



Outcome of the Assemblies of the Member States of the World Intellectual Property Organization 2016

By Nirmalya Syam and Yujiao Cai

Summary

The fifty-sixth series of meetings of the Assemblies of the Member States of the World Intellectual Property Organization (WIPO) were held on 3-11 October 2016. They concluded with no agreement among member States on key issues, such as whether to convene a Diplomatic Conference for adoption of the Design Law Treaty (DLT) and the establishment of new WIPO External Offices for the 2016/17 biennium. Developed countries remained opposed to the inclusion of any provision in the DLT on technical assistance and disclosure of origin or source of a design based on traditional knowledge, traditional cultural expressions or genetic resources. The General Assembly (GA) agreed to establish two new WIPO External Offices in Africa, yet there was no agreement on the establishment of a third External Office in another region, in the face of competing hosting proposals from within and across different regions.

The GA adopted a revised Internal Oversight Charter based on the recommendations of the Independent Advisory Oversight Committee (IAOC). With the entry into force of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled on 30 September 2016, the first meeting of the Marrakesh Assembly was held as part of the WIPO Assemblies.

The Assemblies are the main policy and decision-making bodies of WIPO. At the General Assembly,

Member States take stock of the progress in the Organization's work and to discuss future policy directions. The Member States that are parties to the various treaties administered by WIPO also meet in separate Union Assemblies.

The 2016 WIPO Assemblies convened the meetings of 21 Assemblies and other bodies of WIPO.¹

Address by the Director-General

The Director General of WIPO presented his annual report to the Assemblies. The Director General pointed to the sound financial situation of WIPO and commended the entry into force of the Marrakesh Treaty. In respect of the negotiations on the Design Law Treaty, the Director General described the resistance to convening a Diplomatic Conference as "isolated" and suggested that the conclusion of the DLT will build confidence for the normative programme of WIPO in other areas such as intellec-



(Photo credit: WIPO)

tual property and traditional knowledge (TK), genetic resources and traditional cultural expressions (TCEs), and the negotiation of a broadcasting treaty. Regarding the IGC negotiations, the Director General urged member States to make concentrated political efforts bring the negotiations to a successful conclusion.

The Director-General's address did not make any mention of the WIPO Development Agenda and its implementation. There was also no reference to the role that WIPO can play to facilitate the implementation of the United Nations Sustainable Development Goals.

Priorities of Developing Country Regional Groups

General statements were delivered on behalf of the various regional groups to reaffirm their priorities in WIPO.

African Group

Nigeria on behalf of the African Group mentioned that it looked forward to a decision by the GA on the establishment of two WIPO External Offices in Nigeria and Algeria, in accordance with the decision adopted at the 2015 General Assembly which prioritized Africa in the establishment of new WIPO External Offices. The African Group reiterated that it attached high priority to the IGC negotiations. The group was of the view that crucial technical work has been done on the GRs and TK texts, and looked forward to continued progress for the remainder of the IGC work-programme for the 2016/17 biennium in order to develop an international legally binding instrument that will ensure the effective promotion and protection of GRs, TK, and folklore. The African Group also reaffirmed its support for the adopted work-program of the SCP and stressed that the committee should undertake more ambitious work, especially in the field of patents and health. The African Group welcomed the entry into force of the Marrakesh Treaty and urged for an acceleration of the SCCR negotiations to yield similar results on other long-standing subjects of discussion in the SCCR – protection of broadcasting and cable-casting organizations from signal piracy and the negotiations on copyright exceptions and limitations. The African Group also welcomed the approval of recent projects by the CDIP for implementation of the WIPO Development Agenda recommendations and hoped that member States can recommit to finding consensus on the other issues of importance that lack consensus in the CDIP, such as Governance in WIPO, engagement in the area of technology transfer, WIPO's contribution to achievement of the SDGs, implementation of the CDIP Mandate and the Coordination Mechanism, amongst others. The group also looked for-

