



disputes taking place within the WTO.

Although the WTO has been the primary focus, there exist a multitude of other international organisations in Geneva, including the World Intellectual Property Organisation (WIPO), the World Health Organisation (WHO) and the International Telecommunications Union.

Although many of these bodies do not have the power to directly pass legislation to enact provisions brought before them, many can do so indirectly through the negotiation of treaties that are then enacted at the national level. The forums provided by these international organisations affect and influence the debate on measures that have been brought before national legislative bodies throughout the world. In other words, the debate and negotiations taking place in Geneva have a very real influence on the regulation of international business.

An illustration of just one such issue is a proposed treaty being negotiated at the WIPO relating to the regulation of broadcasts. The treaty follows the model first delineated in the Rome Convention for Protection of Performers, Producers

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OPEN MARKET

In publications devoted to particular legal markets, it is usual for the articles to focus on a recent change in the substantive law of the jurisdiction. Less usual, perhaps, is a discussion of a new market that is in the process of being developed. Switzerland, however, is home to such a development.

During the past several years, Geneva has become home to multiple international organisations which provide a forum for issues that affect business,

turning Geneva into a centre of government much like Washington, Brussels or Beijing. The most high profile of these institutions is the World Trade Organisation (WTO). As the body established to regulate international trade, it has a direct influence on business and, through its rules, it has the ability to force member countries to live by these rules. Not surprisingly, a legal practice has developed and is evolving to represent client interests in discussions or

A new market for legal is taking shape in Geneva along the lines of those in Washington DC and other centres of governmental decision-making. Michael Stepek examines the World Trade Organisation's role in this development

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of Phonograms and Broadcast Organisations enacted by 83 countries around the world and which first regulated the broadcast industry.

Having been completed in 1961, however, and before many of the technological innovations we currently take for granted such as cable and satellite transmission, the treaty does not extend its regulatory scheme to them. As with any negotiation of new regulations there exist competing interests as to its proper scope and terms depending on one's point of view or economic interest.

On the one hand, companies engaged in traditional broadcasting and those engaged in broadcasting by cable hope to obtain several additional economic rights similar to those traditionally granted by copyright law to control the distribution of originals or copies of the fixation of the broadcasts.

Such rights, however, potentially conflict with the rights currently enjoyed pursuant to copyright law thereby putting the broadcast and cable entities in conflict with the owners of such copyrights. For these entities, the proposed treaty is more appropriately focused on updating the Rome Convention to establish and harmonise legal regimes to protect against signal piracy such as the misappropriation of satellite signals or cable transmissions that is otherwise unregulated in many parts of the world. Consumer groups too have expressed an interest in the terms of such an instrument. Thus, the terms of such an instrument have tremendous

implications for a host of different persons and businesses.

The rules and regulations being influenced or decided by events in Geneva are not limited to any one business sector, while the potential issues that can arise before organisations can cover a plethora of subjects.

Take, for example, the WHO's efforts to protect and promote public health. It formed a commission to evaluate the relationship between intellectual property (IP) rights and innovation and public health. The commission's report, which was released last year, made multiple conclusions, including that the incentives for biomedical research and development normally associated with IP rights are not effective in developing countries and that IP rights impinge the ability of developing countries to attain the knowledge and technology needed to discover and develop products necessary to public health.

Without the benefit of innovation or the transfer of the knowledge and technology to develop products for the developing world, the report further concludes that IP rights may serve primarily to limit the affordability of patented healthcare products required by the developing world in the absence of other measures to reduce prices or increase funding.

The report made several recommendations the commission believes would improve the incentive and funding regimes, including IP rights, to stimulate the creation of new medicines and facilitate access to them. These include:

- legislation to use compulsory licensing that might address specific health problems of developing countries;
- developing initiatives for 'open source' methods of research and development;
- exploring the possibility of benefiting from differential pricing and the ability to parallel-import lower-priced medicines;
- the adoption of unspecified measures to promote competition and ensure pricing of medicines is consistent with public health, bearing in mind the leverage to determine prices conferred by patents;
- increasing regulation of medical products in developing countries;
- enacting legislation to encourage generic entry on patent expiry such as the 'early working' exception;
- encouraging policies to support greater competition between generics whether branded or not;
- preventing bilateral trade agreements from seeking to incorporate Trade-Related Aspects of Intellectual Property Rights (TRIPS)-plus protection in ways that may reduce access to regulatory approval data or medicines in developing countries; and
- incorporating digital libraries of traditional medicines into the search documentation lists of patent offices to ensure that the data contained in them will be considered during the processing of patent applications.

These conclusions and recommendations were influential as the WHO's main governing body agreed to initiate work on developing a new framework of



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obligations that would support needs-driven research and development work on diseases that disproportionately affect developing countries.

Although everyone certainly would agree with the goal to which this work is being conducted, concerns have been expressed as to whether the recommended approaches are the best way of achieving it.

This is perhaps particularly true for research-based pharmaceutical companies and the holders of life sciences patents around the world, as the report has the potential to change, and perhaps substantially undermine, the current international IP rights regime.

Consequently, there are multiple organisations that have an interest in the ensuing work and any legal instrument through treaty or otherwise that might be developed from it. These organisations do not have traditional legislative powers, but the determination of an issue by one organisation raises interesting issues as to its enforceability by another organisation in its decision-making. At a minimum, the discussion may change the political climate such that the failure to subscribe to new prescriptions voluntarily could become insupportable.

Given the work being done in Geneva, a new market for legal is quietly developing along the lines of those in Washington DC, Brussels and other centres of governmental decision-making. With the further integration of global commerce, it is a market that is sure to expand. ■

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