

# Geneva Declaration on the Future of the World Intellectual Property Organization October 2004

Humanity faces a global crisis in the governance of knowledge, technology and culture. The crisis is manifest in many ways.

- \* Without access to essential medicines, millions suffer and die;
- \* Morally repugnant inequality of access to education, knowledge and technology undermines development and social cohesion;
- \* Anticompetitive practices in the knowledge economy impose enormous costs on consumers and retard innovation;
- \* Authors, artists and inventors face mounting barriers to follow-on innovation;
- \* Concentrated ownership and control of knowledge, technology, biological resources and culture harm development, diversity and democratic institutions;
- \* Technological measures designed to enforce intellectual property rights in digital environments threaten core exceptions in copyright laws for disabled persons, libraries, educators, authors and consumers, and undermine privacy and freedom;
- \* Key mechanisms to compensate and support creative individuals and communities are unfair to both creative persons and consumers;
- \* Private interests misappropriate social and public goods, and lock up the public domain.

At the same time, there are astoundingly promising innovations in information, medical and other essential technologies, as well as in social movements and business models. We are witnessing highly successful campaigns for access to drugs for AIDS, scientific journals, genomic information and other databases, and hundreds of innovative collaborative efforts to create public goods, including the Internet, the World Wide Web, Wikipedia, the Creative Commons, GNU Linux and other free and open software projects, as well as distance education tools and medical research tools. Technologies such as Google now provide tens of

millions with powerful tools to find information. Alternative compensation systems have been proposed to expand access and interest in cultural works, while providing both artists and consumers with efficient and fair systems for compensation. There is renewed interest in compensatory liability rules, innovation prizes, or competitive intermediators, as models for economic incentives for science and technology that can facilitate sequential follow-on innovation and avoid monopolist abuses. In 2001, the World Trade Organization (WTO) declared that member countries should "promote access to medicines for all."

Humanity stands at a crossroads - a fork in our moral code and a test of our ability to adapt and grow. Will we evaluate, learn and profit from the best of these new ideas and opportunities, or will we respond to the most unimaginative pleas to suppress all of this in favor of intellectually weak, ideologically rigid, and sometimes brutally unfair and inefficient policies? Much will depend upon the future direction of the World Intellectual Property Organization (WIPO), a global body setting standards that regulate the production, distribution and use of knowledge.

A 1967 Convention sought to encourage creative activity by establishing WIPO to promote the protection of intellectual property. The mission was expanded in 1974, when WIPO became part of the United Nations, under an agreement that asked WIPO to take "appropriate action to promote creative intellectual activity," and facilitate the transfer of technology to developing countries, "in order to accelerate economic, social and cultural development."

As an intergovernmental organization, however, WIPO embraced a culture of creating and expanding monopoly privileges, often without regard to consequences. The continuous expansion of these privileges and their enforcement mechanisms has led to grave social and economic costs, and has hampered and threatened other important systems of creativity and innovation. WIPO needs to enable its members to understand the real economic and social consequences of excessive intellectual property protections, and the importance of striking a balance between the public domain and competition on the one hand, and the realm of property rights on the other. The mantras that "more is better" or "that less is never good" are disingenuous and dangerous -- and have greatly compromised the standing of WIPO, especially among experts in intellectual property policy. WIPO must change.

We do not ask that WIPO abandon efforts to promote the appropriate protection of intellectual property, or abandon all efforts to harmonize or improve these laws. But we insist that

WIPO work from the broader framework described in the 1974 agreement with the UN, and take a more balanced and realistic view of the social benefits and costs of intellectual property rights as a tool, but not the only tool, for supporting creativity intellectual activity.

WIPO must also express a more balanced view of the relative benefits of harmonization and diversity, and seek to impose global conformity only when it truly benefits all of humanity. A "one size fits all" approach that embraces the highest levels of intellectual property protection for everyone leads to unjust and burdensome outcomes for countries that are struggling to meet the most basic needs of their citizens.

The WIPO General Assembly has now been asked to establish a development agenda. The initial proposal, first put forth by the governments of Argentina and Brazil, would profoundly refashion the WIPO agenda toward development and new approaches to support innovation and creativity. This is a long overdue and much needed first step toward a new WIPO mission and work program. It is not perfect. The WIPO Convention should formally recognize the need to take into account the "development needs of its Member States, particularly developing countries and least-developed countries," as has been proposed, but this does not go far enough. Some have argued that the WIPO should only "promote the protection of intellectual property," and not consider, any policies that roll back intellectual property claims or protect and enhance the public domain. This limiting view stifles critical thinking. Better expressions of the mission can be found, including the requirement in the 1974 UN/WIPO agreement that WIPO "promote creative intellectual activity and facilitate the transfer of technology related to industrial property." The functions of WIPO should not only be to promote "efficient protection" and "harmonization" of intellectual property laws, but to formally embrace the notions of balance, appropriateness and the stimulation of both competitive and collaborative models of creative activity within national, regional and transnational systems of innovation.

The proposal for a development agenda has created the first real opportunity to debate the future of WIPO. It is not only an agenda for developing countries. It is an agenda for everyone, North and South. It must move forward. All nations and people must join and expand the debate on the future of WIPO.

There must be a moratorium on new treaties and harmonization of standards that expand and strengthen monopolies and further restrict access to knowledge. For generations WIPO has responded

primarily to the narrow concerns of powerful publishers, pharmaceutical manufacturers, plant breeders and other commercial interests. Recently, WIPO has become more open to civil society and public interest groups, and this openness is welcome. But WIPO must now address the substantive concerns of these groups, such as the protection of consumer rights and human rights. Long-neglected concerns of the poor, the sick, the visually impaired and others must be given priority.

The proposed development agenda points in the right direction. By stopping efforts to adopt new treaties on substantive patent law, broadcasters rights and databases, WIPO will create space to address far more urgent needs.

The proposals for the creation of standing committees and working groups on technology transfer and development are welcome. WIPO should also consider the creation of one or more bodies to systematically address the control of anticompetitive practices and the protection of consumer rights.

We support the call for a Treaty on Access to Knowledge and Technology. The Standing Committee on Patents and the Standing Committee on Copyright and Related Rights should solicit views from member countries and the public on elements of such a treaty.

The WIPO technical assistance programs must be fundamentally reformed. Developing countries must have the tools to implement the WTO Doha Declaration on TRIPS and Public Health, and "use, to the full" the flexibilities in the TRIPS to "promote access to medicines for all." WIPO must help developing countries address the limitations and exceptions in patent and copyright laws that are essential for fairness, development and innovation. If the WIPO Secretariat cannot understand the concerns and represent the interests of the poor, the entire technical assistance program should be moved to an independent body that is accountable to developing countries.

Enormous differences in bargaining power lead to unfair outcomes between creative individuals and communities (both modern and traditional) and the commercial entities that sell culture and knowledge goods. WIPO must honor and support creative individuals and communities by investigating the nature of relevant unfair business practices, and promote best practice models and reforms that protect creative individuals and communities in these situations, consistent with norms of the relevant communities.

Delegations representing the WIPO member states and the WIPO

Secretariat have been asked to choose a future. We want a change of direction, new priorities, and better outcomes for humanity. We cannot wait for another generation. It is time to seize the moment and move forward.

<http://www.cptech.org/ip/wipo/futureofwipodeclaration.html>