

## Democracy and dissent at the World Intellectual Property Organisation

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Today, 26 April 2005, is World Intellectual Property Day [1], a celebration of the power of the copyright, patent and trademark disciplines to foster creativity and innovation around the world. It is a day sponsored by the United Nations' World Intellectual Property Organisation (Wipo [2]), a UN organisation unlike any other. In the flock of the organisation with aspirations towards international democracy, yet funded by the big business of worldwide trademark and patent registration, Wipo's plush Geneva headquarters have traditionally played host to lobbyists of corporate power, not champions of the developing world.

**Also by Becky Hogge in openDemocracy:**

**"Patents for profit: dystopian visions of the new economy [2]" (March 2005)**

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Why this should be so boils down to a simple equation – that copyright, patent and trademark law incentivise creators and therefore stimulate development. Now, technologists and their allies with a different vision of how Wipo should operate are challenging the logic of that equation. And in the face of such dissent, the democratic fabric of the institution is being stretched taut.

Cory Doctorow [3] is one lobbyist who has been at the front line in Geneva for some time. Back in 1999, his fledgling technology company's investors "freaked out" about a copyright-driven lawsuit filed against a company using a similar technology to his - Napster. As he faced growing pressure from his investors, Doctorow sought help from the Electronic Frontier Foundation (EFF [4]), an advocacy organisation and impact litigation house that campaigns for the rights of technologists. He later left his company to work for EFF full time. His speciality is legislation on copyright, legislation that in his experience is often exploited in the drafting stages by lobbyists from incumbents on the market seeking to create a "permissions culture" for technologists and other innovators – in his words, "profoundly anti-competitive stuff".

### **A different world**

Two years ago, the EFF got a call from James Love [5], head of the Consumer Project on Technology and celebrated hero of access to medicine initiatives that saw big pharmaceutical players slope away from lawsuits against the South African government over the purchase of generic versions of patented retrovirals in the fight against HIV/Aids. Love had spent years at Wipo, mainly agitating [6] for patent reform, and had noticed a vacuum of dissent against draft global copyright treaties. Delegates without a strong handle on the potential of new technologies, were, in the name of copyright, putting checks and balances on these

technologies that would make valuable innovations illegal. The only lobbyists present were those representing the incumbent rightsholder and broadcasting groups. Could the EFF help?

“It’s a very different world working at Wipo”, says Doctorow,

“so when [Love] approached us the initial reaction from the people on staff was ‘how can we possibly make a difference here? We’re outgunned, we don’t know what’s going on, it’s diplomatic, we don’t know who to sue – all the stuff we’re good at we don’t know how to do here.’ But there were elements of history that resonated”

. At Wipo, just as in the various midnight meetings on broadcasters’ rights in the digital age the EFF had gradually been gaining access to in the United States, the democratic process was in danger of breaking down for lack of people speaking up for the other side: “The most egregious lies were being told about how the world worked and nobody was sticking their hand up and saying that’s not true.”

Cory’s first job at Geneva was to step into negotiations over the Broadcast Treaty [7], a theatre of discourse aimed at updating a 1961 treaty in the light of the impending switch from analogue to digital. What he found was an audience of national delegates already held captive through five years of negotiation by lobbyists from rightsholder groups and incumbent broadcasters. New technologies were represented solely by webcasting businesses keen to sew up the market against future competition.

The arrival of dissenting voices at Wipo, where Doctorow has forged alliances with various intellectual property (IP) reform NGOs [8], has tested the democratic process. Their lobbying on such diverse tickets as international development, the safeguard of the public domain and the rights of archivists, says Doctorow, is viewed as “arriviste” – they are a “rabble” capable of swerving carefully planned negotiations off course when there was policy to make.

Delegates whose tentative grasp of the meanings of new technologies often came from close collaboration with incumbent lobbyists such as the National Association of Broadcasters suddenly found they were being asked to pick sides.

One of the more controversial activities of the IP-reform lobbyists since their arrival at Wipo, Doctorow remarks, has been the spontaneous publication on the web of impressionistic notes taken from the various negotiations through at-table blogging [9].

