

## FOREWORD



**Mr Francis Gurry**



**Mr Roberto Azevêdo**

This journal represents two significant milestones – it is the tenth edition in a ground-breaking series of scholarly publications, and its publication in 2020 fittingly marks the 25<sup>th</sup> anniversary of the 1995 bilateral agreement between the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). This bilateral agreement forms the foundation for cooperation between the two organizations in providing technical assistance to the developing world.

This year also marks the 50<sup>th</sup> anniversary of WIPO's establishment, but the institutional roots of WIPO go back to an earlier era of globalisation and burgeoning international trade. The WIPO-administered Paris and Berne Conventions – still central pillars of the international intellectual property (IP) system – were first negotiated in the 1880s and figure among the first multilateral conventions on any subject. Cross-border trade, investment, technology flows and cultural exchanges in the 19<sup>th</sup> Century had made international rules on IP a practical necessity. The link between IP and international trade was further reinforced and consolidated 25 years ago when the TRIPS Agreement came into force with the establishment of the WTO, introducing IP rules into the multilateral trading system for the first time.

Over the past 25 years, we have learned much about the evolving interaction between the IP system and international trade, and the significance of innovation and flows of technological knowledge for economic and social development. And these insights continue to inform our cooperation on technical assistance which has focused increasingly on strengthening the policy capacity of member governments to work with the complex and challenging linkages between the IP system, trade and innovation policy, and other related fields of public policy.

Our joint technical assistance programmes are therefore guided by the understanding that nations can fully and sustainably reap the expected developmental benefits from the IP system and its interaction with international trade only if these policy tools are adapted to national circumstances and are judiciously used by informed practitioners. That means basing national policy development on skilled, informed and nuanced analysis, tailored to the evolving and diversifying needs of societies. It also means cultivating the necessary skills and understanding among future policymakers, practitioners and analysts. But, in turn, this enhanced ability to shape and to make effective use of the IP system and related trade policy requires sustained national capacity to teach and to conduct research – in short, building each nation's human capital in the law, practice, policy and economics of IP and associated fields.

That imperative led to the launch, in 2004, of the annual WIPO-WTO Colloquium for Teachers of Intellectual Property as a vital element of the joint capacity-building programmes of our two organizations. The Colloquium series was launched with the goal of building the capacity of those best placed to ensure truly sustainable, long-term benefits from the adept use of a well-tailored IP system – academic teachers and researchers. Since its inception, more than 400 academics have taken part in the annual Colloquia. They have come, primarily, from developing countries and least developed countries across the globe, and they have spanned an ever more diverse range of scholarly expertise and teaching responsibilities. Members of this impressive alumni network are now making invaluable contributions to their field, through academic publications, participation in national and international policy debates, teaching, and capacity-building in the developing world.

Over the years, participants in the Colloquium have demonstrated a remarkable range of scholarship, responding to the diverse challenges countries around the world have confronted in seeking to chart how to adapt and implement the broad

principles of IP law, and to put the IP system to work for their social and economic development. It became clear that a more effective medium was needed to capture and disseminate this important research and analysis, leading to the launch of the *WIPO-WTO Colloquium Papers* as a peer-reviewed academic journal.

Since 2010, the annual editions in this series have drawn together participants' insights into IP issues in their countries and given greater substance to the network of mutual learning and intellectual exchanges. The *Colloquium Papers* epitomize the trend towards more diverse and yet more rigorous capacity building in IP law and policy. Responding to the demand for more diverse perspective, these annual publications have been supplemented by regional editions, focusing so far on African and Asian scholarship.

This tenth edition, a selection of papers from the 2019 Colloquium, offers a close look at the diverse legal, policy and practical challenges posed by the IP system for individual developing countries, together with thoughtful analysis of such issues as access to medicine, artificial intelligence, traditional knowledge and plant breeder's rights and the challenges for various knowledge-based industries. The range of scholarship and the focus on concrete challenges faced by emerging IP jurisdictions confirm this journal's distinctive contribution to scholarly discourse.

We warmly congratulate the contributing scholars for their first-rate research, and we thank the Editorial Board – a highly distinguished group of senior IP scholars – for their invaluable support and engagement, which has helped establish the *Colloquium Papers* as a credible academic publication. Our colleagues in the WIPO Academy and the WTO Intellectual Property, Government Procurement and Competition Division have exemplified the cooperative spirit between our two organisations in working tirelessly and collegially to organize the Colloquium series and to produce this unique scholarly resource. Finally, we commend the *Colloquium Papers* as an important source for academic research to what we trust will be a wide and ever more diverse readership, and we look forward to the insights from future editions.



**Francis Gurry**  
Director General  
World Intellectual Property Organization



**Roberto Azevêdo**  
Director-General  
World Trade Organization

## PREFACE

We feel privileged to set before you this volume, the tenth in the journal series of peer-reviewed academic papers, authored by scholars taking part in the WIPO-WTO Colloquium. This journal has provided a uniquely representative and diverse showcase for emerging scholarship from across the developing world. It encapsulates much that is challenging, significant and fascinating in the field of intellectual property (IP) today. As we celebrate the 25<sup>th</sup> anniversary of the bilateral agreement that launched a rich and diverse programme of technical cooperation between WIPO and the WTO, the *WIPO-WTO Colloquium Papers* underscores why this bilateral cooperation is as valuable as ever.

Always with a strong international dimension, the IP system is undergoing an unprecedented phase of globalization and a building of international institutions, bringing with it a deepened understanding of the centrality of a balanced and effective IP system in economic and social development. Yet this same period has precipitated an intensive, wide-ranging process of inquiry about how to adapt and apply IP principles to ensure economic growth, sound public policy, and sustainable development in diverse settings across the globe, recognizing the diversity of economic, social and technological settings, national developmental priorities, and legal and commercial systems.

