21st October 2020

To:
WIPO,
Geneva

Dear WIPO,

Re: Interventions on the WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI): Third Session

Greetings from the Centre for Intellectual Property and Information Technology law (CIPIT) at Strathmore University, Kenya. CIPIT is a think tank research centre established in 2012. The scope of our work includes evidence-based research and training in intellectual property law and policy, especially as they contribute to African law and human rights. Research on IP has therefore been a central tenet of CIPIT for nearly a decade. Among our many qualifications, our Director served on the Board of Directors at KECOBO from 2012-2018, and published a textbook titled *Intellectual Property Law in Kenya* in 2019. Some of our publications in this area can be viewed at www.cipit.org

Centre for Intellectual Property and Information Technology (CIPIT) is pleased to further contribute to the ongoing conversation and call by WIPO on IP and AI. In addition to the contributions we have made, we would like to provide the following written interventions specific to the issues 15 and 16. Subject to availability of time, we would like to make oral interventions on the same during the conversation on 4th November 2020.

Issue 15: Capacity Building Issue 15: Capacity Building

a. **Open collaboration/innovation:** In our written intervention during the second session, CIPIT submitted that innovation models in Africa have shown preference towards open collaboration models with minimal priority for protectionist approaches. DCs especially through their practices favour open systems of innovations and such would call for flexible and progressive IP laws to accommodate the nature of innovations originating from such countries. This noting that the incentive to innovate is dependent on both context and circumstance.[1]

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[1] Yang et al (2014) note that the level of IPRs protection has a direct influence on innovations for high-income countries but has no effect on fostering innovations for lower income countries. See C., Huang, Y., & Lin, H. (2014). *DO STRONGER INTELLECTUAL PROPERTY RIGHTS INDUCE MORE INNOVATIONS? A CROSS-COUNTRY ANALYSIS*. *Hitotsubashi Journal of Economics, 55*(2) (2014), (Abstract)

A flexible and progressive IP system is necessary to provide both an incentive and support for the scaling of innovations in an ecosystem. This is because, often due to contextual constraints, firms in developing countries primarily draw their innovative activities from technology spill-overs and absorption from developed ones. Restrictive approaches to IP protection may therefore hinder access to technical knowledge that these firms need to 'jumpstart' their innovative activities.

b. **Access to data**-Availability of data and having access to the data is paramount to having free flow of technologies between countries. The quality of the data is a factor contribute to this conversation. A protectionist system will be a hindrance to access to data.

c. **Data subjects:** We are in support of data sharing, but urge that this must only be undertaken with utmost transparency, consideration and protection for fundamental human rights for the data subjects. This includes in data collection, dissemination and use. Data collected, and (or to be) used to train an algorithm in foreign countries and the subsequent commercial 'product' is sold in developing countries. See our initial response for further discussion on the same.

We recommend that capacity building efforts on AI in developing countries should focus on these areas.

Issue 15: Capacity Building for IPOs and Issue 16 on Accountability for Decisions in IP Administration

a. National IPOs from many DCs require capacity and infrastructural support including human resources. This will help them to necessary to ease the adaptation and implementation of any AI for administration purposes. Upgrading the existing framework to adopt and implement AI will greatly depend on the staff members engaged by the IPOs. Therefore their understanding and appreciation of AI and its implication will be paramount. However, their training should be localized in such a manner that is reflective of their environment.

b. In a survey conducted in 2018 by WIPO's International Bureau, 35 respondents majorly from developed countries, 17 of them recorded using AI applications for business solutions. The survey found that administrative tasks were the most common areas where AI tools were deployed. For advanced tasks such as patent searches and automatic classification of applications were noted to be limited to a few IPOs. The USPTO reported to have developed its own advanced AI analytics program while the rest

were dependent on commercially available AI applications. Therefore, they will also not have the same capacities to adopt AI in their operations. For instance, in our previous response, we highlighted the concern that due to limited capacity, national IPOs in DCs have to rely on international offices when it comes to examination reports for international applications.

c. The AI in use in administration of IP should be country specific i.e. developed using local data and algorithms to avoid cases of discrimination. To this extent, regulation by the international office of the implementation of AI in IP administration should be as flexible and 'loose' as possible to avoid imposing different and impractical standards on national IPOs.

d. Whereas, the use of AI in administration may assist in decreasing the time taken to do some things such as trademark searches on the database, such use still require human intervention especially in interpretation and application of the results. This mainly results from the design of the AI tools used in the search which is unable or insufficient in examining the similarities of the trademarks. This often happens when the trademarks in question is in or incorporates some aspects of a local dialect. We recommend that national IPOs consider having and adopting AI which understands and implements the distinct and diverse characteristics of the communities in their countries. This may take time but necessary.

e. It is worth noting that in some countries, automation of processes is not socially accepted norm, and is seen as a sign of laziness. This may mean that a holistic implementation of AI in IP administration may have the opposite effect of discouraging people from seeking IP services from the national IPOs. The people may not want to associate with the services of the IP office or when they do, the levels of dissatisfactions may be unreasonably high.

CIPIT continues to encourage a holistic approach to development of an IP Legal Framework that maximally benefits all stakeholders. We are ready and willing to contribute to efforts towards development of the policy and laws for a model IP system. You may contact CIPIT at cipit@strathmore.edu or +254 0703 034 612.

Yours Sincerely,
Centre for Intellectual Property and Information Technology (CIPIT)
Strathmore University