

First Inter-Regional Meeting on South-South Cooperation on IP Governance; Genetic Resources, Traditional Knowledge and Folklore (GRTKF); and Copyright and Related Rights

**Inter-Regional Meeting
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REPORT

prepared by the Secretariat

The First Inter-Regional Meeting on South-South Cooperation was held in Brasilia as part of the implementation of the Development Agenda Project on *Enhancing South-South Cooperation on IP and Development among Developing Countries and least developed countries (LDCs)*.

OPENING

1. Held at the Ministry of External Relations of the Government of Brazil, the meeting was opened by Mr. Alejandro Roca Campaña, Senior Director-Advisor, Global Infrastructure Sector, WIPO, and Manager of the Project under which the First Inter-regional Meeting was organized.

In his opening statement, Mr. Roca Campaña highlighted the objectives of the meeting which, he emphasized, were to promote and harvest exchanges of national and regional experiences as well as best practices in the fields of IP Governance, GRTKF, and copyright and related rights among developing countries and least-developed countries (LDCs). While recognizing the importance of North-South cooperation in the field of IP, he pointed out to South-South cooperation as another very important stream of international cooperation running in parallel, rather than as a substitute, to North-South or triangular cooperation. As a long-standing priority of the United Nations (UN) and an outstanding item on the agenda of the UN General Assembly, South-South cooperation had long been recognized as a key means of effecting technical cooperation. The 1978 Buenos Aires Plan of Action for Promoting and Implementing Technical Cooperation among Developing Countries, endorsed in Resolution 33/134 of the UN General Assembly, he added, had already recognized the need for the entire UN development

system to be permeated by the spirit of technical cooperation among developing countries, and had pointed out to the permanent role to be played by the UN specialized agencies as promoters and catalysts of such cooperation. Resolution 64/222 of December 2009, he added, had endorsed the outcome document of the 2009 High-Level UN Conference on South-South Cooperation held in Nairobi, emphasizing in paragraph 2(k) the fact that South-South cooperation needed “adequate support from the United Nations funds, programs and specialized agencies including through triangular cooperation”, calling upon all relevant UN organizations to “consider increasing allocation of human, technical and financial resources for South-South cooperation as appropriate”.

Organized against this background and in the context of a Development Agenda Project adopted by the Committee on Development and Intellectual Property (CDIP) in November 2011 with the objective to enhance South-South cooperation and to develop means to channel the efforts of different actors to promote South-South exchanges in the area of IP with the participation of all interested Member States, the First Interregional Meeting, he stressed, would focus on exchanges of national and regional experiences, as well as promote the sharing of information on the process of design of national IP policy and best practices in three important fields: IP governance, GRTKF, and copyright and related rights. This exchange would aim to harvest valuable knowledge and promote dialogue and understanding of practical initiatives which developing countries and LDCs could utilize to ensure that IP becomes a tool to achieve broader public policy and development objectives through enhanced cooperation among developing countries, LDCs and other interested Member States. The meeting, he added, did not intend to replace the debates and negotiations taking place in the various WIPO Standing Committees such as the Intergovernmental Committee (IGC) and the Standing Committee on Copyright and Related Rights (SCCR) for instance. Rather, it was intended to be seen as a platform for dialogue and exchange of knowledge, experiences and best practices related to the strategic use of IP for development in the three main areas to be addressed during the meeting, i.e. GRTKF, IP governance, and copyright and related rights. Broken down into two and a half days, the first day would be dedicated to national experiences in the protection of GRTKF and IP governance issues, in particular synergies between IP governance and South-South cooperation on IP and development and IP as a tool in addressing main challenges of global knowledge governance in the areas of climate change, food security, innovation and public health. With regard to copyright and related rights, the meeting would focus on issues such as the international protection of audiovisual works, performances, and broadcasting organizations, national experiences and South-South cooperation in the field of copyright limitations and exceptions for libraries, archives, educational and research institutions for visually impaired persons, and, last but not least, how to strike the right balance in developing countries and LDCs with regard to copyright and related rights protection and the preservation of the public domain.

Thanking the Government of Brazil and in particular the Ministry of External Relations and the National Institute of Industrial Property (INPI) for their precious support and collaboration in the organization of the meeting, and welcoming the participation of highly skilled and renowned speakers to the event, Mr. Roca Campaña concluded his opening statement by stressing the fact that he hoped that this meeting would provide a platform for a lively and rich debate on the challenges and opportunities of the IP system in the three areas to be discussed and that it would contribute to new ideas and reflections on how governments, industry, business, academia, and civil society in general could bring IP into their strategies to reach better levels of economic, social, and cultural development.

2. In his opening statement, Mr. Jorgé Avila, President, INPI, Ministry of Development, Industry and Foreign Trade, Brazil, referred to the WIPO Development Agenda (DA) and to this new South-South collaboration initiative as the most pragmatic result of the discussions which had taken place since the approval of the DA. Pointing out to the important advances in the understanding, among all countries, of the IP system as a tool to promote development,

Mr. Avila stressed the fact that the IP system had been used by various societies to promote innovation and technological development, but that it remained to be seen how this system could be more effectively used by countries with less experience in innovation and industrial development. If developing countries and LDCs were able to build stronger collaboration amongst themselves, in particular in the field of science and technology, and if they were able to create an environment in which all stakeholders including, amongst others, academia, the private sector and small and medium-sized enterprises (SMEs), could participate in so-called 'open innovation networks', then, he stressed, this would strongly contribute to the faster development of the South. In line with the idea that developing countries and LDCs were now mature enough to discuss concrete initiatives towards the achievement of such an objective, Mr. Avila brought to the attention of the participants the design of a new Funds-in-Trust (FIT) between the Government of Brazil and WIPO, to be managed by the WIPO Brazil Office, which would aim to fund such initiatives. He also pointed out the fact that other developing countries had been undertaking similar initiatives, which meant that the financing of these types of initiatives in the future would become less of a challenge. He concluded his opening statement by stressing the fact that INPI would welcome any proposals for new collaborative initiatives to be funded under this new agreement.

3. Mr. Kenneth Nobrega, Head, Intellectual Property Division (DIPI), Ministry of External Relations, Brazil, speaking on behalf of the Ministry of External Relations of the Government of Brazil and in particular on behalf of the Sub-Secretary General for Economic and Technological Issues, started its introductory comments by referring to the approval of the DA as a historical landmark in WIPO's history, stressing the fact that the challenge ahead was how to actually implement the DA, as a result mainly of the developing countries' own limitations in integrating different development dimensions into their national domestic IP policies to make IP a tool for local, regional and international development.

The approval by the CDIP of the South-South cooperation project, he pointed out, was a very positive step forward in the sense that it would promote more direct dialogue amongst Southern countries which share many challenges. South-South cooperation was also, for Brazil, one of the main vectors of public policy, including in relation to IP matters. In this sense, he was pleased to welcome a number of renowned specialists from Southern countries as well as Brazilian speakers from, amongst others, DIPI, the Brazilian Agricultural Research Corporation (EMBRAPA) and the Brazilian Cooperation Agency (ABC) in charge, *inter alia*, of conceiving and executing South-South cooperation activities in Brazil.

Referring to GRTKF and copyright limitations and exceptions, Mr. Nobrega highlighted the fact that these two topics, currently under negotiation in WIPO, were of great interest to developing countries and in particular to Brazil which had been heavily engaged in the negotiations at WIPO. The fact that these issues would be discussed technically speaking during the meeting would not only serve as a foundation for technical positions on the topics, but would also contribute to a greater exchange of more informal ideas about the current state of these negotiations.

TOPIC 1: TRADITIONAL KNOWLEDGE (TK), TRADITIONAL CULTURAL EXPRESSIONS (TCES) AND GENETIC RESOURCES (GR): CURRENT SITUATION, PROGRESS AND MAIN ISSUES AT THE WIPO INTER-GOVERNMENTAL COMMITTEE (IGC)

1. To set the stage and brief participants on the state of play with regard to the first topic, a short video statement by Mr. Wend Wendland, Director, Traditional Knowledge Division, WIPO, was screened. Addressing in his statement the relevance of GRTKF and the role of WIPO in this field, Mr. Wendland highlighted the commercial potential and importance of TK and TCES, or 'expressions of folklore', as embodiments of rich creativity and innovation which could hold answers to global challenges such as climate change, environmental management, food

security and public health. Pointing out to the main challenges facing the preservation and protection of TK and TCEs such as misappropriation, misuse, and lack of respect, he also highlighted the difficulties linked to answering the question as to whether TK and TCEs should be protected as a form of IP, meaning that TK and TCEs should receive some form of property right that would enable a group, the right holders, to prevent others from accessing and using it. Taking into account the fact that innovations and creations based on TK and TCEs are already protected by the conventional IP system, the key issues, he highlighted, were a) whether the underlying communal, pre-existing and generally publicly available TK and TCEs should receive some sort of property right, and b) how to define TK and TCEs and the rights that should be attached to them, such as for instance the right of acknowledgement and benefit-sharing or an exclusive economic right.

GRs on the other hand triggered different issues linked, in particular, to the prevention of erroneous patents and the consistency between the IP system and the objectives of the Convention on Biological Diversity. In this regard, he added, various solutions had been proposed, including databases, mandatory disclosure requirements, and contracts. The role of WIPO, and in particular of the IGC, in addition to providing technical assistance and capacity-building to developing countries and indigenous and local communities, was to provide a platform for international negotiation on the development of an international legal instrument(s) for the effective protection of TK and TCEs and for dealing with the interface between IP and GRs.

South-South cooperation, he added, considering the fact that it was mainly developing countries that were propelling the negotiations in the IGC, could be seen as an important vector in helping developing countries and LDCs exchange experiences and formulate common positions and joint proposals on these issues. South-South cooperation should nevertheless include discussion and negotiation with other countries in order to ensure a cross-regional negotiation process. He referred in this regard to the initiative taken by the Like-Minded Countries (LMCs). In conclusion, he pointed out the importance of South-South cooperation in the area of technical assistance and capacity-building taking into account the fact that some developing countries had vast experience and expertise in protecting TK and TCEs and in dealing with IP and GRs.

2. Mr. Yonah Ngalaba Seleti, Chief Director, Department of Science and Technology, Indigenous Knowledge System, South Africa, started his presentation by pointing out the fact that as a South-South initiative, one of the main objectives of the meeting was to mobilize the South-South grouping in order to position the Southern countries in the IGC as one negotiating block to push for the adoption of a legally binding instrument(s) for the protection of TK, TCEs, GRs and associated TK. Developing countries, which had propelled the negotiations in the IGC, were, in his opinion, the ones holding the key, and it was therefore critical to agree on a South-South strategy in the IGC to move towards a diplomatic conference.

Providing a brief introduction to the IGC, Mr. Seleti highlighted how the IGC had moved from an explanatory to a negotiating forum since 2009 when Member States had begun engaging in substantive text-based negotiations, thanks, mainly, to the strong support of developing countries. The text that had emerged reflected two positions, i.e. the positions of two negotiating blocks, the developing countries on one side and the developed countries on the other. Some of the challenges ahead, he stressed, could be overcome if the South could distinguish its position. Indeed, while Brazil, on behalf of the Development Agenda Group (DAG), and South Africa, on behalf of the African Group, had been pushing for the adoption of a legally binding international instrument(s) in this field, Latin American countries on the other hand had, to this date, failed to position themselves. With the European Union (EU) and the Delegation of Italy, on behalf of Group B, supporting the idea that further substantive work was required before proceeding towards a diplomatic conference, it was crucial for the developing countries and LDCs to form one block if any progress was to be achieved.

Referring to GRTKF and IP governance, Mr. Seleti pointed out the need to find ways in which governance could be brought into the forum. How IP is governed, or how it ought to be governed, he stressed, was related to how knowledge was created and valued in society. In this sense, the concept of governance, i.e. a social system about goal setting, law making and regulations to institutionalize patterns of interaction, establishing oversight over the processes of IP production, exploitation, distribution and access, had to be extended to the field of GRTKF. This was particularly important because the purpose of the IGC was threefold and included all the following elements of governance: policy development, norm-setting and regulations, and institutional arrangements. This, he added, was not just a matter of economic but also of moral interest, a matter of 'cognitive justice'.

As far as substantive matters were concerned, Mr. Seleti pointed out the importance of distinguishing between the competences of UNESCO and WIPO as there appeared to be some confusion as to the role of WIPO in terms of the conservation and preservation of TK and TCEs. While there was clearly some overlap, it was important to focus the negotiations in WIPO on the economic and moral rights to be derived from TK and TCEs. Referring to a number of studies and gap analyses which had been carried out in order to identify what the main gaps and options were, he stressed the fact that, as agreed in the 40th session of the WIPO General Assembly, there appeared to be a clear need for an international legally binding instrument(s) to effectively protect GRTKF. A number of important issues still had to be addressed including issues such as the participation of observers, the tendency to separate GRs from associated TK, the issue of mandatory and voluntary disclosure requirements, databases as a tool rather than as a legal instrument etc.

Mr. Seleti concluded his presentation by pointing out the fact that, from his point of view, the lack of cohesion in the South seemed to be one of the main challenges facing the negotiations in this area. Only the South, in his opinion, could provide the necessary leadership in the IGC to bring the process forward, and, unless developing countries and LDCs could achieve such cohesion and leadership, the adoption of a legally binding instrument(s) for the protection of GRTKF would likely to be jeopardized.

The South could be mobilized in the framework for instance of the Group 77 + China platform which, he stressed, had the advantage of having a certain political cohesion outside of the IGC.

TOPIC 2: NATIONAL EXPERIENCES IN THE PROTECTION OF TK, TCES AND GR

1. Presenting the African Regional Intellectual Property Organization's (ARIPO) experience in the protection of GRTKF, Mr. Emmanuel Sackey, Chief Examiner, started his presentation by stressing the fact that ARIPO had been strongly encouraging its Member States to put in place national systems for the protection of GRTKF while negotiations were taking place at the international level for the adoption of an international instrument(s). In this regard, ARIPO had started developing a framework for: a) legislative developments at the national and regional level; b) documentation initiatives of folklore and TK in the region; and c) capacity-building and awareness-raising activities to support this process.

In Africa, he stressed, one major and still unresolved political issue was the issue of artificial borders. A large number of communities with regional TK and folklore had been separated geographically because of artificial borders. In this regard, one of the main issues that ARIPO had had to tackle when developing its regional framework for the protection of GRTKF had been the issue of transboundary TK and TCEs. ARIPO, he stressed, had started by developing a policy framework by looking at developmental policies, environmental policies, science and technology policies and indigenous rights policies of its Member States, following WIPO's approach in looking at core guiding principles, and also considering mechanisms and structures to provide the needed infrastructure to support any TK legislative developments.

In this regard, an important question had been how to define TK. By nature, he pointed out, TK had inherent characteristics which made it difficult to define the concept. Was there a need for a closed definition, an open-ended definition, an operational definition? At the regional level, ARIPO had undergone a consultative and political process to design its framework. Learning from India's experience in the field of an Indian TK digital library which had sought to digitize codified ayurvedic, the other policy framework which ARIPO had put in place was a documentation initiative framework of codified and uncoded TK. This process, he added, would help Africa move away from its oral nature of TK and TCEs towards documentation to safeguard the disappearance of TK and TCEs. With regard to the question of GRs, Mr. Sackey highlighted the fact that the development of a regional policy and of legal guidelines was still work in progress.

To date, he stressed, ARIPO's main achievement has been the adoption of the Swakopmund Protocol on TK and Folklore as the main framework for the development of national legislative systems, which is now awaiting ratification by ARIPO's 18 Member States. The Protocol's main elements are as follows: it defines TK, folklore, as well as beneficiaries who can be recognized individuals such as clan leaders or heads of communities. It provides positive or exclusive rights for TK holders, the protection of trans-boundary TK and folklore in perpetuity, and provides for prior informed consent (PIC) procedures and mutually agreed terms (MAT). At the administrative level, the Protocol establishes regional and national registration mechanisms, it establishes national competent authorities for implementation of the Protocol, it provides for dispute settlement mechanisms and incorporates all customary laws and protocols. Pointing out to the issue of delinking TK and associated GRs, Mr. Sackey stressed that if this was to happen, the issue of GRs would then be the domain of the Convention on Biological Diversity (CBD). However, what really needed to be addressed was the issue of economic and moral rights. In the Protocol, he added, there was a clause stating that the "authorization to access protected TK associated with GRs shall not imply authorization to the GRs derived from the TK".

As far as capacity-building and awareness-raising was concerned, Mr. Sackey highlighted the fact that ARIPO was seeking to identify projects in Member States and that the assistance of cooperating partners or other developing countries would be very beneficial, in particular with a view to learning from their experiences and with a view to moving from policy and legislative developments towards the implementation of practical measures that would really empower TK holders to utilize their resources for community development.

With regard to the way forward, Mr. Sackey pointed out the need to establish and implement national policy and legal frameworks, stressing the fact that Member States still did not have the necessary funds to establish such frameworks and highlighting the fact that South-South cooperation could be one important vehicle to address some of these issues. There was also a need to build institutional structures to promote the value addition of GRTKF resources and an urgent need for an international legally-binding instrument(s). In this regard, a South-South platform could also help in highlighting key contentious issues and lead to South-South positions as negotiating tools in the IGC.

2. Mrs. Rachel-Claire Okani Abengue, Professor, Faculty of Law and Political Sciences, University of Yaoundé II, Cameroon, took the floor to present the experience of Cameroon in the protection of GRTKF. Pointing to Cameroon's valuable natural and cultural wealth, which needs to be protected through national legislation and other legal instruments, Mrs. Okani stressed the fact that there was a strong need for protocols and conventions and for an international legal framework in the field. Due to Cameroon's historical background and cultural variety linked, partly, to the fact that there are two official languages in Cameroon, i.e. English and French, Mrs. Okani pointed out to the issue of political duality which was reflected in Cameroon's national IP departments and offices, and which had generated difficulties in terms of the management of national resources. One key challenge when talking about protection, she stressed, was linked to the need to better define and understand the concept of GRTKF. There

were also different modalities of protection that had to be taken into account and a need to better understand all the stakeholders and the types of sanctions available to make this protection effective. Referring to the Bangui Agreement, Mrs. Okani highlighted the fact that Cameroon had, since 1999, received the title of protector with regard to historical heritage sites. Cameroon was also a member of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention which had some measures for the protection of the World's natural and cultural heritage, including through a convention on cultural heritage protection in the context of armed conflicts. Cameroon's law of 1991, she added, included the protection and defense of national assets, degradation and destruction, alienation, losses and damages, exploitation, and all other forms of devaluation of wealth. With regard to GRs, and in particular medicinal plants, Mrs. Okani stressed the fact that these were a major concern in the region. Cameroon, she added, had a specific law for the harvesting and gathering of medicinal plants. While thinking of sanctions, i.e. penal, civil, administrative, or disciplinary measures, was very important, it was also very important to think about how to safeguard and replace these types of biological resources.

To conclude, Mrs. Okani underlined the importance of safeguarding and protecting these assets and the need to work with civil society as well as with other national and international partners to achieve this objective. In order to solve some of the challenges linked to the protection of GRTKF, there was a need to think about adequate financial and material resources, as well as a need to harmonize procedures both in Central Africa and internationally. In this regard, the First WIPO Inter-Regional Meeting on South-South Cooperation was rightly considered as a new opportunity, beside the IGC, to make a constructive assessment of the situation and to share valuable experiences and good practices to move forward in this area.

