

CONFERENCE ABSTRACTS

KEYNOTES:

Ruth Okediji

From Minimalist to Maximalist (and back): The Subversive Pathways of Technical Assistance in Intellectual Property Law-Making

For much of its history, technical assistance (TA) arguably has played a benign role in the normative content and design of international intellectual property (IP) law. Recently, however, TA has played an increasingly dynamic role in facilitating positive treaty negotiation outcomes. In two recent WIPO treaties, TA was a significant point of contention among delegates, marking divisions in coalitions of Member States and obscuring key administrative and normative tradeoffs in the treaty making process. This lecture explores the role, structure, and generative power of TA in IP law making. It will focus on historical pathways and variations in the integration of TA in IP law and argue that there has been a subversive turn in the role of TA in international IP relations. This is best evidenced in successive treaty making contexts that skew maximalist where TA is a likely harbinger for globalized IP norms, and minimalist where TA is likely to produce administrative autonomy and national decision-making with little corresponding norm-strengthening features.

Edward Kwakwa

The Global Challenges and Partnerships Sector of the World Intellectual Property Organization: A look at IP and Technical Cooperation in Africa.

This presentation would first introduce the Global Challenges and Partnerships Sector (GCPS), one of 8 Sectors in WIPO. It will then elaborate on some specific activities of GCPS that have a bearing on technical cooperation in Africa. Examples are: the provision of assistance in respect of the recent WIPO Treaty on IP, Genetic Resources and Associated Traditional Knowledge, and the newly established IP for Medical Manufacturing Center of Excellence, both as they affect the IP landscape in Africa.

The Global Challenges and Partnerships Sector of the World Intellectual Property Organization: A Look at IP and Technical Cooperation in Africa

Justin Hughes

“Artisans, entrepreneurs, and adaptive intellectual property for different African stakeholders”

Technical assistance in intellectual property has been a bone of contention at the international level for decades, but broad, international commitments to provide such support – and tough negotiations over those commitments – hide the real difficulties of technical assistance. The WIPO Development Agenda’s 2007 recommendations emphasize that technical assistance should be “demand-driven,” but both developed and developing country governments have done a fairly poor job figuring out what that demand is or *might be*. The burgeoning audiovisual industry in many African countries may benefit from technical assistance that is very “business” oriented, i.e. efficient IP arrangements among all the creative contributors to audiovisual production, fair and profitable IP arrangements for international distribution, etc. In contrast, agricultural producers and rural artisans may benefit most from honest, comparative analysis of their opportunities through geographical indication, certification mark, and trademark regimes. No matter what we do, providing sensible “demand-driven” technical assistance includes helping different communities figure out *if*, *how*, and *what* intellectual property would help them in particular.

PANEL 1:

Isaac Kundakogo Kunko, Michelle Okyere, and Kow Abekah-Wonkyi

Technical Assistance and the Development of IP Dispute Resolution Systems in the AfCFTA Context.

Cooperation on Intellectual Property (IP) rights and enforcement is a key objective of the African Continental Free Trade Area (AfCFTA) Agreement. The Phase II negotiations of the AfCFTA Agreement produced the IP Protocol, which seeks to harmonize IP protection and cooperation across Africa. However, for the harmonization to be effective, an efficient dispute resolution mechanism is essential to address conflicts that may arise under the Protocol's implementation. The AfCFTA Protocol on the Rules and Procedure on the Settlement of Disputes (AfCFTA Dispute Resolution Protocol), which is largely modelled on the World Trade Organization (WTO) Dispute Settlement Understanding (DSU), provides the general framework for resolving disputes arising within the AfCFTA framework. However, it lacks a specific mechanism for handling complexities involved in IP, innovation, and technological disputes.

Given the technicalities of cross-border IP disputes and AfCFTA's multitiered legal framework, technical assistance is important for developing institutional capacity and for integrating IP dispute resolution mechanisms within the national, regional and continental levels of the AfCFTA framework. Thus, the effectiveness of an IP dispute resolution system will depend on how such technical assistance can support and facilitate the integration of best practices from pre-existing models, such as the WTO DSU, the World Intellectual Property Organization (WIPO) Alternative Dispute Resolution (ADR) Rules, and the African Regional Intellectual Property Organization (ARIPO) and the African Intellectual Property Organization (OAPI) procedures.