ward to the outcome of the Independent Review of the Implementation of the Development Agenda (DA) recommendations as one of the tools for appreciating the impact and effectiveness of DA projects. The African Group further took note of, and welcomed some elements of the report on geographical distribution of WIPO's workforce and expressed eagerness to engage on this issue to discuss necessary steps that will facilitate a more inclusive, balanced, transparent and accountable recruitment and selection process for WIPO's workforce. In respect of the DLT, the African Group regretted that agreement could not be reached on technical assistance and disclosure at the 34th and 35th sessions of the SCT as directed by the 2015 GA. The group reaffirmed its commitment to the disclosure of source and origin of GRs, TK and TCEs utilized in industrial designs as part of the closed list of requirements for design registrations and on resolving the issue of technical assistance in the draft DLT.

Asia Pacific Group

Ambassador Ajit Kumar from India delivered the general statement on behalf of the Asia and the Pacific Group and stated that a fair, just and balanced intellectual property system should take care of the rights of innovators as well as the needs of people and larger good of society. On the issue of hosting External Offices, the Asia and the Pacific Group believed that the priority for the establishment of the WIPO External Offices should be given to Africa; at the same time, based on the Guiding Principles for the establishment of new external offices adopted by the GA in 2015, the group felt that the Asia and the Pacific region should host more WIPO External Offices and hoped that member States would give objective consideration to proposals submitted in this regard by Iran, India and the Republic of Korea from the Asia and the Pacific Group.

With regard to the implementation of the WIPO Development Agenda and the work of the CDIP, the group reaffirmed that all relevant bodies of WIPO should take due account of the DA recommendations in their activities. The group believes that it is necessary to contextualize intellectual property rights in the larger framework of development to ensure that IP regimes are suitably crafted and optimised in different countries so that it fosters a holistic socio-economic growth and sustainable development. In this context, the group noted the entry into force of the 17 SDGs of the 2030 Agenda for Sustainable Development and stressed that it is an oppor-

tune moment for WIPO to recalibrate its efforts in order to implement the 2030 Agenda and create coherent linkages with the implementation of the WIPO Development Agenda.

Regarding the normative agenda of WIPO, the Asia and the Pacific group welcomed the resumption of the IGC in 2016. However, it also hoped to see an advance in IGC's work with a view to narrow the existing gaps in the draft texts as stated in the decision of the General Assembly in 2015. The group also hoped to see progress on the Broadcasting Treaty negotiations based on the 2007 General Assembly mandate for the protection of broadcasting organizations on a signal-based approach in the traditional sense. The group also hoped to actively engage with other members on discussions on copyright limitations and exceptions. The group noted that further work is needed in the ongoing negotiations on the draft Design Law Treaty, specifically, the work on the draft Articles and the provision of technical assistance and capacity building in the treaty text.

ASEAN

Delivering the general statement on behalf of the ASEAN, Ambassador Dato Mahdi Rahman from Brunei Darussalam acknowledged WIPO's support in the initial phase implementation of the ASEAN IPR Action Plan 2016-2025 and stated that the ASEAN is also carrying out IP diagnostics in collaboration with WIPO. Infrastructure support is being made available by WIPO for the ASEAN database of patents, which is expected to be launched early next year.

GRULAC

Chile on behalf of GRULAC said that the group considered the issue of opening of new External Offices of WIPO as a matter of priority, and pointed out that the GRULAC countries had nominated Colombia out of six candidate countries from the region, for the opening of a new WIPO External Office. The geographical representation in WIPO staffing is also an issue of particular interest to the group, and in this regard the group stressed on the need to ensure a balanced representation of all regions at all levels in the organization. The group also stressed on the vital importance of the work of the normative committees of WIPO, particularly the IGC and the SCCR and the discussions on country names in the SCT. It also stressed on the

importance of discussions on the role of WIPO in implementation of the SDGs. GRULAC also expressed support for the proposal by Brazil in the PCT Working Group relating to discounts in PCT fees for universities and research institutions in developing countries. The group also commended the entry into force of the Marrakesh Treaty.

