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WORLD INTELLECTUAL
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WIPO SEMINAR FOR ASIA AND THE PACIFIC REGION ON THE INTERNET AND THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

organized by
the World Intellectual Property Organization (WIPO)

in cooperation with
the Ministry of Law,
the Attorney-General's Chambers,
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the Singapore Productivity and Standards Board

and
the Singapore Trade Development Board
of the Government of the Republic of Singapore

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I. WIPO'S WORK PROGRAM IN 1998 AND 1999 RELATING TO INTELLECTUAL PROPERTY PROTECTION AND THE INTERNET

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I. INTRODUCTION

The Seminar which started this morning has assembled together a group of notable experts on the subject of the Internet and the protection of intellectual property rights (IPRs). They come from the four corners of the world. As they will be examining in detail the main IPR issues raised by the phenomenal development of the Internet in the current decade. It may therefore be more profitable for everyone present today if, in place of a *tour d'horizon* of the seminar theme, this paper details what and how the World Intellectual Property Organization (WIPO) can contribute to resolving the problems that the international community is facing.

II. WIPO IN BRIEF

For those in the audience who may never have, before today, heard about WIPO or know next to nothing of it, a brief description of the Organization might be helpful. WIPO is an international intergovernmental organization which has as its mandate the promotion of the protection of intellectual property throughout the world through cooperation among States. The Organization is a member of the United Nations family of organizations. It has a current membership of 169 countries and administers some 21 international treaties dealing with one or more aspects of intellectual property. WIPO is located in Geneva, Switzerland, and has a staff of about 650 persons coming from over 60 countries. Its Director General is a national of Sudan.

Unlike almost all the other UN organizations, WIPO enjoys sound financial health. This is due primarily to the fact that over 85% of its yearly budget of 200 million Swiss francs is covered by the international registration services that it provides to the market sector, that is, to industry and commerce.

Broadly speaking, WIPO's main functions can be grouped into three categories: progressive development of international intellectual property law and technical standards; assistance to developing countries and international protection registration systems.

Today's seminar can be said to fall into the first two categories for the following reasons. Our meeting is aimed at helping developing countries in the region clarify and better understand the implications of the Internet on intellectual property protection: it is thus assistance to developing countries. At the same time, it promotes an international dialogue leading to the development of common, harmonized legal approaches to such questions.

III. IMPACT OF DIGITAL TECHNOLOGY ON INTELLECTUAL PROPERTY LAW

(a) Introduction

The growth of digital networks such as the Internet poses problems for the protection and enforcement of IPRs. The WIPO work program for the years 1998 and 1999 (the Organization has a biennial program and budget) includes a range of initiatives to tackle the implications of such technology for copyright and industrial property law, and the impact on industrial property law via electronic commerce transcending national jurisdiction. The consultative base between the Secretariat and the member States as well as with the relevant

interest groups and market sector representatives will be at once broadened and deepened to enable the Organization to anticipate better the challenges posed to the intellectual property system by technological change.

Despite the steady trend towards the international harmonization of substantive norms and standards, the reality is that the traditional ways of enforcing IPRs can be burdensome and expensive. This has stimulated interest in the possibilities of alternative dispute resolution, an interest that the WIPO Arbitration and Mediation Center serves. The WIPO program foresees further progress here, including on-line dispute resolution services which exploit Internet technology. Indeed, the Center has recently begun to providing the on-line service for resolving disputes concerning trademarks and Internet domain names. This service is expected to be much used because of the likely number of such disputes and because of the obvious advantages that the service offers compared to traditional litigation.

(b) Development of the Law of Copyright and Related Rights

The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) offer appropriate responses to the issues raised by digital technology, particularly by global networks such as the Internet. To enter into force, however, they each require 30 instruments of accession or ratification; to obtain that, the WIPO Secretariat has to undertake active promotional activity. As of April 15, 1998, 51 countries have signed the WCT and 50 countries have signed the WPPT, while only 2 and 1 countries, respectively, have adhered to them.

The December 1996 Diplomatic Conference which adopted the two treaties also had on its agenda the issues of the rights of performers in respect of “audiovisual performances” and of a possible *sui generis* protection system for databases, but did not adopt norms on those issues. Preparation of new international norms, or at least offering guidance on those issues, as well as on two further issues identified during preparatory work on the treaties – namely, the rights of broadcasting organizations and of distributors of cable-originated programs and the intellectual property protection of folklore – has been left, initially, for the 1998-99 biennium. The rapid growth in the applications of digital technology, particularly in global networks such as the Internet, creates a need for continuous attention from the viewpoint of the protection, exercise and enforcement of copyright.

