



South Centre Statement for the Third Session of the WIPO Conversation on AI and IP

4 November 2020

The South Centre is an intergovernmental organization of 54 developing countries working across various policy areas, including intellectual property. This statement focuses on increasing capacity on artificial intelligence (AI) and intellectual property (IP) matters in the context of the widening technological gap and the Fourth Industrial Revolution.

The expansion of forms of protection, – either through IP, *sui generis* rights, liability and contractual rules – if combined with the concentration of certain AI technologies by companies situated almost entirely in a handful of countries, greatly extends the technological gap.

This is both the backbone and the premise under which debates on AI and IP regulation should take place. Without this perspective, there is a risk of furthering inequalities between countries that will benefit from the wide use of AI technologies and those that will be increasingly obliged to introduce them at a later stage and with very limited capacity to “catch-up”.

Hence, we need a clearer understanding of how capacity-building in AI and IP is conducted. In WIPO, this requires an acknowledgement and due consideration of countries’ and industries’ specific areas of concern, which may be dramatically different. Because “technology” is not intrinsically “good or bad”, this is about countries’ preparedness and institutional development, rather than purely the adoption of AI-based administration tools used in other jurisdictions or the norms/principles discussed in substantive fields.

An IP policy in relation to AI must be oriented towards at least the following principles: (i) real inclusivity, (ii) balance between protection of rights and access, (iii) development-oriented, (iv) human-rights based.

A comprehensive view that goes beyond clarifying legal doctrines and questions regarding IP is needed.

In this sense, any forms of capacity building, including trainings and technical assistance activities, should take these principles into account and be transparent as to the challenges faced by countries. They could benefit from the principles of South-South cooperation. IP offices and governments from developing countries need to participate more in this discussion at WIPO, particularly given the fact that their specificities may not be the same as those from developed countries. In the last session of this dialogue, the IP office of one developing country (Ecuador) submitted substantive views, and the ministry of one other country (Uganda) noted challenges for the global South.

For countries that are in the process of consolidation of their IP norms and institutions, this debate should also include consideration of their situation and potential needs. All countries should partake in international discussions on IP and AI. More attention should be given to the needs of developing countries and the risks attached to the ample utilization of AI tools in patent offices, and to the possible consequences of AI-assisted and possibly AI-generated patent applications to the patentability criteria currently in place in each jurisdiction.

Finally, digital rights, access to knowledge, information and science as human rights, data governance (and data sovereignty), internet regulation, ICANN domain names, and transfer of technology are all elements that need to be further discussed. Although WIPO does not and should not deal directly with these issues, they all affect the outcomes of any AI and IP policy and could be the focus of further debates.

Thank you.