

7th February 2012

Mr. Francis Gurry
Director General
World Intellectual Property Organization

Africa IP Summit: Lacking a Development Dimension

Dear Mr. Gurry,

In 2004, the WIPO Development Agenda was launched amidst significant concerns that WIPO's activities lacked a development dimension, undermined public interest, while promoting the interests of IP holders. The Development Agenda received widespread global support leading to the adoption of 45 Development Agenda recommendations in 2007.

We believe that at the core of these recommendations is the need for WIPO to ensure that a balanced and evidence based agenda on intellectual property is promoted taking into account the different levels of development and public interest considerations. Principles of transparency and avoiding of conflicts of interests also underpin these recommendations.

In view of this, we note with significant disappointment and concern the context in which the upcoming Africa IP Summit will be held. Some key concerns are:

Conflicts of Interest: It is worrying to see that a major event such as an Africa wide forum is being co-organised in partnership with US, France and Japan. These governments are known for advocating TRIPS plus agendas in developing countries in the interests of their own industries and priorities. For instance these countries are proponents of the Anti-Counterfeiting Trade Agreement (ACTA), a plurilateral treaty that is widely criticized for its secret negotiating process and the detrimental impact on public interest issues such as access to medicines, freedom of expression over the internet and access to knowledge. One key aim of the treaty is to export these problematic IP enforcement standards to developing countries.

These countries also promote TRIPS plus standards through Free Trade Agreements such as through the Economic Partnership Agreements, and the recent Trans Pacific Partnership negotiations. It is widely known that the different TRIPS plus standards advocated to, and in many cases imposed on to developing countries, will have devastating consequences for development including on access to affordable medicines, freedom of expression over the internet and access to knowledge. These standards are imposed to "kick away the ladder" for developing countries and to protect the interests of certain influential domestic actors. In view of this, WIPO's partnership with these countries to host an Africa wide IP Summit amounts to conflict of interests and is simply unacceptable.

To make matters worse, the Summit is being sponsored by the private sector in particular the International Chamber of Commerce (ICC), Business Action to Stop Counterfeiting and Piracy (BASCAP), Pfizer, Eli Lilly and Company etc., that clearly have a strong stake in a pro-IP protection and enforcement agenda. The involvement of the private sector also raises issues of conflict of interests.

WIPO being an intergovernmental and a specialized agency of the UN must take immediate measures to ensure that all its activities are evidence based, free of conflicts of interests and undue influence of actors that are known to promote an unbalanced IP agenda.

Lacking a development and public interest dimension: The Africa IP Summit concept paper suggests a programme that undermines the spirit of Development Agenda. It is premised on the notion that heightened IP protection and enforcement will deliver development and protect public interest. This distorted approach has no historical or empirical basis and has been clearly rejected by the Development Agenda process. Important development issues such as the different levels of development, the importance of flexibilities (e.g. LDC transition periods, exceptions and limitations (e.g. parallel importation), compulsory licensing) in meeting developmental objectives, examining and addressing the impact of IP on critical public interests issues such as access to affordable medicines, and access to knowledge, appear to be disregarded.

Even more worrying is that the Summit aims to promote the link between IP enforcement and public health and safety, presumably to frighten people into accepting inappropriate standards of IP enforcement agenda. We stress that an IP enforcement framework will not deliver effective public health protection as IP rights are not granted on the basis of the quality and safety of the product. Instead inappropriate standards of IP enforcement are likely to hinder public health such as access to affordable medicines. This has been amply demonstrated by the many seizures of quality generic medicines in transit at various European ports.