Group of Fifteen

Ambassador Ravinatha Aryasinha from Sri Lanka delivered the statement on behalf of the G-15. The G-15 wished to see a conclusion of the negotiation process in the IGC that would result in consensual, legally binding international instrument(s) that would protect and foster the IP rights concerning GRs, TK and traditional cultural practices. The G-15 also stated that in the context of the adoption of the SDGs it is timely for WIPO to consider how it will work, as part of the UN system, to implement the SDGs and create linkages with the implementation of the WIPO Development Agenda. The G-15 also stated that South-South cooperation should be a tool for developing important and strategic partnerships which could play an important role in achieving the objectives outlined in the DA Recommendations in promoting sustainable development. The G-15 also commended the entry into force of the Marrakesh Treaty. With regard to the negotiations in the SCT on the Design Law Treaty, the G-15 highlighted that further work is still needed in reflecting the different levels of development of the member States in the text of the Treaty and believed that the implementation of the proposed Treaty required augmented capacity by States to carry out its obligations. In this regard, the group believed that adequate provisions for building capacity to meet the obligations in the draft Treaty would contribute to realistically achieve its desired outcome.

Least Developed Countries Group

Ambassador M. Shameem Ahsan from Bangladesh delivered the statement on behalf of the LDC group and acknowledged WIPO's support in providing assistance to the LDCs to formulate IP and innovation policy and strategy to LDCs. However, he also stressed that to promote a fair, equitable and balanced intellectual property regime in the LDCs, WIPO's technical assistance should be development-oriented, demand-driven and transparent, based on a country's specific needs and above all, must consider the respective level of development. The LDC group also stressed on the importance of proper

implementation of the Development Agenda and said that as a UN organization, mainstreaming the issue of development in the activities of WIPO is long overdue. The group expected that all relevant WIPO bodies should inform CDIP of their efforts according to the 2010 GA decision on the coordination mechanism. The LDC group also stressed that no development expenditure should be affected on the excuse of any controversy regarding income and expenditure of different Unions. LDCs also urged member States to work towards convening a Diplomatic Conference in advancing the IGC negotiations. The LDCs congratulated all the member States for the entry into force of the Marrakesh Treaty and stressed the need for consensus on issues pertaining to limitations and exceptions for educational, teaching and research institutions and persons with other disabilities, and limitations and exceptions for libraries and archives. For the Design Law Treaty, LDCs expressed strong support for the inclusion of an article ensuring technical assistance in the main body of the Agreement. The LDCs also renewed their willingness to engage in any constructive negotiation regarding the Broadcasting Treaty on the signal based approach according to traditional sense as per the 2007 General Assembly mandate. The LDCs also expressed support for the proposal on revision of WIPO's Internal Oversight Charter and WIPO's existing procurement principles and procedures. The LDCs also stressed on the important role of WIPO for the achievement of the SDGs.

Key Outcomes of the WIPO Assemblies

First Meeting of the Marrakesh Treaty Assembly

A major cause for celebration for this General Assembly was the entry into force of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled on 30 September 2016. The Marrakesh Treaty was adopted on 27 June 2013. The treaty provides copyright exceptions and limitations for special format books accessible for blind and visually impaired people and enables books to be exchanged across borders. The first meeting of Marrakesh Assembly was held as part of the WIPO Assemblies.

The Marrakesh Treaty Assembly was chaired by Marcelo Calero from Brazil. During the interventions, member states of the treaty described

the treaty as “great victory”, “historical milestone” and “victory of multilateralism” and call for more WIPO member states to join. Till date 25 countries have ratified the Marrakesh Treaty.

Decisions on WIPO Oversight Bodies

A revised Internal Oversight Charter (IOC) for WIPO was adopted by the WIPO General Assembly. The Independent Advisory Oversight Committee (IAOC) had submitted a proposal for amendments to the IOC for the consideration by the General Assembly.² The General Assembly adopted the revised IOC and requested the IAOC to prepare appropriate modalities and procedures, with technical assistance from the Secretariat and after consultation with member States, for consideration and adoption by the Coordination Committee at its next session.

