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Knowledge, Power and Politics: A speech held by WIPO Director General Francis Gurry

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On 4 of July WIPO Director General FRANCIS GURRY (DG GURRY) visited the Swiss Federal Institute of Intellectual Property (IPI) and the Federal Department of Foreign Affairs (FDFA) in Bern. He was accompanied by PHILIPPE BAECHTOLD, Senior Director of the PCT Services Department, as well as ALEXANDRA GRAZIOLI, Director of the Lisbon Registry for Geographical Indications. DG GURRY also met with SIMONETTA SOMMARUGA of the Federal Council. On the occasion of this visit, various IP topics and institutional questions concerning WIPO's role as a UN organisation and Switzerland's role as the organisation's host state were discussed. DG GURRY'S visit culminated with his speech on "Knowledge, Property and Power" which was delivered during an IP@6 event in the Bernerhof. DG GURRY'S speech touched upon several topics. He started by discussing technology as a differentiator in history during which he briefly explained the role that technology and development has played throughout human history. He then discussed how the scale and speed of technological development has been and still is transformational in our daily lives and which future challenges this development will present. Below are edited excerpts of Mr. GURRY'S speech.

I. Technology: History's Differentiator

"My starting point is that technology is a differentiator in history and it's a differentiator in contemporary economy...Two things have changed: scale and speed."

"On scale: Technology has become part of our lives and has become pervasive in absolutely everything we do on a daily basis. In many advanced economies more is invested on an annual basis in intangible capital than in physical capital."

"You see it also in research and development expenditures. Around the world last year, about \$1.95 trillion United States dollars was spent on research and development, or the creation of new knowledge and technology."

"The other thing that has changed is the speed with which technology develops these days... Radical technological change is influencing the whole of society and it is occurring at a much more accelerated speed."

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II. Intellectual Property (IP): Basis of Competition

“One of the central roles of intellectual property is to protect or to capture the competitive advantage that is conferred by innovation, or a new technology, in a variety of ways. To use the terminology of Warren Buffett, it constructs an economic moat around the innovation and enables innovation to be protected – and it covers all forms of intellectual property. We are increasingly seeing industry resorting to the use of every available form of intellectual property in order to protect the competitive advantage conferred by innovation.”

“Pharmaceuticals, which once may have been a predominately patent-based business model, now use trade secrets, data exclusivity and trademarks for extending the life of a product beyond the expiration of the patent. Industry is responding to this role of intellectual property by using it to construct this economic moat around the specificities of its particular innovation.”

“I would say that all of the intellectual property titles have a role to play and are very important. So if you take trademarks as one example, according to the survey of the valuation of global brands that was published earlier this year by Millward Brown and the Financial Times, the top trademark in value of the world, Google, was worth \$ 230 billion dollars. If you look at the market capitalization of Google, or Alphabet actually, it was \$ 515 billion dollars. So the brand valuation was about 44% off the market capitalization of Google, and the same goes for Apple and you could go down the list.”

“That is one of the consequences that we are seeing, which obviously creates a question or a challenge for the management of intellectual property rights in this environment of high growth in applications for intellectual property. I think another consequence is that intellectual property, because of the centrality of innovation to economic strategy and as a way of predicting the competitive advantage of innovation, is increasingly the basis of competition.”

III. Changing Geography of Innovation

“In 2008, shortly after starting my current role, I had the opportunity to meet the then Prime Minister of China, Wen Jiabao, and the very first words he said to me were “intellectual property will be the basis of competition in the future”... when you look around the world, I think you see this has a lot of truth in it.”

“The geographical nature of competition is also something which is the subject of a great deal of change. If we just take international patent applications under WIPO’s Patent Cooperation Treaty as one example, last year, 45% of these applications came from Asia, compared to about 25% from Europe and 25% from the United States of America. That’s an extraordinary change that has occurred in the space of about 25 years.”

“Another consequence of this environment is the enormous asymmetry in technological capacity that exists around the world. You might say that those asymmetries have always existed but they are being exacerbated in the current environment. I know that I’m comparing apples and oranges here, but the United States spent last year about \$ 514 billion dollars on research and development. That’s more than the gross domestic product of 167 countries, individually. So the United States spent on the creation of new technology and new knowledge more than each of the 167 countries had to spend on health systems, education systems, infrastructure, defence, everything – all public needs. China spent \$ 396 billion dollars which was more than the GDP of 163 countries.”

IV. Policy Making Struggles to Catch Up

“The current situation has consequences for policy and policy development, since technological development and the market response are moving at a speed which far outstrips the capacity of the legislature and the judiciary to accommodate. Policy is being made increasingly by the market. If you look at the whole digital revolution that occurred and its application to creative works you find that there has been a complete revolution in the manner in which creative works are produced, distributed and consumed. It’s completely different from the way in which we produced, distributed and consumed 20 years ago.”

“And if you look at the legislative responses around the world, you see legislatures grappling with the two really revolutionary features of the new environment: Reproducibility, or the capacity to reproduce

a creative work with essentially a zero marginal cost; and escapability – that once a work is out there in the internet, that's it."

"One of the other consequences of this is that a much heavier burden has been placed on judiciaries. The United States Supreme Court, for example, in the last five years has accepted more cases in the area of intellectual property than in any other field of human endeavour."

V. Complicated Multilateral Stage

"Those policy challenges stirred up by the new environment are vastly magnified on the multilateral or international stage: We are facing of course a multi-speed and increasingly multi-layered world. States are seeking to advance their interests or protect their interests in whatever form they find most appropriate and so we have the multiplicity of layers of unilateral action, bilateral action, plurilateral action and multilateral action and we have the variety of speeds, from the pre-industrial societies to the post-industrial societies. Put that all together and try dealing with new problems that are emerging from rapidly developing and changing technology and you have all ingredients needed for a real crisis for the institutional capacity of the multilateral system."