Intellectual property is seemingly ubiquitous in contemporary life, but its role and impact are both highly diverse and in need of careful analysis and informed debate. An IP dimension is present in many challenging public policy issues today. For instance, we see growing attention to its role in promoting public health, addressing climate change, and achieving food security, as well as its interaction with human rights and social and economic development. The impact of new technologies – most recently, artificial intelligence and the impact of ‘big data’ – poses additional challenges for law and policy. And the field of IP is no longer a narrow specialist field. IP has been the subject of complex, multifaceted debates at the multilateral, regional and national levels over such matters as the rights of indigenous people, the conservation of biodiversity, the ethics and use of genetic resources, internet governance, climate change technology, access to education and medicine, cultural policy, sustainable agriculture, and support for the disabled. Behind these debates lay essential questions. How to come to grips with the significant responsibility of IP systems in the current world economy, in international trade, and in national policy environments? How can IP systems be designed or adapted to promote economic development, stimulate innovation, and disseminate knowledge in a manner that balances the rights of all stakeholders?

The contemporary field of IP is therefore characterized by profound and searching debates on questions of essential public policy; an approach to policy-making that emphasizes empirical research, theoretical clarity, and achieves coherence with other areas of law; and the harvesting of practical experience from an ever-widening base of national IP systems and participants in the policy and practice of IP. It is, therefore, a field in need of deeper and wider research efforts; sophisticated, informed and carefully tailored approaches to education and practical capacity building; and, above all, dialogue and debate founded on a richer base of information, theoretical understanding, practical experience, and knowledge of its implications in other areas of law and policy.

Both WIPO and the WTO have been called upon to play a role in strengthening capacity to deal with the intellectual challenges of these policy debates. This increasing diversity of demand for capacity-building support has had a profound impact on programme design and delivery. The WIPO Academy has developed a wide range of specialist courses and training activities to respond to this evolving pattern of demand, and to reach out to and support an ever-widening range of stakeholders.

The WTO Intellectual Property, Government Procurement and Competition Division (IPD) continues to broaden and tailor its technical cooperation and policy support activities, developing a wider engagement with current international issues and with a broader base of stakeholders, exemplified by work on public health issues. However, none of these outcomes can be possible without partnerships – the sharing of ideas, pooling of resources, and coordination of practical activities – so that the necessary wide range of experience and expertise can be drawn on to meet diverse needs.

Both the WIPO Academy and the WTO IPD therefore enjoy many valuable partnerships as a central strategy in ensuring programme delivery. The Colloquium has exemplified and promoted current trends in technical assistance and capacity building, and builds upon and extends the existing partnership between WIPO and the WTO. It responds to the need for stronger, broader dialogue and a greater involvement of voices from all perspectives in contemporary debates. It recognizes the central role of indigenous capacity building and of the key contribution of IP teachers and researchers as the mainstay of sustainable development of the necessary IP expertise in developing countries. The Colloquium transcends traditional boundaries between regions and between ‘north’ and ‘south’ to allow fruitful discourse on the future of IP systems. Most importantly, it recognizes the importance of extending beyond an educational function to one of bringing together a diverse group with the aim of reviving and refreshing dialogues on IP and its cognate fields.

The Colloquium has in particular, laid emphasis on the role of participants as active players, as informed, stimulating teachers and researchers who bring to the two-week dialogue as much as they take away from it. Past feedback from participants stressed the need to capture many insights gleaned from these few days of intensive and vigorous discussion, in more

permanent form. Participating teachers and researchers are able to offer important new ideas and insights to global debates that could enrich and inform exchanges among policymakers, the academic community, and the public at large.

These thoughts, guided very much by the participating teachers and researchers themselves, are what gave rise to the present publication, which is in a way a tribute to the intellectual energy and curiosity of the many alumni of the past Colloquia, with whom we continue to enjoy a range of partnerships and dialogue. Participants, too, have provided valuable peer review input to the papers published in this journal, which are presented to the Colloquium at an earlier stage in their development.

WIPO and the WTO both host numerous meetings every year, in Geneva and in many locations elsewhere, and under numerous headings: committees, seminars, workshops, roundtables, symposia, and so on. But amidst all this activity, the idea of a 'colloquium' has a special ring to it – for the WIPO-WTO Colloquium, it connotes a spirit of academic enquiry, a search for new ideas and new ways of analysing IP and related fields, through open debate, rigorous research, and new ways of communicating the complexities of IP law, practice and policy, and providing a vibrant forum for peer review of current research. We trust that this publication will bring to a wider community of researchers, policymakers and teachers some of the colloquium spirit that we have valued so much in this unique programme.

All of us who have participated in the Colloquium have benefited from the hard work and dedication of many colleagues within WIPO and the WTO Secretariat – notably, the WIPO Academy and the WTO IPD. All have contributed valuably to the design and delivery of this programme, and their spirit of collegiality makes a demanding programme a pleasurable one.

We owe a particular debt of gratitude to the Editorial Board and the editors of the *Colloquium Papers*: they have been indispensable in ensuring that the Papers can be used as a trusted, academically sound and readable source of cutting-edge IP scholarship from an impressive group of emerging scholars from across the developing world. Finally, we record our deep appreciation for the contributions made by individual scholars to this, and the preceding, volumes. We have come to know and respect their contributions to policy and legal scholarship, and are sure that this active, informed and thoughtful participation in many of the key public policy debates of today will continue, exemplifying the important public service role performed by the scholarly community today.



**Sherif Saadallah**  
Executive Director  
WIPO Academy  
World Intellectual Property Organization



**Antony Taubman**  
Director  
Intellectual Property, Government Procurement and  
Competition Division  
World Trade Organization

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