This paper therefore highlights the need to respond to the peculiar needs of IP disputes and include this within the AfCFTA legal framework. It argues that a one-size-fits-all approach to dispute resolution as provided under the AfCFTA Dispute Resolution Protocol may not be sufficient. Instead, there is a critical need to develop specialized mechanisms, with technical support from existing institutions, that cater specifically to IP-related conflicts, ensuring that they are resolved efficiently, fairly, and in alignment with international best practices.

Phillip Johnson

Tired thinking? The approach to exhaustion of intellectual property rights under the African Continental Free Trade Agreement

This discussion explores the contentious rules of exhaustion in the context of the African Continental Free Trade Agreement (AfCFTA). While the topic of exhaustion is widely studied in relation to developed countries, there is much less consideration of the issue in the context of Africa and, in particular, in light of the differing levels of development and wealth across the continent. Therefore, after setting out the background to AfCFTA, this discussion will evaluate the various approaches to exhaustion and consider, in particular, the approach adopted by the European Union, another regional trading block and its suitability in the African context. It concludes by arguing that the rule adopted in AfCFTA may inhibit the least developed countries accessing goods at the lowest prices. This in turn may hinder further economic growth across the continent.

Janewa Osei-Tutu

Prioritizing Human Rights in IP Norm Setting in Africa

Several scholars have observed that the intellectual property (“IP”) standards established through the WTO TRIPS Agreement are more suitable for western industrialized nations than they are for most African nations. This economically focused and trade-centered approach to IP leaves room for variations only through the “TRIPS flexibilities. African nations, relying on technical assistance and international experts, may find that they inadvertently implement IP policies and systems that do not prioritize the interests of their citizens or their indigenous and local industries. Taking into consideration the development of IP policy and laws through African Union, including the African Continental Free Trade Area, this chapter explores how human rights can be prioritized in intellectual property (IP) norm setting in Africa.

Lydia Lundstedt

Abstract: Cross-border Enforcement of Intellectual Property (IP) Rights in Africa: Can Technical Cooperation Facilitate Private Law Solutions?

WIPO has played a crucial role in providing technical assistance and cooperation in Africa to help build and strengthen intellectual property (IP) systems. Much of this assistance has focused on

providing legislative and policy support to develop and align national and regional IP laws with international standards as well as providing institutional capacity building in relation to the application and enforcement of these laws on the national territory. There has been less focus however on the *cross-border* enforcement of these national and regional IP rights on the continent. As economic integration in the African Union intensifies with the African Continental Free Trade Area (AfCFTA) and its newly adopted IP Protocol, the number of private international law disputes involving IP rights will continue to rise on the African continent. At present, however, there are no common African courts for the litigation of cross-border IP disputes so such disputes must be adjudicated in national courts. However, the rules on private international law across Africa reflect a diversity of approaches, and in particular, the rules on the enforcement of IP rights under private international law are unsettled and relatively unestablished. Could a differentiated or holistic approach to intellectual property technical assistance facilitate private law solutions for the cross-border enforcement of IP Rights in Africa?

PANEL 2:

Lokesh Vyas

Language and Power in International IP Law: A Reading from the Global South

What if an international lawyer had to argue in Tamil or Twi at the WTO or WIPO? Would it work? No. Even if someone did, would others engage? Again, no! Now, flip the question. What if they argued in English or French? Of course. Not only would they be heard, but international organisations would ensure translation into other “common” languages. It seems obvious. Natural. But why is it not the same for Tamil or Twi? It is a difficult question, for sure, with practical implementation problems. One may argue, and perhaps rightly so, that not all the languages of the world can be made official languages. True, that is. But if that is true, it is also not less true that international (IP) law does not just *happen* in any language—it *operates* in a curated linguistic order—one where European languages reign, with token nods to Arabic and Chinese. Take the Berne Convention for the Protection of Literary and Artistic Works: French, with colonial imprint from 1886, is still the prevailing language, though English has become the legal lingua franca. Mind it, these are not just tidbits of history; they shape the very fabric of IP legal discourse.