“Normally the way that Wipo transcripts are produced is there’s a six-month delay during which the secretariat’s notes are sanitised by circulation to all the members – ‘here’s what we’re gonna say you said, would you care to re-write it?’. And you end up with this kind of linen-draped version of the negotiation months after it happened. Whereas we go in and take collective notes which we publish twice a day. We are told that there are delegates who get phone calls in the afternoon about what we’ve posted about what they’ve said in the morning.”

Doctorow is puzzled at the reception of this practice: “They characterise that as an abuse of their hospitality because we’re telling tales. But it’s the UN, right? The idea that the UN proceeds in secret is the stuff of paranoid fantasy.”

Indeed. Last November, during the twelfth session [10] of the standing committee of copyright and related rights, Doctorow found himself clinging on to the reins of reality after literature IP-reform NGOs had produced for the session was continually moved [11] from the handout table to the wastepaper basket in the first-floor men’s toilets.

“This wasn’t flyers with skulls and crossbones on them saying you guys can all burn. This was thoughtful, well-informed, substantive comment on the process that we as observers have been invited to present. We ended up posting Rufus (Pollock, from the [Campaign for Digital Rights](#) [12]). Rufus stood by the table for two days.”

Doctorow claims that further attempts to exclude the reformist argument from treaty discussions were made when Wipo “switched policy” on attendance leading up to talks on the [Development Agenda](#) [13] earlier in April. The Development Agenda is the first piece of legislation to pass through Wipo that questions the direct link between strong intellectual-property protection and development, and had been directly facilitated by Doctorow and his allies. Whereas previously both ad hoc and permanent observers had been welcome at such talks, Wipo announced that only permanent observers could attend this meeting; thus [excluding](#) [14] the majority of reformist NGOs, although not the EFF.

### **Whose democracy?**

Doctorow and his partner NGOs’ message is perhaps a little too much for the delicate ears of Wipo, an organisation funded by the trademark and patent-registering business that until recently would never have given the appropriateness of that arrangement a second thought. The [three aims](#) [15] of this year’s World Intellectual Property Day suggest Wipo’s continued belief that development comes from protection of intellectual property and that if you want more development, you need more protection. That core idea has now been challenged.

After a two-day conference in September 2004 a coalition of NGOs produced the [Geneva Declaration on the Future of WIPO](#) [16]. Signed by high profile free software and copyleft advocates, access-to-medicine campaigners, library associations, academics, Nobel prize-winning scientists and development organisations such as Oxfam, the declaration demands that Wipo re-examine its ideas about the logical link between copyright, patent and trademark protection and the ultimate goal of its UN mandate: development.

Noting the emergence of other intellectual-property disciplines within which development has been shown to flourish, and condemning the anti-competitive advantage Wipo had bestowed on its most vocal lobbyists in the past, the Geneva Declaration has already provided a [springboard](#) [17] to Argentina and Brazil from which to launch the Development Agenda.

These and other rebel delegates from the global south, who have identified an opportunity to swing the [global intellectual-property agenda](#) [18] – so intricately linked to world trade – in their favour, have a tough battle ahead. Doctorow reveals the tensions at one meeting:

“There was a proposal to cancel the June meeting in favour of a series of regional meetings, which is widely understood to be a divide-and-conquer tactic. Brazil, Chile, Argentina, India...spoke out passionately against it and said ‘we block it, this is a consensus body, and without our consensus you can’t go forward with this’. And the chair put it to a vote, and they had a vote, and he said ‘well that’s democracy’. Their response was ‘what do you mean that’s democracy? We have a deliberative process, and the deliberative process is consensus oriented, there’s no consensus in this room’. The chair’s reply was that the consensus is on substance not on points of procedure.”

Cory Doctorow is confident that his and other NGOs’ activities will end up having a lasting, positive effect on Wipo’s engagement with the developing world. As with many geeks, there is idealism just underneath the earnestness. At the end of our interview he quotes Gandhi: “First they ignore you, then they laugh at you, then they fight you, then you win”.

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