to be granted to broadcasting organizations in a multilateral treaty which would, if adopted, update international regulations in this area and bring them into line with the digital age. The SCCR was attended by delegates from 77 Member States, the European Community, seven intergovernmental and 45 non-governmental organizations and various other stakeholders representing broadcasting organizations, content providers such as the film and music industries, and civil society. A seminar on webcasting, which took place on the sidelines of the SCCR meeting, contributed to a better understanding of the issues at stake in relation to this new and evolving activity.

Talks to update the intellectual property rights of broadcasters, which are currently dealt with by the 1961 Rome Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, began in the 1990s. The advent of new types of communications for radio and television programs and of content distribution over the Internet has made it necessary to review and upgrade existing international standards to ensure an appropriate balance between the different interests of all stakeholders and those of the general public. A growing signal piracy problem in many parts of the world, particularly of digitized pre-broadcast signals, has also generated a need to discuss the nature and scope of protection for broadcasts.

A broad consensus exists on the need to upgrade these rights. The committee made progress on a number of key issues.

Identifying the Beneficiaries

First, in relation to identifying the beneficiaries, the committee explored whether only organizations that broadcast over the air are to be given better protection, or whether such protection should also be extended to cablecasters and certain categories of webcasters. Many delegations expressed the belief that traditional broadcasting and cable-originated programs would benefit from protection in a new treaty and that, as webcasting was a new and evolving activity, it deserved further analysis. The possibility of protecting real-time streaming in which broadcasting occurs simultaneously over the air and on the Internet by broadcasting organizations was also discussed.

Rights to be Granted

Second, the committee made progress in discussing the rights to be granted to those beneficiaries. The economic rights proposed center on those already outlined in the Rome Convention, and the additional protection granted under the WIPO Internet treaties (WIPO Copyright Treaty (WCT) and the WIPO Phonograms and Performances Treaty (WPPT)), as well as some new rights. A majority of delegations considered that a number of issues required further discussion, namely the right of fixation, the right of reproduction of fixations, the right of distribution of fixations, the right of re-broadcasting, the right of simultaneous retransmission, the right of making available fixed broadcasts, the right of deferred broadcasting, and the right of communication to the public. It was agreed that these issues would be re-visited at the next meeting of the SCCR in November.

Proposals on Outstanding Points

The SCCR continued to examine the proposals submitted by the various Member States to achieve clarification and consensus on the outstanding points. Among several proposals considered, a paper submitted by Japan urged caution on webcasters' rights and pointed out that updating the scope and level of protection of broadcasting organizations' rights was an urgent matter. It noted, however, that the protection of webcasting activities was a newly emerging issue that merited more thorough consideration. Many developing countries endorsed this position, recognizing that the Internet has evolved into an important channel for distributing content that is protected by copyright or related rights through various free or subscription-based services.

Internet streaming is one of two principal methods for users to access sound and/or images over the Internet. The first method is downloads, whereby a file on a server is accessed by a remote user, transmitted over the Internet in the form of "packets" to the user's machine and saved there locally, in most cases on the hard drive. The second is "streaming," which is an Internet data transfer technique that allows users to see and hear audio and video files without lengthy download times. The host or source "streams" small packets of information over the Internet to the user, who can access the content as it is received. The stream may be a real time (live) transmission or an archived file.

The common underlying feature of all types of Internet streaming is that files are not saved locally on the user's machine. Delegates stressed, however, the difficulty in distinguishing between certain protected streaming emanating from broadcasting organizations and individual-based streaming that could be conducted without investment on an amateur basis. It was also pointed out, however, that Internet streaming, or "webcasting," is a new way of transmitting content to consumers that requires significant investment and deserves protection in its own right. Support was also


Photo: Mercedes Martinez-Dozal

expressed for protection of the simultaneous Internet distribution of over-the-air broadcasts. Some developing country delegations stressed that webcasting was generally unknown in their countries as Internet access itself is very limited. While there is potential in this new area of activity, delegates agreed that more information and discussion are essential.