International law is Eurocentric (an axiomatic claim?), not just in its substance but also in its form through which it subjectivises people. Language, thus, is not a neutral vessel carrying ideas and meanings. It creates, crafts, channels, regulates, and sometimes even strangles them. Looking at this

way, international negotiations—the so-called democratic processes of lawmaking—are not just about conversations and communications but a site of linguistic powerplay. In this power play, linguistic fluency is not just a skill—it is capital one has to employ to influence the field. And if language is a form of capital, legal language does not just describe the legal world—it performs, realises, and even reifies it within a specific legal order. While scholars have long contested the Eurocentric underpinnings of international law, a similar reckoning remains relatively under-contested in international IP law. This paper aims to fill that gap.

Our core claim is that the language of International IP law has *performative* and *discursive* effects. Here, the performative effect refers to how the language of the international IP law *acts*, shapes/creates reality rather than merely describing the law for others to perform. The discursive effect, conversely, is about how language structures very legal thought and knowledge, delimiting what can (or cannot) be said, who gets to speak, and how ideas circulate and get validation. To exemplify our claims, we adopt a historical approach to understand how colonial powers (directly or indirectly) denied linguistic agency to colonised nations, embedding asymmetries that persist even today. Here, we trace shifts in the language of international IP treaties, examining how legal language has evolved, creating the effects mentioned above. In sum, this paper aims to address three key questions: 1.) What does the language of International IP do, and who does it do it for? 2.) Who decides what is “legal” and “valid” and what is just noise and unworthy? And how language facilitates this setting. 3) How did we get here and why are we still stuck with this linguistic leviathan?

Juliet Ogbodo

What Legal Transplants teach us about IP- Related Technical Assistance in Africa

One of the key and thought-provoking questions raised by the conveners of this conference is whether Intellectual Property Technical Assistance (IPTA) should be “based on an assessment of the recipients’ needs or the providers’ capabilities.” My presentation will attempt to answer this question by exploring the connection between the concept of legal transplants and IPTA.

The development of intellectual property (IP) laws and frameworks in many regions of the Global South has often been described as the result of legal transplants—the transfer of laws and legal norms from prominent Global North economies to other jurisdictions. Legal transplants refer to the movement of laws from one legal system to another, often raising questions about compatibility, adaptation, and long-term effectiveness. Similarly, technical assistance can be understood as the

provision of support—whether through human, infrastructural, or financial resources—from a donor state or entity to a recipient.

In both instances, the relationship between donor and recipient is critical. The success of a transplanted legal text, norm or rule depends – to a great degree – on its compatibility with the legal, economic, and social context of the recipient state. This paper examines the lessons that the literature on legal transplants offers in understanding IPTA, particularly in determining whether technical assistance is tailored to the needs of recipients or primarily shaped by the interests and constraints of donors.

Furthermore, this paper will explore how recent developments in the international IP landscape, particularly the adoption of the *WIPO Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge*, may shift the traditionally one-directional model of technical assistance between the Global North and South.

Véronique Pouillard

**Intellectual property and legal regimes in Congo (present day Democratic Republic of Congo):
A historical study of the transitions to the colonial and early decolonization periods**

This paper examines the implementation of intellectual property law in the Democratic Republic of Congo historically, including during the period of the Belgian colonization (1908-1960, preceded by the Congo Free State, 1885-1908). It questions the ruptures and continuities in the history of technical assistance in the introduction of IP frameworks. The DRC is currently reforming its IP law, which remains incomplete in the present day (Ncube 2024).

Research for this paper examines the long-term history of IP in the DRC by focusing on three main issues: the globalization of IP frameworks; the role of the colonial authorities in implementing early IP regulations; and an empirical view on the influence of those regulations on various industries. Firstly, the DRC adopted the Berne Convention in 1948, the UNESCO Universal Copyright Convention in the fall of 1960, and joined the WIPO in 1975. But research for this paper shows that the relation of the Congo with international IP systems goes back to nineteenth century debates between the Ministry of the Colonies of Belgium and WIPO's predecessor, the International Bureaus for the Protection of Intellectual Property (BIRPI). Secondly, this research provides a critical examination of the IP rights framework implemented by the colonial authority in Congo, and its multiple reorganizations (Acquah 2017). The IP framework provided, in some cases, access to a limited number of rights for colonial subjects who did not have access to the franchise (Pouillard

2024). Thirdly, the historical lens allows for an examination of the implementation of the various forms of intellectual property (including patent, trademark, industrial design, and copyright), their limitations, and their relevance to the development and protection of specific industries (Coombe 1997, Mondonga Moyama 2014, Ngombé 2022).