3. Mrs. Lilyclaire Bellamy, Deputy Director and Legal Counsel, Jamaica Intellectual Property Office (JIPO), took the floor to share the Jamaican experience in protecting GRTKF. Referring to the fact that protection was only available for the creations of the mind, she highlighted the fact that this made the protection of GRs questionable and that it was in fact the patents that would arise from the GRs that could be protected. Giving a brief overview of Jamaica's history, Mrs. Bellamy stressed the fact that Jamaica, as a "land of wood and water" (ranked 5th worldwide as far as endemic species and biodiversity are concerned), had had a long history of colonization, slavery and immigration, which had led to cultural melting pot in Jamaica of religions, TK and TCEs, which raised, in Jamaica, questions of access and benefit-sharing.

Jamaica, she stressed, was a signatory of a number of international conventions and had over 50 pieces of legislation. None of these, however, except for IP laws, were specific to GRTKF. Jamaica had also established a number of specialized bodies and agencies to protect local TK and TCEs, such as the Jamaican Scientific Research Council, the National Environmental and Planning Agency, the Jamaica National Heritage Trust designating certain protected areas, and the Institute of Jamaica hosting a natural history and music museum, including a memory bank recording oral history such as research on medicinal plants. In the absence of specific legislation on GRTKF, Jamaica, she concluded, has issued a practice direction which stated that if something was commonly associated with Jamaica's tradition and culture, then no exclusive right could be granted except for the members of that community.

4. Mr. Lim Heng Gee, Professor, Faculty of Law, University Teknologi MARA, Malaysia, took the floor to present the Malaysian experience with regard to the protection of GRTKF, giving an overview of existing IP laws protecting GRTKF in the country. While there are no specific sui generis laws for the protection of GRTKF in Malaysia, several laws contain provisions that can be used to provide some form of positive and defensive protection.

Many TCEs are for instance protectable subject matters under the 1987 Copyright Act which protects literary works, artistic works, musical works, and performers' rights. The challenge however is linked to fulfilling all the elements required for copyright protection, such as for

instance the element of originality. Indeed, many TCEs may not be considered to be original in character as they have been in existence for many generations. Their adaptation can however, in certain cases, be protected as original works and benefit from copyright protection under the Act. Another criterion is the fixation requirement, which many TCEs do not meet. Likewise, there are also issues of ownership in the sense that copyright protection requires the identification of a known individual creator or creators to determine the ownership of rights. Under the Copyright Act, there is no recognition of the concept of collective or 'communal' ownership, only of 'joint authorship'. The length of protection is also an issue as the Copyright Act has a finite duration and does not foresee the concept of protection for perpetuity or for as long as a TCE is being practiced. Expressions of folklore, he added, can be protected as performers' rights, but the problem here is that there is nothing preventing the copying of some elements of the performance once it has been fixed/recorded.

Under the Industrial Design Act of 1996, while traditional designs are not new nor original and cannot, therefore, qualify for industrial design protection, adaptations of TCEs by third parties on the other hand can be protected as new designs. Section 13 of the Act, which may provide some grounds to provide defensive protection to prevent third parties from registering designs which are derived from TCEs, depending on the Court's interpretation of "contrary to public order or morality", states that "industrial designs that are contrary to public order or morality shall not be registrable". Another possibility to provide for defensive protection is the possibility to revoke or cancel wrongly registered industrial designs if procured by unlawful means, which could be defined as procured without the consent of TCE right holders.

The Trademark Act of 1976 provides both for positive and defensive protection. If a local community is involved in the trade and marketing of its traditional products, the Trademark Act provides for the possibility to register traditional names and symbols associated with that community. Third-parties who take advantage of these traditional signs to sell their products can be prevented to do so under the Act. A mark can also be revoked if it is contrary to the public interest, which may include TCEs, such as in the example of the Ponni Rice case. The Geographical Indications Act of 2000 also provides for both positive and defensive protection in the sense that traditional handicrafts fall within the definition of protected goods.

Another legal framework which can be used to prevent misappropriation of reputation associated with TCEs, such as for instance false claims as to the authenticity of a product, is the common law action for the tort of passing off or unfair competition. Under the breach of confidence law, information regarded to be secret that can be protected can include literary and artistic works and information of deep religious and cultural significance to some communities.

Referring to TK and GRs, Mr. Lim Heng Gee also stressed the lack of sui generis or special laws to protect them. Just like for TCEs however, some provisions may be found in existing laws such as for instance in the National Policy on Biological Diversity and the 1983 Patents Act. If for instance inventions derived from TK satisfy both the novelty and inventive criteria, these may be patented under the Act. With regard to GRs, the New Plant Varieties Act of 2004 can be used as legal framework for the recognition and protection of contributions made by farmers, local communities and indigenous people towards the creation of new plant varieties. Here, any application for a variety derived from a native variety must enclose evidence of prior informed consent and should also disclose the source of the genetic material.

In addition to these federal laws, Mr. Lim Heng Gee also pointed out the fact that two of Malaysia's States (13 States in total) had come up with biodiversity centre ordinances: the Sarawak Biodiversity Centre Ordinance of 1997 and the Biodiversity Ordinance Sabah 2000, under which a research permit and an agreement on access and benefit sharing were needed before undertaking any research on GRs, with the understanding that if any patent or other IP right was to be derived from this research, the rights would then have to be shared with the natives/communities involved in the research.

In conclusion, Mr. Lim Heng Gee stressed the fact that there was clearly a need for a revision of existing IP laws or for a sui generis legislation for the protection of GRTKF in Malaysia. An international agreement was also essential in order to strengthen national protection efforts. In addition, due to the importance of cross-border endemic species and shared TK and TCEs, there was also clearly a need for a mechanism to handle these types of transboundary issues.

TOPIC 3: FACILITATING INTERNATIONAL COOPERATION, IN PARTICULAR SOUTH-SOUTH, FOR THE USE OF IP FOR THE PROTECTION OF TK, TCES AND GRS

1. Mr. Manuel Ruiz Muller, Director and Principal Researcher, International Affairs and Biodiversity Program, Peruvian Society for Environmental Law, Peru, started his presentation by pointing out the fact that the concept of “facilitating South-South cooperation” referred to the idea of creating a policy, legal and institutional framework to enable cooperation and set common policies based on existing experiences and capacities in the South. In this regard, Mr. Ruiz highlighted the fact that many of the current measures and frameworks being discussed in the international arena had, to some extent, been generated by initiatives born in Southern countries, specifically in the Asian and ANDEAN regions.

In the area of GRTKF protection, he stressed, it was important to understand that GRTKF protection would require different strategies and approaches to traditional IP rights in order to protect countries of origin and communities. Each element, i.e. TK, TCEs, GRs, had its own characteristics which meant that different protection strategies had to be considered for each. Classic IP tools would not necessarily serve the interests and needs of communities in developing countries and LDCs. As far as patents were concerned for instance, it had been questioned whether or not these were appropriate tools for the protection of TK. In many cases, it had been recognized that patents were not in fact an appropriate tool. Nonetheless, some tools may be used such as for instance copyright protection, collective marks, geographical indications (GIs), or a sui generis combination of these. Most countries, he added, were opting for the development of sui generis frameworks including the use of classic IP tools being adapted to some extent and combining different aspects such as contractual approaches, registers etc. (1998 law in Panama, 2001 law in Peru, ARIPO Protocol).

In order to facilitate cooperation in this area, he stressed, exchanges of information were very useful, and in this sense, meetings and other activities such as this one were very valuable. Indeed, it was important to take into account the fact that developing countries and LDCs shared many features (such as shared resources and TK) and challenges. A global mechanism was therefore clearly needed in order to take these features into account when designing national policies and legislations. The 2010 Nagoya Protocol for instance contained specific provisions calling for the development of measures taking into account the fact that GRs and TK are widely shared among countries.

Mr. Ruiz also referred to other existing settings/platforms which countries could use to agree on certain common positions such as the African Group, the Latin American Group, the G77, or the Group of Like Minded Megadiverse Countries, which had been instrumental in the adoption of the Convention on Biological Diversity and of the Nagoya Protocol.

With regard to existing mechanisms in the South, these included for instance the concept of defensive protection being incorporated into many IP systems or biodiversity laws. Registers for GRTKF had also been considered in various countries for defensive purposes mainly and with a view to preserving and maintaining TK, supporting capacity building activities, and promoting research and conservation objectives. Some important questions, he concluded, where South-South cooperation could be a particularly useful platform, were the issues of how to capture the commercial, economic value of biodiversity/gene/derivatives related products and innovation and the considerable asymmetries and transaction costs linked to the use and protection of GRTKF.

2. Mr. Paul Kuruk, Executive Director, Institute for African Development, Ghana, started his intervention by stressing the fact that his presentation would focus on the use of mutual recognition agreements (MRAs) as the proposed basis of international cooperation to enhance the protection of GRTKF.

While GRTKF were protected under various frameworks including national IP laws, many international initiatives including model laws and recommendations on folklore, and provisions on cultural heritage and human rights had over the years complemented these national frameworks. The Nagoya Protocol for instance was a concrete result of the interest of the international community in a remedial solution premised on facilitating access to GRs in exchange for the sharing of benefits.

With regard to the need for cooperation at the national and international level, Mr. Kuruk highlighted the fact that there were still gaps in the protection of GRTKF which called for the need for international cooperation in this field. Part of the problem, he stressed, was linked to the territorial nature of IP laws, as IP rights granted in one country were not recognized and enforced as such in other countries in the absence of applicable international arrangements. As a result of this situation, cases of IP rights infringements of an international dimension, referring in particular to transboundary issues, were not being resolved satisfactorily.

Some developed countries, he pointed out, had been opposed to the adoption of an international legal instrument(s) that would address these gaps in the protection of GRTKF and had had an obstructionist attitude in the IGC. Diverging views between developed and developing countries in the IGC, he stressed, suggested that a regional approach reflecting cooperation among like-minded countries had a greater chance of success than a more encompassing global treaty. To this end, he stressed, countries that already recognized and protected TK should enter into cooperation agreements to regulate users of TK. This approach could entail the adoption of separate and flexible mechanisms between interested TK-source countries and user countries, focusing on the particular types of TK for which protection was required as well as on forms of protection that actually made sense from the perspective of the participating countries. Such bilateral agreements, unlike international treaties, would be more flexible and would allow addressing specific user country concerns about the protection of TK.

Important principles to take into account and which should form the basis of MRAs in the field of GRTKF, he stressed, were the principles of national treatment (i.e. non discrimination) and reciprocity. The protection of TK on the basis of reciprocity would offer the possibility of a fuller protection of TK. Earlier proposals by WIPO and UNESCO, he added, had in fact incorporated this principle with regard to the protection of expressions of folklore.

As far as the scope of protection of a typical MRA between a TK resource country and a TK user country is concerned, Mr. Kuruk stressed the fact that MRAs would create an environment to facilitate the enforcement of TK rights that would have been granted in the TK source country. As part of this arrangement, a central agency created in the TK user country would be the conduit for receiving requests for use of TK from the source country and would channel payments for such use. The MRA would also need to clearly define the scope of protection.

In conclusion, he reiterated the fact that MRAs were particularly useful in situations where international harmonization was proving to be difficult as they were easier to negotiate than efforts to harmonize regulatory regimes that may differ.

3. Mr. Mihály Ficsor, Chairman of the Central and Eastern European Copyright Alliance (CEECA), Hungary, started his presentation with a historical overview of the protection of GRTKF, mentioning the fact that the first attempt to protect folklore had taken place in the framework of the 1967 Stockholm Revision Conference of the Berne Convention. For the first time, a revision conference of the Convention where a number of developing countries were

represented had included on its agenda the issue of the protection of folklore (Art. 15 (4)). But, as highlighted by Mr. Lim Heng Gee, it appeared in the 1970s and 1980s that copyright was clearly not the solution to the problem. In 1982, a number of sui generis model provisions on the protection of expressions of folklore were adopted and mostly implemented in Africa. In 1984, an attempt to transform the model provisions into a treaty failed to concretize. Two issues were of particular concern: the issue of the identification of expressions of folklore (which may be now partly solved with the digitization of TCEs) and the issue, in the case of African trans-boundary folklore for instance, of country ownership. ARIPO's Protocol, in this respect, appears to offer some answers to this question.

Referring to the draft treaty on GRTKF protection, Mr. Ficsor said that, in his opinion, there were still too many questions to be discussed before a diplomatic conference could be convened. As regards TCEs, while the questions of terminology may be solved easily, a number of important questions still needed to be addressed, including issues such as beneficiaries (mainly the communities, but in certain countries public authorities), economic rights, the issue of exceptions (i.e. it should be free for the members of the community to use TK/TCEs in their original context and for institutions dealing with folklore and educational purposes) and the issue of the status of derivative works, or adaptations. The answer to the latter question, he stressed, may be the same as in the case of copyright, i.e. it should be free if something is really creative and doesn't replace the function of the original creation be it copyright work or folklore, and thus which does not unreasonably conflict with the normal exploitation of the creation. When there is no such creative contribution, however, the original work or TCE should be protected against misuse.

GENERAL DISCUSSION ON TOPICS 1, 2 AND 3

1. In his opening remark, Mr. Carlos Roberto de Carvalho de Fonseca, Deputy Head, Unit of International Affairs, Ministry of Environment, Brazil, stressed the fact that this kind of sharing of national experiences was particularly relevant because of the sovereign rights of each country over its own natural resources and the TK and TCEs developed within its territory, which sometimes required different approaches and strategies. It was not an easy task to regulate the relationship between providers and users of GRTKF, but there appeared to be a general consensus that this issue had to be taken into account when discussing the protection of GRTKF and of the communities involved. There was clearly a need for a mechanism and effective platform of cooperation to prevent biopiracy and share the benefits arising of the utilization of such resources.

2. The Delegate of Egypt took the opportunity to stress that this type of exchange of experiences was of particular importance and that Egypt had already benefited greatly from these types of exchanges, not just during the meeting but also through bilateral negotiations with other partners. This had had an immense effect on some of the laws being drafted in Egypt. In this context, the Delegate of Egypt reaffirmed the African Group's position regarding the necessity of pushing forward the adoption of an international legal instrument(s) for the protection of GRTKF. Numerous discussions had taken place as to when the diplomatic conference should be held, and, in his opinion, the next WIPO General Assembly would be of crucial importance in this regard. More discussions should therefore take place until then.

He also pointed out the fact that Egypt was very interested in hosting the Second WIPO Inter-Regional Meeting on South-South Cooperation which would be held in 2013. This issue, he added, would be further discussed in Geneva with the various regional groups and in particular the African Group.

3. Speaking as a legal expert on IP, Professor Mohamed Nour Farahat, Egypt, mentioned the fact that one of the main challenges was the fact that the terminology and legal technicalities of traditional copyright were being applied to questions of TK and GRs, when the nature of

these two groups were in fact very different. Article 142 of the Egyptian national legislation stated for instance that “national folklore is deemed public domain” and that the “Ministry of Culture shall exercise the moral and financial copyrights on folklore and shall assume the protection and support thereof”. Nothing however had been said about the definition of folklore, i.e. what kinds of works were included or excluded from the concept, the concept of ownership or national and multinational folklore, or the legal tools that were recommended to be adopted to protect these types of folklore. These questions, he stressed, could not be addressed from the point of view of traditional copyright. There was therefore clearly a need to create new legal tools and concepts for this category of rights.

4. In order to achieve a common understanding and adopt common positions in the South, the Delegate of Kenya stressed the fact that it was crucial to understand the basic concepts related to GRTKF, i.e. who was to benefit from the protection thereof, against whom, and where. If these were rights to exclude rather than rights to include, then the questions of national treatment versus reciprocity and of enforcement were crucial. Based on the previous discussions, it appeared that what was needed at this stage was a sui generis system.

5. To put the issue into context, the Delegate of ARIPO stressed the fact that it was important to determine whether TK should be seen as holistic concept or as a segregated concept. The fact that traditional knowledge holders view TK holistically would itself lead to certain policy choices. The issue of public domain was also crucial. Is the concept used in the same way that the classical IP system sees it? In this regard, he highlighted the fact that it was crucial to identify which elements could fit into the classic IP regimes and which could not. At the international level there was clearly a need to tackle some fears and to further study how some of these issues could be implemented at the practical level.

6. Mr. Ahmed Abdel Latif, Senior Programme Manager, Programme on Innovation, Technology and Intellectual Property, International Centre for Trade and Sustainable Development (ICTSD), Geneva, pointed out the fact that treaties, by nature, establish general principles and norms to give guidance to Member States. Discussions could continue for years and if no decisive stance, at some point, would be taken, then the process would never reach the stage of concluding an international instrument. In this regard, what was needed, he stressed, was above all political momentum and policy leadership to bring a broader policy view on this issue and make it move forward. It was also important to think about the level of ambition of such an international instrument. Often, he stressed, the success of adopting an international instrument required finding the lowest common denominator with flexibility to implement at the national level. It was therefore important to define the level of ambition desired. The way forward, he suggested, could be to leave some scope to national laws to decide on certain issues while establishing general principles of protection at the international level. The success of the diplomatic conference in Beijing was in fact a good example of a situation where fundamental differences had been left to national laws to address.

7. Referring to the issue of transboundary cooperation, the Delegate of Bolivia highlighted the fact that various TKs and TCEs were shared in the ANDEAN region. Due to the lack of cooperation and regulations among countries, these types of cultural expressions were often practiced jointly. In this regard, one important element that should be discussed was whether TKs were exclusive rights or whether they should be submitted to collective rights regimes managed and recognized in international tools such as the ILO Convention No. 169 on the rights of indigenous peoples. In order to generate and fruitful and effective discussion on the issue of the protection of GRTKF, it was also very important to take these other instruments into account.

8. Having stressed the fact that the draft treaty was not yet ready for the convening of a diplomatic conference, Mr. Ficsor highlighted the fact that it may be ready in 2013 or 2014, but

that some important issues such as economic rights, the status of adaptations, and regional folklore had to be addressed first.

9. Referring to Mr. Latif's comment about the need for political momentum, the Delegate of South Africa stressed the fact that there was clearly a need for higher segments to push the negotiations forward.

10. Reacting to the issue of lack of political will, the Delegate of Jamaica highlighted the fact that a CARICOM Working Group on TK, TCEs and GRs had prepared a policy paper on the subject, which was currently under consideration at the ministerial level and which aimed to adopt a regional approach, working in parallel to the IGC.

11. Commending this South-South initiative to strengthen cooperation, the Delegate of Oman stressed the fact that, in view of the divergence of opinions on the issue of the protection of GRTKF, regional mechanisms that could allow reaching more realistic agreements such as MRAs may be more achievable and effective than an international solution to the problem.

12. Referring to the sui generis protection system in Ethiopia, the Delegate of Ethiopia highlighted the fact that Ethiopia had adopted a number of proclamations and was still considering enacting further comprehensive rules for ensuring the protection of TK and TCEs at the national level. The discussions, exchanges of views and experiences to be shared during this meeting would immensely help Ethiopia in amending the existing sui generis system of laws and adopting further comprehensive national legislations. In this regard, the outcome of the meeting would also further enhance the adoption of international binding legal instruments in years to come.

TOPIC 4: PROMOTING SYNERGIES BETWEEN IP GOVERNANCE AND SOUTH-SOUTH COOPERATION ON IP AND DEVELOPMENT

1. Mr. Jorge Avila, President, National Institute of Industrial Property (INPI), Brazil, started his presentation by pointing out the fact that the adoption of the WIPO Development Agenda (DA) had changed perceptions of IP rights and had provided an opportunity to rethink the very nature of the IP system. Developing countries, he stressed, had for a long time perceived the IP system as a system which was essentially to maintain an unfair division of labor in the international community to favor developed countries. This perception, he added, had arisen from easy to understand reasons such as for instance the fact that developing countries did not see themselves as able to generate companies with innovative capabilities, with all innovations thought to come from abroad. With such a mindset, developing countries saw the IP system as a system that maintained the inequality situation in which developed countries would have total control over the new technologies and developing countries would have to follow and become mere imitators. The adoption of the DA and the discussions that resulted thereafter changed this perception when developing countries started to understand that IP rights, if properly designed in a fair system, could provide a platform to facilitate the participation of newcomers in the innovative consortia, known as the 'open innovation environment', thereby promoting their economic, social and cultural development.