With respect to discussions on the protection of non-original databases, the Committee decided, in view of the limited developments that had taken place on the subject, to take the matter up only at its next meeting in the first half of 2004.

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NEW EFFORTS TO MAKE IP ENFORCEMENT MORE EFFECTIVE

Photo: Mercedes Martinez-Dozal

The first meeting of the Advisory Committee on Enforcement, which was established to explore issues relating to the enforcement of intellectual property rights (IPRs) took place in Geneva from June 11 to 13. The Committee was created following a decision by Member States to merge the work of the Advisory Committee on Enforcement of Industrial Property Rights (ACE/IP) with that of the Advisory Committee on Management and Enforcement of Copyright and Related Rights in Global Information Networks (ACMEC) in 2002. Its mandate is defined as technical assistance and coordination, and excludes norm setting. In its activities, the Committee will focus on coordinating with various organizations and private sector activities to combat counterfeiting and piracy, public education, assistance, undertaking of national and regional training programs for all relevant stakeholders and exchange of information on enforcement issues through the establishment of an electronic forum.

At the outset of the meeting, the representatives of WIPO Member States and the various intergovernmental and non-governmental organizations with observer status agreed that WIPO is in an eminently appropriate position to provide technical assistance and education and to contribute to the creation of awareness in this field. Under the guidance of the Chairman of the Committee, Mr. Henry Olsson, Special Government Advisor, Ministry of Justice of Sweden, the Committee adopted a number of conclusions on issues pertaining to the enforcement of intellectual property rights stressing, in particular, the need for coordination, training and development of enforcement strategies. To render the electronic exchange of information more meaningful, the Committee agreed that the access to the website of the Electronic Forum on Intellectual Property Enforcement Issues and Strategies (IPEIS) no longer be reserved for registered participants and that a link be provided from the WIPO website.

The participants welcomed the establishment of the Committee as a forum for discussion on enforcement matters, in particular regarding technical assistance and cooperation. Some 106 representatives from 72 Member States, five inter-governmental and 16 non-governmental organizations discussed issues pertaining to the enforcement of intellectual property rights. They identified, as a theme of particular interest for further examination and discussion at the next meeting of the Committee, scheduled to be held in 2004, the role of the judicial and quasi-judicial authorities and of prosecutors in the field of enforcement of intellectual property rights, as well as related problems such as litigation cost.

Support as well as some reservations were expressed on a considerable number of other themes which were proposed. These included further topics suggested by the WIPO Secretariat, such as

- the development of national strategies in order to render enforcement of intellectual property rights more effective;
- assistance by the private sector to enforcement agencies in the identification of counterfeit and pirated goods, training, and activities relating to education and awareness building;
- the socio-economic impact of counterfeiting and piracy; and
- the implementation of procedures and mechanisms for appropriate and effective border measures.

In order to provide its members with examples reflecting experience in the field of IP enforcement and to stimulate the discussion of issues with particular practical relevance, the next meeting of the Committee will also include specific presentations by experts from the judiciary and other areas.

REVIEW OF PROVISIONS ON PATENT LAW HARMONIZATION

Photo: Mercedes Martinez-Dozal

WIPO Member States continued discussions on further global harmonization of substantive patent law during a meeting of the Standing Committee on the Law of Patents (SCP) held in Geneva from May 12 to 16. The Committee made progress in reviewing provisions of the draft Substantive Patent Law Treaty (SPLT), which aims to simplify, streamline and achieve greater convergence among national law and practice in the examination and grant of patents.

The draft SPLT covers a number of basic legal principles that govern the grant and validity of patents in different countries of the world, such as definition of prior art, novelty, inventive step (non-obviousness), industrial applicability (utility), sufficiency of disclosure and the structure and interpretation of claims.

The SCP made further headway in establishing a common understanding on several issues arising from differences that exist among patent systems. Provisional agreement was reached on a number of elements on the understanding that any delegation could re-open discussions on these matters at any time in the future. For example, progress was made in respect to the introduction of a grace period in the draft SPLT. A grace period refers to a specified period of time preceding the filing date of a patent application during which the disclosure of the invention, under certain circumstances, does not affect its patentability.