The conclusion of the paper summarizes the findings and discusses the international circulations of IP, the challenges of accessibility, and the historical discontinuities in the implementation of IP frameworks on the long term.

PANEL 3:

Gururaj Devarhubli, and Taruna Jakhar

Creating a Room for Gendered AI-Chatbots in Africa: Analyzing the Intellectual Property Issues, Challenges, and Opportunities

Chatbots are "artificial intelligence" programs that can simulate human communication via various mediums such as instant messaging, websites, mobile apps, or even over the phone. Chatbots have been developed and used more frequently in Africa, and their popularity is spreading among data and service providers who employ them to keep up with their growing customer base. Because of the data explosion and the continent's improved data gathering and processing capabilities, an increasing number of African enterprises are relying on artificial intelligence to power their products and services. Chatbots aren't just used in banking and other financial institutions, but also in insurance, transportation, and healthcare. However, the AI-Chatbots come with their own share of issues. The present work would highlight and discuss three major issues arising from AI-Chatbots in Africa. Firstly, the issue of data privacy arising due to lack of proper encryption mechanisms, leading to mass data theft. Secondly, as chatbots, are nothing but AI, the extension of IP protection to the content generated by such AI platforms, has been question of debate, since the proliferated use of AI. Thirdly, the frequent anthropomorphization of chatbots as females, requires close scrutiny due to its impact on perceptions of women as well as existing socio-cultural expectations, stereotypes, and demands regarding how women are expected to act in society. Based on this, the authors in the present work have highlighted the above three issues arising in the commercial banking and financial institutions of Africa, by analysing the chatbots deployed by such institutions. For this, the authors rely on secondary data collection methods (such as information available on websites of such institutions).

Nkem Itanyi

The Role of Intellectual Property Technical Assistance: Addressing Africa's Unique Developmental Needs

Intellectual Property (IP) technical assistance has played a significant role in integrating African nations into the global IP framework. Since the post-World War II era, organisations such as the World Intellectual Property Organization (WIPO) have provided support to African countries, influencing the development of IP laws and institutions like the African Intellectual Property Organization (OAPI) and the African Regional Intellectual Property Organization (ARIPO). However, a salient question persists: has this technical assistance been tailored to Africa's unique developmental realities, or has it primarily served the broader agenda of global IP harmonisation? This paper examines the effectiveness of IP technical assistance in Africa, particularly in the context of international agreements such as the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. It explores whether such assistance is driven by the needs of recipient African states or by the capacities and priorities of donor organisations. Additionally, the paper assesses the impact of modern IP laws on economic development, innovation, and creativity, with a focus on Africa's distinct concerns, such as the protection of traditional knowledge, cultural expressions, and genetic resources. Considering the African Continental Free Trade Agreement (AfCFTA) Protocol on Intellectual Property, this paper further evaluates whether existing technical assistance frameworks support Africa's economic and creative aspirations or whether a restructured approach is necessary. By analysing current policies and their practical effects, the paper aims to contribute to discussions on aligning IP technical assistance with Africa's specific needs, offering recommendations for a more inclusive and context-sensitive framework that fosters sustainable economic growth and innovation across the continent. I recommended that context-sensitive approaches be taken regarding Africa's unique developmental needs; consequently, a tailored approach, not a one-size-fits-all approach, is required to address the challenges faced in the Global South.

Isaac Rutenberg

Technical Assistance models - direct assistance or assisting local experts?

Two models for providing technical assistance are compared and contrasted in the context of IP in Africa. The first model (the "Direct Model"), which is favoured by the IP5, involves directly advising government officials at national IP offices or government ministries. While the Technical Advisors

in this model maintain close control over the assistance received by the government, the major drawback is that those Technical Advisors tend to lack context for the receiving country, so the advice is necessarily generic and consistent from country to country. The second model (the "Indirect Model") involves providing technical advice to local experts, who then relay the advice to the appropriate government entities. This model has the opposite advantages and disadvantages - i.e., less control over what actually reaches the recipient government, but significantly more contextualization of the advice. This paper looks at the two models in the African context, and seeks to illuminate the importance of contextualization of technical advice.