As a result of this change of perception and the adoption of innovation policies by most developing countries, the IP system is now seen as a system which has to be designed and operated in order to facilitate the largest participation possible of all companies, universities, research and development (R&D) centers etc. which might contribute to a faster innovation process. There is a need to create an environment which is friendly to newcomers and where research centers and not-for-profit organizations can organize the results of their research investments in the form of IP portfolios which can be licensed to those who can develop those technologies into products that can be sold on the market. This is linked, he added, to the understanding that local companies, universities, R&D centers etc. need to be able to build

partnerships with other companies, universities and R&D centers in the developed world as well as in other developing countries.

When talking about South-South cooperation on IP, he stressed, what is really being addressed is the issue of South-South collaboration on innovation. Developing countries bring new perspectives with regard to the role of IP rights in their economies based on the relationship between innovation and development. Brazil for instance, he highlighted, had developed an IP strategy totally integrated into its national strategy for fostering innovation and industrial development. With regard to IP collaboration in the region, Mr. Avila referred to the establishment of PROSUR, a collaborative association of IP authorities of nine South-American countries, following the African examples of ARIPO and of the African IP Organization (OAPI), as well as the example of the European Patent Office. With the aim to foster collaboration, PROSUR offers integrated services and assists in the granting of regional IP rights. This type of regional collaboration, he added, was very important to facilitate partnerships between companies and other stakeholders located in the region, to promote joint innovative activities, and to promote a consolidated culture of innovation and IP. With regard to the importance of raising awareness and educating on the effective use of IP for development, Mr. Avila gave the example of China where each of the 31 provinces, including large cities such as Beijing and Shanghai, have an office totally dedicated to helping SMES, R&D centers and universities in building their IP portfolio and licensing it in order to participate in innovation networks.

When talking about South-South cooperation on IP, this meant in fact essentially identifying how best to build an environment in which all stakeholders could cooperate among themselves. With this in mind, the FIT Agreement to be concluded between WIPO and the Government of Brazil would aim to assist developing countries and LDCs in facing the challenges imposed by the so-called knowledge economy essentially driven by innovation, in itself mainly driven mainly by IP-based contracts.

2. Mr. Ahmed Abdel Latif, Senior Programme Manager in the Programme on Innovation, Technology and IP of the Geneva-based ICTSD, started his presentation by reiterating the fact that South-South cooperation was a well established principle of the UN and a priority of the UN with numerous resolutions promoting South-South cooperation and asking UN agencies to mainstream South-South cooperation into all of their activities, taking into account on the other hand that South-South cooperation was not to be seen as a substitute to North-South cooperation, but rather as a complement to it. In this context, the WIPO initiative on South-South cooperation was carrying out a broader UN mandate. The importance of South-South cooperation on IP, he stressed, was linked to the fact that it made entirely sense for countries with similar levels of development and views on IP to benefit from their respective experiences. This was intrinsically based with the idea that IP should be sensitive to different levels of development and that there was clearly a need for a reflection on these issues on the part of developing countries. Currently, he added, there appeared to be increased momentum for South-South cooperation linked to important developments in the past few years, particularly with the adoption of the DA in WIPO, an increased use of the IP system in developing countries and emerging economies, the development of more sophisticated national IP regimes and laws, increased IP expertise in developing countries, and growing regional cooperation between developing countries such as for instance the example of generic pharmaceutical companies in India investing in African countries to set up production facilities for the development of generic drugs.

IP and development, he stressed, referred to two aspects: the use of IP for development – i.e. IP rights for development, IP administration and infrastructure –, and the concept of development-oriented IP, i.e. balanced IP regimes, the use of flexibilities, limitations and exceptions, and ensuring that IP is supportive of public policy objectives. These two elements, he stressed, were compatible and had to be brought together into one holistic dimension. Indeed, in order to achieve IP for development, it was essential to have development-oriented

IP. With regard to the use of IP for development, he noted that developing countries were increasingly adopting IP policies and that it was important to take into account, in this regard, the fact that IP impacts on many sectors (health, innovation, technology, agriculture, environment), which leads to the importance of domestic coordination on IP and integration of IP considerations into other national sectoral policies and strategies. As far as the use of IP rights for economic development was concerned, an important question was how these rights could be effectively used by domestic industries and other stakeholders. There was here clearly a need for further sensitization and PROSUR was an interesting example of an area where South-South cooperation on IP could bring many benefits through the exchange of experiences and best practices. With regard to development-oriented IP, Mr. Latif also highlighted the fact that it was important for developing countries to ensure that their IP and other public policies were aligned and mutually supportive. The sharing of experience in the field of the use of flexibilities, exceptions and limitations, and reforms of national IP laws would be particularly beneficial. In this regard, he pointed out to countries like Brazil, India, China, Thailand and Malaysia which have for instance more experience in using compulsory licensing and to the fact that other developing countries could greatly benefit from these experiences.

Referring to South-South cooperation efforts, Mr. Latif also pointed out to the need for better coordination at the multilateral level between developing countries. The Development Agenda Group, he stressed, tries to bring together countries with similar levels of development and views on IP to better coordinate, including through the regional groups. While appropriate to start with broad efforts such as the first inter-regional meeting and the Annual Conference to be held in September 2012, encompassing a large variety of issues, Mr. Latif suggested that it would be a good idea to organize, on a yearly basis, more focused thematic meetings. Another suggestion would be to further institutionalize and mainstream South-South cooperation in all of WIPO's activities. He pointed out the fact that South-South cooperation in WIPO was currently being carried out in the framework of a DA project, but that it should ideally become a permanent feature of WIPO's work, to be conceived as a special focal point or unit in the Secretariat to permanently follow and steer the issue, with inclusion and mainstreaming into the Organization's program and budget and strategic framework. Such mainstreaming would have many advantages in terms, for instance, of WIPO's training activities. It would indeed make sense to bring experts from a specific region to contribute to a training activity in that region, which would ultimately also save costs. Last but not least, Mr. Latif suggested that the experiences and lessons learned from developing countries and LDCs should be consolidated into publications, handbooks, policy guides and other types of similar materials.

3. Mr. Nirmalya Syam, Programme Officer, Innovation and Access to Knowledge Programme, South Centre, Geneva, started with a general introduction about the South Centre, an intergovernmental organization of developing countries which provides research-based support to Geneva-based diplomatic missions. Referring to the general misperception about the role of IP prior to the adoption of the DA, Mr. Syam reiterated the fact that IP should in fact be seen as an incentive to reward investors and creators to benefit society through the use of such inventions and creations, fostering scientific and technological progress, as the fundamental objective that should inform the design of any development-oriented IP system. Taking into account the fact that the history of IP is full of examples about ways in which today's developed countries have adapted the IP rules to their changing technological and industrial development needs, it is important that the design of IP systems in developing countries also take into account the countries' different levels of development, needs and realities.

Referring to the three stages of technological development, i.e. the initiation stage where technology is imported as capital goods, the internalization stage where local firms start to learn through imitation under a flexible IP rights regime, and the generation stage where local firms and institutions innovate through their own R&D, Mr. Syam stressed the fact that one of the problems which was increasingly being referred to by both developing and developed countries was the improvement, for instance, of patent quality and the realization that the IP regimes were

moving away from their original objective of stimulating genuine inventions towards a system for the protection of investment in developing incremental innovations, whether truly inventive or not (referring, for instance, to UK Patent No 2438091).

With regard to the challenges facing the establishment of development-oriented IP policies, he referred to the fact that IP policy has to be integrated into different aspects of national development policies and that IP regimes must be established in accordance with the realities of developing countries. While there appears to be an increase in the level of IP expertise in developing countries, there is nevertheless still a strong need for more local expertise. Most of these countries, he added, still require technical assistance in order to design their IP regimes and policies. There is also a need for greater coordination on IP issues between related government departments. In this regard, he added, he strongly believed that meetings such as this one could be more instructive in highlighting such examples to other developing countries. He also mentioned the need for greater South-South cooperation in the area of free trade agreements (FTAs) negotiations, pointing out the fact that a major problem appeared to be the coercion exerted by developed countries in certain contexts to deter the use of flexibilities and inappropriately raise the standards of IP protection and enforcement through bilateral negotiations. Referring to recent examples of South-South cooperation in which developing countries had already learned from each other, he gave the example of the issue of patentability standards in the Indian patent law which had inspired other countries to emulate the same, such as the Philippines, Argentina and China. At the international level, there were also many examples of South-South cooperation such as the Friends of Development Group in WIPO which had been a trigger towards the adoption of the WIPO Development Agenda, and many other examples such as cooperation initiatives among Like-Minded Countries, or cooperation between India, Brazil and South Africa (IBSA countries).

In conclusion, Mr. Syam stressed the fact that the South Centre was keen to further participate in such forums and provide its expertise to developing countries in the context of any future IP and development-related discussions.

GENERAL DISCUSSION

1. Answering the Delegate of Egypt's question regarding the organization of more thematic meetings in the framework of South-South cooperation, Mr. Latif stressed the fact that the idea was to move more towards focused discussions and more in-depth debates about specific issues, rather than general meetings focusing on too many issues at one time.
2. Reacting to Mr. Syam's presentation, the Delegate of Cameroon highlighted the fact that in her opinion WIPO had not been departing from its original objective, i.e. encouraging investors versus becoming more protective, and that it was part of a holistic approach in which protection was essential to ensure that inventors could benefit from their innovations.
3. Responding to the Delegate of Cameroon's comment, Mr. Syam clarified that he had not said that WIPO was departing from its original objective, but that what he had intended to say was that many scholars, even in developed countries, had actually observed that the IP system was departing from its original objective, a problem which was reflected, for instance, in the grant of low quality IP rights.

TOPIC 5: IP AS A TOOL IN ADDRESSING MAIN CHALLENGES OF GLOBAL KNOWLEDGE GOVERNANCE IN THE AREAS OF CLIMATE CHANGE, FOOD SECURITY, INTERNET, INNOVATION AND PUBLIC HEALTH

1. Mr. Anatole Krattiger, Director, Global Challenges Division, WIPO, started his presentation with a quote from the President of the Brazilian Agricultural Research Corporation (EMBRAPA), stressing that Brazil's capacity to access and use GRs had been a fundamental driver of Brazil's agricultural development. Brazil's agricultural development in the last 40 years had been

astounding and this development had been partly made possible through the exchange of GRs, in this case agricultural resources, particularly between South-South countries. In fact, he stressed, all agricultural developments anywhere in the world had relied on the exchange of plant genetic resources as well as livestock and other genetic resources. GRs in that context encompassed a form of technology transfer in the sense that they contained tremendous knowledge that populations had contributed over many years. This success in exchanging resources, ideas and knowledge is what epitomized today's world. Economies were more open and integrated and knowledge flows were particularly important in development overall. This had led to so-called 'open innovation', i.e. managing the inflows and outflows of knowledge in order to accelerate innovation and the use of innovation in the market place. With regard to IP, there had been a fundamental shift with the open innovation concept that IP was much less viewed as a defensive right than in fact as a starting point for inclusion. That notion, he stressed, had fundamental implications on how countries and institutions used IP.

Throughout history, WIPO had largely been a technical agency focusing on legal and normative aspects of IP. This had changed with the adoption of the DA and with new initiatives such as the establishment of the Global Challenges Division, which deals with IP issues related to food security, climate change and global health. In the field of health, he noted, IP was often seen as something preventing access (i.e. access to medicines for instance), but in his opinion, it was important to focus on two separate aspects of IP: IP as a driver of innovation, and IP as a tool for access. If the two concepts were mixed together, a clear contradiction would appear, taking for instance patents which are mainly a right to exclude. However, if we were to look at IP as a tool for encouraging innovation and providing new products and services and then identify how to increase access to these products and services for commercial or humanitarian purposes, then it becomes clear that IP can be seen as a starting point for partnerships and for inclusion with open innovation.

Mr. Krattiger then highlighted two interesting initiatives, the first one in the field of health on how companies' IP assets could be leveraged to be applied to neglected diseases or diseases that perpetuate poverty. Having launched a consortium in 2011 with 28 members, now 50, sharing not only patent rights but also more importantly know-how, technologies, access to laboratories, regulatory data, unpublished scientific data and materials/compounds, the platform, of which Brazil was a founding member, was used to share IP royalty-free for distribution to LDCs and to negotiate access, through agreements, for all developing countries. The second initiative was the WIPO Green platform on climate change, which, he stressed, aimed on adding some transparency to a very complex market of green technologies. This platform was a tool for those with technologies to list what they had available for sale, transfer or adaptation to local needs through collaboration or joint ventures; it was also a tool for entities to describe their needs for match-making; finally, it embedded within the WIPO Green system services on licensing, access to finance etc.

In conclusion, he quoted from a scientific paper, stressing the belief that "more frequent robust exchanges of know-how among the expanding universe of public and private sector players would accelerate innovation and expedite the translation of knowledge about needs of the poor while also reflecting national sensitivities, changing contexts and desire for economic growth". IP was therefore not only to be seen as a driver for economic growth but also as a tool to meet humanitarian objectives.

2. Mr. Filipe Teixeira, IP Manager, EMBRAPA, Brazil, started his presentation by pointing out to current population growth rates, showing that, at his rate, we would move, in the next 40 years, from a global population of 6.8 billion people to 9.3 billion people. This situation would worsen some of today's main challenges including access to food, access to water, poverty, energy, the environment, diseases, democracy, quality of life, education, and wars. Five of these challenges, he stressed, could be tackled from the point of view of agriculture: food generation, use of water, fight against poverty, energy generation and ensuring respect for the

environment. Taking into account the fact that over half of the available land worldwide which can be used for agricultural purposes can be found in Latin America, Africa and the Caribbean, countries in the Southern hemisphere have both an important responsibility and a sizeable opportunity to contribute to solving some of the world's greatest challenges.

Brazil's experience, he stressed, has shown that it is possible to generate appropriate technologies to tackle some of these challenges. The country, he added, had generated technologies for the entire tropical band, encompassing practically all of the Southern hemisphere countries. Access to land, technology, rivers, farms, has allowed Brazil, in 40 years, to transform itself from a food item buyer to a position of food supplier. This, he stressed, had partly been thanks to EMBRAPA, which, in the last 40 years, had been able to generate technologies and studies showing that tropical agriculture was indeed possible. Since then, EMBRAPA had been engaged in a series of cooperation endeavors including with other developing countries and it had in fact developed an encompassing cooperation framework in the South to bring technology to other countries and meet demands in the agricultural sector.

He also stressed the fact that EMBRAPA, which was initially funded as a research company, would never have been able to deliver all the research results to those who most needed them, i.e. the farmers, without an effective transfer process and innovation system where research could be conducted, resources could be collected and players for development could be brought in to ensure a proper market for transfers. This, he stressed, was where IP had become a crucial tool. Brazil's agriculture, he pointed out, was in fact highly based on protected products. As far as EMBRAPA was concerned, IP had been used as a business tool not only to attract and generate partnerships, but also to ensure access to third-party technologies and to ensure research return on investments.

Referring to today's open innovation system where one needed to count on the input of a multitude of participants to go from research to development and from development to market, such relationships, he stressed, could only be forged in an institutionally safe and economically feasible environment. To ensure access to technology created by other players and ensure access to markets, South-South cooperation was particularly crucial. More than ever, especially in the field of agriculture, there was a need for cooperation to solve some of today's challenges linked to access to food, energy etc. The main challenge was therefore, in his opinion, to identify how to avail ourselves of this example and other examples of using IP legislation in a way to create an institutionally safe and economically sound environment, both at the national level as well as at the regional and international level.

GENERAL DISCUSSION

1. Answering the Delegate of South Africa's question regarding the use of indigenous GRs in this process, Mr. Teixeira stressed the fact that a number of research and studies had taken place throughout the last 40 years all over the national territory. In this context, some research had also come from traditional communities and indigenous populations. While the focus had been mainly on commercial technologies, EMBRAPA had been following national and international legislations with regard to the use of technologies and participative researches together with local communities and indigenous populations, thus generating various types of technologies for the benefit of these communities.

TOPIC 6: MAIN CHALLENGES OF GLOBAL KNOWLEDGE GOVERNANCE IN THE FIELD OF IP: CIVIL SOCIETY AND VARIOUS STAKEHOLDERS

1. Mrs. Diana de Mello Jungmann, IP Program Coordinator, National Confederation of Industry (CNI), Brazil, took the floor to present the work of CNI, highlighting the importance, in particular, of education and sensitization to raise awareness, in society, of the importance of IP as a tool for development. While Brazil still had a long way to go from the point of view of

innovation and competitiveness, IP had become a valuable tool providing for the generation of knowledge and promoting investments towards innovation. The future of economic development in Brazil, she stressed, was closely linked to the exploitation of this knowledge. The key to achieving this objective was to develop an environment with the right human capacities, access to innovation and investments. In such an environment, IP could help translating knowledge into assets of economic value, generating wealth for developing countries and LDCs.

With regard to Brazil's main IP achievements, Mrs. Jungmann stressed the fact that 2010 had been an important year for the Brazilian industry with the launch of a vast national IP program, in cooperation with INPI, fully dedicated to raising awareness of the importance of IP in society, including through IP courses and the development of educational material for a wide range of stakeholders. 2011 had also been an important year for Brazil as IP became the first strategic topic in Brazil's innovation agenda. In 2012, a statement by President Dilma Rousseff confirmed the importance of IP, innovation and technological advancements, for Brazil, in which the President reiterated the Government's commitment to modernize INPI.

2. Referring to WIPO's main mandate in 1967 which was purely to protect IP, with no mention of incentivizing creativity or innovation or of the concept of technology transfer, Mr. Pedro Paranagua, Entrepreneurial Law Professor, *Fundação Getulio Vargas* (FGV), Brazil, and Technical Advisor on Digital Media, Cybercrimes, Copyright and Patents, Labor Party, highlighted how many years later, the discourse had changed with the protection of IP becoming a tool for the economic, social and cultural development of countries. Since then, many technological developments had taken place with the Internet now facilitating file sharing and transfers. The legal framework, he stressed, was no longer appropriate and often too restrictive, such as the copyright law in Brazil. He gave for instance the example of translating records into digital format, which meant that the analogue information in the record had to be entirely copied first, which, according to the current legal framework, was prohibited by the national legislation. Referring to exceptions and limitations, Mr. Paranagua also highlighted the fact that there were no exceptions in Brazil, unlike for instance in Germany, for copying books that were sold out and no longer available on the market. He also referred to the exchange of files online and to the fact that, instead of banning these exchanges of files on the Internet and generating lack of satisfaction among consumers, the implementation of licenses would be more attractive and something that consumers would be willing to pay for.

To conclude, Mr. Paranagua emphasized the fact that the question was not whether protection should exist or not, but that what was important was to find the right balance between protection and access to knowledge and the use of technology in an intelligent way so as to promote greater diversity and access and revenue for the authors. In this respect, the TRIPS flexibilities were very important.

GENERAL DISCUSSION ON TOPICS 4, 5 AND 6

1. Referring to Topic 4 and to the importance of national frameworks to forge synergies in the field of IP governance, the Delegate of Kenya highlighted the fact that the Government of Kenya had promulgated a new Constitution which, amongst other things, had elevated IP to Constitution status in Kenya. In the Constitution, IP was clearly mentioned under culture, under the bill of rights chapter (protection of right to IP protection), as well as under land and environment issues. He also stressed the fact that Kenya was a member of the Treaty on East Africa Cooperation which contained a common market protocol. Article 43 thereof, he highlighted, brings up the issue of cooperation on matters of IP rights in the region to boost economic development. Kenya, he added, is also a member of COMESA, which also has an IP policy. He concluded by stressing the fact that Kenya was currently facing the challenge of coming up with an IP policy and that this would be a good opportunity for other countries to benefit and learn from this process.