Effective implementation of the WCT and WPPT will be essential if the Internet and other global digital networks are to be fully used as a market place for cultural and information industries in due accordance with the public interest. Hence it will be a priority for WIPO in 1998 and 1999 to promote adherence to, and implementation of, these treaties and secure their entry into force as soon as possible. The further development of law in the fields noted above will serve to extend the scope of international protection of copyright and related rights in the emerging information society. WIPO activities aimed at developing the international system for protecting copyright and related rights will be better harmonized, more thoroughly prepared and more transparent, partly through the operations of a new Standing Committee on Copyright and Related Rights.

In addition, the Secretariat of WIPO will undertake regular monitoring of and prompt reaction to developments in digital technology, particularly global networks such as the

Internet, from the view point of copyright and related rights; and will offer guidance in this field, both to the WIPO Members States and to interested groups.

By the end of 1999, it is expected that progress in adherence to, and implementation of, the WCT and the WPPT, will be such that they will enter into force not later than in the 2000-2001 biennium. Further, it is expected that a Protocol to the WPPT on Audiovisual Performances would be adopted by a diplomatic conference. Also, it is hoped that progress in the preparatory work on new norms concerning intellectual property in databases, and the rights of broadcasting organizations and of distributors of cable-originated programs, would be such that treaties may be adopted not later than in the 2000-2001 biennium, or at least appropriate guidance be offered to WIPO member States for harmonization of their laws on these issues.

To achieve the above-mentioned progress, there will be held two or three meetings of representatives of WIPO member States and of the European Community, taking the form, depending on the progress and the requirements of the preparatory work, of a committee of experts (involving also interested intergovernmental and non-governmental organizations); of sessions of the Standing Committee on Copyright and Related Rights; of informal consultations and negotiations, and/or of a preparatory meeting to deal with the procedural aspects of the diplomatic conference. In addition, there will be one or two series of regional consultation meetings for developing countries and for certain European and Asian countries combined with other regional consultation meetings.

A number of government representatives of developing countries and certain other countries will be provided with financial assistance to attend the meetings concerned.

(c) Protection of Databases

The Berne Convention, the TRIPS Agreement and the WCT provide for the protection of original databases by copyright. The agenda of the December 1996 Diplomatic Conference included a draft treaty on a *sui generis* system of protection for databases. It envisaged the protection of the rights of makers of databases in respect of the utilization or extraction of the contents of both original and non-original databases, under certain conditions. The Conference did not discuss that draft treaty in substance, but recommended that the schedule of further preparatory work of a WIPO Treaty on Intellectual Property in Respect of Databases be discussed and established. In September 1997, an Information Meeting was held on this issue, where it was found that discussions of any details of a possible treaty should be preceded by consideration of some more fundamental questions, for example, the need for, the desirable nature and extent of any protection going beyond the existing protection of databases by copyright or by other legal means such as by protection against unfair competition or by contracts, as well as the foreseeable economic, cultural and social impact of such protection.

The objective of WIPO's work during 1998 and 1999 would be to review the present situation, at national, regional and international levels, of the protection of databases by copyright and by other legal institutions, such as *sui generis* protection or protection against unfair competition; determine where harmonization and updating of the relevant norms are necessary; and obtain such harmonization and updating through binding norms, where appropriate, or through recommendations, guiding principles or other forms of guidance.

To achieve that objective, there will be held two or three meetings of representatives of WIPO member States and of the European Community, taking the form, depending on the progress and requirements of the preparatory work, of information meetings, sessions of a committee of experts (involving also interested intergovernmental and non-governmental organizations), sessions of the Standing Committee on Copyright and Related Rights, or informal consultations and negotiations. If necessary, the Secretariat will commission two or three studies by external experts for consideration at the meetings. Furthermore, there will be one or two series of regional consultation meetings for developing countries and for certain European and Asian countries combined with other regional consultation meetings. A number of government representatives of developing countries and certain other countries will be provided with financial assistance to attend the meetings in question.

It is hoped that there will be sufficient progress so that, probably in the 2000-2001 biennium, a treaty on intellectual property in respect of databases could be adopted, or at least, the adoption of recommendations, guiding principles or similar forms of guidance to harmonize regional and national legislation on this issue.

(d) Copyrights, Related Rights and Digital Technology

In responding to the most important and urgent issues for copyright and related rights raised by digital networks such as the Internet, the WCT and WPPT determined the rights to be granted and the possible exceptions to, and limitations on, rights. They also introduced obligations concerning technological measures of protection and rights management information systems, but left it to the interested parties to work out and operate such measures and systems. While promoting adherence and implementation in relation to these treaties, WIPO will continue studying certain issues they do not cover, and regularly monitor developments in digital technology and global networks.

WIPO will also act as a forum for interested groups to work together for the creation and operation of the most appropriate and most efficient methods for the protection, exercise and management of rights in the digital environment.