Peter Yu

The Promise and Peril of Technical Assistance

This presentation begins by providing a historical overview of international efforts to provide technical assistance to developing and least developed countries in the intellectual property context. It discusses the benefits of technical assistance while cautioning the danger posed by inappropriately designed programs. The presentation further offers suggestions on how to strengthen international technical assistance programs in the intellectual property arena.

PANEL 4:

Victoria C. Onyeagbako

IP Technical Assistance in Africa: The Paradox of Needs and Capabilities.

The World Intellectual Property Organization (WIPO) has provided IP technical assistance (TA) for over 44 years around policy, institutional support for IP enforcement, training, capacity development and administrative or IT support. These have influenced the legal and institutional landscape of IP protection in Africa. As a dominant player, WIPO collaborates with a wide range of national and international actors to implement various initiatives to support structural advancements in Africa – the establishment of regional IP organizations, adoption of international treaties, enactment of modern IP laws and integration of African nations into the global IP framework. While these interventions are widely accepted, developing countries question their adequacy in meeting specific development needs. The WIPO Development Agenda (DA) was adopted in 2007 to integrate questions of

development into WIPO's mandate. Notwithstanding, the Global South appears dissatisfied 18 years after. The question remains, while WIPO achieves the integration of the Global South into the international IP system, has this adequately met the economic development needs of the GS? This paper analyses the concept of technical assistance; what it is and what it could be for Africa. It argues that current WIPO TA efforts, although drive globalisation of IP laws, are insufficient and unsustainable as many of the western-centric IP models do not meet African realities – informal economies, technological realities and wellbeing challenges. With a focus on Performer's rights and their impact on economic development, this paper highlights the neglected strengths of Africa in the pursuit of economic development. A hybrid TA path is suggested to strike a balance between African needs and WIPO capabilities. Considering the AfCFTA IP Protocol, this paper submits alternative approaches to TA and a holistic consideration of economic, social and cultural development needs of African Nations.

Isaac Kundakogo Kunko

Intellectual Property and Corporate Insolvency in Africa: Bridging Legal Gaps Through a Model Law and Technical Assistance

Intellectual property (IP) is not only an essential asset during a company's operations but also in its insolvency. While most IP laws focus on the former, the treatment of IP assets—including IP licenses—during insolvency proceedings remains an underexplored issue in many African jurisdictions. Given the intersection of IP, company and insolvency laws, understanding whether and how IP is recognized and treated during insolvency is crucial for the comprehensive IP protection, valuation and transferability within businesses and maintaining cross-border trade, investment and business stability.

This paper's study of statutory laws of selected ECOWAS states as a reflection of broader African trends reveals a fragmented approach to IP protection in insolvency, with some jurisdictions explicitly recognizing IP—albeit in either their company laws, insolvency regimes, or both—while others lack clear provisions, risking the loss, undervaluation, or non-recognition of valuable IP during insolvency. Since IP protection is not the central focus of company and insolvency laws, what role can IP technical assistance play in addressing these gaps?

This paper argues that the lack of clear IP protections in insolvency highlights the need for a model law, potentially developed in collaboration with the World Intellectual Property Organization

(WIPO), the African Intellectual Property Organization (OAPI) and the United Nations Commission on International Trade (UNCITRAL) alongside capacity-building efforts for stakeholders, including IP and insolvency practitioners, judges, and lawmakers across the continent. This approach would support AfCFTA IP Protocol's harmonization efforts, which primarily focus on core IP rights, by addressing broader legal regimes that indirectly impact IP—such as corporate and insolvency laws—that also require attention in the harmonization process.

Olufunmilayo B. Arewa

Conceptualizing Expertise: Technocracy, Local Knowledge, and African Development

Technical assistance has long been a core aspect of development strategies for developing countries, including in Africa. Because law may be highly technical, an emphasis on technical assistance is well-suited to legal reform projects, which may include help with developing new laws, building capacity, and enforcing laws. During the colonial and post-colonial eras, lawmaking in African contexts has relied to a significant degree on cut-and-paste copying of laws and norms present in contexts outside of Africa with the use of external expertise and experts to facilitate such borrowings. External experts are thus often an essential element in technical assistance, which makes assumptions about expertise and the knowledge flows necessary for the poverty alleviation that is a core development objective.