2. Referring to the concept of frugal innovation in India, the Delegate of South Africa mentioned the widening gap between living standards which were falling and innovation which had generated wealth and had led to an increase in gross domestic products (GDPs) and increased competitiveness. To what extent, he asked, was innovation speaking to the poor and how could the poorest be brought into the competitive economies? He concluded by stressing the fact that we appeared to be in a paradigm that still ignored the majority of the people.

3. Reacting to the Delegate of South Africa's comment, Mr. Teixeira agreed that this was also a major concern in Brazil and that there was clearly a need to generate protection systems that would benefit the entire society. He pointed out on the other hand that Brazil's agriculture sector was highly based on family farming and that more than 70 percent of the Brazilian farmers were small-sized farmers. If an environment conducive to continuous technological development could be achieved, all stakeholders, including commercial and non-commercial stakeholders, would be able to benefit from it.

4. In this regard, Mr. Avila pointed out the fact that different business models could be used in an innovative fashion by drawing up on IP rights. When talking about the creation of an IP system that was inclusive and able to promote the highest possible dissemination of knowledge to accelerate development and ultimately reduce poverty, what was important was not just rights themselves but also the systems through which these rights were transacted, i.e. transferred and used to promote innovation in the country. In this regard, he referred to platforms such as the creative commons for instance which were alternative licensing models that needed further study. The WIPO initiative in the health sector, with support from the pharmaceutical companies, was another example of the possibility of different sectors coming up with specific and innovative models for transferring and disseminating technologies.

5. Referring to the shift between property rights and public interest objectives, the Delegate of Malaysia gave the example of the patent system in which one of the main objectives was to provide incentives to innovate through adequate protection, but ultimately, he stressed, the public interest should be the concern that prevails. Owners' rights should be subsumed to public interest policies such as health issues, national economic issues, etc. The current trend, he added, seemed to indicate that less attention was being paid to public interest and more was being spent on protecting the rights of IP owners. This area would therefore greatly benefit from increased South-South cooperation.

6. Commenting on the public versus private interest, Mr. Avila, drawing on the Brazilian experience, highlighted the fact that Brazil was striving to build innovation-oriented industrial policies to promote, in particular, public and private investment in research development and innovation activities, which, in turn, would help generate better jobs and services for the benefit of all. In order to promote the public interest, it was therefore important to ensure a system that offered some rights to private players. In this regard, the line between private and public interest was often very thin.

7. Supporting the Delegate of South Africa's argument, the Delegate of ARIPO shared some statistics showing that, in the last 40 years, the technological gap between developed and developing countries had in fact further increased, despite the fact that many countries had put in place IP systems and modernized their laws. From this point of view, an important question that had to be addressed was how to make the IP system friendlier for local innovators in developing countries. In this regard, it would be useful to further study models such as the Chinese and Indian models for instance.

8. Reacting to the Delegate of ARIPO's comment about how to make the IP system friendlier for local and non-experienced potential innovators and how to ensure that newcomers can compete with companies which have already built a strong IP portfolio, Mr. Avila highlighted the fact that the system should above all have an architecture that would facilitate the participation

of newcomers. The problem with “one size does not fit all”, he stressed, was the fact that on one hand, each IP system was designed nationally to take into account and reflect differences in the very nature of each system, but at the same time these systems were more and more obliged to operate in a globalized environment. There was therefore a need to find a balance between these two dimensions in order to generate a system that would offer the best possible conditions for non-experienced endogenous companies so that they could start building their IP portfolios and engage in open innovation networks.

Referring to the concept of ‘frugal innovation’, he stressed that if the bar was put too high, many products would not be patented in the market and imitators would then have more opportunities to do business. On the other hand, if the bar was far higher than in other parts of the world, then companies which relied on the lack of property rights would not be able to export their products. This would create a serious difficulty for non-experienced new innovators. Looking at countries like Singapore, Korea and China where a huge amount of patents were being granted each year, and looking at the speed in which new endogenous companies were obtaining patents, he pointed out the fact that the bar was probably not set very high in these countries.

Essentially, what was important, he stressed, was for people to know and understand the system. The main challenge was still to raise awareness. Small companies, he pointed out, still had a tendency to believe that the system was for big multinational corporations and not for smaller companies and newcomers. This, he added, was why initiatives such as the initiative undertaken by the CNI were particularly important. The CNI initiative had reached millions of students. Taking into account the fact that there are, in each country, institutions to which companies can come in search of advice and support, he stressed that a good strategy was to build partnerships with these institutions so that they could help enterprises better understand how to effectively use the IP system to their advantage. INPI for instance had developed a special division which was solely dealing with the dissemination of the use of the IP system. It also had an academy which was entrusted with teaching IP to various stakeholders in the country. This area, he concluded, would also greatly benefit from further South-South cooperation and exchange of experiences, lessons learned and best practices.

ROUNDTABLE: SOUTH-SOUTH COOPERATION TO USE IP FOR DEVELOPMENT GOALS. THE ROLE AND STATUS OF THE DEVELOPMENT AGENDA PROCESS IN WIPO

1. Mr. Georges Ghandour, Senior Program Officer, Development Agenda Coordination Division (DACD), WIPO, started this presentation by pointing out the fact that the project on South-South cooperation had been adopted in the framework of the DA. As a Member State driven process, the DA, he stressed, was seeking to place the development dimension at the core of the global IP system by: a) making the global IP system development-friendly; b) taking into consideration the specific needs and challenges faced by developing countries and LDCs; c) ensuring a balance between the rights of IP holders and public interest; and d) ensuring that development considerations became integral to WIPO’s work.

The negotiation process for establishing the DA had started in October 2004 with a proposal from the Governments of Brazil and Argentina to the WIPO General Assembly, which had been discussed in three inter-sessional inter-governmental meetings in 2005. Fifteen papers containing 111 proposals from developing countries and developed countries had been discussed in the provisional Committee which had been established by the General Assembly in 2005 and had met twice a year in 2006 and 2007. This had led to the adoption of a milestone agreement in October 2007 with the establishment of the DA. 45 recommendations, grouped into six clusters, had been adopted and the Committee on Development and Intellectual Property (CDIP) had been established with the mandate to: develop a work program for implementation of the 45 adopted recommendations; monitor, assess, discuss and report on the implementation thereof; and discuss IP and development-related issues. Since 2008, he

added, the CDIP had met in 9 sessions, with the next session scheduled to take place in November 2012. In this regard, Mr. Ghandour also pointed out the fact that WIPO was systematically financing the participation of 26 developing countries and LDCs to attend each session of the CDIP, ensuring geographical balance in the representation. Since the adoption of the DA, WIPO, he stressed, had succeeded in mainstreaming the DA into its work by integrating the DA principles into the Organization's strategic framework and program and budget.

A project-based methodology for implementation of the DA had been adopted by the WIPO Member States during the third session of the CDIP, which had led to the development and approval of 26 projects, including this project on South-South cooperation. Out of the 26 projects, 6 of them had already been completed and evaluated and 6 others had been completed recently and were undergoing an evaluation process which would be discussed in the next CDIP session. Approximately 23 million Swiss francs had been committed so far to such projects, and a geographical balance had been sought when identifying the beneficiaries of such projects. The projects adopted by the CDIP, he added, fell into three categories: 1) projects and activities for technical assistance, such as for instance the specialized databases and support project, and the start-up academies project; 2) projects for the enhanced use of the IP system, such as the IP and competition policy project, and a project on patents and the public domain; and 3) projects/activities for the enhancement of management structures, such as a project on the enhancement of the WIPO results-based-management framework to support the monitoring and evaluation of development activities. In addition to these projects, the CDIP had also discussed three Director General Reports on the implementation of the DA and four series of progress reports on the implementation of the DA recommendations and projects. In addition, the CDIP had also discussed two studies on the relationship between IP and the Millennium Development Goals (MDGs).

In conclusion, Mr. Ghandour stressed the fact that WIPO was striving to ensure an effective mainstreaming of the DA principles into all of its work. The success of the DA did not however solely rely on WIPO's efforts. It was a collective effort that also counted on the full commitment of WIPO's Member States and other key stakeholders.

2. Reacting to the idea that the implementation of the DA is indeed a collective responsibility and a complex task, Mr. Ahmed Abdel Latif, ICTSD, highlighted the fact that the DA recommendations had been formulated in a general manner and that the challenge was really how to translate these general recommendations into concrete activities on the ground.

The DA, he stressed, had two dimensions: the use of IP for development, and the concept of development-oriented IP, i.e. two dimensions which were complementary and mutually reinforcing. Referring to norm-setting for instance, the DA stated that "norm-setting activities shall take into account different levels of development and take into consideration a balance between costs and benefits". This concept had been included, for instance, in DA Recommendation 11 for the strengthening of national capacities to protect domestic creations and innovations. With regard to the discussions related to the private versus public interest, Mr. Latif highlighted the fact that the concept of development-oriented IP referred to the idea of a balance between the two. He quoted Victor Hugo on the rights of authors and the public interest (1878): "If one of the two rights, that of the writer and that of the human spirit, must be sacrificed, then certainly it should be the right of the writer, as the public interest is our sole preoccupation, and everyone, I declare, should come before us". This quote, he stressed, showed that the concern of the public domain was at the foundation of IP and copyright. Another relevant quote was a quote by the Swiss delegate to the Berne Convention, Mr. Numa Droz, who had stated, in 1886: "It should be remembered that limits to absolute protection are rightly set by the public interest." While people may disagree on where the balance should be, the concept of balance between the public interest and the rights of authors and innovators has therefore always been fundamental.

With regard to the main achievements of the DA, Mr. Latif pointed out the important shift from IP itself to innovation promotion, with a clear move towards stressing the importance of innovation in the DA projects and activities. There had also been a wide range of efforts by the WIPO Secretariat to reinforce national IP capacities in Member States. Likewise, a lot of progress had been accomplished in terms of integrating and mainstreaming the DA principles into the organization's work and into its strategic framework. A number of important projects had been implemented under the DA such as for instance a project on setting up national IP academies, a project on technology transfer and innovation, a project for the improvement of capacities related to collective management, and a project for the strengthening of national IP capacities and for the development of national IP strategies.

With regard to the main challenges facing the DA, Mr. Latif highlighted the fact that a number of interesting studies had been conducted with regard, in particular, to issues such as the public domain and flexibilities. The main challenge at this stage, he stressed, was to move from studies to how to operationalize the use of flexibilities and how to take concrete initiatives to promote the preservation of the public domain. Another challenge was related to WIPO's technical assistance activities. So far, little attention had been paid to the recommendations of the report reviewing WIPO's technical assistance. Another difficult task ahead was how to measure the development impact of DA activities. With regard to a DA coordination mechanism, he also stressed the fact that the idea of mainstreaming the DA meant that there should be reporting about the DA in all of WIPO's bodies, not just in the CDIP. This issue was still being debated in WIPO. Some countries, including the African Group, supported the idea for instance that the Program and Budget Committee as well as the Committee on WIPO Standards should be reporting on the DA implementation. Referring finally to the debate regarding a standing agenda item on general IP and development issues in the CDIP, Mr. Latif highlighted that a number of developing countries (including the DAG and the Asian Group) had been supporting the idea that there should be such an item on the agenda.

In conclusion, Mr. Latif stressed that while there had been some interesting progress with regard to the DA's implementation, it remained work in progress and its implementation remained an ongoing challenge for all stakeholders. There was clearly a need to be innovative and creative in trying to translate the DA recommendations into concrete changes on the ground.

3. Mr. Marcio Lopez Correa, Coordinator for Multilateral Received Technical Cooperation at the Brazilian Cooperation Agency (ABC), Brazil, started his presentation by pointing out the proposed partnership between the Government of Brazil, through INPI and ABC, and WIPO, a triangular cooperation mechanism which showed the commitment of the Government of Brazil in promoting and expanding its South-South cooperation through this partnership with WIPO. Brazil, he stressed, had engaged both in intense bilateral South-South cooperation in many fields, as well as in triangular partnerships with many UN agencies. The concept of triangular partnerships was particularly interesting because, he stressed, it allowed the convergence of the comparative advantages of bilateral South-South cooperation and multilateral initiatives carried out by UN agencies, in this particular case WIPO.

Mr. Lopez Correa concluded this intervention by stressing the fact that he was convinced that the perspectives of South-South cooperation in the area of IP would, through this partnership, gain scale and have much more impact. The Government of Brazil, through ABC, would be discussing this initiative further and would seek to review proposals and demands coming from developing countries to see to what extent Brazilian institutions and experts would be able to assist and respond to those needs.

4. Referring to the concept of triangular cooperation, Mr. José Graça Aranha, Regional Director, WIPO Brazil Office, mentioned that the Government of Brazil, through INPI, and WIPO had signed their first cooperation agreement in 1970 with a view, mainly, to training the INPI

staff during the first years of its existence. In 1997, a second agreement had been signed to further modernize INPI, strengthen its infrastructure, and provide technical training to its staff. In 2006, a new agreement had been signed to further train the staff and promote the dissemination of the IP culture. At that time, INPI was restructured and it started to focus on the challenges of discussing IP as tool for economic and social development. Under this agreement, INPI and WIPO had extended the opportunity of established projects to other countries by financing the participation of officials from other countries in debates related to IP competitiveness, strategies, new models of IP infrastructure, IP education and research etc. It had also become a tool for the inclusion of other developing countries in national and regional opportunities involving capacity-building in the field of IP. In 2011, a further agreement was signed as a continuation of the 2006 agreement, with a special emphasis on the improvement of the quality of services provided by INPI with the creation of a mediation and arbitration center, and with a view to promoting a better understanding of the role of IP in certain sectors such as IP and sport. The new cooperation agreement which would be concluded between WIPO, INPI and ABC, would aim to establish projects with partners in the South aiming at the expansion and improvement of the use of the IP system. In this regard, Mr. Graça Aranha stressed the fact that WIPO, through the WIPO Brazil Office, and INPI had already initiated discussions with countries such as Oman, Saudi Arabia, and Colombia, for activities to be carried out under this new initiative.

GENERAL DISCUSSION

1. Referring to the Doha Development Agenda in the WTO, from which a number of lessons have been learned – in particular the fact that the program largely collapsed because of a strong divergence between developed and developing countries –, the Delegate of Ghana asked to what extent developing countries had actually been involved in determining the scope of the projects to be implemented under the DA.

2. Answering the Delegate of Ghana's question, Mr. Ghandour stressed the fact that the DA had, since the beginning, been a Member State-driven process and that out of the 111 proposals, most of them had been made by developing countries and LDCs. He also referred to the golden rule of interpretation of the 45 recommendations adopted by all Member States which stressed that: 1) each recommendation had to be discussed in the CDIP; 2) such discussions should lead to concrete proposals for particular sets of activities; and 3) the Secretariat would develop projects on that basis and Member States could specifically request that the project be implemented in their country. Since the beginning, the process had been owned by developing countries and it had to be stressed also that WIPO was not in a position to impose anything on Member States, as clearly stated in the first principle of the DA.

3. Mr. Roca Campaña further highlighted the fact that the project on South-South cooperation had in fact been proposed by the African Group. Another example was the recently approved project for the development of the audiovisual sector in Burkina Faso. Looking at the history of the DA, it appeared that developing countries and LDCs had played an important role not only in shaping the modalities of the DA implementation, but also in proposing projects to be implemented in its framework.

4. Mr. Ruiz Muller, Peru, asked about the relationship between the WIPO DA and the World Trade Organization (WTO) process, referring in particular to the TRIPS Agreement which strongly influences FTAs, which tend to be the norm in terms of what is being negotiated in regard to IP rights, and whether there had been any streamlining of the DA into the WTO process.

5. Referring to the relationship between WIPO and the WTO, Mr. Latif stressed the fact that there was in fact an important agreement between the two organizations upon which WIPO played an important role in providing technical assistance and capacity building for the

implementation of the TRIPS Agreement. In this regard, the DA recommendations on technical assistance were particularly relevant to the way the TRIPS Agreement was implemented and operationalized. Under DA Recommendation 40, WIPO was also invited to strengthen its relationship with a number of international organizations, including WTO. One aspect of that cooperation in the past couple of years had been the trilateral cooperation between WIPO, WTO and the World Health Organization (WHO) on IP and public health. In conclusion, Mr. Latif stressed that it was also the responsibility of Member States to diffuse information about the DA at the national level and to make it better known. There had been for instance at one point a suggestion that each developing country should try to make a national plan on how it implements the DA at the national level.

6. Mr. Roca Campaña also highlighted the fact that WIPO regularly attends the TRIPS Council as an observer, and that WTO also attends the sessions of the CDIP, as well as the General Assembly sessions. In this regard, the Member States had in fact given WIPO the mandate to implement all technical assistance related activities referring to the implementation of TRIPS.

7. Referring to DA Recommendation 40, Mr. Ghandour also pointed out that the WIPO Secretariat was organizing on a regular basis working meetings with all international governmental organizations (IGOs) to ensure appropriate coordination of all work related to IP.

8. Referring to Mr. Ghandour's remarks with regard to the importance of the support and active participation of all Member States for the DA to be a success, the Delegate of Cameroon asked whether any concrete actions were expected from developing countries in this regard.

9. Stressing the fact that impressive results had already been achieved in the last three years, Mr. Ghandour highlighted the fact that there was however still a need to create more consensus and synergy to ensure that countries didn't go at different paces in the work that was being carried out and to ensure that the realities of each country could be interpreted and adequately implemented at the national level.

10. The Delegate of Namibia asked WIPO whether it was on its agenda to institutionalize South-South cooperation, so that developing countries and LDCs could meet on a regular basis to share data and other relevant information, stressing that this would to some extent help developing countries and LDCs better understand how to use IP as a development tool.

11. Answering the Delegate of Namibia's question, Mr. Roca Campaña highlighted that while WIPO had in the past undertaken several interregional activities carried out by the different Regional Bureaus, it was the first time that there was, in the framework of the DA, a specific project which aimed to enhance South-South cooperation in the field of IP. As a two-year project which started in January 2012, it would be up to Member States in the framework of the CDIP to decide how to bring the process further and whether to mainstream South-South cooperation as a permanent element in WIPO's program. Mr. Roca Campaña also stressed the fact that the interregional meeting was only one activity under the project. There would also be an Annual Conference on South-South cooperation in Geneva on September 28, 2012, and a second interregional meeting, as well as a second annual conference in 2013. As clearly stated in the project, the meetings were meant to be expert meetings and the annual conferences a forum to review the results of the meetings and to take some decisions as to how to advance the process further. Under the project, he added, WIPO would also create a virtual platform and webpage by which information related to South-South cooperation in the field of IP would be made available to Member States. To conclude, he pointed out that certain steps were being carried out within the implementation of the project to try and institutionalize this process, but that the ultimate decision as to how to take the process further would be in the hands of Member States, both in the framework of the CDIP, the General Assembly and all other relevant bodies, including the Program and Budget Committee. The project would be submitted for

evaluation in April 2014, after which it would be in the hands of Member States to decide how to take the process further.

TOPIC 7: SOUTH-SOUTH COOPERATION IN ESTABLISHING DEVELOPMENT ORIENTED APPROACHES TO BUILDING RESPECT FOR IP, ADDRESSING BENEFITS, COSTS AND BALANCING RIGHTS

1. To set the stage and brief participants on the state of play with regard to this topic, a short video statement by Mrs. Louise Van Greunen, Director, Building Respect for IP Division, WIPO, was screened.