On a number of other subjects, however, important differences in patent systems remain and require further reflection. One such issue relates to the extent to which the SPLT should allow contracting parties to retain divergent laws and practices, bearing in mind that the objective of the draft treaty is to harmonize patent law and practice. Proposals relating to the protection of public health, genetic resources, traditional knowledge and a number of other public policy issues, which the SCP agreed to include in the draft Treaty at its December 2002 meeting, were not discussed (see WIPO Magazine Jan/Feb 2003).

UPDATE OF PATENT INFORMATION RETRIEVAL SYSTEMS

The Working Group on the International Patent Classification (IPC), meeting in Geneva from June 4 to 13, agreed to incorporate additional classifications for traditional knowledge-based inventions and business methods' patents into the IPC. The IPC is a hierarchical classification system covering all fields of technology, which is indispensable for efficient retrieval of patent information. This system is periodically revised to take account of technological developments and to ensure a more user-friendly and accessible patent classification and search tool, for specialists and non-specialists alike. The current (seventh) edition of the IPC entered into force on January 1, 2000. The next edition, to be published in June 2004, will enter into force from January 1, 2005 and will reflect many changes in evolving fields of technology.

The Working Group responsible for the revision of the system agreed to create and incorporate into the IPC a new main category of information on traditional medicine based on the use of plants, comprising more than 200 subdivisions in its English version. Such information represents the most important part of documented traditional knowledge. This new enhancement provides access to classification-based traditional knowledge as prior art and thereby will facilitate information searches relating to traditional knowledge-based innovations.

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Inventors wishing to obtain a patent are obliged to fulfill certain criteria which require the examination of the state of technological developments in the relevant sector, known as "prior art", to determine the patentability of their invention. The inclusion of this new category, in the English version of the IPC, is the result of two years of investigation by a task force comprised of representatives of China, India, Japan, United States of America and the European Patent Organization (EPO). The French version of the new scheme will be submitted for approval by the IPC Committee of Experts at next meeting in November.

A Provisional Subclass for Business Methods

The Working Group also agreed to establish a new provisional subclass of information relating to business methods patents, known as "Data processing equipment or methods specially adapted for administrative, commercial, financial, managerial, supervisory or forecasting purposes". Business methods are the subject of a rapidly growing number of patent applications relating to electronic commerce and methods of electronic administration, management and payment, especially on the Internet.

Although debates on the legal protection of business methods are continuing, elaboration of relevant classification tools is necessary for the retrieval of information contained in patent applications on this subject. Since the patenting of business methods is a recent phenomenon, the IPC does not contain an appropriate place for their classification. The working group agreed that the creation of this subclass was necessary in view of the potentially rapid growth in the number of patent documents relating to business methods. On the basis of a proposal submitted by the EPO, the working group approved a provisional scheme for the new subclass, which is expected to be completed at the next meeting of the working group.

The Committee of Experts

Changes to the IPC are prepared by the IPC Revision Working Group in the course of the IPC revision period and are subsequently approved by the IPC Committee of Experts. The current revision period runs from 1999 to 2004. Of the 13 projects considered by the Working Group at its recent session, six have been successfully completed. The Working Group is expected to complete the IPC revision program at its next session in November 2003. The results of this revision process will then be forwarded to the Committee of Experts for approval before their inclusion into the next edition of the IPC.

The IPC Committee of Experts is also carrying out a reform process designed to adapt the IPC to the electronic environment and to ensure that the system offers a more user-friendly and accessible patent classification and search tool, in particular for non-professionals. The reform process will involve the introduction of fundamental changes to the structure and use of the IPC as well as its revision process. Principles and strategic directions of the reform have been elaborated by the IPC Reform Working Group established by the Committee of Experts for this purpose.

SCIT REVIEWS STANDARDS AND DOCUMENTATION

The Standards and Documentation Working Group (SDWG) of the Standing Committee on Information Technologies (SCIT), which met in Geneva from May 5 to 8, agreed on a number of standards associated with the recording, storage, exchange and retrieval of patent, trademark and industrial design information. Such standards play a central role in facilitating access to intellectual property information, particularly in light of the steep rise in the number of patent documents processed by industrial property offices around the world.

