

## #GlobalDigitalEncounters

#10: Fostering a Dynamic IP System Based on Sustainable Development Goals

### Global Digital Encounters

#### The Role of IP in a new post-crisis world

## Encounter 10: Fostering a Dynamic IP System Based on Sustainable Development Goals

### Report Encounter 10

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Speakers:

Prof. Edward KWAKWA, Assistant Director General, Global Challenges and Partnerships Sector, WIPO

Prof. Peter YU, Regents Professor of Law and Communication and Director, Center for Law and Intellectual Property, Texas A&M University

Moderator:

Prof. Miriam ALLENA, Professor of Environmental Law, Bocconi University

### INTRODUCTION

The [17 Sustainable Development Goals](#) (hereinafter SDGs) were adopted in 2015 by the United Nations as a universal call to action against, *inter alia*, poverty, inequality, climate change, and environmental degradation.

In a world where intangible assets are more and more relevant, is the IP system duly equipped to respond to these challenges? Starting from the issue of making the vaccines for COVID-19 available to everyone, can we achieve the goal of leaving no one behind?

#### 1) WHY ARE THE SDGs SO IMPORTANT FOR IP?

Prof. KWAKWA: The 2030 agenda is undoubtedly very ambitious because it sets out a roadmap to protect the planet, to ensure that all people live in peace and prosperity.

Two examples can explain their importance for IP:

- on 19 December 2019, the UN passed a [Resolution on Science, Technology, and Innovation for Sustainable Development](#), recognizing the importance of the measurement of national innovation systems, with specific reference to the Global Innovation Index published by WIPO;

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- on 11 September 2020, the UN passed a [Resolution on Consolidating Gains and Accelerating Efforts to Control and Eliminate Malaria in Developing Countries](#). This resolution recognizes the importance of innovation in eliminating malaria, including the role of WIPO Re:Search, one of WIPO's public private partnerships, through which the public and private sector share IP and expertise with the global health research community.

Prof. YU: The SDGs can have three main contributions:

- The first is a reminder that IP is a tool and not an end in itself. In this sense, when we want to increase IP protection, the SDGs are the goals that we should keep in mind when developing new IP laws and policies.
- The second deals with the fact that IP is multidimensional. We need a holistic debate to achieve the 17 SDGs. This can help us to think about the direction and intensity of our efforts.
- The third is about legitimacy. It is important to have a document and consensus among the UN Member States about what we need to achieve to the benefit of the international community.

## 2) WHY IS IP SO IMPORTANT FOR THE SDGs?

Prof. KWAKWA: IP and the SDGs go hand in hand.

WIPO launched in 2016 the [Inventor Assistance Program](#), which aims to level the playing field for inventors who struggle to secure patents for their invention due to a lack of funds. As an example, Antonio Gonzalo, a Colombian inventor, received professional support from WIPO. He invented a device to prevent ambulances and other large vehicles from sliding when there is mud on the road, which creates a high risk for the patients and the people transported. WIPO put the inventor in touch with a Colombian lawyer who provides pro bono services, allowing the inventor to get a patent and commercialize his life-saving invention.

There is a perception problem with IP. It seems that only developed countries benefit from IP. This is traditionally true, but [2020 WIPO annual statistics on IP indicators](#) show that the Patent Cooperation Treaty witnessed an increase of 4% during the pandemic. More importantly, the first 7 countries on the list with the highest percentage increase are developing countries, which are now big players in the IP system.

Prof. YU: Science, technology, and innovation are important for all SDGs. Whatever IP rights we take into account – be they copyrights, patents, trademarks, trade secrets, designs, geographical indications, or the emerging protections for genetic resources and traditional knowledge – IP provides a framework that goes in different directions depending on the specific needs. In addition, it promotes commercialization and facilitates licensing and technology transfer.

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Concerns have been raised about the current IP system but it really depends on the level of protection we have in each country. The difficult issue is that different countries need different innovation frameworks and different support for technology transfer and licensing. Therefore, it is hard to agree on common standards of protection.

The current IP system seems to benefit developed countries at the expense of developing countries. What is interesting is that a lot of developing countries are now taking advantage of the IP system, improving their economy and technology.

#### **3) ARE THE SDGs COMPATIBLE WITH THE WAY WE HAVE UNDERSTOOD IP IN THE LAST DECADE OR SHOULD WE CHANGE HOW WE LOOK AT IP RIGHTS?**

Prof. KWAKWA: We need to shift our paradigm on how to look at IP, going beyond normal stakeholders to meet new and emerging stakeholders, in particular the youth. At the same time, we need to connect the IP ecosystem more closely to enterprises and the economic systems. In particular, we need to go beyond ordinary registration of IP to help those rights to go to the market. With this in mind, WIPO created the IP and Innovation Ecosystems Sector.

Indeed, IP can be a positive tool contributing to the SDGs. Thinking about [WIPO Re:Search](#), its founding partners, 8 of the world's biggest pharma companies, have agreed to contribute their IP assets into a pool that goes to assist researchers in developing countries that are researching neglected tropical diseases, malaria and tuberculosis. Through this program we can show that IP is actually a force for good.