In her video, Mrs. Van Greunen reminded participants that the Building Respect for IP Division was under the Organization's Strategic Goal 6, Program 17. The expected results of this division were to first and foremost look after the Advisory Committee on Enforcement (ACE), secondly to strengthen legal systems and capacity building, and thirdly to promote strategic cooperation with partner organizations on enforcement related activities. The ACE, as the single Committee in charge of global enforcement issues, was in charge of coordinating with certain organizations and the private sector the fight against trademark counterfeiting and copyright piracy through public education, assistance, national and regional training and exchange of information. Guided by DA Recommendation 45, it was striving to balance rights and obligations and to establish equilibrium between private rights and the public interest.

The current work program of the ACE, she added, included identifying the different types of infractions and motivations for IP rights infringements, taking into account social, economic and technological variables and different levels of development. Another issue of great concern to the Committee was to develop analytical methodologies to measure the social, economic, and commercial impact of counterfeiting and piracy. Finally, the Committee also considered efforts and alternate models to address counterfeiting and piracy.

With regard to the strengthening of legislative frameworks, Mrs. Van Greunen stressed the fact that the Division provided legislative assistance upon request. IP issues related to enforcement were being integrated into activities of partner organizations such as in the context, for instance, of the Global Congress on Counterfeiting and Piracy. She concluded by drawing attention to the enhanced cooperation between WIPO and UNEP with regard to the environmentally friendly disposal of infringing goods.

2. Mr. Dissanayake Mudiyansele Karunaratna, Director, National IP Office of Sri Lanka, started by underlining the fact that South-South cooperation was not an option but rather an imperative. It had to be seen as a complement to North-South Cooperation for the achievement of internationally agreed development goals based on solidarity. A key issue to be addressed in this regard was the meaning of development. The meaning, scope, parameters and limitations of development had to be seen in the context of each country. To ensure the basic elements for development (i.e. access to food, shelter etc.), there was a need to ensure a conducive environment for vibrant economic/development activities with attention to areas such as national creativity, investment, transfer of technology, commercialization of products and services, industrial and commercial strategies/catalysts, education, R&D, food security etc. IP, he stressed, had an important role to play in such an environment conducive to development. Respect for IP was a crucial concept in the sense that it would ensure contribution to the promotion of innovations and transfer and dissemination of technology for mutual advantage of producers and users and for the social benefit and balancing of rights and obligations. Before talking about cooperation, one had to ensure that countries were ready at the national level and that they had an enabling environment based on appropriate policies, laws, public awareness, the promotion of national creativity and support to creators, and respect for IP rights. In Sri Lanka for instance, the IP office had set up an inventors' commission to help with patent

applications, promote public outreach, training etc., and it had to be noted that IP had received strong support at the highest level in the country.

With regard to potential areas of cooperation, Mr. Karunaratna referred to areas such as creativity, IP creation, protection and management, including commercialization, and building respect for IP. In order to make progress, he stressed, it was important to understand the challenges facing developing countries and the root causes leading to lack of respect for IP. Respect, he added, comes from understanding – it cannot be forcefully achieved. Training, education and awareness-raising were therefore crucial in order to change attitudes. This, he added, could be achieved both individually and collectively, through the sharing of expertise and best practices. Giving the example of counterfeited drugs which had been a major problem in Sri Lanka, Mr. Karunaratna stressed how thousands of pharmacists had been trained on how to identify these drugs and how, with the cooperation and support of the customs and the police, it had been possible to greatly reduce this problem.

With regard to the advantages of South-South cooperation, Mr. Karunaratna highlighted aspects such as increased access to resources and funding. He also stressed the fact that South-South cooperation should be used as a platform to further focus on the specific challenges of small economies and LDCs.

GENERAL DISCUSSION

1. In response to a comment by the Delegate of Senegal, Mr. Karunaratna highlighted the fact that South-South cooperation could be used as a source for additional funds but that it was also important for the countries themselves to commit some funds at the national level with a domestic plan for the allocation of resources, taking into account the fact that cooperation should be a continuous process.

2. Answering a question from the Delegate of Egypt about the role of the private sector in Sri Lanka, Mr. Karunaratna stressed the fact that the private sector had always been supporting government efforts, through, for instance, the Chamber of Commerce. The program for the combat of counterfeited drugs for instance had been carried out in close cooperation with the Chamber of Pharmaceutical Industry of Sri Lanka.

TOPIC 8: INTERNATIONAL PROTECTION OF AUDIOVISUAL WORKS AND PERFORMANCES. NATIONAL EXPERIENCES CONCERNING THE PROTECTION OF AUDIOVISUAL WORKS AND PERFORMANCES

1. To set the stage and brief participants on the state of play with regard to this topic, a short video statement by Mrs. Geidy Lung, Senior Counselor, Copyright Law Division, WIPO, was screened.

In her statement, Mrs. Lung referred to the fact that before the Beijing Diplomatic Conference in June 2012, the protection of performers in audiovisual media had not yet been effectively established at international level. This lack of protection had not only affected actors in different media such as film and television but also musicians with regard to the recording on DVD or other audiovisual platforms of their performances. Since the adoption of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) in 1961, singers, musicians, dancers and actors had enjoyed limited international protection for their performances. The adoption of the WIPO Performances and Phonograms Treaty (WPPT) in 1996 had updated these standards in respect to sound performances, particularly in relation to digital uses, leaving a void in the international rights' system for actors and other audiovisual performers.

During the 2000 WIPO Diplomatic Conference on the protection of audiovisual performances, discussions on a possible treaty had been initiated, but Member States at the time did not agree on whether or how a treaty on performers' rights should deal with the transfer of rights from the performer to the producer, and therefore a treaty could not be adopted. Between 2001 and 2010, Mrs. Lung highlighted the fact that WIPO had engaged in extensive fact-finding and research on these differences and had developed a high level, generic and comprehensive review of contractual considerations in the audiovisual sector. In June 2011, Members of the Standing Committee on Copyright and Related Rights had agreed on a compromise wording of the provision on the transfer of rights sufficiently flexible to adapt to different national laws, thereby paving the way for the conclusion of a treaty. In this regard, the adoption of the Beijing Treaty on Audiovisual Performances had been widely welcomed by the international community as an important example of how multilateralism could succeed in bringing benefits to humanity. It was strongly believed that it would strengthen the precarious position of performers in the audiovisual industry by providing a clearer legal basis for the international use of audiovisual productions, both in traditional media as well as in digital networks. Such an instrument would also contribute to safeguarding the rights of performers against the unauthorized use of their performances in audiovisual media, such as television, film and video. She concluded her presentation by stressing the fact that it was now up to Member States to ratify the treaty and implement its provisions into national law so as to empower the actors' community for the efficient organization of the individual and collective management of their rights.

2. Mr. Balamine Ouattara, Director General, Burkinabe Copyright Office (BBDA), Burkina Faso, started his presentation by referring to the fact that many initiatives for developing the audiovisual sector in Africa had started since the 1970s, and that there was a need for national institutions to come up with ways to encourage their respective audiovisual sectors. The audiovisual sector had become a very important sector for the country's development with the establishment *inter alia*, in 1969, of the Panafrican Film Festival of Ouagadougou (FESPACO).

In Burkina Faso, he stressed, literary and artistic works were protected under Law 032 from December 22, 1999. This legislation had replaced a recommendation from 1983 on copyright and related rights. At the international level, a number of developments had also taken place such as the adoption of TRIPS in 1994 and the Internet Treaties in 1996. Since then, he stressed, Burkina Faso had been able to work in a more optimized environment to protect audiovisual works by creating new types of access to these rights. With regard to the conditions for access to protection, these were based on international legislation such as the Berne and Rome Conventions. The conditions, he highlighted, included among others essential elements such as: national treatment, the criterion of first publication or simultaneous publication, and the habitual residence of the author. The national legislation in Burkina Faso, he pointed out, had extended these criteria to include others such as the fixation of the performance in a phonogram or videogram protected under the law, and the incorporation of the performance in a broadcast protected under the law when it had not been fixed in a phonogram or videogram, two conditions which had not been included in the Beijing Treaty. With regard to the rights, article 6 of Law 032 provided the terms of protection for audiovisual works which were seen as collaborative works. According to the national legislation, authors of such works could be the author of the script, the author of the adaptation, of the dialog, of the musical compositions, and the director (article 33 of the Law 032). The law also stipulated that if an audiovisual work was adapted from a pre-existing work or script which was still protected, the authors of the original work should be included as authors of the new work. Another important aspect, he added, was the question of authorship and of moral and economic rights for co-authors of the works and of the transfer of exclusive exploitation rights (article 59). The Law also provided a definition of performers to be protected for their works as follows: "performers are, except for ancillary performers considered such by professional practice, natural persons who perform, sing, recite, deliver, declaim, act, dance or otherwise perform literary or artistic works, variety, circus or puppet acts or expressions of folklore." In this regard, he stressed, article 2 of the Beijing Treaty was very explicit on the definition of physical persons that could be protected under the treaty.

With regard to the issue of managing the transfer of rights, he pointed out to the question of the right of equitable remuneration in Law 032 which had been improved in the Beijing Treaty in Article 12-3, providing for the right to receive royalties or equitable remuneration for the artist or by the collective management society.

With regard to the economic and moral rights of the authors, Law 032, he stressed, contained a series of articles (articles 72 to 75) providing authors with economic and moral rights for the execution and production of their works (equivalent to Article 5 §1 of the Beijing Treaty on economic rights for authors and performers). New types of rights had developed since then, such as for instance the right of rental included in article 9 of the Beijing Treaty. An important aspect of the Beijing Treaty, he added, was the fact that it provided for the extinction of the rights after the first sale. Referring to the limitation of economic rights, Mr. Ouattara mentioned articles 21 and 80 of the Law 032, based on the principle that such limitations should be limited to special cases, should not conflict with normal exploitation, and should have no unreasonable prejudice to the legitimate interests of the right owners. With regard to the length of protection of these rights, he pointed out that most national laws, including the Beijing Treaty, mentioned a minimum protection of 50 years after the death of the author, while in Burkina Faso, the protection had been extended to 70 years after the author's death. For audiovisual works, the protection therefore lasted during the lifetime of the last survivor until 70 years after his or her death. In conclusion, Mr. Ouattara also mentioned other types of protection such as obligations concerning quotas for broadcasting audiovisual works. In this regard, he stressed, the Government of Burkina Faso had imposed a minimum quota of 40 percent of the broadcasting rate for national audiovisual works. Another aspect concerned the strengthening of the infrastructure and capacity of the audiovisual sector through awareness raising and education to attract more investments in this sector. Mr. Ouattara concluded his presentation by pointing out the importance of collective management in the audiovisual sector and by stressing the fact that Burkina Faso had been collectively managing related rights in the audiovisual sector since 2005.

3. Mr. Victor Drummond, Director General, Inter Artis Brazil (IAB), Brazil, addressed the topic from the perspective of someone who works directly with authors and others involved in the sector. From the perspective of authors, producers and performers, he stressed, the Beijing Treaty was seen as a Treaty that brings along many advantages in terms of new techniques and new market elements. By establishing an international framework, the Treaty has given birth to different national legislations.

Within the WIPO context, the audiovisual sector had benefited from a huge participation in the different music management bodies, something that had been one of the demands of the audiovisual sector. A minimum amount of rights had been ensured which would allow for a systematic balance and create a society for collective management. It would also help stimulate the collective management of such rights, which would have positive impacts for artists and their activities. In countries that have signed the Treaty, he added, it would certainly foster and promote a discussion on national legislation. In the case of Brazil, the national law was still discussing many correlated topics, including the issue of audiovisual performances. Referring to audiovisual performances, Mr. Drummond highlighted the fact that it was important to examine and understand the rights that apply to audiovisual performers as there appeared to be a lot of confusion in this area, which had made technical discussions related to IP much more difficult. In this regard it was important to mention the fact that performers, actors etc, have a right to their image, a right which is not connected to IP. Many constitutions, including the Brazilian Constitution, state that image is a constitutional right, i.e. a person's right to protect his or her own image, which is very different from an artist performing on TV. In addition, he pointed out the fact that when an artist is called to do a movie, or any kind of performance shown audiovisually, he is in fact an employee and very rarely the owner of that production. In this case, he stressed, the artist's rights would be covered by labor rights as a service being rendered. It is only once the audiovisual work has been finalized that we enter into the

discussion about authors' rights and about the right to receiving royalties or the right to equitable remuneration.

With regard to the right to equitable remuneration or compensation, Mr. Drummond pointed out the fact that in many countries in Latin America, the TV producers were the ones who, most of the time, approved the national circulation of such completed audiovisual works, but in some cases, these did not have full control over the process. Many countries for instance had not yet developed national movie industries. Generally speaking, he stressed the fact that if an actor was employed by a TV producer, that producer was the owner of the channel that would be showing the performances. The more that performance would be shown, the more equitable remuneration would be generated for all right owners in the productive chain. Once an actor had been hired and had allowed for the circulation of his work, nothing could prevent such work from circulating. Mr. Drummond also referred to the misconception that the right to equitable remuneration would represent the end of actors' rights because they would have to relinquish their exclusive right to that revenue. On the contrary, he stressed, the idea was to make sure that when these works were shown publicly, the actors would be entitled to some sort of economic compensation. He also pointed out the fact that this was a very different market than the book or the music industry. In these markets, he stressed, it was possible to sign contracts with publishers and recording companies. In the audiovisual market however, there was a need to look at the specificities of the market to see how to adapt the national legislation.

Looking at the right to remuneration and domestic laws, he stressed the fact that this right, also called right to equitable compensation for the exploitation of any work, referred to a certain balance between two parties. What was particularly interesting, he added, was the untransferable and unrelinquishable nature of such rights. In national legislations, the terminology used sometimes differed: in Mexico for instance, the legislation referred to the concept of irrefutable, while in Chile they used the terminology irrefutable and untransferable. In Chile, the legislation also stated that performers of audiovisual works would continue to have an untransferable right to remuneration as a result of their performances, even after the transfer of their ownership rights. The Colombian legislation on the other hand states that artists and performers of audiovisual works will continue to hold in all cases the right to receiving equitable remuneration. In the case of Brazil, he stressed, the copyright law did not include remuneration rights, but there was however a reference to the rights of performers and artists in the labor law, stressing that the rights of performers and artists would be paid in each exhibition of that particular work. Since this hasn't been part of the discussions on remuneration rights, it is however seen as an exclusive right. In conclusion, he reiterated the fact that the right to remuneration was what allowed works to circulate and in this regard it was very important to take into account all stakeholders, including directors, producers and soundtrack writers.

GENERAL DISCUSSION

1. Referring to the concept of "equitable remuneration", the Delegate of Malaysia asked what was meant by "equitable". Was it based on a percentage of profits or divided by the number of actors involved? Should leading actors receive more than those playing minor roles? What would happen if a lump sum was paid at the beginning and this work became very profitable – would there be a possibility to renegotiate the amount paid to performers?

2. In terms of audiovisual works, Mr. Drummond highlighted the fact that performers and actors were not the only right holders, i.e. there were also script writers, directors, photography directors, soundtrack composers and producers who also held related rights and should receive some benefits. Some societies, he stressed, divide collections by artists, others by sector. In Latin America, he added, actors' associations usually divide themselves into different types of categories of collections. With regard to equal pay for participation, Mr. Drummond stressed the fact that he personally advocated that remuneration should be proportional to the screen time of each actor. Remuneration rights should be proportional to the participation of each person and

not based on the quality of the performance, which is also true in the music sector, i.e. the quality of the musicians does not define their remuneration.

3. Answering a question by the Delegate of Mauritania about the main challenges that had been encountered in Burkina Faso, Mr. Ouattara mentioned that Burkina Faso was planning on signing and ratifying the Beijing Treaty, which would allow for the implementation of some rights. With regard to collective management, Burkina Faso used collective management in the context of related rights, i.e. rights of artists and performers. It was a new type of management in Burkina Faso which had started in 2005. The main difficulty that had been encountered was in terms of ensuring everyone their rights. Thanks to the technical assistance from many agencies for the implementation of management mechanisms, Burkina Faso had managed to make significant progress in this sector.

TOPIC 9: INTERNATIONAL PROTECTION OF BROADCASTING ORGANIZATIONS. NATIONAL EXPERIENCES CONCERNING THE PROTECTION OF BROADCASTING ORGANIZATIONS

1. To set the stage and brief participants on the state of play with regard to this topic, a short video statement by Mrs. Carole Croella, Senior Counselor, Copyright Law Division, WIPO, was screened.

In her statement, Mrs. Croella referred to the fact that international rules to protect broadcasting organizations from, in particular, the unauthorized use of their television broadcasts had not been updated since the 1961 Rome Treaty, drafted at a time when cable was in its infancy and the Internet not even invented. The developments since 1961 had led to a situation where digital copies of television programmes could be made and transmitted with a few mouse clicks, and where signal theft had become a big commercial issue for broadcasting organizations worldwide. This type of piracy, she added, could take physical form or could be virtual, such as the unauthorized redistribution of signals over the air or online. Hacking into encrypted pay-TV signals with equipment designed to circumvent the security measures in set-top boxes was another common form of piracy, while live sports broadcasts had been a particular target for unauthorized retransmission on the Internet as we were now witnessing with major sport events such as the Olympic Games. This type of signal piracy, she added, was costing broadcasters millions of dollars in lost pay-TV subscriptions and/or advertising revenues.

The object of the protection in the proposed treaty, Mrs. Croella stressed, was the broadcast signal rather than the content it transmits. Such rights would aim to equip broadcasters with mechanisms to prevent others from free-riding on their investment of time, skill, and effort in working on the infrastructure of the television and radio industries. The negotiation process for an updated protection for new broadcasting technologies had been launched in 1997 and had continued in the framework of the SCCR, WIPO's main copyright negotiating body. A cross-cutting issue, the protection of broadcasting organizations was of equal interest to both developed and developing countries. Several studies had indeed shown that broadcasting constituted a public good in the economic and cultural fabric of countries and that it therefore played an important role for the economic, social and cultural development of all countries as the protection of broadcasting organizations' rights would ultimately foster the production of local content and support the growth of domestic cultural industries.

To conclude, Mrs. Croella referred to the 24th session of the SCCR in July 2012 which had discussed the idea of a signal-based approach draft treaty further and which had adopted the Chair's non paper as a Working document of the SCCR as the basis for future discussions on the topic. While there was already convergence on an important number of issues such as the objectives and object of protection, the scope of protection still required further clarification and discussion.

2. Mr. Octavio Pieranti, Director, Department of Monitoring and Evaluation, Secretariat of Electronic Communications, Ministry of Telecommunications, Brazil, focused in his presentation on the broadcasting scenario in Brazil. The concept of broadcasting in Brazil, he stressed, was translated in Brazil as TV and radio transmitted by radiofrequency, or what is known as 'open radio' and 'open TV', or terrestrial television.

In most countries, he highlighted, the term broadcasting meant open TV/open radio, subscription TV, internet etc. In Brazil, the term broadcasting referred exclusively to TV and radio through radiofrequencies. For more than 80 years, the Brazilian legislation had been dealing with this concept in a different way when compared to subscribed TV and other means of broadcasting. In Brazil, web-TV and web-radio could for instance work without any type of license. A subscription TV would work with a license that was granted much faster than a license for a radio or TV broadcaster, as this had to go through the Ministry of Telecommunications and through the National Congress. There were also quotas for subscription TV that did not exist for other types of mandatory content/open radio and TV. In this regard, he added, the Brazilian legislation dealing with open TV and radio, in other words broadcasting, was outdated. It had been approved and enacted at a time when there was no satellite transmission in Brazil and no national radio networks. With regard to pay TV, there was an exclusive law for cable TV from 1995 and a new law which had been enacted in 2011. As far as the Internet was concerned, he stressed the fact that Brazil was currently discussing a new piece of legislation and a new law for telecommunications in general.