The SDWG adopted a revision of a WIPO Standard (ST.8) regarding the recording of International Patent Classification (IPC) symbols on machine-readable formats. The IPC is a uniform system of classification of patents designed to facilitate retrieval of patent information. Delegates also agreed to revise two additional standards (ST.10/B and ST.10/C) related to bibliographic data components of patent documents. These revisions are intended to bring the standards in line with the program of IPC reform which is due to take effect from January 1, 2005.

The SDWG also made progress in discussions on the need for new codes for Internationally Agreed Numbers for the Identification of Bibliographic Data (INID), in anticipation of the entry into force of the 1999 Act of the Hague Agreement Concerning the International Registration of Industrial Designs.

Delegates also reviewed progress in establishing an inventory of electronic data products for the purposes of disseminating intellectual property information. A prototype system hosted on the website of the State Office for Inventions and Trademarks of Romania which allows intellectual property offices to present information about their official gazettes, books, CD-ROMs containing industrial property and other information was presented to the working group in December 2002. It was agreed that the Romanian Office and WIPO would explore the possible transfer of this system to the WIPONET platform to encourage more widespread use of the inventory.

The work of the SDWG is facilitated by the establishment of an electronic forum that enables ongoing discussion between members on specific aspects of the group's work. This minimizes the need for physical meetings, enables global consultation on the work of the SCIT, and expedites decision-making by Member States, generating efficiency gains in the management and implementation of existing and new IT initiatives in the Organization.

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MEMBER STATES DISCUSS BUDGET PROPOSALS FOR 2004-2005 BIENNIUM

WIPO Member States attending the Program and Budget Committee in Geneva from April 29 to May 1 made headway in discussions on the Organization's proposed program and budget for the 2004-2005 financial period and agreed to pursue consultations before final approval of the document in September. In line with the vision of the Organization to promote intellectual property (IP) as a tool for economic social and cultural development, activities in 2004-2005 will concentrate on yielding specific, tailored outcomes and tangible deliverables which play a direct role in the strategic use of the IP system for economic development and social benefit.

The proposed budget for the 2004-2005 financial period amounts to 655,400,000 Swiss Francs (SFr) reflecting a 2.5 percent decrease (16,800,000 SFr) on the revised budget for 2002-2003 which stands at 672,200,000 SFr. The reduction is proposed despite an increase in the level of activities, in particular of WIPO's global protection systems – mechanisms that facilitate the international filing and registration of rights, including, patents, trademarks and industrial designs. The budget decrease is possible thanks to the completion of major infrastructure projects in the area of information technology and buildings during 2002-2003.

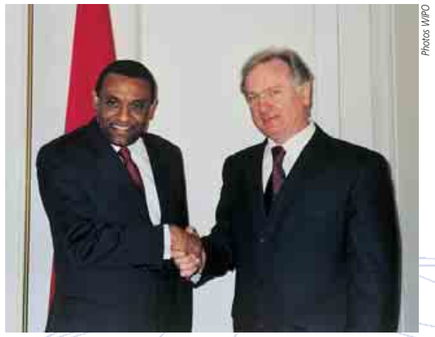
The central theme of the proposals is the translation of WIPO's vision of IP as a powerful tool for economic, social and cultural development into a reality through the provision of concrete assistance and specific deliverables. The proposals outline measures to provide policy and practical support for the diverse needs of Member States through a consolidated program of activities to support strategic goals. This marks a decisive shift towards capitalizing on WIPO's past substantial investment in the legal, technical and administrative infrastructure of the last three biennia.