#### **4) SOME EXPERTS ARGUE THAT, IN AFRICA, MOST PATENT APPLICANTS ARE NON-RESIDENT AND THE SECTORS WHERE PATENT APPLICATIONS ARE MOST FREQUENTLY FILED ARE RELATED TO THE EXTRACTION OF RAW MATERIALS. CAN IT REALLY BE SAID THAT SO FAR PATENTS IN AFRICAN COUNTRIES HAVE BEEN USED TO PROMOTE SUSTAINABLE DEVELOPMENT?**

Prof. YU: A lot of things can be triggered by patent-related activities, encompassing not only the owners of IP rights, but also other stakeholders (e.g. employees who have the chance to work on new technologies).

I agree that we need to pay more attention to the youth. The preference for innovation models has been changing. What models the younger generation wants will be important to both policy makers and other stakeholders in the IP system?.

Prof. KWAKWA: COVID-19 is a tremendous opportunity for a rapid and disruptive change on the way we consume. Science estimated that we'll see the most severe impact of environmental degradation in the coming 50-100 years. The rate of change has been dramatically faster than what was originally estimated, including the loss of permafrost and ocean warming. Anyway, I think that we are not in a post-crisis scenario yet. The worst is

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yet to come. The crisis will take up speed as we continue to damage the environment, which is key in the SDGs.

#### **5) IS IT POSSIBLE THAT THE BASIC IP CONCEPTS WILL BE AMENDED TO ENCOURAGE A LESS CONSUMER BASED ECONOMY, SETTING THE STAGE FOR THE FUTURE ROLE OF IP?**

**Prof. YU:** We need to think about whether there are other paradigms within the IP field that can be beneficial to sustainable development and to the international community.

Focusing on patent statistics in African countries, as suggested in the earlier question, is not the best way to measure the contribution of IP to sustainable development in that region. Maybe we should look at other models to see how they have been increasing the capacity for innovation and research and development. We have a lot of new models coming from public bodies, NGOs, and academics. The pandemic has shown that people are willing to cooperate on new initiatives, which are worth paying attention to.

#### **6) WHAT IS THE OVERALL IMPACT OF NON-TRADITIONAL INNOVATION MODELS IN THE ACHIEVEMENT OF THE SDGs?**

**Prof. KWAKWA:** We need to start looking seriously at other IP models, like genetic resources. From the creation of vaccines to the development of new food crops, the use of genetic resources for innovation is today much more important than ever.

As regards the way we use the IP system to take care of our problems, the traditional method of treaty making is probably too slow to tackle the problems of the IP system. In this regard, we should also be looking at non-traditional forms of norm making, such as resolutions, declarations etc. We should move closer to the soft law mechanisms with the use of public-private platforms to set the agenda and guidelines.

**Prof. YU:** The challenge is to tie the ongoing negotiation of international IP treaties to other debates (human rights, climate change, etc.). We should not let these discussions sit in different compartments but get them together to have more interactions.

The more developing countries can find models suitable to their local conditions, the more they will believe that the IP system provides benefits to them. Debate around IP started more than 200 years ago. At that time, the debate focused on issues important to developed countries and it took a while before developing countries had a voice in that debate. The international IP system is still a work in progress but we are moving in a direction where more and more developing countries are benefitting from the system.

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### 7) WHAT DO YOU THINK ABOUT THE IDEA OF SUSPENDING IP RIGHTS ON VACCINES?

**Prof. KWAKWA:** I do not think anyone is suggesting that IP itself is an obstacle to vaccines. For example, Pfizer's problem deals with a limited production capacity. This is why it decided to work in collaboration with other actors to increase its production.

Few days ago, the COVAX Facility administered by the World Health Organization delivered 60.000 doses to Ghana, a symbolic gesture to show that a multilateral system is rallying behind the pandemic. The IP system in itself is not preventing access to vaccines.

**Prof. YU:** The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) allows for different types of adjustments to the IP system to provide flexibilities (like compulsory licensing, limitations and exceptions, and national security).

While I support efforts to adjust the IP system to help developing countries to combat COVID-19, I have some reservation about the way the waiver is currently drafted and negotiated. I fear that this waiver will not be ready in time for this pandemic. It will take a while before two-thirds of WTO members ratify the waiver. If you look at the last amendment to TRIPS, it took more than ten years to get the amendment ratified. Probably, any effort we are doing now will be for the next pandemic.

Any discussion between developed and developing countries involves a lot of bargaining. Developing countries are unlikely to succeed if they just ask for a waiver without giving anything in return. So, what are they going to offer?

We should therefore think about broader adjustments to the IP system, as opposed to only the waiver. For example, we could suspend IP rights during the pandemic but extend the term of protection for those rights after the pandemic. This would be more attractive to developed countries and their industries. But there remain difficult questions concerning when the pandemic will end for each country.

### CONCLUSION

**Prof. ALLENA:** My feelings after this discussion is that IP shares a lot of commonalities with environmental law, e.g. the multidimensional character of IP, the need for a holistic approach to tackle all the challenges that IP regulations have to face in the coming years. At the end, probably IP has to change and evolve, but still it is at the very core of sustainability. I believe that IP and sustainability are intertwined and we have to make them work together. This is our challenge.

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