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Global IPR regime and challenges in bridging the knowledg e gap - African Virtual Library and Information Network

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Introduction

- Knowledge is considered the key to human development
- Human Development Report notes, "knowledge is the new asset….and globalisation's rules have set off a race to lay claim to knowledge"
- New information and communications technology (ICT) are driving globalisation but polarising the world into the connected / information or knowledge rich and the isolated / information or knowledge poor (Longworth, 2000)

Introduction (2)

- Nations and organisations that have been able to leverage their knowledge more effectively and efficiently through the use of new information and communications technology are poised to continue to dominate world trade and to derive massive benefits in human development
- The regimes of intellectual property rights (IPRs), especially those enacted in the western countries to protect digital resources accessible across electronic networks, are compounding this situation by restricting access to public domain information

Global IPR Regime

- Two major international copyright conventions in operation
  - Berne Convention that dates originally from 1886, and
  - the Universal Copyright Convention, dating from 1952 but revised in 1971
- The Berne Convention has been revised many times and there are numerous different texts in existence to date. South Africa and many other countries around the world are signatories to this Convention

Universal Copyright Convention

- The Universal Copyright Convention was rendered ‘no longer important’, when the United States finally acceded to the Berne Convention in March 1989. The United States strongly resisted joining the Berne Convention until it became a net exporter of intellectual property and derived economic benefits from it

The Berne Convention

- is administered by the World Intellectual Property Organization (WIPO)
- WIPO also has two copyright treaties
  - the WIPO Copyright Treaty (WCT)
  - the WIPO Performances and Phonograms Treaty (WPPT)
- Many developing countries, including South Africa, have signed both treaties, the countries of the European Union have not yet done so

Trade Related Aspects of Intellectual Property (TRIPS) Agreement

- The Berne Convention did not have adequate measures to enforce protection of intellectual property. This was the motivation for adoption of the TRIPS Agreement, which was born out of the Uruguay round of the General Agreement on Trades and Tariffs (GATT) and came into force on 1 January 1995
- TRIPS provides minimum standards for intellectual property compliance and adequate enforcement measures for member states
- Both the Berne Convention and the TRIPS Agreement make provisions for member countries to apply national treatment to the protection of the works of foreigners, i.e. equal protection would be given to foreign works as to domestic works

- Berne Convention and the TRIPS Agreement have provisions for limitations and exceptions, and additional provisions for developing countries, which can be adopted by member countries
- Most developing countries have not taken advantage of the legal flexibilities, and operate restrictive copyright laws
- Many developed countries have provisions for the print-handicapped to convert information into more accessible alternative formats

Challenges Posed by the IPR Regime

- IPR regimes increasingly eroding the fair use concept which sought to strike a balance between economic and moral interests of IP owners and protection of public goods
- Being used to tighten control of the world's knowledge to the advantage of the industrialized world
- In the African context, Kawooya observes that these IPR regimes will

  - Burden local tax payers to protect what is largely western content given that less of the local indigenous content is available electronically

  - Restrict exploitation of indigenous knowledge

  - Hinder growth and innovation in Africa's unexploited software industries
- Lock up indigenous knowledge behind electronic databases owned by multinationals operating in the content industries of Africa.

Other concerns

Based on debates on the IP chapter in the US/Australian Free Trade Agreement, there are many other concerns which developing countries need to take heed of, namely,

- The IP clauses would undermine flexibility to access knowledge and to develop technological skills;
- The traditional balance of interests between rights owners and users, fundamental to the concept of IP, would be distorted;
- Contractual law could override IP laws which allow access to information;
- Protection for branded drugs and limits for parallel imports would be extended;
- The availability of affordable generic medicines would be hampered;

Other concerns (2)

- IPR infringements would become part of criminal law;
- Extension of copyright term would facilitate further copyright extension in the future;
- Information, including public domain material, would be locked up for a further 20 years;
- Copyright royalties would be payable to foreign rights owners for a further 20 years.
- Information providers would be at risk in copyright infringement cases.