WIPO's activities will concentrate more fully on the creation of an IP culture that enables all stakeholders to realize the potential of IP as a tool for economic, social and cultural development, with efforts aimed at maintaining an effective, balanced IP system, built on greater understanding of its workings and lower entry barriers for its use. WIPO's activities will assist governments of Member States to integrate IP components into their national policy priorities and provide assistance to such stakeholders as entrepreneurs, business owners, creators and innovators in fully using the IP system. Particular emphasis will be given to the global protection systems and services (PCT, Madrid, The Hague and Lisbon systems) in 2004-2005. Further development in the services and coverage of the PCT and Madrid systems is planned. These are strategically important vehicles representing one of the most concrete ways WIPO supports users of the IP system worldwide, ensuring that the benefits of IP protection can be enjoyed by a broader range of constituencies and enabling wider participation in the creation of an IP culture.

NEWS ROUNDUP

WIPO Pledges Support to Republic of Belarus

WIPO Director General Kamil Idris has pledged the Organization's continuing support to the government of Belarus in further reinforcing its intellectual property system. In talks with President Alexander Lukashenko and other top government officials in Minsk on June 10 and 11, Dr. Idris welcomed Belarus' efforts to modernize its legislative intellectual property framework and other initiatives to ensure that the vast human capital of the nation is best exploited for economic growth and development.



Photos WIPO

WIPO Director General Kamil Idris and Prime Minister Gennadi Novitski

A memorandum of understanding was signed to build on WIPO's existing cooperation with Belarus, in particular in the area of institution- building and human resources training. The Director General outlined a number of WIPO initiatives that could be of particular interest to Belarus. These include efforts to help small and medium-sized enterprises (SMEs) to better exploit the intellectual property system, talks on intellectual property aspects of traditional knowledge and folklore, and WIPONET.

During the talks, the Belarus officials reiterated their desire to establish an Intellectual Property Center, which would promote scientific research, training, innovation and invention. Dr. Idris said WIPO would support the government's efforts to set up this Center, in particular through the WIPO Worldwide Academy.

The officials also assured the visiting WIPO delegation of their intention to join more WIPO-administered treaties. Belarus is already party to 16 of the 23 treaties administered by WIPO. Dr. Idris welcomed this strategy and recalled that it is equally important to further develop a national legislative framework that promotes indigenous innovation and creativity. He welcomed the existence of several national bodies on intellectual property within the government.

Signing of the memorandum of understanding by WIPO Director General Kamil Idris and Vice Prime Minister and Minister of Economy Andrei Kobyakov

At a visit to the National Academy of Science, a presentation was made of the Director General's new book, *Intellectual Property: A Power Tool for Economic Growth* (see WIPO Magazine Jan/Feb 2003). The presentation was followed by a round-table discussion attended by representatives of government, parliament, academic and scientific circles and the National Center of Intellectual Property.

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NEWS ROUNDUP

Visual Creators' Collective Management Societies

WIPO participated in the June meeting of the International Confederation of Societies of Authors and Composers (CISAC) committee for the visual creators' collective management societies worldwide, which was held in Copenhagen, Denmark. The collective management of copyright faces numerous challenges due to the diversity of visual creations and the rapid expansion of the means of dissemination of such works.

Visual creations include all works such as plastic art (paintings, drawing, sculptures), graphic creations (illustrations, caricatures, animated drawings, comics, graphic designs), photography, video creations and other types of graphic creations. In Latin America, these creations constitute an enormous repertory with various applications in the cultural market as well as in the world of trademarks, graphic design and advertising. WIPO launched a pilot project in Latin America in 1999 to deal with such problems. The Latin American Council of Visual Arts was established at a meeting organized by WIPO and the Government of Cuba. It groups seven societies and works under the coordination of the Mexican collective management society.

The CISAC meeting provided useful information on current collective management issues in the 24 participating countries as well as an opportunity to build a network with partners in cooperation activities. The meeting covered a number of topics, including:

- the harmonization of the *droit de suite* in the European Union;
- the European directive on copyright and the information society; and
- the development of visual creators collective management societies in Africa, Asia and Latin America.

◆

The First PCT Seminar in Iran

WIPO organized the first-ever seminar on the Patent Cooperation Treaty (PCT) and innovative and inventive activity in Tehran on June 22 and 23 in cooperation with the Registration Office for Companies and Industrial Property, the Registration Organization for Deeds and Properties and the Iranian Research Organization for Science and Technology. The conference attracted some 100 participants from research and development (R&D) centers, universities and the intellectual property profession as well as government officials.

