

IP Justice Report

on the 2nd IIM of the
WIPO Development Agenda
20-22 June 2005

Debate on Proposals to Reform WIPO Begins Despite Delays: Friends of Development Coalition Maintains Strong Front Against US/UK/EU

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I. Background on the Development Agenda and Call for Reform at WIPO

IP Justice was one of a handful of public-interest NGO's accredited to participate at the Development Agenda meetings at the World Intellectual Property Organization (WIPO), a UN Specialized Agency this summer. The Development Agenda is a proposal adopted by WIPO's General Assembly to reform WIPO's tendency to blindly increase intellectual property rights without consideration of the public interest or the social costs of those expanded rights.

After WIPO's General Assembly adopted the [proposal](#) in fall 2004, three meetings were scheduled for the summer 2005 to consider the proposal and make recommendations to the General Assembly in fall 2005. The first Intergovernmental Intercessional Meeting (IIM) was held from 13-15 April 2005. The second IIM was held 20-22 June 2005, and the third and final IIM is scheduled for 20-22 July 2005 in Geneva.

The first IIM debate focused on the process and structure of the forthcoming discussions. Due largely to delay tactics by WIPO's Secretariat and developed countries, not until the middle of the second IIM did any substantive discussion take place regarding the Development Agenda.

At the second IIM session, IP Justice provided a [floor paper](#) supporting the Development Agenda and IP Justice delivered an [intervention statement](#) during the meeting on 20 June 2005.

The 14-country coalition of developing countries, led by Brazil and Argentina, called the "Friends of Development"¹ advocated for the [Development Agenda](#) as further elaborated

IP Justice is an international civil liberties organization that promotes balanced intellectual property laws (www.ipjustice.org).

in their [proposal of 6 April 2005](#). The US [proposed](#) an agenda that calls for only minor and technical reform at WIPO, and the UK provided another [submission](#) supporting the US view on the Development Agenda.

At the Second IIM, [Bahrain](#) curiously submitted a proposal praising WIPO and advocating for the UK/US position on the Development Agenda. However, soon after Bahrain's proposal was published, its legitimacy was called into [question](#) since the King of Bahrain had recently signed the "[Doha Plan of Action](#)" an agreement reached by the Heads of State and Government of the Group of 77 and China that pledged support for the proposals contained in the Friends of Development proposal.²

II. Battle to Set Discussion for the Development Agenda: Despite WIPO/US Stalling, Friends of Development Begin Substantive Debate

The Second IIM opened with confusion regarding the structure of the ensuing debate. WIPO's Secretariat proposed an agenda for discussion that consisted of 4 general "[Clusters and Possible Topics](#)". The Secretariat's proposal for discussion lacked any of the concrete proposals adopted by the General Assembly last fall or any subsequent proposals made by Member Countries. In what appeared to be an effort to stall any substantive discussion on existing proposals, the Secretariat's agenda consisted of only dozens of general topics for possible discussion.

A number of Member Countries including India, Brazil, Chile, the African Group, Argentina, Iran, Pakistan, and South Africa immediately complained about the unproductive discussion agenda, and instead called for a debate on specific action-oriented proposals that had been on the table for months. The US led the other side of this debate, advocating for no discussion of substantive proposals, but rather general discussion of possible clusters of issues as proposed by the Secretariat, with support from the UK, Switzerland, and the European Union.

Brazil and the Friends of Development eventually won this important and hard fought battle, because in the afternoon of the second day of the meeting, the discussion [agenda](#)

¹ "The Group of Friends of Development" includes Argentina, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania, and Venezuela.

² Para 8.(vii)(b): "We call: ... on WIPO, as a UN Agency, to include in all its future plans and activities including legal advice a development dimension that includes promoting development and access to knowledge for all, pro-development friendly principles and guidelines for the provisions of technical assistance and the transfer and dissemination of technology." *Doha Plan of Action*, Second South Summit, Doha, Qatar, 12-16 June 2005 (G-77/SS/2005/2) available at: http://www.ipjustice.org/WIPO/Doha_Declaration_G-77.pdf

was re-set to focus on specific action-oriented proposals already submitted by Member Countries as well as a few new proposals by the United States, Morocco, and a coalition of Arab states. But already, one-and-a-half-days of the three-day meeting had been wasted on debating the Secretariat's proposal for clusters of topics before any substantive discussion on the Development Agenda could take place.

Had the US and the WIPO Secretariat been successful in setting the agenda as general topic discussions, it would have virtually assured that no concrete proposals could be made in time for the final report to the General Assembly, and thus the Development Agenda would have essentially been "dead in the water" at this meeting.

With only one scheduled meeting to go, it remains to be seen whether the coalition of developing countries will be able to fend off attacks by the US and the Secretariat to further derail discussion in order to make concrete proposals for a Development Agenda to the General Assembly by the 30 July 2005 deadline.

III. Specific Proposals to Reform WIPO Debated at 2nd IIM

One of the controversial issues debated was whether WIPO should create an independent **WIPO Research and Evaluation Office (WERO)** to assess the impact on development of WIPO's activities and report directly to the General Assembly. The US/UK were staunchly against the creation of WERO and instead proposed that an existing body, the Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD) deal with all development issues at WIPO. Developing countries suggested that relegating development concerns to PCIPD was analogous to "dumping them in a trash can", where no real action or reform could take place.

Another important action item for the Development Agenda is **amending WIPO's mandate** to make it conform more closely with the humanitarian objectives of the United Nations. Developing countries have expressed frustration by WIPO's growing focus on promoting private business interests at the expense of the general public welfare.

