

Back-to-Office-Report

Achieving Balance in the Enforcement of Intellectual Property Rights – South Centre Third International Symposium (Geneva, 23 October 2009)

Summary and conclusions

The objective of this symposium was to examine the possible implications of increasing enforcement of intellectual property rights (IPRs) from a public interest perspective. The challenges identified are:

- how to ensure that IPR enforcement procedures do not act as a global trade barrier to the development of innovative and knowledge-based solutions to global challenges in areas such as health, education and food security;
- how to safeguard the public interest concerns against the rigours of IPR enforcement procedures; and
- how to develop strategic responses to the IPR enforcement agenda.

Within this context the symposium was organised into three panels:

- IPR enforcement and the public interest;
- safeguards for a balanced IPR enforcement;
- responding to the global IPR enforcement agenda.

The symposium programme is available at the South Centre's website: http://www.southcentre.org/index.php?option=com_content&task=view&id=1099&Itemid=77
This Symposium can be considered as preparation for the World Intellectual Property Organization (WIPO) Advisory Committee on Enforcement which takes place from 2–4 November 2009.¹

There was no general good news or any breakthrough. There are areas of concern under the well-argued cases presented by the distinguished panellists: TRIPS-plus, the role of government in enforcing private rights, the emergence of non-transparent negotiations of a so-called Anti-Counterfeit Trade Agreement (ACTA) and, critical to the discussion, the very definition of what constitutes counterfeit. Some panellists favoured adherence to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) minimum without going beyond it, while others viewed TRIPS as not providing enough balance in favour of develop-

¹ http://www.wipo.int/meetings/en/details.jsp?meeting_id=17445

ing or least developed countries. Trade was not at the forefront of the arguments; development and access to knowledge were of greater concern. The question of whether IPR violations should be considered under criminal or legal law was also addressed, and reference was made to Article 61 of the TRIPS Agreement, pointing out that the term “commercial scale” needed clarification.²

Professor Carlos Maria Correia reminded the audience that TRIPS is the first agreement to contain detailed provisions on enforcement, and that there has been little discussion about Part Three. In addition he suggested that developing countries should give priority to fixing the system for enforcement of competition, as without this, enforcement makes no sense.

Viviana Munoz expressed the view there is a lack of common language and understanding and that developing countries would be well advised to use WIPO to reframe and redefine global IPR enforcement.

Professor Alan Story introduced the idea of going back to examine what the meanings of balance, balanceable and balancing are, and he concluded that the present basis for copyright – the Bern Convention – was neither balanced, nor balanceable. He strongly criticised the present basis and various national approaches to the implementation of copyright and gave examples where access to knowledge and enforcement of copyright are in conflict.

Sangeeta Shashikant pointed out that IPR enforcement is not an issue in food security, rather one of food sovereignty. The right to access to food has been recognised in the Universal Declaration of Human Rights and the International Covenant on Economic and Cultural Rights, thus states are obliged not to take measures that will prevent access to food, or violate people’s right to food. She stated that we already have a crisis in access to medicines in terms of medicine seizures (in transit), and that we do not want similar incidents in the area of food.

Professor Hong Xue offered an analysis of DS 362 as an example of using the WTO dispute settlement mechanism in IPR enforcement. It would be interesting to have a copy of her presentation when and if it is made available.

It is my view that this topic, while very trade relevant, given its highly technical substance at both the juridical and technology level, tends to be dominated by parties with the largest intellectual resources; developing and least developed countries often bargain their IP measures against market access without necessarily undertaking a full analysis of the implications, thus the imbalance continues as another north–south issue. The linking of IP issues to human rights issues may have the effect of bringing the IP issues some additional bargaining power for developing and least developed countries.

(sig.) Dannie Jost

² This point was made by Judge Vichai Ariyanuntaka, Thailand.