

## Freedom of Expression Project Note:

### Consumers International: Latin American regional meeting on A2K Santiago, Chile, 30 and 31 March 2009

This note includes an outline of the issues discussed and some observations on intersections between this agenda and the Freedom of Expression Project.

Participants represented: consumer organisations in Argentina, Brazil, Chile, Mexico and Peru; universities in Mexico and Brazil; the Peruvian copyright office; the Felipe Hererra Foundation (Chile); and SERNAC (Chilean government consumer advice department). The majority are working on IP alongside other issues that include: food safety; costs of and access to pharmaceuticals; education; access to telecommunications; digital rights; access to culture; young people's participation in democracy; and freedom of expression. These discussions were an interesting opportunity to network, consider synergies/ tensions between IP and human rights frameworks, and learn directly from consumer organisations in Latin America.

#### Aims of the meeting

Programme attached, with links to presentations where these are available. The aims of the meeting were to:

- share information on intellectual property (IP) as an issue for consumers
- promote members' participation in two Consumers International (CI) projects: the Global Consumer Dialog on A2K; and the IP Watch List and consumer survey on copyrighted material
- seek members' input to CI's strategic plan for the next two years' activities in the areas of IP and A2K.

#### Issues and priorities discussed

Jeremy Malcolm (CI, Malaysia) outlined three significant areas for IP as a consumer issue:

- *educational materials*, including: exceptions to copyright for libraries and academic institutions; costs of access to academic journals; unnecessary new editions of textbooks stifling second-hand markets
- *music and films*, including: digital rights management (DRM) protections affecting legal uses; Creative Commons licensing for creative works
- *software*, including: free and open source software and licensing.

Discussions included these and other areas – here's a brief summary:

- The length of copyright terms and lack of fair exceptions, e.g. for educational use are a priority concern. They demonstrably reduce access to and raise the cost of **educational materials** – Brazil, Argentina, Peru.
- The **gap between the legal situation and practice** on IP can be considerable. E.g. Peru is signatory to all key international agreements and Mexico has stringent penalties for piracy – but not enforcement.
- IP issues need to be linked to the question of **consumer protection** in Latin America. 'Pirated' is often the norm, e.g. software in Mexico, music and videos in Peru, and seen as a necessary evil.

- Need to move away from seeing copyright as an author's right, to a new understanding: equilibrium between consumers' rights, creators' rights and the **public interest**. Well-known artists and fee-charging bodies are powerful lobbies and make it difficult for civil society to promote this.
- A key challenge is to **build a consumer movement**: to campaign, make issues real and embed them in public consciousness. E.g. Mexico has an access to information law and department that works well, but not supported by a culture of citizens' awareness of rights, in a context of high levels of violence and corruption.
- Other IP issues are significant as well as copyright, e.g. **patents** for seeds.
- **Internet access** is priority in A2K context. Brazil: only 2% of the poorer half of population has access. Argentina: initiatives to promote access have been Microsoft-based and therefore too expensive to succeed.
- **Creative Commons** licences are very little known in the region. A project to bring CC to Peru found them difficult to explain to government.
- As consumers become producers, need to rethink the incentives for the production of culture. Some '**open**' **business models** are emerging in the digital environment, e.g. Technobrega music distribution in Brazil.
- **DRM** technologies are a concern – Brazil, Chile. Noted that cases brought in other jurisdictions (California, France, Spain) question whether they are constitutional or violate consumers' rights.
- Negotiations on **standards for digital TV** are ongoing in Argentina and Peru. Concerns that business interests are squeezing out civil society voices.

### **Synergies or tensions between the IP agenda and a human rights framework?**

The discussions, while primarily concerned with IP, encompassed other concerns identified in the Freedom of Expression Project's *Principles*: the need for balanced IP regimes; the need to frame decisions in terms of the public interest, for example on copyright law; access to communications infrastructure; affordable access to communications, particularly broadband internet; civil society's access to the digital broadcasting spectrum; the right of access to government information; privacy in the digital environment; the effects of concentration of media ownership; the question of ISPs' liability for content.

This suggests a strong potential for alignments between the consumer/A2K movements and the Project's framework based on the right to freedom of expression in its expansive sense. Participants were supportive of this and supportive of proposals – when raised by CI and Global Partners as discussion points in the strategic planning session – to build links between consumer and human rights organisations and bring consumer voices into international fora concerned with rights in the digital environment – e.g. advocacy at the IGF Dynamic Coalitions and ICANN.

Some participants articulated access to knowledge issues in broad human rights terms, e.g. "Access to knowledge is necessary to promote human rights and economic development"; "We need to campaign on access to ICTs as a human right". More, however, discussed IP objectives in terms of 'fairness' or 'balance' rather than 'rights', e.g.: "we need a fairer IP regime"; the concept of 'fair use' for exceptions; one organisation's campaign website on copyright is

[www.tratojustoparatodos.cl](http://www.tratojustoparatodos.cl) (translation: 'fair treatment for all', i.e. not just major artists); the need for stronger exceptions to balance stronger IP protections. The concept of 'the public interest' was significant in determining such balance. This aligns with CI's definition of A2K as 'fair public access to the fruits of society's cultural and scientific output'. 'Freedom of expression' was used to describe specific concerns within the communications environment: filtering of content, monitoring and censorship, both direct censorship and, for example, restrictions placed on ISPs in response to the use of copyrighted materials in blogs.

The IP Watch List (due to be published 16 April 2009) reports on IP policies that are harmful to consumers in 16 countries, and ranks those countries in order. The report is designed to shadow the US Government's '301 report' on countries that offer inadequate protection for US copyrights. A preview of the rankings presented at the meeting showed the UK's policies as the worst of the 16 and China's as among the best. As these rankings don't appear to correlate with human rights and freedom of expression, it may be useful to think through: What are the relationships between IP policies and human rights, and between protection of consumer rights and human rights? Would further contextualisation be helpful?

In summary:

- there appear to be strong alignments on issues of concern and objectives between the A2K and human rights frameworks.
- the concept of 'the public interest' is common to both A2K and the Freedom of Expression Project's frameworks
- participants were supportive of rights-based advocacy on internet governance when proposed, though did not initially indicate it as a priority – and there are also other consumer priorities in the region

Freedom of Expression Project  
<http://www.freedomofexpression.org.uk>

## **Consumers International: Latin American regional meeting on A2K Programme**

### **30 March 2009**

- 09:00 Registration
- 09:30 Welcome and **introductions**
- 10:00 Presentation on “**Intellectual Property as a Consumer Issue**” – Part 1, Introduction
- 10:45 Break
- 11:00 Presentation on “**Intellectual Property as a Consumer Issue**” – Part 2, Application
- 12:00 Discussion and questions
- 12:30 Lunch
- 13:30 Presentation of country reports on IP and communications rights  
Reports presented by:
  - ASPEC Peru**
  - Colectivo Ecologista Mexico**
  - Derechos Digitales Chile**
  - IDEC Brazil**
  - Peruvian Copyright Office**
  - Proteste Brazil**
- 15:30 Break
- 15:45 **Consumer survey objectives and orientation**
- 16:00 Workshop on consumer survey
- 17:00 **IP Watch List objectives and orientation** and Web site tour
- 17:45 Close

### **31 March 2009**

- 09:00 Recap session
- 09:30 Brainstorming for content of **strategic plan on IP** – Introduction and background
- 10:30 Break
- 10:45 Brainstorming for content of **strategic plan on IP** – Mind mapping and group discussion
- 12:00 Close