The IAOC is a subsidiary body of the General Assembly and of the Program and Budget Committee (PBC). It is an independent, expert advisory and external oversight body established to provide assurance to member States on the adequacy and effectiveness of internal controls and of internal and external oversight at WIPO. The IOC constitutes the framework of the Internal Oversight Division (IOD) and establishes its mission. The IOD is a body within the structure of the WIPO Secretariat, functioning mainly to support the Director General. The amendments adopted by the General Assembly are aimed to create more accountability and independence in the process and more confidentiality of documents.

Postponement of decision on WIPO External Offices

Two outstanding issues were transmitted for further discussions and decision to the fifty-sixth General Assemblies. One of them was the issue of opening of new WIPO External Offices. In accordance with the decision of the 2015 General Assembly³, this General Assembly decided 1) to open WIPO external offices in Algeria and Nigeria; and 2) to continue consultations on the opening of one external office in the current biennium and three external offices in the 2018-2019 biennium based on a relevant call for proposals made by the Secretariat with a view to making a decision on the above during the 2017 General Assembly based on the Guiding Principles.

Currently, WIPO has five external offices, located in Singapore (established in 2005), Tokyo, Japan (established in 2006), Rio de Janeiro, Brazil (established in 2009), Beijing, China (established in

2014), and Moscow, Russia (established in 2014). The WIPO New York Office in the United States, mentioned as an External Office, is categorized as a Liaison Office.

The 2015 General Assembly had adopted a set of Guiding Principles relating to the establishment of new External Offices (document A/55/13, paragraph 258). It also recognized the limited capacity of WIPO to open new External Offices and the need to take a phased and prudent approach in this regard, and decided to open not more than three External Offices per biennium for the biennia 2016/17 and 2018/19, subject to the approval of the GA. For this period, the GA decision also stated that priority shall be given to Africa and invited member States to submit hosting proposals to be considered under the Guiding Principles. This decision is without prejudice to any decision by the PBC or the GA on opening of new External Offices pursuant to the Guiding Principles after an evaluation during 2021.

In accordance with the GA decision, member States were invited to submit hosting proposals for setting up External Offices. Hosting proposals were submitted by 18 member states - Algeria, Azerbaijan, Chile, Colombia, Ecuador, Egypt, El Salvador, India, Iran, Kenya, Mexico, Morocco, Nigeria, Panama, South Korea, Romania, Tunisia, and Turkey. These proposals were considered at the twenty-fifth session of the PBC. However, the PBC could not reach consensus on the opening of new External Offices and decided to continue informal consultations leading to further consideration of this matter in the 2016 WIPO Assemblies.

Informal consultations were conducted during the General Assembly on which three countries should be chosen for the 2016/2017 biennium in accordance with the GA 2015 decision. The African Group had nominated two candidates for the African region: Algeria and Nigeria, and the GRULAC had nominated Colombia. After extensive informal consultations, the GA agreed to establish two new External Offices in Algeria and Nigeria and continue consultations on the opening of one External Office in the current biennium and three External Offices in the 2018-19 biennium, based on a call for proposals by the Secretariat for a decision by the GA in 2017 based on the Guiding Principles.

Lack of Agreement on a Design Law Treaty

Another outstanding issue is the adoption of a Design Law Treaty (DLT). Developed Countries have been pressing for the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) to agree to convene a Diplomatic Conference for the adoption of the DLT. Differences remain with developing countries, particularly on the acceptance of a provision on technical assistance as an article under the treaty and the question of introducing a mandatory disclosure requirement regarding the source or origin of industrial designs and whether they are inspired by traditional knowledge or traditional cultural expressions. Consensus on this issue was not reached after the discussions during the General Assembly. At the end, the WIPO General Assembly decided that "at its next session in October 2017, it will continue considering the convening of a diplomatic conference on the Design Law Treaty, to take place at the end of the first half of 2018."