In 1998 and 1999, the following activities are planned by WIPO:

- One or two sessions of the Standing Committee on Copyright and Related Rights over the biennium to consider in particular the impact of digital technology and global information networks on copyright and related rights, each session preceded by a hearing for, or other consultations with, interested non-governmental organizations on the issues to be discussed in that session.
- Two or three meetings of the newly established Advisory Committee on Management of Copyright and Related Rights in Global Information Networks, with the representatives of owners of copyright and related rights and Internet service and access providers to discuss the exercise and collective management of rights in a digital environment, particularly in global networks, including the practical application of technological measures of protection, rights management information systems and new methods for management of rights; commissioning of two or three studies on these issues by external experts who will also take part in consultations.

- A world-wide symposium on the creation, licensing and protection of multimedia productions.
- A meeting of a group of consultants on the nature and extent of liability of service and access providers in respect of transmissions on digital networks such as the Internet; commissioning of two or three studies by external experts, to be discussed by these consultants; and publication of the studies and meeting materials for use in advising governments, legislators and the judiciary.
- A meeting of a group of consultants on the private international law aspect of the protection of works and objects of related rights transmitted through global digital networks; commissioning of two or three studies by external experts on these aspects, to be submitted to the group of consultants.
- Financial assistance to enable some officials of developing and certain other countries to attend selected meetings described above.

The expected results of the activities described above would include the following:

- The availability of up-to-date information, in respect of the protection, exercise and collective management of copyright and related rights.
- Progress in the clarification of the issues relating to the licensing and protection of multimedia productions so that, no later than in the 2000-2001 biennium, recommendations, guiding principles or other similar forms of guidance may be offered to governments, legislators and the judiciary of WIPO member States.
- Progress in outlining options for solving the private international law problems emerging in respect of transmission of works and objects of related rights through global digital networks, such as the Internet; publication of a study or collection of studies on those problems and options, not later than in the 2000-2001 biennium.
- Contribution to the establishment and operation of harmonized systems of exercise and management of copyright and related rights in a digital environment, particularly on the Internet.

(e) Protection of Industrial Property Rights in Global Electronic Commerce

Global electronic commerce, including commerce on the Internet, is growing at an unprecedented rate, and is expected to reach a level, by some estimates, of over US\$300 billion by the year 2005. In a medium which channels such an extensive volume of commerce, effective protection of industrial property rights is essential. Information placed into global electronic commerce by a commercial user is immediately accessible, simultaneously, in every country of the world, hence creating a difficult challenge for the current industrial property system, in which rights are enforced on a territorial basis. An example of a pressing issue which crops up with increasing frequency is the protection of trademarks in the Internet environment.

The fact that commercial users of global electronic commerce could be subject to the laws and to the courts of many countries simultaneously has serious implications for principles concerning protection of industrial property rights in international commerce. These principles should be re-evaluated in the context of global electronic commerce, and possibilities for international dispute settlement alternatives specifically designed for industrial property disputes in global electronic commerce should be explored.

Consequently, a study of the appropriate legal infrastructure within which industrial property rights can be effectively protected in the emerging electronic commerce system needs to be undertaken as a matter of urgency. This study would take into account relevant deliberations of the expert meeting on intellectual property beyond territoriality referred to later in this paper.

The main activities that will be undertaken in this area are described below:

- Exploration of the relevant issues by an Advisory Committee on Protection of Industrial Property Rights in Global Electronic Commerce, made up of WIPO member States and interested intergovernmental and non-governmental organizations.
- Studies to identify problems and potential solutions for protection of industrial property rights in global electronic commerce.
- Cooperation with other international national institutions, including other international intergovernmental organizations, concerning protection of rights in global electronic commerce.
- Research into the applicability of current industrial property laws to global electronic commerce; identification of areas where global principles could be developed; and preparation of analyses, reports and recommendations.

As for the expected outcome of the activities, they are twofold:

- (i) greater practical insights into the applicability of current industrial property law to global electronic commerce and possible areas for development of global principles;
- (ii) clearer practical understanding of the desirability and feasibility of adaptation of existing principles of industrial property protection to the protection of industrial property rights in global electronic commerce.

(f) Intellectual Property Rights Beyond Territoriality

Under the international intellectual property system, IPRs have been used and managed within a framework of distinct, national territories. However, an increasingly networked and integrated environment demands that new ways are conceived to exercise IPRs beyond this principle of territoriality. In this biennium, the possible evolution of the intellectual property system in relation to territoriality will be explored. Specific points of study will include national treatment, exhaustion of rights, management of rights, choice of law, evidentiary rules,

courts of competence and execution of judgments, as well as the implications of regional and international registration of industrial property rights, and other forms of cooperation between national granting authorities. Close attention will be given to changes in territoriality following from regional integration through agreements such as the European Union, ASEAN, APEC, Common Market of the Southern Cone (in Latin America) (Mercosur), North American Free Trade Association (NAFTA) and Southern African Development Community (SADC).