Flows of knowledge in technical assistance contexts may be unidirectional, moving from external actors presumed to be experts to local communities whose knowledge and understanding may not be sufficiently recognized. These types of top-down development approaches have led to questionable outcomes and the development of norms that may not actually be conducive to development. In the intellectual property arena, for example, as noted in the Concept Paper, many African countries have higher levels of intellectual property protection than required by TRIPS, with minimal use of exceptions and limitations.

Although many agree that innovation is central to economic development, paths to achieve innovation driven economic growth may not be well understood in African contexts. Even if better understood, paths to economic growth and prosperity may be difficult to replicate, particularly in contexts where expert technical assistance may not take sufficient account of local knowledge. Further, technical assistance may be rendered in contexts of institutional and governance failures with significant uncertainty as to policies, goals, processes, and outcomes. Approaches that blend bottom-up understandings with learning from external experience have

the potential to improve outcomes.

Improving development outcomes is critical today in African contexts. African countries have the youngest population in the world, with the oldest rulers. In a January 2025 Special Report “The Africa Gap,” *The Economist* noted that the economic gap between Africa and the rest of the world has been increasing. Closing this economic gap will require the development of robust and innovative economies that use external expertise to inform locally driven strategies rather than the reverse. Improving local outcomes will also require policy innovation and innovation in conceptualizing expertise, the internal and the external, and law itself.

Chidi Oguamanam

The Place of Indigenous Knowledge in IP Technical Cooperation

From the colonial times through the botched New International Economic Order to the present era of unprecedented global technological capture of society, relations between colonial powers and the colonized others are mapped on unquestioned logical binaries. Those simplistic binaries constitute the warrants for unidirectional flow of ‘assistances’ in their various guises and disguises. This framework of global power relations is loaded with a universe of assumptions. Those assumptions rightly require scrutiny, especially over how the ‘cooperations’ between the technological haves and have-nots are framed and operationalized. In the context of increasing traction for global knowledge governance generated at the intersection of intellectual property, innovation and indigenous knowledge systems, we find a fertile site to envision a less presumptuous and less generic form of technical cooperation, one that affords us the opportunity to dare. We dare to interrogate the effusive promises of technical cooperation, its *raison d’être*; and to wonder whether it serves the interests of all stakeholders; to re/imagine how technical cooperation can be sensitive to epistemic inclusion and plurality as a shift from the unidirectional conceit.

PANEL 5:

Sofia Jernroth

Sub-Saharan Africa’s Struggle for Traditional Knowledge Amid Regime Shifting

The protection of traditional knowledge and cultural expressions was a central concern for WIPO and UNESCO between the 1970s and 1990s. A series of meetings explored the establishment of a *sui generis* system for protecting traditional knowledge. However, in 1984, discussions on a draft treaty based on the UNESCO/WIPO Model Provisions were ultimately rejected and abandoned, just two

years before the TRIPS negotiations at the GATT Uruguay Round. During the Uruguay Round, traditional knowledge was absent from discussions. Instead, intellectual property rights entered the international legal system a trade-related issue, when they were incorporated into the TRIPS Agreement. In the same negotiations, Sub-Saharan African countries were largely absent or their participation was limited.

This shift from UNESCO/WIPO to GATT and the WTO represented a major setback for efforts to recognize traditional knowledge as intellectual property and to strengthen the collective protection for Indigenous peoples' cultural expressions.

Following the adoption of TRIPS, however, the issue of traditional knowledge protection resurfaced, now centered within WIPO and its Intergovernmental Committee (IGC). This study examines the phenomenon of *regime shifting*, from UNESCO/WIPO to GATT and the WTO, and now back to WIPO IGC. The hypothesis guiding this research is that WIPO provides developing countries, particularly in Sub-Saharan Africa, with a strategic advantage due to its technical expertise in intellectual property law. The lack of such expertise was a key factor in their limited participation during the GATT-TRIPS negotiations. By leveraging WIPO's resources, Sub-Saharan African countries, in particular, can better advocate for traditional knowledge interests in a more inclusive and flexible negotiation environment. The IGC, unlike the legally binding WTO fora, offers a participatory platform where developing nations can engage more effectively in shaping global intellectual property norms.