With regard to IP in particular, Mr. Pieranti referred to law 9.610 from 1998 which mentioned transmissions "by any means", but in most cases referred only to radio and TV. Article 95 also stated that "broadcasting stations are responsible to authorize and prohibit the transmission of their signals", but the law did not grant this possibility to pay TV providers, web TV, or web radio, i.e. services which were very incipient at that time.

Referring to the structure of the TV sector in Brazil, he pointed out that Brazilian broadcasting was regulated by three types of licenses: commercial, educational (around five hundred), and "retransmitters" (more than one thousand in Brazil). More than eighty percent of Brazil's TV stations were either private or commercial, and "retransmitters" could only include new programs or advertisements when situated in the borders of the country.

With regard to the radio sector, there were six types of licenses: FM broadcasters (about 2000 of them), medium wave broadcasters (about 1650), short waves (66) and Tropical Wave (72); Educative FM (176), and FM Community Radios (about 4500). Since most of the radio sector was public and not for profit, educative and community radios could not broadcast commercial programs and be profit-oriented and their sustainability models were therefore very different from traditional radio broadcasting – i.e. they have fewer resources available to them. He also highlighted the fact that there were very few national radio stations in the country. Community radios (accounting for about half of Brazil's radio stations) had very low potency (25 watts) and could not participate in networks according to the current legislation, except in the case of disasters and other very rare occasions.

In conclusion, Mr. Pieranti highlighted the fact that current Brazilian laws did not use the same concept of "transmission by any means". They did not refer to this because radio broadcasting was different than for instance paid subscription and pay TV. All these services were subject to different rules. As a result, the current debate of a more generic nature in WIPO did not really correlate with Brazil's legislation. He stressed however that the situation may change with new laws currently being debated in line with a more "pro-convergence" framework in Brazil. Brazilian TV networks were based on a type of "retransmitters" stations that did not include original programs or advertisement as they were legally prevented from doing so, which meant that the single source of revenue for these retransmitters when they did not belong to public ownership was any contracts they may sign with the networks/stations for signal retransmitting

purposes. Most of these retransmitters, he stressed, were licensed to city halls. In the case of radio, more than half of the licenses given out to Brazilian stations were used for educational and community services and were not profit orientated. This is why, he concluded, it was very important that national/local scenarios be taken into account when discussing this issue at the international level. Based on national contexts, the same obligations could not be applied to all.

3. Mr. Joseph Fometeu, Professor, Faculty of Legal and Political Sciences, University of Ngaoundéré, Cameroon, highlighted a conceptual problem when talking about IP and radio broadcasting. In this regard, he stressed, a clear distinction had to be taken into account when it came to the terminology used in this area. Perhaps more than in any other area, the notion of terminology was here of crucial importance as it was based on different domestic and national laws and countries had each done different things to abide by the 1961 and 1974 International Conventions.

Many, he stressed, felt that it was not necessary to have a new convention for the protection of radio broadcasting organizations. They argued that radio broadcasting organizations were capable of protecting their signals and believed that any treaty on radio broadcasting used to encourage these mechanisms may actually curtail freedom of expression, while also making it more difficult for competitors to enter the market, curtailing technological developments in the field. An additional concern which had been raised was the fact that radio broadcasting organizations no longer appeared to fulfill their main social role but that they had become largely commercial and profit-based enterprises, in which case protecting them would lead to protecting investments and nothing else.

Current national laws, he stressed, do stipulate a certain level of protection of radio broadcasting organizations. In Ghana's legislation for instance, both the signal and the content are protected. The signal is protected by giving broadcasters the right to block any distribution or any signal transmission that comes from a suspicious source. In Cameroon, he added, there are also such protection programs in place. These, he highlighted, constitute a set of actions whose main objectives are to protect images, signals and infrastructures used for broadcasting. Given the specificities in Cameroon and the different laws in place, there appears to be a different relationship between the signal and the content of that signal, and this is where the problems related to terminology begin. Indeed, there are three levels of distinction that need to be clarified: 1) the signal, which is the vector; 2) the program carried by the signal; and 3) programming that may contain potentially protected content.

In order to justify an international treaty in this area, it would be crucial to identify to what extent that signal is important. Looking at the Rome Convention in which transmission itself was addressed, programs were seen as a result of actions carried out, which is contrary to the nomenclature used in the area of signals where these are seen as actions and not as a result of an action. Taking for instance a radio broadcasting company, there are certain portions of the content that need to be protected and others that don't. Currently, he stressed, radiobroadcasters aren't really abiding by the prerogatives included in the right to protect programming, copyright and signal broadcasting. What needs to be taken into account is the fact that the signal used in radio broadcasting may in fact be intercepted before it reaches its final audience. The current Satellite Convention does not provide any answers to this issue. Radio broadcasters are therefore not effectively protected.

GENERAL DISCUSSION

1. Referring to the situation in Egyptian law, Professor Farahat mentioned the existence of two legal instruments: the law on IP (article 158) and the law of the Radio and Television Union. Both pieces of legislation, he stressed give the Radio and Television Union exclusive rights to allow the use of the signals. In this respect, it is forbidden in Egypt to make any wireless transmission without the authorization of the Union. The second right is the objective right to be

protected. In this case, any content produced by TV or radio is protected by either the IP law or the law of the Union on TV and radio. Here, the Egyptian legislation makes a clear distinction between the signal and the content. This, he stressed, was the main difficulty currently facing the SCCR in preparing such a treaty, because the proposed convention assumed that the main approach was the protection of the signal itself and not the protection of the objective rights of the broadcasting organizations. What is the importance of the signal if it is empty from any content?

The proposed treaty also stresses that it does not intend to protect the activity of broadcasting but the broadcasting organizations themselves as right holders. Looking at the wide range of activities carried out by broadcasting organizations, which is more than simply the transmission of a signal, one cannot talk about protecting broadcasting organizations without taking into account these other activities. Last but not least, Prof. Farahat also pointed out the fact that the activity of webcasting had been excluded from the proposed treaty, which was not satisfactory to developed countries. He raised the question as to whether the technological aspects related to webcasting were in fact sufficiently developed to draft legal provisions to protect it. These questions, he stressed, were some of the issues that had to be addressed in the context of the preparation of the treaty.

2. Commenting on the decision by the WIPO General Assembly in 2007 to pursue a signal-based protection, Mr. Roca Campaña stressed the fact that many countries were still discussing the need for protection of the content. In this regard, while there had already been major convergences on important issues such as the treaty's objectives, a number of issues still had to be addressed, including clarification on the scope of protection.

3. Taking into account the fact that when some content is transmitted, that content should first be translated into a signal before being transmitted, the Delegate of Malaysia asked for some clarification on the actual distinction between signal and content.

4. Mr. Fometeu started by pointing out to the distinction between the transmitted signal and the signal content, stressing that, within the signal, some works may be protected and others not (he gave the example of music transmitted during a football game which is protected when the game itself is not protected). In this context, he stressed, it was important to remember that the protection of the content and the program itself which had already been paid for were already protected under the Rome Convention. In the Satellite Convention, the signal had also been mentioned. The problem however at that time was the fact that the Satellite Convention was interested with the final destination of the signal and that it had not created any obligations to create a specific space for broadcasting organizations. In most Member States, he added, signals appeared to have been protected but only from an IP perspective. The result was that in the current situation, broadcasting organizations could not use judicial means to cancel or block the transmission of a signal, and signals could not be treated independently from their content. This had to be kept in mind when justifying a new treaty.

5. The real interest of broadcasting organizations, Mr. Ficsor added, was indeed to protect the signals against their unauthorized use, i.e. to fight signal piracy. Various options had been submitted to the SCCR, but there was a general agreement that the signal-based approach was the only feasible way forward. It should not include such concepts as rights based on fixations. An important area that had to be addressed, however, was the concept of signal casting. Indeed, he stressed, most signals were now digital, which raised a number of issues. Should these signals be protected from the moment they reach and enter the world of the internet? It seems that if an affirmative answer was to be given to this question, it would still correspond to the concept of signal-based approach.

6. Mr. Pieranti highlighted an important distinction, i.e. the fact that there are two ways of transmitting a broadcasting, i.e. terrestrial TV, signal: 1) through network operators, i.e. a

company separate from any given TV station where the TV station holds a license for showing certain programs, and the TV station then hires a company responsible for the distribution of the content. In this context, he stressed, the separation between signal and content was very clear. The second model, used mostly in South America, including in Brazil, is a model in which TV stations hold the licenses for broadcasting transmission, so where programming and transmitting are part of the same license. In this context, signal and content may be confused. Regardless of the model however, he highlighted the fact that the content of TV stations comes from two different sources, one of them which is third-party content (i.e. a license which stipulates with the content right owner the conditions for that transmission, whether the content will be given out to other stations, whether it's exclusive etc.). In this case, he stressed, the differences between this relationship became much more tangible.

TOPIC 10: COPYRIGHT LIMITATIONS AND EXCEPTIONS FOR LIBRARIES, ARCHIVES, EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR VISUALLY IMPAIRED PERSONS. NATIONAL EXPERIENCES AND SOUTH-SOUTH COOPERATION

1. To set the stage and brief participants on the state of play with regard to this topic, a short video statement by Mrs. Geidy Lung, Senior Counselor, Copyright Law Division, WIPO, was screened.

In her statement, Mrs. Lung referred to the need for an appropriate balance between the interests of right holders and users of protected works, which had been translated in certain limitations on rights, that is, cases in which protected works may be used without the authorization of the right holder, and with or without payment of compensation. Based on different social, economic and historical conditions, these limitations and exceptions varied greatly from one country to another, including within the same region. The WIPO-administered treaties, she stressed, acknowledged this diversity by providing general conditions for the application of limitations and exceptions, leaving to national legislators to decide if a particular exception or limitation was to be applied and determining its exact scope.

With the development of new technologies and the Internet, it had been considered that the above balance between various stakeholders' interests needed to be recalibrated. Since 2004, the debate had focused mainly on three groups of beneficiaries or activities in relation to exceptions and limitations: persons with disabilities, particularly visually impaired persons or persons with print disabilities, libraries and archives, and educational and research institutions.

With regard to visually impaired persons or persons with print disabilities, the focus was mainly on facilitating access of the blind, visually impaired and other people with print disabilities (VIPs) to copyright-protected works. According to the WHO, there were around 314 million blind persons and visually impaired persons in the world, and more than ninety percent of them lived in low-income developing and least-developed countries. A WIPO survey published in 2006 showed in this respect that the copyright laws of only about eleven percent of WIPO Member States contained specific provisions to assist this group of persons with disability and also highlighted a lack of clarity as to whether distribution rights permitted the movement among countries of copies of works in accessible formats. Indeed, Mrs. Lung stressed the fact that it was considered that, without contravening the legitimate interests of right holders, greater quantities of copyright protected material – being analog and digital – could be made available in accessible formats and disseminated across borders to enhance opportunities for the literacy, independence and productivity of VIPs. In this regard, the WIPO Secretariat had been working on two complementary tracks proceeding in parallel, namely a Stakeholders' Platform and an international instrument. The platform, and in particular the Trusted Intermediary Global Accessible Resources (TIGAR) project had the objective of putting into place operational and practical arrangements to be applied in a way that is consistent with, and supported by, the enabling legal framework of an international instrument, in order to facilitate access to published

works by persons with print disabilities. Launched in November 2010, TIGAR was a three-year project which aimed to facilitate the cross-border transfer of copyrighted books in accessible formats among various national institutions or trusted intermediaries in cooperation with organizations representing the community of persons with print disabilities, authors and publishers. So far, she highlighted, fourteen trusted intermediaries and thirty-two right holders had taken part in this project, including the Library of Congress of the United States, the South African Library for the Blind, and the Cambridge University Press.

With regard to the adoption of an international instrument, a number of proposals had been put forward since 2009, which had been merged into one single working document and would be further discussed in the SCCR, with the possibility of a diplomatic conference being convened in 2013.

With regard to the other limitations and exceptions, the SCCR had also agreed to work towards the adoption of an appropriate international legal instrument (whether model law, joint recommendation, treaty and/or other forms). In the case of libraries and archives, delegations had identified eleven common topics for discussion, including: preservation, right of reproduction and safeguarding copies, orphan works or works out of commerce, technological measures of protection and contracts. Some of these topics had also been identified in the area of limitations and exceptions for educational and research institutions and persons with other disabilities.

2. Mrs. Natasha Pinheiro Agostini, Secretary, IP Division, Ministry of External Relations, Brazil, started her presentation by stressing the fact that discussions about limitations and exceptions had been following a work plan agreed upon in 2010 stipulating that the work undertaken by the SCCR would have to be based on text-based work, which had been a very important step forward in the SCCR towards the adoption of international instruments in this field. In this context, it was worth noting that the civil society of both developing and developed countries had played an important role in the adoption of the work plan.

These limitations and exceptions, she stressed, were important to promote systemic balance. They provided legal security for the States to implement them at the domestic level based on instruments negotiated at WIPO. In the case of the beneficiary parties, it was stipulated in the work program of the SCCR that there were concrete needs that required limitations in order to grant access to those who were visually impaired. Since the work plan had been enacted, negotiations had advanced significantly, in particular with regard to the negotiation of an instrument for those with reading disabilities. In this context, it had been agreed that new technical consultations would be conducted to finalize the text and that recommendations would be made at the next WIPO General Assembly to convene an extra-ordinary session at end of the year to analyze the text and to decide whether or not to convene a diplomatic conference in 2013. Joint efforts and cooperation among developing countries in this regard would be of great importance.

Taking into account the fact that over 300 million people had visual disabilities, and that fewer than fifty percent of all published books were available in format accessible to these groups, with a lack of material even greater in developing countries where it was much more difficult to earmark resources, Mrs. Agostini pointed out the fact that this instrument sought to provide solutions to two problems generated by the copyright system. The first problem was generated by the fact that copyright was a territorial right, and that it did not allow for cross-border movements of accessible works, which meant duplicity of efforts and more resources to be made available. Brazil for instance had a large number of titles in accessible format. With such an agreement, it would be possible for Brazil to share such works with other Portuguese-speaking African countries including with Portugal which had less publications than Brazil in this area. The second problem, she stressed, was linked to the fact that very few countries have, in their legislation, exceptions and limitations. If there were a minimum set of exceptions included

in the legislation, the number of countries that would adopt this would grow substantially. There was clearly a need for such dispositions, which were also based on concrete demands from institutions such as the World Blind Union and other national institutions working in this field. Brazil had proposed, together with Chile, that this topic be included as a permanent topic on the agenda of the SCCR. The benefits, she added, would go beyond the IP system and would also have an impact on human and social rights established in several international conventions.

These discussions, she stressed, were also very much in line with the DA objectives. For the first time in WIPO, Member States were very close to agreeing upon instruments that were aimed at the balance of rights and at fostering the public interest. It was also important to realize that these instruments should not be seen as harmful to developing countries. Brazil, as one of the ten biggest publishing markets in the world and the fourth largest musical repertoire executed around the world, had no interest in weakening the protection of copyright, but based on the experience of other successful countries, it was important to find pragmatic solutions to the problems of libraries, educational institutions, and visually impaired people. Despite having achieved a lot of progress in this area, a lot of efforts were still needed to move forward in the negotiations. Partnerships and cooperation, in particular South-South cooperation, in this area would therefore be crucial.

3. Mr. Joseph Fometeu, Professor, Faculty of Legal and Political Sciences, University of Ngaoundéré, Cameroon, started his presentation by focusing on the concept of balance as a key concept in IP. IP, he stressed is based on a search for balance between IP rights holders and the right of society to have access to culture.

In Cameroon, he pointed out, the words “limitations” and “exceptions” were not explicitly used; however, the legislation referred to the concept of “free use”, looking at ways in which citizens could make use of works without the need to ask for previous permission of the right holders. While there are some common dispositions on exceptions and limitations in the field of libraries, archives, educational and research institutions dedicated to visual disabilities, in most cases there are none. In the situation where a country does not have exceptions or limitations regarding libraries and public archives, there was a need, he stressed, to make a distinction between a situation where the library belongs to an educational institution and the situation where it does not. If it does, which is the case in Cameroon, then the institution is subject to paying for copyright. Having paid to have access to these works, the institution is also paying for the right to use these works inside the library. If however the library is independent from an educational institution, then it must pay for copyright, which can curtail the diffusion of knowledge. With regard to limitations and exceptions for educational and research institutions, he stressed the fact that exceptions did not neutralize the right itself but mainly its exclusivity. With regard to the visually impaired and the fact that only eleven percent of Member States appeared to have some provisions, in Africa there were in fact only two countries in that situation: Nigeria and Cameroon. Even these two countries, he stressed, did not stipulate limitations and exceptions for the same situations. In this regard, the treaty currently under negotiation was therefore crucial. South-South cooperation in this area would also contribute to reaching important common goals. In this regard, it would be important for each State to start by defining its field of interest in order to identify where cooperation would be particularly beneficial.

GENERAL DISCUSSION

1. Answering a question from the Delegate of Malaysia with regard to the main obstacles to reaching an agreement on this issue, Mrs. Agostini stressed the fact that these topics were in fact at different levels of development within WIPO. The entire work had been towards the creation of exceptions and limitations that would not hinder copyright in any way but would rather allow for certain groups to grant access to culture to restricted or marginalized groups. As for progress within WIPO, she highlighted the fact that multilateral negotiations were always

slow but in this specific case, quite a lot of progress had been achieved and there were in fact very few divergences in the text.

2. The Delegate of Jamaica shared the information with the participants that, even in the absence of a treaty, Jamaica had already taken steps to amend its national copyright laws in this field, in cooperation with the Society for the Blind.

3. Taking into account the fact that there appeared to be very few points of convergences in this area, the Delegate of South Africa made an appeal for a South-South approach. Some challenges, he stressed, were linked to the fact, for instance, that there were many different languages in Africa and therefore many diverging patterns and trends. The solution, however, should be the adoption of an African position. There was also the need to see in Latin America or Asia for instance if there were common positions that could be adopted. In this regard, the Delegate of South Africa pointed to the need for more studies to create certain trends and patterns to agree on common positions. With regard to the balance of interest between authors and the public use, it was also important to look at the question of the economic, public and social impact of these exceptions and limitations and to undertake a cost-benefit analysis thereof.

4. From the point of view of Malaysia, the Delegate of Malaysia highlighted the fact that in his opinion, if all these exceptions were to be implemented internationally, the economic impact on copyright owners would be very little while the social impact would be very important. In this regard, he stressed the fact that Malaysia had also included most of these exceptions in its national copyright law. In his opinion, there was no need for impact studies in this field.

5. Referring to the TRIPS Agreement, the Delegate of Ghana mentioned that TRIPS had tried to come up with common standards of protection of IP with the clear recognition, however, that these provisions would have to be adapted and that there would be a need for limitations to these exclusive rights for the benefit of society. In this regard, the TRIPS Agreement states that Member States shall confine their limitations and exceptions to special cases only which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interest of the right holder. In approaching this question, there is therefore a need to seek a balance, looking on the one hand at the interest of the private sector (right owner) and on the other hand at the public interest and domain. For certain purposes, such as for instance in the case of libraries and educational institutions, there is clearly a need for limitations and exceptions, which in this case would be pro-development.

SIGNATURE OF MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF BRAZIL AND WIPO TO PROMOTE SOUTH-SOUTH COOPERATION ON IP

1. Welcoming Minister Marco Farani, Director of ABC, and Mr. Jorge Avila, President of INPI, Mr. Roca Campaña pointed out that the main goals of this Memorandum of Understanding (MoU) would be to promote a better use of IP in order to achieve better levels of social and economic development among developing countries and LDCs. In the near future, he stressed, the Government and Brazil and WIPO would present specific projects that would be negotiated with certain developing countries and LDCs on specific areas of IP development.

