PAIPO – unnecessary and unwanted

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Because intellectual property rights are territorial in nature (that is, recognition by the country in which protection is sought), authors, creators, designers, inventors and traders seek similar protection in other countries to that they enjoy in their domestic legal systems or to, at least, be afforded the protection enjoyed by nationals of the foreign country. This need initially gave rise to a number of bilateral agreements and then multilateral treaties or conventions.

These treaties or conventions can be broadly classified as falling into three kinds (or a combination of these), depending on what is sought to be achieved. First, they may require that signatories provide a minimum level of protection in terms of their domestic law, which should also extend to protecting the interests of foreigners. This latter requirement is the principle of "*national treatment*," which requires that foreigners be afforded the same protection as nationals of the relevant state. The problem, however, is that national law often requires registration before any rights are afforded to a person, which places a considerable burden on authors, creators, designers, inventors and traders in securing registration in the various countries.

The second kind of multilateral treaty or convention is thus concerned with facilitating the registration process in multiple jurisdictions. An example of such a centralised registration system is the African Regional Intellectual Property Organisation (ARIPO), which provides for patent and trade mark registrations in multiple jurisdictions pursuant to the Harare (1982) and Banjul Protocols, respectively.

The last kind of multilateral treaty seeks to go even further, and aims to harmonise the laws of the signatories to the treaty, as well as providing for a common registration system. Examples of this approach are the African Intellectual Property Organisation (known by its French acronym OAPI), comprising 16 West African states, established under the Bangui Agreement of 1977, and the European Union's Trademark Directive (and the Community Trade Mark Regulation).

Proposed establishment of PAIPO

At the meeting of African Union (AU) science and technology ministers held from November 12-16 in Brazzaville, Democratic Republic of Congo, one of the matters for consideration was the *Final Draft Statute of the Pan-African Intellectual Property Organization*, produced by the AU's Scientific, Technical and Research Commission (the Draft Statute). The Draft Statute seeks to establish the Pan-African Intellectual Property Organisation (PAIPO), a specialised agency of the AU tasked with matters concerning intellectual property in Africa (Article 2).

According to the Draft Statute, PAIPO's stated objectives (Article 5) include

- the promotion of harmonisation of intellectual property laws of its member states, with membership being restricted to the members of the AU;
- to provide for common administration and management services of intellectual property; and
- to provide a vehicle for addressing political issues and developing African common positions relating to intellectual property matters.

Thus, among PAIPO's main goals is to harmonise intellectual property laws and to provide a centralised registration system to facilitate registration, building on existing institutions like ARIPO.

Other than being the constitutive document for PAIPO, the Draft Statute provides no details (not even by way of a separate explanatory memorandum) on the substantive legal requirements and principles for the proposed basis of harmonisation of the different forms of intellectual property.

PAIPO and its critics

Critics have been quick to condemn the PAIPO initiative, claiming that it panders to the demands of foreign intellectual property rights holders (by seeking to adopt "*first-world*" standards of protection), and that it fails adequately to appreciate, or address, the needs of the least-developed countries in Africa, particularly in the area of providing affordable healthcare. For example, they require that the Draft Statute expressly include among its goals the utilisation of the rights afforded by TRIPS to promote access to affordable medicines, educational resources, and other public goods. A petition has been circulated to oppose the adoption of the Draft Statute and the establishment of PAIPO on the basis proposed.

In my opinion, unless there is a subtext to which I have been oblivious, or a particular context out of which this initiative was born (or is being driven), the text of the Draft Statute does not support a clear basis for such criticism. For example, among the stated objectives of PAIPO is to maximise the benefits of the intellectual property system to improve public health. I too could become easily exercised about, for example, the potential inclusion of traditional knowledge within the intellectual property framework (which is a stated objective), but because the Draft Statute is so thin on detail, it is something which I would prefer to address when more concrete proposals are made in this regard.

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Having said that, the lack of consultation and transparency in the process leading up to the production (and potential adoption) of the Draft Statute is something that should be

condemned. Intellectual property has become a highly politicised issue and it is imperative that there be an inclusive and transparent process when initiatives of this nature are embarked upon.

My principal concern at the moment is of a more pragmatic nature. The wisdom of trying to establish an African centralised registration system has to be questioned. Would the resources, which are to be spent in such an endeavour, not be better utilised in ensuring that the intellectual property registries and laws of the various African states are improved in order for them to participate in existing international registration systems such as the Madrid Agreement and Protocol, administered by WIPO, for trade marks? There is no cogent argument for proliferating registration systems or for focusing on, comparatively, parochial initiatives in an era of ever-expanding cross-border trade.

The fact that I spent about 20 minutes on the African Union's website in a failed attempt to find the Draft Statute and that the ARIPO website was unavailable when I attempted to access it, convinces me that this is an ill-conceived initiative, built on structures that have proven to be dysfunctional (and largely ignored) and, therefore, unsuited to warrant the extra resources which would be dedicated to them. ◆

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