Rasoul Rahmani

TRIPS Flexibilities and Technical Assistance: Rethinking WIPO's Role in Strengthening Compulsory Licensing for Economic Development in Africa

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides flexibility to balance patent protection with public interest, particularly in health and economic development. Compulsory licensing, a key TRIPS flexibility under Articles 30, 31, and 31bis, allow governments to authorize the production of patented pharmaceuticals without the consent of the patent holder under specific conditions. Despite its potential to enhance access to essential medicines and promote local pharmaceutical industries, many African nations underutilize this mechanism due to legal, political, and technical constraints.

This paper examines whether WIPO's technical assistance programs sufficiently encourage African nations to use TRIPS flexibilities, particularly compulsory licensing, as a tool for economic development. It explores whether WIPO's initiatives align with the region's public health and industrialization goals, or if they primarily promote stronger patent protection at the expense of local innovation. The discussion also considers whether technical assistance should prioritize enabling African governments to assess and utilize TRIPS flexibilities in a manner tailored to their socio-economic needs.

By analyzing existing case studies of compulsory licensing in developing countries, this paper argues for a reorientation of WIPO's technical assistance toward a more needs-based, country-specific approach. Such an approach would not only support public health objectives but also contribute to the development of domestic pharmaceutical industries, reducing dependence on imports and fostering long-term economic growth. The paper concludes by proposing policy recommendations to enhance the Effectiveness of intellectual property technical assistance in Africa, ensuring that it empowers governments to use TRIPS flexibilities effectively and equitably.

Susan Isiko Štrba

Artificial Intelligence (AI) and Copyright in Africa: the Potential Role of technical Cooperation

African countries still struggle with using copyright for economic development, due to factors such as lack of adequate funding and limited or no technical expertise in intellectual property. At the same time, African countries need to leapfrog to AI technologies to address a range of developmental challenges. Otherwise they will be left behind and, like has been the case with intellectual property, become users and enforcers of other peoples' AI. A number of startups and small businesses have expressed interest in developing AI, but face various challenges including funding, infrastructure limitations, shortage of talent and brain drain, regulatory complexities, data availability and quality and cultural and linguistic diversity. In addition, the AI field is dominated by private entities, which might imply that they are not direct beneficiaries of technical cooperation given by international institutions like WIPO, WTO or UNCTAD to government entities. They nevertheless benefit from partnerships with established international enterprises or technologically advanced companies. In additions, the African Union AI Strategy, 2024 recommends, *inter alia*, fostering regional and international cooperation and partnerships to develop national and regional

AI capabilities and advance Africa's position on a global state.

The paper explores entities with the potential for (international) cooperation with African institutions working or exploring to work with AI to advance development of the continent. It will discuss roles and tasks of who might form the foundation of AI success – policymakers, universities and other research institutions, technology companies, startups and multi-stakeholder partnerships – in fostering creativity and innovation in Africa, with a focus on IP and AI. The paper examines the place of intellectual property in advancing technological innovation for African development and highlights areas where technical cooperation might be helpful.

Tshireletso Modikwa

Traditional Knowledge and Traditional Cultural Expression in the Era of Digital Technology

The nature and needs of Traditional Knowledge (TK), Traditional Cultural Expression (TCE) in Botswana is based on communal ownership that is firmly rooted in generational transmission, preservation, recreation, and protocols. This, in some instances, is at odds with the era of digital technology which has little patience and respect for traditional protocols governing the access and transmission of TK and TCE. The matter is further exacerbated by the conventional Intellectual Property System (IP) that recognizes IP rights as individual property that should be rewarded with individual monopolistic economic and moral rights conferred on the rights holder. Botswana has made efforts to address this through the Botswana Copyright and Neighbouring Act of 2006 and leveraging on protocols, support, and initiatives from the World Intellectual Property Organisation (WIPO), Africa Regional Intellectual Property Organisation (ARIPO) as well as AfCFTA Protocol on Intellectual Property, among others. This paper interrogates and explores how Botswana's IP system treats and responds to TK and TCE in area of digital technology. The adequacy of or lack thereof the Botswana's IP system in protecting and promoting TK and TCE in area of digital technology is examined in the context of government institutions, community cultural organisations and Cultural practitioners as they play a critical role in the recreation, transmission, promotion, and support of TK and TCE.