2. Very satisfied with this accomplishment, Minister Marco Farani, Director, ABC, stressed that the main objective of this MoU was for ABC, together with INPI, to promote South-South cooperation drawing on the Brazilian experience and making it available to other countries interested in specific areas or specific technologies, legislation or policies of Brazil. ABC and INPI, he added, would be financing this initiative with WIPO as a partner, counting on the knowledge and experience of WIPO in the implementation of these projects.

3. Mr. Avila, President, INPI, invited all countries to contact INPI with a view to developing new projects in a collaborative spirit. Some projects, he stressed, had already been carried out with Latin American neighbors and the objective of the MoU would be undertake similar projects with other regional groups. He referred for instance to the INPI academy on IP and development which could organize educational programs both in Brazil as well as in countries which would collaborate with Brazil under this new agreement.

4. Mr. Graça Aranha, Regional Director, WIPO Brazil Office, reiterated the importance, for WIPO, of achieving this agreement with Brazil, the fifth agreement of this nature with Brazil, but the first time that such an agreement would specifically focus on South-South cooperation.

TOPIC 11: COPYRIGHT AND RELATED RIGHTS AND THE PRESERVATION OF THE PUBLIC DOMAIN: STRIKING THE RIGHT BALANCE IN DEVELOPING COUNTRIES

1. To set the stage and brief participants on the state of play with regard to this topic, a short video statement by Mr. Victor Vazquez Lopez, Senior Legal Counselor, Copyright Law Division, WIPO, was screened.

In his statement, Mr. Vazquez Lopez stressed the fact that the WIPO DA had enhanced awareness of the importance of improving the delimitation, accessibility and preservation of the public domain. In this regard, a number of activities had been undertaken, including a number of surveys and studies such as a survey on voluntary registration legal deposit systems with a focus on registrations in the digital environment and orphan works, a survey on private registration systems operating in the online environment related to document ownership, and a survey on collective management repertoire databases and documentation. Collective management organizations, he stressed, hold a great wealth of information and this information is usually registered in repertoire databases that hold information about the different types of content, works and different types of creators, producers, authors etc. The survey therefore looks at the management of that information. He also referred to a study on the public domain in the field of copyright prepared by Professor Dusollier, which looks at the definition of the public domain and the challenges with regard to the preservation and accessibility of the public domain. The results of these surveys and studies, he added, were showcased in a Global Meeting on Copyright Infrastructure and Documentation in October 2011 which had led to a broad consensus on the need to interconnect different initiatives in infrastructure and documentation and to a growing realization that the same infrastructure and documentation that serves rights owners can often be used for public interest purposes.

With regard to the latest developments, Mr. Vazquez Lopez mentioned the follow-up to the recommendations of the study from Prof. Dusollier on copyright and the public domain, focusing on three different areas, as agreed by Member States: copyright relinquishment, copyright infrastructure, and WIPO's cooperation with UNESCO in the field of cultural heritage. These activities, he concluded, had been welcomed by Member States, as reflected in the external evaluation undertaken in this regard, which also highlighted the fact that there was new momentum and increased interest for the importance of the public domain both in the CDIP but also in other WIPO Committees.

2. Mrs. Marcia Regina Vicente Barbosa, Director, IP Rights, Ministry of Culture, Brazil, stressed the fact that the issue of the public domain was of crucial importance as it determines the extinction of copyright and other related rights over the work allowing for its commercial exploitation. Once the protection period has expired, she stressed, that same asset can be taken advantage of by society. The public domain imposed by law after the time of protection has expired differs according to the nature of the work and always obeys a minimum period according to international standards. This could happen right away with the works of deceased authors with no successors and with works that are not safeguarded by legal protection. The

public domain, she stressed, has the effect of ensuring the full social function of the dissemination of culture for the benefits of the entire society. Indeed, after the expiring of copyright, full access to this cultural wealth should be guaranteed. Referring to the extensive discussions which have taken place regarding the feasibility of the maximum period of protection for works, she highlighted the fact that the utmost concern for developing countries was the maximization of the works that had been going into public domain, i.e. the necessity to ensure access to these works. Developing countries, she stressed, should adopt a perennial policy in the IP area that identifies the works in the public domain. These efforts should be coordinated to ensure that the whole collection of mankind could be put at the service of development and would not be isolated from the developed countries' policies with regard to dissemination policies and access to material assets without increasing the gaps in terms of access to education, technology, knowledge and culture. Referring to the CDIP study on IP and the public domain, the study recognized that States would in fact need to bring together all the different legislations in order for them to be properly implemented.

Referring to registration activities, Mrs. Barbosa highlighted two challenges, i.e. aspects related to the operationalization of works in the respective registration offices, and how to make the registration process more attractive to public policy makers and part of the fundamental agenda of culture for the public domain. The Brazilian pre-legislative bill, she highlighted, was looking at a digital platform to register these works but wanted to go even beyond that and substantially increase the scope of the registration system to include the idea of a robust public domain which would be accompanied by the registration of works that were understood as being collective or free. Initially speaking, the focus would be on ensuring a reliable registration system for any works that were already in the public domain. The registration system would then be expanded to create a digital public works licensing platform that could be used by all free of charge. The registration of Brazilian works, she stressed, was of crucial importance. Determining that something is public domain requires not just information about its authorship but also a series of other information such as identifying successors/heirs, and the duration of protection. The proposed legislation would therefore impose that all editors and producers register the works produced under their responsibility and that all other social players contribute towards providing pertinent information.

While critics of such a registration system refer to the cumbersome administrative requirements linked to the registration procedure, they forget that such systems save time and prevent financial losses by increasing the volume of transactions related to intellectual works. WIPO, she added, had been discussing this in a collective platform with the stakeholders of the musical sector and many other artistic sectors, including internet service providers, with the establishment of the international music registry (IMR). At the forefront in this area, the IMR lays out basic principles such as the public nature of these types of works and the use of such registration for conceding licenses. It also serves as model for the interoperability of the model through open data/outourcing as well as unlimited access to data by any parties so long as this data is not classified.

The proposed text of the pre-legislative bill in Brazil, she concluded, had the objective of making the service of registration of copyright completely universal, with the understanding that such a database should be mandatory and managed by the Ministry of Culture.

3. At the international level, Mr. Ficsor, Chairman, CEECA, pointed out three 'layers' of relevant international norms, which can be found in the Berne/Rome Convention, the TRIPS Agreement, and the WIPO "Internet Treaties". In the Berne Convention, there were many exceptions and limitations, including those for freedom of speech, public information, educational purposes, facilitating broadcasting, facilitating recording of music, special treatment for developing countries etc. In order to allow more exceptions and limitations to be included, also in line with developmental needs, the "three-step test" had been introduced as the general criteria for exceptions and limitations. An interesting point to mention in this respect was the

work conducted in 1982 by a WIPO-UNESCO Working Group on Access by the Visually and Auditorily Handicapped to Works Protected by Copyright. The adopted model provisions included two versions: 1) complete free use, without payment for Braille and for special formats such as large print, and 2) the same concept but in the form of a compulsory licensing system. This, he stressed, had been adopted on the basis of the three-step test. If implemented properly, the test allowed for a great range of freedom and flexibility. The WIPO Internet Treaties further extended the application of the three-step test to control both the existing exceptions and limitations and those that may be applied concerning new rights. Referring to the Beijing Treaty adopted in July 2012, he stressed the fact that Article 13 of the Treaty also applied the three-step test.

Introduced in the Berne Convention on the right of reproduction, the three-step test was extended by the TRIPS Agreement to all economic rights under copyrights, industrial design rights and patent rights. The three-step test includes the following conditions: 1) exceptions and limitations may only be applied in certain special cases; 2) they should not conflict with normal exploitation; and 3) they should have no unreasonable prejudice to the legitimate interests of the owners of the rights. What is important is how these three steps are interpreted and applied. Referring to the first criteria on special cases, the idea is not only that the exceptions and limitations should be of a limited scope, but also that they should be justified by some sound legal-political reasons. The second step, which refers to the concept of no conflict with "normal exploitation", can be interpreted as not entering into economic competition with the works, i.e. it should not fully undermine the market. The third step refers to the idea of a balancing aspect and allows broad flexibility.

With regard to special principles and rules for developing countries, Mr. Ficsor referred to the TRIPS Agreement provisions which stipulate for instance that LDCs are not required to apply the provisions of the Agreement for a period of 10 years from the date of application except for some general obligations, and that the said grace period may be extended (at present it is extended until 2013). This principle, he stressed, could also be found in the Appendix to the Berne Convention which already recognized that LDCs could not yet fulfill the obligations under the Berne Convention and needed special treatment. This principle was still valid, but the provisions of the Appendix were out-of-date. It was recognized that special treatment was particularly needed for the purpose of teaching, systematic instructional activities, and research. However, he stressed, when the Appendix had been adopted in 1967, photocopying was not in use, not to mention digital technology and the Internet. How to apply the valid principles of the Appendix (also included by reference in the TRIPS Agreement) for LDCs in this new environment was, he concluded, certainly one of the important issues to be addressed.

ROUNDTABLE: FACING THE CHALLENGES OF THE CREATIVE INDUSTRIES IN DEVELOPING COUNTRIES AND COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS IN THE DIGITAL ENVIRONMENT

1. To set the stage and brief participants on the state of play with regard to this topic, a short video statement by Mr. Dimiter Gantchev, Deputy Director, Creative Industries Section, WIPO, was screened.

In his statement, Mr. Gantchev referred to the growing interest, in recent years, for the creative economy and for the cultural and creative industries. This interest, he stressed, was explained by the fact that many nations had turned to creativity as a source of inspiration, but also as a source of economic growth. WIPO had tried to support this interest through various research which had helped countries understand the power of the creative economy and the economic dimension of the cultural and creative industry sector. This sector, supported by copyright, provided a framework for the operation of creative markets and created stability and predictability for creators and right holders. With regard to the main challenges facing creative industries today, Mr. Gantchev pointed out the problem of educating creators and helping them

identify their creative assets and how they can better manage those assets to create additional income streams and make a better living. In this regard, he stressed, WIPO had been engaged in the production of a large number of training material and capacity building activities with creators throughout the world. A second challenge was how to ensure the adequate copyright infrastructure which would help creators operate in an environment which would be receptive to copyright standards and which could bring back the benefits to those creators, the time and efforts that they had invested in creating a work.

2. Given the current revenue models for authors (peer-to-peer networks, music sharing on blogs etc.), Mr. Cristiano Borges Lopes, General Coordinator, Copyright Regulation, IP Rights, Ministry of Culture, Brazil, introduced the topic by stressing its importance with regard to the exploitation of works in today's digital environment.

3. Mr. Ficsor, Chairman, CEECA, stressed the importance of collective management for the protection and promotion of cultural diversity. The *raison d'être* of collective management was in fact that certain rights could not be exercised appropriately on an individual basis. In addition to the basic functions of collective management - i.e. negotiating with users, licensing users, collecting money, and distributing to the right owners -, certain specific functions had emerged which were not just linked to the management of rights but also to the promotion of creativity. In the traditional system reflected in the model provisions between collective management organizations, it was foreseen that these societies may use a certain amount of the income for the promotion of creations and for social purposes. It was foreseen that ten percent of the income for the use of the repertoires would remain in the country and be used for such purposes. According to Mr. Ficsor, this percentage might be even higher in LDCs. Such a proposal, he stressed, had been considered once by the governing bodies of CISAC, but it had been rejected at that time.

Referring to the use of music on the internet, Mr. Ficsor gave the example of the model of Santiago Agreements (worked out at the Santiago de Chile congress of CISAC) based on the idea that collective management societies everywhere should be able to authorize the online use of music which has the closest relationship with the content provider; that is, in general, the society where the music has been uploaded (with distribution of the money between the different societies whose repertoires would be used). The Santiago Agreements, however, had to be abandoned due to rigidly interpreted European competition rules. Instead of them, a Recommendation was published in 2005, which, in a way, imitated the US system. Because of the countries' different languages and levels of development, this system was however not suitable in Europe. The ideal collective management system, Mr. Ficsor pointed out, was that there should be one single source of licensing in each country. However, with the new system in Europe, there were suddenly 27 or 30 sources, since although some all-European platforms were set up, the small societies continued to exist. As a result of the situation, the European Parliament adopted a Resolution in 2007 stressing that "national collective management organizations should continue to play an important role in providing support for the promotion of new and minority right-holders, cultural diversity, creativity and local repertoires". In this regard, a draft Directive on collective management had been published recently which tried to eliminate at least some of the problems created in 2005.

4. Mr. Borges Lopes pointed out that this was also very true for Brazil, where, in the area of music in particular, it had been discussed that all the societies be part of a bigger society for a unified license or single license system, in which such a unified system would control the cost of licensing for the users.

5. Focusing on the African interpretation of the collective management of digitized works, Mr. Ouattara, Director General, BBDA, Burkina Faso, stressed that the creative industry had indeed an important role to play in today's knowledge-based economies. Challenges could however be seen at several levels. While creative industries were indeed an interesting source

of development in Africa, the importance of this industry in Africa seemed to have been left aside. In view of the lack of studies and evidence as to the economic impact of these industries, some countries like Burkina Faso had started making studies to demonstrate what resources were available in this sector and what could be their potential impact. The development of the cultural industry, he added, strongly depended on the existence of a good legal framework and on collective management. These issues, he stressed, needed to be taken up by policy makers so that clear progress could be achieved. In this regard, collective efforts were clearly needed to bring to the attention of policy makers in developing countries the importance of the sector.

In terms of collective management, Mr. Ouattara recalled that African countries still faced numerous challenges related to collective management in the digital environment and that there was a need for more effective collective management at large. In order to move forward, there was a need to clearly identify what works were available, how these were being used and what types of contracts/licenses were being used.

6. Collective management, Mr. Drummond, Director General, IAB, Brazil, stressed, could be defined as an option to exercise a right. It was almost imposed when there was clearly impossibility for the right owner to exercise his or her rights, something which was particularly relevant in the music sector due to the technological developments in this field. In this regard, a number of basic principles had to be clearly observed when talking about collective management: transparency, both in the collection and in the distribution of money; balance with regard to charging and distribution; proportionality; efficiency; and effective collective participation. These principles, he stressed, had been neglected by many collective management organizations.

In the digital environment, it was important to understand the technological developments that had taken place. When talking about the dissemination of digital files, there was a need to analyze whether each right was a new right in cyberspace and whether the Internet/cable distribution carried within it broadcasting. In terms of collective management, it was also important to understand that the most relevant rights in terms of economic participation were the rights to communicate with the public and their equivalence in the digital market.

7. Mr. Claudio Lins de Vasconcelos, Senior Partner, *Lins de Vasconcelos Advogados Associados*, and Director-Rapporteur, Brazilian Association of Intellectual Property (ABPI), Brazil, referred in his presentation to the media industry and to the three main stages in the productive process in this field. In the first stage, IP was seen as an input and as a cost in terms of access to images, performances etc.; the second stage referred to media creation, production and distribution; and the third stage included the concept of IP as a product and revenue in the form of movies, books, reality shows etc. As a result of the digitalization of content, the third stage, he stressed, had become very ineffective and had led to a shift in the balance between costs and revenues in the media industry. The current industry, he added, was digital, multidirectional and multimediatic, i.e. it was an era of absolute convergence and interactiveness. This had greatly changed the structure behind any normative legal instrument, including IP. With this new digital environment, the balance of power has shifted with new players in the market, mostly in the consumption and distribution stages, where IP was seen mainly as a cost.

Since 2010, he added, there had been a mobile media revolution through the development of smart phones etc., and companies had started to understand the fact that even the most advanced phone in the world would be nothing without content. Without content, technology was in fact useless. In this regard, he stressed, there appears today to be a convergence of interests. The discussions about whether content should be free or not would no longer apply since it is understood, in the professional media sector, that there is no room for this debate. As an example, he referred to Google, which is today one of the greatest IP owners worldwide.

8. Mr. Borges Lopes also pointed out the fact that an important aspect in this area was the need to create regulatory frameworks that would add legal security in the field of the creative industries in the digital environment. He also supported Mr. Ouattara's point that there was clear lack of data in the field. The idea of a unified registration system would also help in identifying the total cultural production and to identify what business models and political options would be the most applicable and relevant in the field. In this regard, coordination at the international level would also have great benefits.

GENERAL DISCUSSION

1. Referring to the concept of a balance of interests in the digital online environment, Mr. Ficsor stressed the fact that a lot of materials were already available free of charge on the Internet (he referred for instance to the creative commons platform) but that this solution was only good for those who had other sources of income. Therefore, for mainstream copyright, appropriate business models were needed along with new means of enforcing copyright in which the cooperation and liability of intermediaries were decisive. Google for instance had agreed on an intelligent system with the Hollywood studios by developing a content filtering system. Under the agreement, he pointed out, the studios make available identification information and when the Google filtering system finds a match (i.e. that infringing materials/films are being made available), the studios instruct YouTube (owned by Google) what to do, taking into account three possible options: 1) taking the infringing copy down when, for instance, it is a new film that has just been released; 2) tracking the source without bothering the users for the time being (in relatively isolated concerning older films); or 3) monetizing, i.e. allowing that the materials remain on YouTube and share the advertisement revenues, taking into account the fact that a very high percentage of Google's income is generated from advertisements. He also referred to the concept of cloud technology which would make these issues even more complex in the future.

2. The Delegate of Libya highlighted the fact that another important issue for developing countries in this field was related to access to scientific publications and associated knowledge, which was often very costly.

3. Reacting to the Delegate of Libya's point about access to scientific publications, Mr. Roca Campaña highlighted a DA project which specifically dealt with the issue of access to technological information. In this context, WIPO had, in 2009, concluded a private partnership with publishers that own scientific and technical articles (ARDi) in which publishers had agreed to facilitate access to developing countries and LDCs free of charge, or at a very low access cost (free of charge for LDCs). For the developing countries that were not eligible for free of charge or low cost access, WIPO was negotiating with the publishers preferential access for industrial property offices. The publishers, in agreement with WIPO, had divided all developing countries and LDCs into different eligible groups and the countries would pay a contribution on the basis on the group in which they were classified. Other UN specialized agencies such as WHO, the Food and Agriculture Organization (FAO) and UNEP, had developed the same type of arrangement with the publishers in their respective fields of work.

4. Referring to the discussions on copyright and related rights and the preservation of the public domain, the Delegate of Ghana stressed the fact that Ghana had, since 1985, established a registration system which was very popular, to the extent that authors often believed that without registering they did not have adequate protection. The registration process had been manual until last year when WIPO had assisted Ghana with the automation of its registration procedures. In this regard, he asked Brazil about its experience with regard to the management of physical legal deposits and how it managed a situation in which information needed to be updated in the registration database.

5. Stressing the fact that the current registration system in Brazil was still manual and voluntary, Mrs. Barbosa pointed out the fact that the proposed digital registration platform would not contain any obligations to update the data, but that the State in control of the platform would have the obligation to look for the author in order to know the various types of use of that piece of work and identify potential successors/heirs, or any other information that would allow the State to find out when the work would go into public domain. With regard to legal deposits, Mrs. Barbosa mentioned the existence of legislation for the legal deposits of books in the national library, including phonograms. There was now an opportunity, from a legal perspective, to propose a system that would allow the authors and the State to have better control over the works, and in this regard, Mrs. Barbosa mentioned the fact that a visit to Chile was being planned, as Chile appeared to have one of the best working systems in Latin America in this regard.