In addition to topics covering features of the PCT system and its advantages, the seminar also discussed subjects such as patenting strategies, the importance of patent information in support of inventive and innovative activities, and the infrastructure and professional training needed for commercializing inventions. The participants particularly appreciated the positive experience of India with the PCT system and Indian efforts to modernize patent legislation and administration. The Iranian R&D organizations expressed interest in learning from the experience of the Council of Scientific and Industrial Research (CSIR) of India, which has in recent years developed a substantial portfolio of patents and emerged as the top user of the PCT from developing countries in 2002.

Iran has a wide network of dynamic R&D centers spread across the country. The seminar contributed to a large extent in raising the awareness of the inventors, R&D institutions and policy makers in Iran about the PCT system and its benefits. It is expected that Iran will accede to the PCT in the near future.

◆

IP Cooperation with OECD Countries

The first Forum on Intellectual Property and Small and Medium-sized Enterprises (SMEs) for Intellectual Property Offices (IPOs) of the OECD, held at WIPO in Geneva from May 20 to 23, provided a platform for participants to share policies, practices and experiences on their respective outreach and support activities concerning intellectual property for universities, entrepreneurs, industry and business. Participants from the 15 Organization for Economic Cooperation and Development (OECD) countries agreed to intensify future collaborative efforts in this area.

A number of presentations showed that, while much innovative work is being carried out by a number of IPOs, significant work remains to be done in view of the generally low level of awareness about the role and relevance of the intellectual property system for enterprise competitiveness in OECD countries and the world. The presentations made during the Forum are available on the website of the SMEs Division at *www.wipo.int/sme*.

WIPO Deputy Director General Rita Hayes opened the Forum by highlighting the importance of SMEs to the economies of the OECD countries, and the continuing need for more effective use of the tools offered by the intellectual property system. Mrs. Hayes outlined the approach of the SMEs Division to meet the challenges in demystifying intellectual property for SMEs worldwide. In his keynote speech, WIPO Deputy Director General Philippe Petit outlined the various ways in which OECD countries contribute to, and participate in, the activities carried out by WIPO. Mr. Petit cited the opening of the WIPO coordination Office in Brussels as a sign of WIPO's willingness to intensify relationships with OECD countries belonging, or in the process of acceding to, the European Union.

Forum participants agreed to meet at WIPO every alternate year, with the intervening periods being utilized for collaborating on various projects. It was also agreed that in the intervening years, at least one theme-based meeting would be organized in one of the OECD countries. The online Web Forum, created and maintained by the WIPO SMEs Division, will remain the principal tool for interaction among the IPOs of the OECD countries to share ideas and experiences.

◆

SCHEDULE of meetings

SEPTEMBER 8 TO 10
GENEVA

Program and Budget Committee (Seventh session)

The Committee will continue to discuss proposals with regard to WIPO's Program and Budget for the 2004-2005 biennium.

Invitations: As members, the States members of the Program and Budget Committee; as observers, all Member States of WIPO that are not members of the Committee.

SEPTEMBER 17
GENEVA

Conference on the Importance of Statistics on Patenting Trends Analysis and Projections

The Conference will examine the role of statistical information in the analysis of trends in patenting activity worldwide.

Invitations: Open to all interested persons.

SEPTEMBER 18 AND 19 (MORNING)
GENEVA

WIPO-OECD Workshop on Statistics in the Patent Field

The Workshop, jointly organized by WIPO and the Organisation for Economic Cooperation and Development (OECD), aims to stimulate discussion on technical aspects regarding statistics.

Invitations: Participation will be limited to entities/individuals selected by WIPO and OECD.

SEPTEMBER 22 TO OCTOBER 1
GENEVA

Assemblies of the Member States of WIPO (Thirty-ninth Series of Meetings)
All Bodies of the Assemblies of the Member States of WIPO will meet in their ordinary sessions.

Invitations: As members, the States members of WIPO; as observers, other States and certain organizations.

