Intellectual Property and the creative economy, digital trade and other new frontiers

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What is the creative economy?

- The creative economy has no single definition. It is an evolving concept which builds on the interplay between human creativity and ideas and intellectual property, knowledge and technology. Essentially it is the knowledge-based economic activities upon which the ‘creative industries’ are based.

- The creative industries – which include advertising, architecture, arts and crafts, design, fashion, film, video, photography, music, performing arts, publishing, research & development, software, computer games, electronic publishing, and TV/radio – are the lifeblood of the creative economy. They are also considered an important source of commercial and cultural value.

https://unctad.org/topic/trade-analysis/creative-economy-programme
The importance of the creative economy

• The creative economy can be an engine for economic diversification, economic growth and innovation, and provides an avenue to make our economies more resilient.

• Factors of production used for many creative industries are essentially “human” – ideas and knowledge – rather than natural resources, factories or machines.

• These industries have relatively low barriers to entry. This can open opportunities for creators, including women, youth.

• Growth in the creative economy is closely linked to the opportunities flowing from digital trade.
Intellectual property regimes: addressing new types of economic goods and activities, together with increases international trade

- Paris Convention 1883
- Berne Convention 1886
- Rome Convention 1961

- WIPO – Stockholm Convention 1967
- The TRIPS Agreement 1995

- The digital age
Trade in knowledge: The WTO response

- WTO Trade in Knowledge programme
- “Intellectual Property, Trade and Development in a Transformed Global Economy”

“Digital technology has transformed business models based on IP. A significant proportion of trade in knowledge now constitutes transactions based on licences of IP rights. In addition, IP transactions form an integral part of global production chains.”

“Innovators can access new trading platforms, creating new business opportunities, while increasing attention is being paid to how to make best use of the opportunities provided by the knowledge economy in areas such as sustainable development.”

- The purpose of the programme is to stimulate debate and to provide technical support

https://www.wto.org/english/res_e/publications_e/tradeinknowledgetpub22_e.htm
The new frontier: AI and the WIPO response

• Artificial intelligence (AI) is increasingly driving important developments in technology and business.

• It is being employed across a wide range of industries with impact on almost every aspect of the creation. The availability of large amounts of training data and advances in affordable high computing power are fueling AI's growth.

• AI intersects with intellectual property (IP) in many ways.

• WIPO Conversations on Generative AI and IP (Generative artificial intelligence (GenAI) can create certain types of images, text, videos, and other media in response to prompts.)

Two other issues to consider: Trade in services, and then an African priority

• Intellectual Property in Services Sectors
  https://ecipe.org/blog/ip-in-services-sectors/

• Basic Proposal for an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources
Update on the AfCFTA Protocol on Intellectual Property

• Article 7 of the AfCFTA provides that, in pursuance of the objectives of the Agreement, Member States shall enter into Phase II negotiations in the areas of Intellectual Property Rights (IPRs), Investment; and Competition Policy.

• There was a shift from negotiating an Annex to negotiating a Protocol on IPRs

• The Protocol on IPRs and its associated Annexes and Appendices shall be integral parts of the Agreement and shall form part of the single undertaking, subject to entry into force.
List of Annexes

- Plant Variety Protection
- Geographical Indications
- Marks
- Copyright and Related Rights
- Patents
- Utility Models
- Industrial Designs and Models
- *Traditional Knowledge, Traditional Cultural Expression and Genetic Resources*
The AfCFTA Secretariat has started work on a first Annex (Copyright and related rights)
A draft structure and list of key elements have been developed
Regional stakeholder engagement meetings took place on 24 and 25 April 2024
A similar exercise has now started on the Annex on Patents (but institutional arrangements also a pressing issue)
The third priority for now is the Annex on Utility Models
The expected outcome of these meetings is to receive comments that will help in the development of the specific Annex
Questions