

FOREWORD



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This volume represents the ninth edition of a peer-reviewed academic journal published jointly by the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). Drawing on papers presented to the annual WIPO-WTO Colloquium for Teachers of Intellectual Property, this publication makes an important contribution to international scholarship in the field of intellectual property (IP). In particular, it responds to the vibrant diversity of academic work in this field in the developing world. Today we witness ever-increasing, more diverse forms of international interaction on IP, yet equally we see growing attention to differing national policy needs and social and developmental priorities. The *Colloquium Papers* series highlights the importance of fostering scholarship in emerging IP jurisdictions, harvesting insights from global policy and academic debates, and promoting mutual learning through the sharing of research and scholarship.

The annual WIPO-WTO Colloquium itself has played a central role in the joint capacity building programmes of WIPO and the WTO since their inception in 2004. This cooperation seeks to enrich dialogue on IP issues and to address the developmental and wider policy considerations that form an integral part of IP law and policy today. The Colloquium responds to the recognition that developmental benefits from the IP system can be reaped only if the system is adapted to national circumstances and judiciously used by informed practitioners. Equally, effective policy development at the national level needs to draw upon skilled, informed and sophisticated policy analysis. The Colloquium aims to enhance the capacity of those best placed to ensure sustainable, long-term benefits from the adept use of the IP system – those who teach the IP practitioners of the future, and those who conduct research on IP law and policy.

The programme has produced more than 380 alumni, who now comprise an active network of highly engaged teachers and researchers. It is heartening to see the contributions of these scholars through academic publications, participation in national and international policy debates, teaching, and capacity building in the developing world.

The *Colloquium Papers* epitomize the trend towards more diverse and yet more rigorous capacity building in IP law and policy. 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 programme represents. These annual publications have been supplemented by regional editions, focussing so far on African and Asian scholarship.

The latest edition, a selection of papers from the 2018 Colloquium, offers a close look at the diverse legal and policy contexts of individual developing countries together with thoughtful analysis of issues such as access to medicine, artificial intelligence, traditional knowledge and plant breeder's rights. The range of scholarship and the focus on concrete challenges faced by emerging IP jurisdictions confirm this journal's distinctive contribution to scholarly discourse.

In today's changing global economy, IP significantly influences the everyday lives of all citizens around the world. An international IP system that can adjust to the shifting global economic landscape, while also stimulating innovation and furthering development, demands the understanding, participation and cooperation of all peoples across the societal spectrum. Initiatives such as the Colloquium play an important role in building capacity, raising awareness, and engaging all societies affected by the evolution of the international IP system.

We 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. We should also record our appreciation for the work of our colleagues in the WIPO Academy and the WTO Intellectual Property, Government Procurement and Competition Division in organizing the Colloquium and facilitating the publication. 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.



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PREFACE

This volume is the ninth in the journal series of peer-reviewed academic papers resulting from the WIPO-WTO Colloquium. It serves as a tangible reminder of the vitality and richness of collaboration between the two organizations since the conclusion of a bilateral agreement in 1995, shortly after the WTO was established. The content of this journal, representing emerging scholarship from across the developing world, encapsulates much that is challenging, significant and fascinating in the field of intellectual property (IP) today, and 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 poses additional challenges for law and policy. And 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 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; and how should 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 expressed important new ideas and insights to global debates that could enrich and inform the exchange 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 we 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.



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DEDICATION

This publication is dedicated to Professor Shamnad Basheer, who was a hard-working and active member of the Editorial Board for the WIPO-WTO Colloquium Research Papers from 2017 to 2019. Professor Basheer's deep knowledge, intellectual openness and engaging personality left warm memories for all who encountered him. He was a bright light at the 2011 WIPO-WTO Colloquium for Teachers of Intellectual Property. Professor Basheer made unique and lasting contributions to the international intellectual property community and was recognized as a leading international expert from his home country. He will be sorely missed.