Lobbying by some multinational companies and their developed country governments in linking IP enforcement to public health has led to a proliferation of anti-counterfeiting bills in many African countries as well as at the regional level, most notably in East Africa. The enactment of these bills is usually promoted on public health grounds. However, in reality these bills are only about protecting the rights of IP holders and are in fact “TRIPS plus plus” in so many ways, containing provisions that undermine flexibilities and that are detrimental to national developmental objectives such as building local production capacity, scaling up access to affordable medicines and improving access to knowledge. For example, most of these bills define “Counterfeit” products as being substantially similar or identical to IP protected products, which effectively makes every generic pharmaceutical a counterfeit. In Kenya, enactment of the Anti-Counterfeit Act 2008 has been challenged by people living with HIV/AIDS on the grounds that enforcement and application of the Act will deny them access to affordable essential medicines and thus deny their Right to Life. Noting the controversies surrounding these bills, it is inappropriate for WIPO to be championing the strengthening of IP enforcement on alleged public health grounds.

Further we stress that addressing the issue of substandard, poor quality medicines (also often labeled as “counterfeit medicines”) is not within the mandate of WIPO but a responsibility of the World Health Organization.

Dealing with the problem of “counterfeit medicines” requires a focus not on IP enforcement but on building regulatory capacity and ensuring access to affordable medicines. A process is already underway at the WHO to address this. Apart from

medicines, it is also not within WIPO's mandate to deal with other poor quality, substandard products thus it is surprising that the Africa IP Summit is heavily focused on this issue.

Lack of Transparency & Information: According to available information, the WIPO and African regional IP organizations are key partners in the organization of the Africa IP Summit. However to date there appears to be no information available on WIPO's website about this Summit. This undermines implementation of the Development Agenda recommendation on transparency.

Further the US government website states that registration request will not guarantee participation and that the participants will be selected. However, no information is being provided on the criteria that will be the basis for selection.

Following the above concerns, we demand that: WIPO postpone the holding of the Africa wide IP Summit. WIPO should also reconsider its partnership with the different interests involved and work to organize a balanced forum that is development oriented and upholds public interests as well as that is free of any conflicts of interests and influence of actors that tend to promote an unbalanced IP agenda. The process of organizing such a forum, (i.e. the selection of speakers, the drafting of the programme, criteria for selection of participants) should be transparent and all information should be promptly available on WIPO's website. Further we also call on WIPO to avoid partnering actors that tend to promote an unbalanced IP agenda in all its future activities.

cc.

1. Mr. Gift Sibanda
Director General
African Regional Intellectual Property Organization (ARIPO)

2. Mr. Paulin Edou Edou
Director General
African Intellectual Property Office (OAPI)

Signatories

1. Act Up Paris
2. Action Against AIDS, Germany
3. Akiba Uhaki Foundation, Kenya
4. AIDES, France
5. AIDS Law Project, Kenya
6. All India Drug Action Network, India
7. Alternative Information and Development Centre (AIDC), South Africa
8. Alternative Agricultural Network, Thailand
9. AFASO, Cameroon
10. African Council of AIDS Service Organizations (AfriCASO), Senegal
11. African Services Committee, US
12. AIDS ACCESS Foundation, Thailand
13. ASAFE, Cameroon
14. Aseed Europe, Amsterdam
15. Association Alternative, Côte d'Ivoire>Association d'aide et de Protection