PANEL 6:

Felipe de Andrade

The Technology Bank for the Least Developed Countries: the promise and pitfalls of a new institutional actor in the international governance of science, technology and innovation

The 2030 Agenda for Sustainable Development (SD) identifies Science, Technology and Innovation (STI) as a central means of implementation of the SDGs. Out of the many STI-related targets and means of implementation of the SDGs, this paper draws attention to one case that seems to be flying under the radar of the intellectual property (IP) scientific community: the United Nations Technology Bank for the Least Developed Countries (LDCs) (UNTB). The work of the UNTB is particularly relevant for African countries, as 32 out of the 44 nations in the UN's List of Least Developed Countries are located in Africa. This new actor in international STI and IP governance was founded with the promise to facilitate technology transfer and development and transformative change for the LDCs. In this paper I explore the challenges the UNTB faces to deliver this promise and what tools exist for it to overcome them. Challenges are of structural – lack of resources and implementation barriers -, substantive – lack of normative guidance on how to apply and interpret IP in accordance with the goals of the sustainable development agenda -, and governance – the fragmented, and dense nature of the current landscape of international STI and IP norms and institutions - nature. I demonstrate how the UNTB can leverage partnerships and make use of its main tools – Technology Needs Assessments (TNAs) and technology transfer through the IP Bank, its operational unit in the course to be implemented – to provide for and overcome each of these challenges. Despite the progressive implementation of the UNTB being a barrier, I conclude that this new organisation has tapped potential to reinforce the development frame of IP and to become a reference actor for the LDCs with regards to STI, technology transfer, and IP.

Anna Marie Skråmestø Nesheim

Monetizing African Culture, 1850s–1960s

Copyright jurisprudence and legislation have shaped African cultural production for over 150 years. By mapping out and analyzing the establishment of French collective management organizations (CMO) in the period 1850s–1960s, the project *Monetizing African Culture* investigates how the

implementation of copyright in “French” North and West Africa affected cultural production. The dual goal is to:

- Develop a historical theory of the legal acknowledgement and monetization of cultural production in these regions.
- Provide an account of historical alternatives to organizing creativity that did not fit into the rights-oriented cultural production developing in Europe.

On 18 May 1849, the military post in Blida, Algeria, reported to the French Société des auteurs et compositeurs dramatiques (SACD), that a local theatre had been established in town. The leader of the military post, M. Chapelle, volunteered to represent SACD and to collect royalties from the venue. The following year, SACD offices opened in Oran and Alger despite protest from local venue managers who found the royalty tariff too high. The presence of SACD in Algeria from the mid-nineteenth century is remarkable. In most European countries, CMOs were a late nineteenth or early twentieth century phenomenon. France was an exception, with the founding of SACD in 1829, and of the Société des auteurs, compositeurs et éditeurs de musique (SACEM) in 1851. The early introduction of CMO offices in Algeria alongside military garrisons suggests that licensing and royalty collecting structures on the most ephemeral of all intellectual properties (performance) were an integrated part of French imperial ventures. *Monetising African Culture* investigates how the implementation of authors’ rights systems affected the production of North and West African performance cultures in the period from the 1850s to the 1960s.

Emmanuel Kolawole Oke

An Evaluation of the Technical Cooperation Activities of the United Kingdom under Article 67 of the TRIPS Agreement

This paper critically evaluates the technical cooperation activities of the United Kingdom pursuant to the obligation contained in Article 67 of the TRIPS Agreement which mandates Members of the WTO that are developed countries to provide, on request and on mutually agreed terms, technical and financial cooperation to developing and least-developed countries. The objective of the technical and financial cooperation required by Article 67 of the TRIPS Agreement is to facilitate the implementation of the TRIPS Agreement. In reality, and in the absence of any effective mechanism for evaluating the activities of WTO Members in this regard, developed countries typically label various activities, initiatives, and events as ‘technical cooperation’ in their annual reports to the TRIPS Council on technical cooperation activities under Article 67 of the TRIPS Agreement.

Nevertheless, these annual reports filed by developed countries provide a means of assessing the compliance of developed countries with their obligations under Article 67 of the TRIPS Agreement. This paper therefore examines the annual reports on technical cooperation activities that have been submitted by the United Kingdom to the TRIPS Council in the post-Brexit era (i.e. 2020 to 2024). The paper critically analyses the extent to which the activities reported by the United Kingdom during this period actually facilitates the implementation of the TRIPS Agreement in developing and least-developed countries (including African countries).

Carlos Correa

The Role of Patent Offices as Custodians of the Public Interest