The developed countries had taken the position even prior to the informal consultations that they would seek an agreement for convening a Diplomatic Conference and not agree to any further negotiation within the framework of the SCT. This demonstrated an unwillingness on the part of the developed countries to engage in any further substantive discussion on the outstanding issues in the draft DLT text relating to technical assistance and disclosure requirement submitted by the African Group and supported by other developing country groups. All parties maintained their stated positions during the informal consultations. In this context, the decision by the GA suggests that the developed countries will seek a political agreement towards a Diplomatic Conference at the 2017 GA rather than engage in any further negotiation in the SCT.

Conclusion

Two issues dominated the 2016 WIPO General Assembly discussions - the decision on convening a Diplomatic Conference on the Design Law Treaty, and the establishment of new WIPO External Offices in accordance with the Guiding Principles adopted by the General Assembly in 2015. However, the Assembly could not conclude discussions on both these issues. Regarding the Design Law Treaty, the General Assembly decision merely states that the issue of convening a Diplomatic Conference will be considered by the General Assembly in 2017. However,

in contrast with the decision of the 2015 General Assembly on this issue, this decision makes no reference to the need to continue and conclude discussions on the outstanding issues in the DLT negotiations i.e., technical assistance and disclosure requirement. Thus, while technically the DLT draft texts remain on the agenda of the SCT, there is no express direction from the General Assembly to the SCT on resolving differences on these issues in the SCT between the 2016 and 2017 sessions of the General Assembly. Though the African Group and other developing country groups have expressed readiness to engage on further discussions on these issues, Group B has shown reluctance to any further engagement in substantive negotiations on the DLT in the SCT. This suggests that the developed countries would seek a political decision on the DLT at the 2017 General Assembly. It will be pertinent to note that the 2017 General Assembly will also have to take a decision in respect of the work of the IGC. In view of the current state of work in the IGC, it is apparent that a further renewal of the mandate of the IGC with improved terms may be desirable. However, this could be held hostage to a political decision on the DLT at the next General Assembly.

The issues regarding the establishment of new WIPO External Offices are political rather than substantive. While the General Assembly agreed to establish two new external offices in Algeria and Nigeria in accordance with the priority accorded to Africa for the 2016/17 biennium under the Guiding Principles adopted in 2015, there was no clarity on the way forward with regard to the proposals submitted by a number of countries from various other regions. While the question of establishing one additional external office for the current biennium has been deferred to the 2017 General Assembly, the next General Assembly will also have to take decisions on the establishment of additional external office for the 2017/18 biennium for which more proposals may be submitted. Unless proponent countries agree to make compromises on the question of establishment of new external offices, the impasse on this issue may continue and be further complicated with the inclusion of new proposals for consideration of the member States. This can negatively impact the opportunity for discussing substantive issues on the agenda in the next General Assembly.

Endnotes

¹ 1) WIPO General Assembly 2) WIPO Conference, 3) WIPO Coordination Committee 4) Paris Union Assembly 5) Paris Union Executive Committee 6) Berne Union Assembly 7) Berne Union Executive Committee, 8) Madrid Union Assembly 9) Hague Union Assembly 10) Nice Union Assembly 11) Lisbon Union Assembly 12) Locarno Union Assembly 13) International Patent Classification Union Assembly 14) Patent Cooperation Treaty Union Assembly 15) Budapest Union Assembly 16) Vienna Union Assembly 17) WIPO Copyright Treaty Assembly 18) WIPO Performances and Phonograms Treaty Assembly 19) Patent Law Treaty Assembly 20) Singapore Treaty on the Law of Trademarks Assembly, and 21) the Marrakesh Treaty Assembly.

² Document WO/GA/48/16.

³ Document A/55/13.

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**SOUTH
CENTRE**

Chemin du Champ-d'Anier 17
PO Box 228, 1211 Geneva 19
Switzerland

Telephone: (4122) 791 8050
Fax: (4122) 798 8531

E-mail: south@southcentre.int
<http://www.southcentre.int>