OCTOBER 2 TO 10
GENEVA

Committee of Experts of the Nice Union (Special Union for the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nineteenth session)

The Committee of Experts will consider proposals for amendments and other changes to the eighth edition of the International Classification of Goods and Services (Nice Classification).

Invitations: The States members of the Nice Union and, as observers, the States members of the Paris Union but not members of the Nice Union, the African Intellectual Property Organization, the Benelux Trademark Office and the Office for Harmonization in the Internal Market (Trade Marks and Designs).

OCTOBER 6 TO 10
GENEVA

Committee of Experts of the IPC Union (Thirty-third session)

The Committee of Expers will continue its work on IPC reform, and will consider proposals of the IPC Revision Working Group with regard to the preparation of the eighth edition of the IPC (IPC-2005).

Invitations: As members, the States members of the IPC Union; as observers, States members of the Paris Union, who are not members of the IPC Union, and certain organizations.

OCTOBER 20 TO 24
CICG, GENEVA

Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) (Eleventh session)

The Committee will continue its work on the revision of the Trademark Law Treaty (TLT) and on other issues, on the basis of the results of the tenth session.

Invitations: As members, the States members of WIPO and/or the Paris Union; as observers, other States and certain organizations.

NOVEMBER 6 & 7
GENEVA

Seminar on the Madrid System of International Registration of Marks

This Seminar, in English, aims at increasing awareness and practical knowledge of the Madrid system amongst actual and potential users, whether in industry or in private practice.

Invitations: Registration is open to all interested persons, subject to the payment of a registration fee.

CORRIGENDUM

The recent publication entitled *Intellectual Property: A Power Tool for Economic Growth* (published in April 2003; WIPO Publication No. 888E) cites an opening speech of the representative of the Government of Australia at a WIPO Symposium on the International Protection of Geographical Indications held in Melbourne in 1995 (the first paragraph on page 181). According to evidence recently provided by the Government of Australia, the example provided in the paragraph does not support the direct link between the use of geographical indications and the success of the Australian wine industry, and that the example referred to a wine that was actually sold under a trademark.

NEW PRODUCTS

General Information Brochure 2003
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Portuguese 400 (P), Spanish 400(S)
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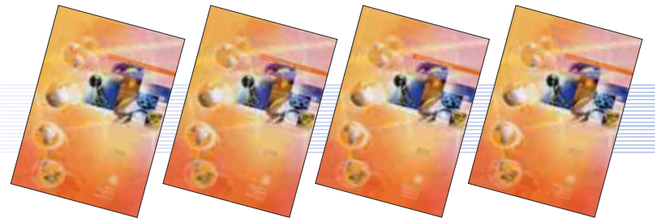

Annual Report 2002
English 441(E)
Free of Charge

The Madrid System for the International Registration of Marks (leaflet)
English 492(E)
French 492(F)
Spanish 492(S)
Free of Charge

International Classification for Industrial Designs (Locarno Classification) 8th Edition
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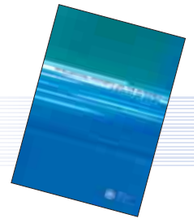
French 501(F)
100 Swiss francs

Intellectual Property on the Internet: A Survey of Issues
English 856(E)
30 Swiss francs



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If you are interested in receiving copies, contact:

Marketing and Distribution Section
WIPO
34, chemin des Colombettes
P.O. Box 18
CH-1211 Geneva 20
Switzerland
Fax: +41 22 740 18 12
e-mail: publications.mail@wipo.int

For comments or questions, contact:
The Editor
WIPO Magazine (at the above address)

For more information contact WIPO at:

Address:
34, chemin des Colombettes
P.O. Box 18
CH-1211 Geneva 20
SWITZERLAND

Telephone:
+41 22 338 91 11
Fax:
+41 22 733 54 28
e-mail:
wipo.mail@wipo.int

or its New York Coordination Office at:

Address:
2, United Nations Plaza
Suite 2525
New York, N.Y. 10017
United States of America

Telephone:
+1 212 963 6813
Fax:
+1 212 963 4801
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