6. In view of the discussions on the topic, Mr. Latif stressed the fact that it was important for developing countries to be aware of the existence of different views and models in this area. Some initiatives, such as for instance the creative commons, which had not been referred to extensively during the meeting, were very important in the digital environment and had to be taken into account when assessing the various models and options available. He pointed out for instance the fact that the World Bank had become, in July 2012, the first international organization to adopt creative common licenses for its content. Another important initiative to take into account was the open access movement, which promotes open access to educational resources. With regard to the three-step test, he also pointed out the fact that only one view had been represented but that there were other views on how this test should be applied.

He concluded by pointing out the fact that collective management was indeed an area in which South-South cooperation could play an important role, taking into account the fact that collective management was still a major challenge for developing countries and LDCs.

7. Supporting the initiative undertaken by the Ministry of Culture of Brazil, Mr. Drummond reiterated the importance of centralizing all the registrations as the existence of such a database would greatly help in identifying works that are part of the public domain and those that are not.

8. Referring to the WIPO ARDi initiative mentioned by Mr. Roca Campaña for access to publications, the Delegate of Kenya highlighted the fact that the Kenyan IP Office had recently subscribed to that initiative, shared the information with all relevant institutions nation-wide, but that a number of institutions had asked the IP Office for direct access to the platform without having to go through the Office. As indicated by WIPO, only IP Offices were to have access to the platform and other interested institutions were supposed to contact WIPO directly, which had led to a situation in which the interested institutions in Kenya had simply failed to contact anyone. In the end, the IP Office felt that it was only paying the subscription fee of 1000 USD but that nothing had really changed on the ground. In this context, he asked WIPO whether, in order to make this platform truly effective, it could reconsider providing access to other institutions, as opposed to holding it in the IP Office.

9. Acknowledging the situation, Mr. Roca Campaña stressed that WIPO was fully aware of these difficulties and that it was negotiating with the publishers the possibility of giving access to these institutions. The problem however was that publishers wanted each new institution interested in the platform to pay the relevant subscription fee. While WIPO was trying to reduce this amount for some countries, he also pointed out the fact that this was the same arrangement that had been negotiated with other UN organizations, and in this respect, the solutions would have to be negotiated and applied equally with all partner organizations.

10. Referring to the Brazilian registration system, Mr. Borges Lopes stressed the fact that from the moment a contract would be signed, the person would be mandated to register it into the public record system. It was also worth noting that while there were many voluntary

registration systems, the industry itself also had many private registration systems. The problem was that the State was not able to find out which works were part of the public domain and which ones could be used for economic or even social development purposes. A database, collectively managed, would therefore provide much more security and social control than a privately owned registration service. With regard to the difficulty in storing registrations, he stressed the fact that registrations would be mostly digital, but that there was also a policy by the Ministry of Culture, through the National Library Foundation, which stressed that there should also be a technical deposit.

11. With regard to registers and the publishing of works, the Delegate of South Africa also pointed out that the challenges were particularly immense when looking at TK, TCEs and other works that had not yet been documented and that had been passed on orally from one generation to the next. In South Africa, he stressed, a national recording system had been developed which would be made accessible through the Internet and would also be used as a register for TK and TCEs.

12. Reacting to Mr. Latif's remark about the need to focus on collective management in developing countries, the Delegate of Egypt stressed that the problem was mostly institutional and that WIPO should therefore not confine its activities to awareness-raising, meetings and seminars, but also draft some guidelines and models to assist developing countries in the process of establishing efficient institutions.

13. In this regard, Mr. Roca Campaña highlighted the fact that WIPO was already undertaking such types of technical assistance activities and would continue to do this as cooperation for development was in fact one of WIPO's main strategic objectives. He also highlighted the fact that WIPO had in the past developed a guide for the creation of collective management societies which had been updated with time, acknowledging the fact that more work should certainly be done in this regard.

CONCLUDING REMARKS

1. Referring to the three-day expert meeting, the Delegate of ARIPO asked about the output of the meeting and how it would feed into the Annual Conference scheduled to take place in September 2012 and whether any final recommendations could be formulated. His question, he stressed, was linked to the fact that a number of countries in the CDIP saw this South-South cooperation platform as a way to harmonize positions and strengthen the negotiating power of the South in different WIPO bodies on issues of concern to developing countries and LDCs.

2. In response to the Delegate of ARIPO's question, Mr. Roca Campaña stressed the fact that the WIPO Secretariat would prepare a report of the meeting, and, as noted, all discussions had been recorded and webcasted and all material would be made available on the WIPO website. Taking into account the short time lapse between the two events, the Secretariat would do its utmost for the report to be ready in time for the Annual Conference. The provisional agenda of the Annual Conference had already been circulated and all of the three main topics of the interregional meeting would be discussed in the context of the Conference. It had to be acknowledged however that this had been the first interregional meeting organized as part of the South-South project and that in this regard, no concrete recommendations or specific outputs had been foreseen.

3. Making a proposal on the way forward with regard to South-South cooperation, the Delegate of ARIPO stressed that it would be useful for subsequent meetings to be more strategic. As a technical expert body, it should provide the right type of information for subsequent conferences to be able to make informed decisions.

4. Having taken duly note of all the discussions, Mr. Roca Campaña reiterated the fact that no specific proposals could be made in the context of the meeting as it was not a negotiating body as such. The way forward, he stressed, was for WIPO to prepare a report of the meeting which would contain all the discussions and concerns raised by participants and which could then be taken further by concerned WIPO bodies. These could also become the object of new proposals in the framework of the DA. In the context of the meeting, WIPO was not mandated to come out with specific outcomes and recommendations. The main purpose of the meeting had been to initiate a process and to exchange experiences, best practices, and identify areas of interest for future work and South-South cooperation, which, he believed, had been achieved. WIPO had taken note of suggestions such as for instance the suggestion to organize further thematic meetings. The main 'outputs' of the meeting, he concluded, would be the recording of the meeting which would be put at the disposal of all Member States on the WIPO website and the report of the meeting which the Secretariat would prepare.

5. In reaction to the previous statements, the Delegate of South Africa stressed the fact that he had been striving all along to draw attention to the importance for Southern countries to use this platform to identify, as a group, common issues and create consensus to unblock some of the stumbling blocks in WIPO's negotiations. In this regard, he added, it would be of little significance to come to another meeting which only intended to share experiences without any concrete strategic inputs.

6. Taking into account the fact that most of the negotiations within WIPO were not moving forward because of a lack of consensus among WIPO's Member States, the Delegate of Namibia said that he was disappointed to hear that this meeting would not have any other outcome than merely the sharing of information. He was also of the view that developing countries and LDCs should at least come up with a position that would bring these countries together as a South-South group, stressing that, in his opinion, the meeting would otherwise be fruitless.

7. Reacting to this comment, Mr. Ghandour stressed the fact that the meeting had had a clear purpose which had been very well defined from the start, i.e. to deliberate about and discuss the three topics on the agenda, and that it could not be qualified as fruitless in this regard. The Annual Conference which would take place in Geneva, he stressed, could be used as a platform for Member States to take this discussion further. As mentioned, the Secretariat would prepare a report of the meeting which would be shared with Member States.

8. The Delegate of Namibia stressed the fact that Member States were only putting ideas across and that there was a strong feeling among Member States that this meeting should come up with recommendations, without the need for them to be adopted. Without such an output, the meeting, he reiterated, would feel like a fruitless process.

9. Having taken note of the ARIPO, South Africa and Namibia delegates' suggestions, Mr. Roca Campaña reiterated the fact that no recommendations could be made taking also into account the fact that not all Member States were represented in this forum. While the process of South-South cooperation had been initiated through this exchange of experiences, it was also important to highlight that many other activities would be undertaken in the context of this two-year project, in line with its mandate and objectives.

10. Referring to the question on how to move forward with this project, the Delegate of Egypt stressed that it was important to be aware of the fact that it was a project adopted for two years only. It was however the intention of Egypt to see the possibility of extending it as part of the continuous work of WIPO. The recommendations made by the ARIPO, South Africa and Namibia delegates were indeed valid and, as mentioned by the WIPO Secretariat, they would be clearly mentioned in the report and developing countries and LDCs would be building more

on this in Geneva and it would in fact be a clear recommendation during the Annual Conference on September 28, 2012.

11. Mr. Ficsor highlighted the fact that some proposals had emerged in the context of the meeting discussions such as, for instance, the suggestion to have more focused meetings and concrete proposals in the field of collective management. If this was highlighted in the report, it would already serve a useful purpose. Further concrete proposals, he added, would be much easier to formulate in the context of more focused thematic meetings.

12. Stressing the fact that the project had been approved by the CDIP for a limited period of two years and that it would be evaluated after completion, Mr. Ghandour highlighted the fact that the recommendations emanating from the evaluation could include discontinuation, a phase two extension or mainstreaming into WIPO's work. It was also important to be aware of the fact that the project had a limited budget and scope and that it was not possible, due to its funding limitations, to extend the scope of the project to include additional activities. However, he added, if either a phase two or mainstreaming were to be proposed, all the deliberations and proposals made by Member States during the two-year project would certainly be taken into account. In this respect, it should also be noted that other WIPO Divisions could take some of these recommendations into account.

CLOSING

1. In his concluding remarks, Mr. Paulo Mesquita, Head, Economic Department, Ministry of External Relations, Brazil, thanked WIPO for its leadership and cooperation and all Brazilian partners for their contribution to the meeting. Taking the opportunity to remind participants that the DA had a very short history and was still a learning process both for WIPO as well as for its Member States, he stressed the fact that the meeting had achieved its objective which was to share experiences.

Referring to the comments made by a number of delegates, he stressed the fact that Brazil had, in the past, had similar concerns about such technical meetings with regard to coming up with recommendations. He pointed out, however, that there was an issue with regard to the approval and way forward should such recommendations be formulated since not all Member States were present in these types of non-Geneva based meetings. What was important was therefore to build real cooperation among developing countries and LDCs which required common understanding and political will. Achieving this, he added, would already greatly contribute to strengthening the effectiveness of the DA. He concluded by pointing out the fact that Brazil, despite huge steps forward, still felt that it had a lot to learn from other developing countries and that in this regard, South-South cooperation would be a particularly valuable platform.

2. In conclusion, Mr. Roca Campaña reiterated the fact that IP was not an end in itself but a means to achieve an end, i.e. the development of all countries. In this regard, he stressed, he believed that the meeting had been an important step in terms of enhancing South-South cooperation. As mentioned, all the discussions had been recorded and webcasted and the video would be made available for consultation by all Member States. The WIPO Secretariat would also be working on other deliverables foreseen under the DA project such as, for instance, the development of a dedicated webpage as a one-stop facility for all developing countries in the field of South-South cooperation on IP, and it would also work on the development of an interactive portal for which a questionnaire would be circulated by the Secretariat to the Member States asking for concrete inputs with regard to its content.

Thanking the Government of Brazil, and in particular the Ministry of External Relations for the excellent arrangements made for the meeting, the Ministry of Culture, and all Ministries who had taken part in the meeting and had shared the experience of Brazil on the various topics under

discussion, Mr. Roca Campaña concluded by expressing his gratitude to all the speakers and participants for their valuable contributions and for helping in identifying issues that would need further attention in the future.

[Annexes follow]



GOVERNMENT OF BRAZIL



INTERREGIONAL MEETING

**WIPO/IP/GRTKF/BRA/12/INF/1 PROV.
ORIGINAL: ENGLISH
DATE: AUGUST 8, 2012**

First WIPO Interregional Meeting on South-South Cooperation on Intellectual Property (IP) Governance; Genetic Resources, Traditional Knowledge and Folklore (GRTKF) and Copyright and Related Rights

jointly organized by
the World Intellectual Property Organization (WIPO)

and
the Ministry of External Relations of the Government of Brazil

Brasilia, August 8 to 10, 2012

PROGRAM

prepared by the International Bureau of WIPO

Wednesday, August 8, 2012

8.30 – 9.00 Registration

9.00 – 9.30 Opening Ceremony

Welcome addresses by:

Alejandro Roca Campaña, Senior Director-Advisor, Global Infrastructure Sector, WIPO, Geneva, Switzerland

Jorge Avila, President, National Institute of Industrial Property (INPI), Rio de Janeiro, Brazil

Kenneth Nobrega, Head, Intellectual Property Division (DIPI), Ministry of External Relations, Brasília

9.30 – 10.00 Topic 1: Traditional Knowledge (TK), Traditional Cultural Expressions (TCEs) and Genetic Resources (GR): Current Situation, Progress and Main Issues at the WIPO Inter-Governmental Committee (IGC)

Speaker: Yonah Ngalaba Seleti, Chief Director, Department of Science and Technology, Indigenous Knowledge System, Pretoria

10.00 – 10.30 Coffee Break

10.30 – 11.30 Topic 2: National Experiences in the Protection of TK, TCEs and GR

Speakers: Emmanuel Sackey, Chief Examiner, African Regional Intellectual Property Organization (ARIPO), Harare

Rachel-Claire Okani Abengue, Professor, University of Yaoundé II, Faculty of Law and Political Sciences, Yaoundé

Lilyclaire Bellamy, Deputy Director/Legal Counsel, Jamaican Intellectual Property Office (JIPO), Kingston

Lim Heng Gee, Professor, Faculty of Law, University Teknologi MARA, Shah Alam, Malaysia

11.30 – 12.15 Topic 3: Facilitating International Cooperation in Particular, South-South Cooperation in Using the Intellectual Property System for the Protection of TK, TCEs and GR

Speaker: Manuel Ruiz Muller, Director and Principal Researcher, International Affairs and Biodiversity Program, Peruvian Society for Environmental Law (SPDA), Lima

Paul Kuruk, Executive Director, Institute for African Development, Accra

Emmanuel Sackey

- 12.15 – 13.15 Roundtable: Protection of TK, TCEs and GRs. General discussion on Topics 1, 2 and 3
- Moderator: Carlos Roberto de Carvalho Fonseca, Deputy Head, Unit of International Affairs, Ministry of Environment, Brasília
- Panelists: Yonah Ngalaba Seleti
- Lilyclaire Bellamy
- Paul Kuruk
- Rachel-Claire Okani Abengue
- Lim Heng Gee
- Manuel Ruiz Muller
- Mihály Ficsor, Chairman, Central and Eastern European Copyright Alliance (CEECA), Budapest
- 13.15 – 15.15 Lunch Break
- 15.15 – 16.15 Topic 4: Promoting Synergies between Intellectual Property (IP) Governance and South-South Cooperation on IP and Development
- Speakers: Jorge Avila
- Ahmed Abdel Latif, Senior Programme Manager, Programme on Innovation, Technology and Intellectual Property, International Centre for Trade and Sustainable Development (ICTSD), Geneva, Switzerland
- Nirmalya Syam, Programme Officer, Innovation and Access to Knowledge Programme, South Centre, Geneva Switzerland
- 16.15 – 16.45 Coffee Break
- 16.45 – 17.15 Topic 5: IP as a Tool in Addressing Main Challenges of Global Knowledge Governance in the Areas of Climate Change, Food Security, Internet, Innovation and Public Health
- Speakers: Anatole Krattiger, Director, Global Challenges Division, WIPO, Geneva, Switzerland
- Filipe Teixeira, Manager of Intellectual Property, The Brazilian Agricultural Research Corporation (EMPRAPA), Brasília

- 17.15 – 17.45 Topic 6: Main Challenges of Global Knowledge Governance in the Field of IP: Civil Society and Various Stakeholders. General Discussion
- Speakers: Diana de Mello Jungmann, IP Program Coordinator, National Confederation of Industry (CNI), Brasília
- Pedro Paranagua, Entrepreneurial Law Professor, *Fundação Getulio Vargas* (FGV), Rio de Janeiro, Technical advisor on digital media, cybercrimes, copyright and patents, Labor Party
- 17.45 – 18.30 General Discussion on Topics 4, 5 and 6

Thursday, August 9, 2012

- 9.00 – 10.00 Roundtable: South-South Cooperation to Use IP for Development Goals. The Role and Status of the Development Agenda Process in WIPO
- Moderator: Alejandro Roca Campaña
- Panelists: José Graça Aranha, Regional Director, WIPO Brazil Office, Rio de Janeiro, Brazil
- Ahmed Abdel Latif
- Marcio Lopez Correa, Coordinator for Multilateral Received Technical Cooperation, Brazilian Cooperation Agency (ABC), Ministry of External Relations, Brasília
- Georges Ghandour, Senior Program Officer, Development Agenda Coordination Division, WIPO, Geneva, Switzerland
- 10.00 – 10.30 Coffee Break
- 10.30 – 11.00 Topic 7: South-South Cooperation in Establishing Development Oriented Approaches to Building Respect for IP, Addressing Benefits, Costs and Balancing Rights
- Speaker: Dissanayake Mudiyansele Karunaratna, Director, National Intellectual Property Office (NIPO), Colombo
- 11.00 – 12.00 Topic 8: International Protection of Audiovisual Works and Performances. National Experiences concerning Protection of Audiovisual Works and Performances
- Speakers: Balamine Ouattara, Director General, Burkinabé Copyright Office (BBDA), Ouagadougou
- Victor Drummond, Director General, Inter Artis Brasil (IAB), Rio de Janeiro, Brazil
- 12.00 – 14.00 Lunch Break

- 14.00 – 15.30 Topic 9: International Protection of Broadcasting Organizations.
National Experiences Concerning Protection of Broadcasting Organizations
- Speakers: Octavio Pieranti, Director, Department of Monitoring and Evaluation, Secretariat of Electronic Communication Services, Ministry of Telecommunications, Brasília
- Joseph Fometeu, Professor, University of Ngaoundéré, Ngaoundéré, Cameroon
- 15.30 – 16.00 Coffee Break
- 16.00 – 17.30 Topic 10: Copyright Limitations and Exceptions for Libraries, Archives, Educational and Research Institutions and for Visually Impaired Persons. National Experiences and South-South Cooperation
- Speakers: Natasha Pinheiro Agostini, Secretary, Intellectual Property Division (DIPI), Ministry of External Relations, Brasília
- Joseph Fometeu
- 17.30 – 18.00 General Discussion on Topics 8, 9 and 10

Friday, August 10, 2012

- 9.00 – 10.00 Topic 11: Copyright and Related Rights and the Preservation of the Public Domain: Striking the Right Balance in Developing Countries
- Speakers: Marcia Regina Vicente Barbosa, Director, Intellectual Property Rights, Ministry of Culture, Brasília
- Mihály Ficsor

- 10.00 – 11.00 Roundtable: Facing the Challenges of the Creative Industries in Developing Countries and Collective Management of Copyright and Related Rights in the Digital Environment. International and Regional Perspectives
- Moderator: Cristiano Borges Lopes, General Coordinator, Copyright Regulation, Intellectual Property Rights, Ministry of Culture, Brasília
- Panelists: Mihály Ficsor
- Balamine Ouattara
- Victor Drummond
- Cláudio Lins de Vasconcelos, Senior Partner at Lins de Vasconcelos Advogados Associados, Director-Rapporteur at the Brazilian Association of Intellectual Property (ABPI), Rio de Janeiro
- 11.00 – 11.30 Coffee Break
- 11.30 – 12.00 Roundtable (continued)
- 12.00 – 13.00 Evaluation
- 13.00 Closure

[Annex II, follows]



GOVERNMENT OF BRAZIL



INTERREGIONAL MEETING

**WIPO/IP/GRTKF/BRA/12/INF/2 PROV.
ORIGINAL: ENGLISH
DATE: AUGUST 8, 2012**

First WIPO Interregional Meeting on South-South Cooperation on Intellectual Property (IP) Governance; Genetic Resources, Traditional Knowledge and Folklore (GRTKF); and Copyright and Related Rights

jointly organized by
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and
the Ministry of External Relations of the Government of Brazil

Brasilia, August 8 to 10, 2012

LIST OF PARTICIPANTS AND SPEAKERS

prepared by the International Bureau of WIPO

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[End of Annex II and of document]