- des groupes Vulnérables du entre Nord, Burkina Faso
16. Association des Femmes vivant avec le VIH / SIDA, Mauritanie
 17. Association de lutte contre le sida, Maroc
 18. Association New Way+
 19. Association de Protection Contre le Sida, (APCS), Algérie
 20. Association soleil pour le soutien des enfants affectés et infectés par
 21. le VIH/ sida au Maroc
 22. Association Tunisienne de Lutte contre le Sida, Tunisie
 23. Bharatiya Krishak Samaj, Inde
 24. The Center for Health, Human Rights and Development, Ouganda
 25. Center for Encounter and active Non-Violence, Autriche
 26. Coalition 15%, Cameroun
 27. Coalition PLUS, France
 28. Comité Régional de Promotion de Santé Communautaire (CRPSC)
 29. Consumers International
 30. Cross River Farm Credit Scheme, Nigeria
 31. Derechos Digitales, Chili
 32. Diverse Women for Diversity, Inde
 33. Drug Study Group, Thaïlande
 34. Drug System Monitoring and Development Program, Thaïlande
 35. Ecological Alert and Recovery - Thaïlande (EARTH)
 36. Ecumenical Service for Peace, Cameroun
 37. European AIDS Treatment Group (EATG), Belgique.
 38. Fondation Femme Plus Kin, République Démocratique du Congo
 39. Foundation for AIDS Rights, Thaïlande
 40. Foundation for Consumers, Thaïlande
 41. FTA Watch, Thaïlande
 42. Health Consumers Protection Program, Thaïlande
 43. Health and Development Foundation, Thaïlande
 44. Health GAP (Global Access Project)
 45. Health Action International Afrique
 46. HEPS-Ouganda
 47. Initiative for Medicines, Access & Knowledge, I-MAK
 48. Initiative for Health & Equity in Society, Inde
 49. Institute for economic research on innovation, Afrique du Sud
 50. Ivoirien Network of People Living with HIV/AIDS (RIP+)
 51. Knowledge Ecology International (KEI)
 52. LGBTIQ Tanzanie
 53. Medsin, Royaume-Uni
 54. Mozambique Network against Poverty, HIV/AIDS, Family Violence and
 55. Occupational Health Diseases, (ROCPA)
 56. National Empowerment Network of PLHAs in Kenya (NEPHAK)
 57. Navdanya, Inde
 58. Réseau Togolais Association for Patients Safety (RETASEP)
 59. Médecins Sans Frontières - Access Campaign
 60. Médecins Sans Frontières - Access Campaign, Afrique du Sud
 61. Organisation Pan Africaine de lutte contre le Sida - Maroc (OPALS - Maroc)
 62. Positive Generation, Cameroun
 63. Peoples' Health Movement, Global
 64. Peoples' Health Movement, Amérique Latine
 65. Peoples' Health Movement, Afrique du Sud
 66. Réseau Accès aux Médicaments Essentiels (RAME)

67. Réseau des associations de PVVIH (RMAP+), Mauritania
68. Réseau Ethique, Droit et Sida (REDS), Yaoundé-Cameroun
69. Réseau Nigerien des Personnes Vivant Avec le VIH/SIDA (RENIP+)
70. Research Foundation for Science Technology & Ecology, India
71. Rural Pharmacists Foundation, Thailand
72. Rural Doctors Foundation, Thailand
73. Rural Doctor Society, Thailand
74. SEATINI, South Africa
75. Social Pharmacy Research Unit, Chulalongkorn University
76. Sidaction, France
77. Solthis, France
78. Thai Holistic Health Foundation
79. Thai NGO Coalition on AIDS
80. The Good Samaritan Social Service Tanzania
81. The Thai Network of People living with HIV/AIDS (TNP+)
82. Third World Network
83. Treatment Action Campaign, South Africa
84. Treatment Access Watch, Cameroon
85. Treatment Advocacy and Literacy Campaign (TALC), Zambia
86. Widevision et Droits de l'Homme, Cameroon, 3SH, Cameroon
87. Ayorinde P. Oduroye, Deputy Registrar/Secretary, School of Postgraduate Studies, Babcock University, Nigeria
88. Dr. Caroline B Ncube, Senior Lecturer, University of Cape Town
89. Dr. Leslie London, School of Public Health and Family Medicine, University of Cape Town
90. Dr. Louis Reynolds, Associate Professor, University of Cape Town
91. Esther Sandrine Ngom, IP Consultant, Cameroon
92. Hala Essalmawi, Principal Attorney, The Library of Alexandria (Bibliotheca Alexandrina)
93. Henry Zakumumpa, Makerere University
94. Margot Kaminsky, Executive Director of the Information Society Project at Yale Law School
95. Prof. Ikechi Mgbeoji, Osgoode Hall Law School, York University, Toronto, Canada
96. Prof. David Sanders, School of Public Health, University of the Western Cape
97. Sean Flynn, Associate Director, Program on Information Justice and
98. Intellectual Property (PIJIP), American University Washington College of Law
99. Susan Sell, Professor of Political Science and International Affairs, George Washington University, Washington, DC
100. Yassin Tusingwire, East African research and Legal Chambers, Rwanda