In the year 2000 and beyond, other stress points will be studied by WIPO, such as those arising from tensions between intellectual property and policies favoring competition, free trade, access to information and affordable healthcare. The conceptual groundwork undertaken in these studies is aimed at illuminating possible ways ahead for the intellectual property system in all such areas.

It is planned that the following work will be carried out in 1998 and 1999:

- An expert meeting (drawing on the fields of intellectual property, economics, environment, information and communication technologies), to explore new practical approaches to the principle of territoriality in the global intellectual property system, with publication and dissemination of the meeting's results and recommendations for new approaches to the principle of territoriality.
- Consultations with competent secretariats, such as the European Commission and the Secretariats of ASEAN, APEC, COMESA, Mercosur, NAFTA and SADC, to secure input on the implications of this issue in the exercise of IPRs in regional cooperation arrangements.

The expected results are likely, for the time being, to be modest. The ongoing examination of the interaction between intellectual property and other policy objectives that are influenced by the changing nature of territoriality will ensure the continuing practical relevance of the intellectual property system. At the same time, there should be an enhanced understanding of the changing role of territoriality in the global intellectual property system and of possible improvements to the system in response to these challenges.

(g) Intellectual Property Information on the Internet

The member States of WIPO approved, for the 1998-99 biennium, an important project that aims at creating a WIPO global intellectual property information network. The project takes advantage of the advance in digital communications technology and of the Internet while, at the same time, reorganizing the economic importance of timely access to intellectual property information in a cheap and efficient way.

The idea behind this project which will be spearheaded by the WIPO Secretariat, is to create an information exchange network in which each country will serve as the local link, providing information and statistics on intellectual property activities, such as the number and types of trademarks registered or patents granted, and for which good or service or field of technology as well as the identity of the owners of the rights.

Under the project, WIPO will provide sufficient telecommunication capacities in hardware and software to local national and regional intellectual property offices participating in the network. The aim of such assistance in kind is to enhance local capacities to generate, store, access and exchange information with each other.

Given the disparities which exist between countries as to financial and human resources available and the different technical standards and parameters embodied in the range of hardware and software available on the market, this project of WIPO is obviously an ambitious one. Many steps and preparations will be necessary and the entire process will take a number of years. Fortunately, there is a strong desire on the part of the member States to establish such a network, and the financial resources required by the Organization are not lacking.

The main strategy in the next 20 months can be summarized as follows: WIPO will provide the basic network to facilitate the access to and exchange of intellectual property information and will liaise with providers of such information from public and private sectors. That network will be used to improve the interaction between the intellectual property community members, thus enhancing the protection and enforcement of intellectual property rights. Further, WIPO will serve as a forum through which offices can concurrently develop an organized collection of information in electronic form (Intellectual Property Digital Libraries (IPDL)) that will be made accessible to the general public, with certain information being accessible only to designated communities (such as intellectual property offices) through the network. As WIPO generates considerable information through its own international registration services for patent, trademark and industrial designs, the Organization itself will be an important source of information and will itself develop an IPDL. Moreover, an ambitious project of computerizing the operations of the Patent Cooperation Treaty (PCT), to be launched in 1998, will be closely coordinated with the global network project. The PCT project itself may spend up to 40 million Swiss francs, with a project life span extending, obviously, beyond the year 2000.

Enhanced expert resources within the WIPO Secretariat will coordinate the development of the network, and aspects related to the network interfaces, equipment, technical assistance and training. The Secretariat will outsource tasks in these areas to the maximum appropriate extent. Pilot projects will be initiated and coordinated to assess the functional and technical aspects of the network, taking advantage of the rapid developments in information technology, with a view toward implementing flexible and scaleable solutions. At the same time the automated systems architecture within the Secretariat will be maintained, modernized and developed to ensure that it can fully support all information technology activities within the Secretariat.

At the end of 1999, there should have been an initial deployment of the network infrastructure and the provision of technical and training services, utilizing modern and secure technologies, to developing countries; the facilitation, through deployment of the network, of the modernization of activities for the protection and enforcement of intellectual property rights; and improved access to intellectual property information through the network for all concerned, whether in the government or private sectors, in developing or developed countries.

The member States of WIPO have earmarked about 25 million Swiss francs for this global information network project in 1998 and 1999 alone. Because of its size and

importance, the project will be kept under close surveillance by the member States through, in the first instance, the newly-created Standing Committee on Information Technologies. Some financial assistance will be provided to developing countries to facilitate their participation in meetings of the Standing Committee.

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