



Frontier Technologies and IP – WIPO 4th Conversation

South Centre Statement, 23 September 2021

Thank you, Chairperson.

The South Centre is an intergovernmental think tank of 54 developing countries working across various policy areas, including health, intellectual property, and the impacts of the 4th Industrial Revolution. The following remarks focus on the necessary attention that should be laid out to the specific status of developing countries.

From the outset, it should be recalled that the technological divide between industrialized countries and most of the global south drastically limits the conditions to accrue benefits from data-intensive economies.¹ This should not be understated in policy discussions such as the present one.

The second point is how the IP system may reinforce this technological gap by creating unsurmountable barriers to entry by new market players, research institutions and individual innovators from developing countries. For example, a dataset may be protected by *sui generis* rights in the EU, and via various forms of IPRs directly and indirectly (trade secrets, patents); a key software for data analytics may be protected by copyrights; an AI system may be itself protected by a patent, etc.²

Without affordable and reasonable licensing and pro-active technology transfer policies by companies that hold such technologies, we all face the risk of **'data colonialism'**: developing countries provide only raw data and are not able to turn them into intelligence and fulfil the promises of the 4th Industrial Revolution.³ Restrictive licensing and ownership over big data software and other core data technologies or datasets impede technological catch-up. This also runs counter to the TRIPS Agreement's mandate to promote "*technological innovation and [...] the transfer and dissemination of technology*" as objectives (Article 7), and to address anti-competitive licensing as part of its principles (Article 8).

Another key area is how to address the issues of **equity, discrimination, and human rights** that underpin the use of big data and other frontier technologies. Algorithmic discrimination and bias are real problems that, while not restricted to the IP system, should also be part of its broader discussions. In this context, 'innovation' cannot impede considerations of

¹ See: Sohail Asghar, Gulmina Rextina, Tanveer Ahmed & Manzoor Illahi Tamimy, *The Fourth Industrial Revolution in the Developing Nations: Challenges and Road Map*, Research Paper, No. 102 (Geneva, South Centre, 2020).

² See: Carlos Correa, *Data in Legal Limbo: Ownership, sovereignty, or a digital public goods regime?* Research Paper, No. 117 (Geneva, South Centre, 2020).

³ See: Padmashree Gehl Sampath, *Technology and inequality: can we decolonise the digital world?* South Views, No. 215, 6 April 2021. Available from: <https://www.southcentre.int/wp-content/uploads/2021/04/SouthViews-Sampath.pdf>.

fairness, equity and redress that should be integrated into global policy discussions on data governance and IP.

There are many unsolved issues, and for this reason we may conclude with the following four suggestions:

1. No discussions with a normative aim should take place at WIPO regarding frontier technologies at this point, given the limitations for developing countries to fully participate in this.
2. Discussions should be undertaken on technology transfer and facilitated licensing mechanisms, including FRAND licensing for SEPs, and the role of antitrust laws and policies to address developmental concerns related to data governance.
3. Discussions on IP exceptions and limitations, including the use of public order exceptions in patent law in relation to AI and data-related patent applications, could be explored in substantive WIPO committees.
4. Finally, more participation of developing countries is needed to ensure, as the South Centre noted in a previous statement, a system based on (i) real inclusivity, (ii) balance between protection of rights and access, (iii) development, and (iv) human rights.