Greater Challenges

- The proliferation of multilateral and bilateral trade agreements that the larger developed countries are imposing on other countries, particularly developing countries. Since the United States realised it could not impose its TRIPS-Plus copyright regime through WIPO or WTO channels, it adopted a "bilateral" approach. It is now imposing its stricter copyright regime on other countries through its so-called 'Free Trade Agreements'
- Increased expenditure with regard to copyright royalties, which would result from the extended copyright term, (i.e. from 50 years to 70 years after the death of an author)

Greater Challenges (2)

- At the UK Commission on Intellectual Property Rights' Conference in London in February 2002, the Director-Designate of the WTO, stated that "developing countries are being expected to adhere to very strict international copyright agreements, which the developed countries did not have to, when they were in their developing stages". Many of them are struggling to meet the very basic requirements of the TRIPS Agreement. He recommended that the WTO, WIPO and the Commission consider 'differential treatment' for developing countries. He encouraged developing countries to adopt and take full advantage of the exceptions and limitations allowed in international agreements

Greater Challenges (3)

- In August 2004, Argentina and Brazil submitted an urgent proposal to WIPO to adopt a Development Agenda, to address the needs of developing countries, as opposed to those of developed countries. Many developing countries added their signatures in support of the proposal. It is hoped that this proposal will survive strong opposition from developed countries, and become entrenched in the WIPO agenda, to address the very real issues needed to bridge the knowledge gap in developing countries

Actions

- African countries need to consider the long-term dangers of adopting the TRIPS-Plus copyright model. They need to resist pressure from the United States, the European Union or any other country in this regard. The knowledge gap would no doubt widen and dependence on developed countries would be perpetuated
- Need to review, liberalize and harmonize their copyright laws to facilitate, not restrict access to information and assist cross-border exchange
- Imperative that African countries work together in a co-ordinated, efficient way to review domestic laws and investigate harmonization possibilities as a matter of urgency

Bridging the Knowledge Gap: African Virtual Library and Information Network (AVLIN)

- African content in the public domain has been identified as a challenge
- Significant proportions of third world intellectual output appear through outlets controlled in the developed world. Restrictive IPR means that there is no ready access to such information, except by buying back such information
- Need to harness and leverage national information resources for educational, cultural, economic and social needs

Example

- The University of the Witwatersrand (Wits) used to send abstracts of theses and dissertations to UMI and paid a fee of USD 50 to put each abstract in UMI's database. Wits now publishes TDs electronically on the Internet and has joined the international network that makes ETDs available free of charge. Students now only pay R100 (USD 17) to the University for the management of the ETD database.

AVLIN

- AVLIN is one of many actions being taken to close the knowledge gap
- AVLIN was established in 2002 as a result of the ECA (Economic Commission for Africa) implementing a CODI 2 resolution that called for the establishment of such a facility
- Envisaged as a collaborative project of the ECA, other interested regional institutions, and the African library community. Ownership of content, hardware, in-house software, operational strategies and human resources will be vested in partners and participants. ECA's role is facilitative and integrative, and membership and participation is voluntary

Goals and Objectives of AVLIN

AVLIN's overarching objective is to help bridge the knowledge gap between Africa and the developed world by:

- providing access to, policy documents and reports, bibliographic databases, general information and expert and institutional profiles of African universities, research institutions, libraries and information centres;
- building capacity at institutional, national and regional levels on development of integrated virtual library services;
- promoting regional cooperation on standardization and virtual library system developments; and
- facilitating research and developmental activities in both infrastructure and development of digital and virtual libraries

AVLIN
http://www.uneca.org/temp2/avlin/home1.htm.

- The main focus of AVLIN is on capacity building at institutional, national and regional levels; regional cooperation on standardization and system development; and the facilitation of research and development activities in both infrastructure and development of digital and virtual libraries
- The success of the AVLIN project largely depends on having a coordinator at ECA who will ensure that full attention is paid to the implementation of the project. Unfortunately this hasn't happened yet. It is hoped that the Officer-in-Charge of DISD will pay attention to this

Conclusion

- Digital technology has fostered unforeseen possibilities to creativity, innovation and sharing of knowledge. At the same time it has brought about new possibilities for control and increasing knowledge gaps among and within societies of the world, especially through the implementation of restrictive IPR regimes
- There is need to use collective bargaining power based on regional approach or shared interests in opposing the imposition of restrictive IPR regimes. NEPAD and the African Union could also be vehicles for transforming and harmonizing IPR regimes in Africa
- Africa must seize opportunities to make its presence felt and have its needs taken into account in negotiations on any review of the TRIPS Agreement

Conclusion (2)

- African institutions, while seeking access to the global public domain information, should also seek to harness their own public domain information using modern ICT. There is need to equip these institutions to be able take on the challenge of harnessing and managing their own public domain information using modern digital technologies
- Attention should be paid to the infrastructure that is needed to support information resources and services
- The Digital Solidarity Fund could be used for massive digitization efforts in Africa

Thank you