The Chair of the Secretariat, Rigoberto Gauto Vielman, the Ambassador from Paraguay, stated that WIPO's objectives are "to promote the protection of intellectual property throughout the world."³ The US delegation agreed, frankly stating that, "WIPO is for promoting IP protection."

This objective sharply clashes with Article 1 of WIPO's agreement with the United Nations, which states its objective: "for promoting creative intellectual activity and for

³ Article 3 from the Convention Establishing the World Intellectual Property Organization.

facilitating the transfer of technology related to industry property to the developing countries in order to accelerate economic, social, and cultural development ...”⁴.

A clarification is needed regarding WIPO’s proper objective, to prevent it from working against the greater humanitarian goals of the United Nations. As a UN Agency, WIPO’s primary obligation is to promote the public interest, a principle that must be re-infused in all WIPO norms and activities. Indeed, the growing subordination of public to private interests at WIPO gives the United Nations a black eye and undermines the UN’s credibility as a humanitarian organization.

Led by India, developing countries argued that intellectual property should not be viewed as an end in and of itself, but rather should be pursued as a means to promote the greater social good. They called for an **end to the “strong IP culture”** at WIPO that blindly works toward increasing intellectual property rights without any weighing of the social costs associated with the expanded rights. Brazil cited WIPO’s current initiative on patents, which does not take development goals into account at all. The Canadian delegation admitted that proposals made by developed countries in fact go beyond existing international obligations regarding intellectual property rights.

Developing countries also overwhelming support the proposed [Access to Knowledge Treaty](#) that would ensure more widespread access to textbooks, library and educational materials so sorely needed in the developing world.

Apparently frustrated and forgetting Swiss diplomacy, the Swiss delegate boldly asserted that developing countries are themselves “standing in the way of their own development” by supporting the Friends of Development proposal, and that “civil society misunderstands intellectual property.” Imperialism is alive and well at WIPO.

Brazil articulated the need for flexibility in tailoring intellectual property rights with a country’s particular economic and social needs, a point supported by many developing countries throughout the meeting. WIPO’s current approach of “one size fits all” (XL) for setting IP rights among nations will only increase the gap in access to knowledge and medicines between developed and developing nations.

Another issue debated was WIPO’s need to include more **civil society participation** from public interest groups in the discussions. Brazil noted that rightsholders groups have dominated at WIPO, but participation from all stakeholders, including consumers is needed to create balanced laws. Brazil suggested that WIPO should hold public hearings on matters prior to creating proposals for new IP laws. WIPO does not presently have any means of receiving general public input regarding its processes and activities.

With little public accountability and participation, WIPO’s Secretariat has been able to drive the discussion on many topics for years with little interference from opposing

⁴ Article 1 from the Agreement Between the United Nations and WIPO (1974).

views. Member Countries resoundingly called for WIPO to become more **member-driven**, a necessary component to all legitimate law-making bodies. The lack of transparency in WIPO's work plan and strategic vision was also widely criticized during the debate by developing countries.

The US delegation flatly stated its opposition to the Friends of Development proposal, claiming that, "development must not be a pretext for diluting international IPR regimes." The US stated it was against adopting principles and guidelines for norm-setting activities at WIPO, and against the proposal to undertake independent evidence-based development impact assessments. The US also recorded its objection to the proposal to hold public hearings prior to the initiation of proposals on the matter.

One technique used frequently in the debate by opponents to the Development Agenda was to mischaracterize the debate as being either "pro intellectual property rights" or "against intellectual property rights". The US, UK, Switzerland, and the EU waxed on repeatedly about the benefits of intellectual property rights without any acknowledgement of their social costs and accusing those who call for a balance as "anti-IP".

Despite the simplistic rhetoric, the Development Agenda is not about undermining intellectual property rights per se, but rather, about ensuring that the scope and level of the rights are set appropriately. Rather than address the merits of specific proposals for reform, the strategy of the developed countries is to attack the motives of the developing countries and to mischaracterize the Development Agenda as "anti-intellectual property", something analogous to "anti-motherhood" at WIPO.

IV. Looking Ahead to 3rd IIM: Recommendations to the General Assembly

On the afternoon of the final day of the 2nd IIM, the WIPO Secretariat unexpectedly proposed ending discussion an hour earlier than scheduled, but a number of countries objected to the proposal and asked that the substantive discussions be allowed to continue until the official end of the meeting at 6pm on 22 June 2005.

The 2nd IIM ended with no real conclusion, since it was only in the beginning of the substantive debate on the Development Agenda. A [Summary by the Chair](#) was adopted on 22 June 2005 that lists 25 specific proposals for continued debate at the 3rd IIM on 20-22 July 2005 in Geneva. Also, the Secretariat stated that new proposals may be received prior to the 3rd IIM for debate at that final meeting as well.

A Draft Report of the 2nd IIM will be prepared by the Secretariat and made available on WIPO's website by 4 July 2005. Comments on the Draft Report must be submitted in writing by 11 July, and the revised Draft Report will then be made available and adopted at the beginning of the 3rd IIM session from 20-22 July 2005.

At the conclusion of the 3rd IIM, Member Countries should adopt specific recommendations to the General Assembly for a Development Agenda at WIPO. The final reports of the three IIM sessions together with the draft decisions and recommendations will constitute “the Report to the General Assembly” as mandated by the General Assembly in the fall of 2004.