



CONFERENCE ON REGIONAL MECHANISMS FOR THE ADMINISTRATION OF IPRS

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CARIFORUM



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Regional mechanisms for administration of IPRs: CARIFORUM Perspective

EUIPO, Alicante, SPAIN



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Overview



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Why Establish a Regional Mechanism

Harmonization

- Helps in harmonizing intellectual property laws and regulations across participating countries
- Reduces discrepancies and inconsistencies
- Creates a more predictable and consistent environment for intellectual property protection,
- Facilitates the ease of doing business

Why Establish a Regional Mechanism

Efficiency

- Centralizing administrative processes and procedures
- Streamlining the registration, enforcement, and management of intellectual property rights
- Reducing administrative burdens and costs associated with intellectual property protection

Why Establish a Regional Mechanism

Enhanced Protection

- Enhanced levels of protection for intellectual property rights compared to individual national systems
- Strengthened enforcement mechanisms, broader scope of protection, and more effective remedies for infringement

Why Establish a Regional Mechanism

Promotion of Innovation and Creativity

- Enhanced IPRs play a crucial role in incentivizing innovation, creativity, and investment in research and development
- Encourages businesses and individuals to innovate, create, and commercialize their intellectual assets within the region

Why Establish a Regional Mechanism

Facilitation of Trade and Investment

- A well-functioning regional intellectual property system can facilitate trade and investment
- Creates a level playing field for businesses operating within the region
- Enhances the confidence of investors and trading partners, promoting economic growth and development

Why Establish a Regional Mechanism

Capacity Building and Technical Assistance

- Often include provisions for capacity building and technical assistance to support member countries in developing their IP infrastructure, human resources, and institutional capabilities

Why Establish a Regional Mechanism

International Cooperation and Coordination

- Serves as platforms for international cooperation and coordination on IP issues
- Facilitates alignment of regional standards and practices with international norms and treaties,
- These systems contribute to the overall coherence and effectiveness of the global IP framework.



Legal Basis For Establishing A Regional Mechanism For Administration Of IPRs

LEGAL BASIS

International Treaties and Agreements

- Regional mechanisms for IP administration are often established based on international treaties and agreements
- Treaties provide the legal framework and mandate for regional cooperation in IP matters
- E.g., the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), administered by the WTO, sets minimum standards for intellectual property protection and enforcement, which member countries are required to implement.

LEGAL BASIS

International Treaties and Agreements

- WTO – The majority of the CARIFORUM member states are signatories
- Bahamas has observer status

LEGAL BASIS

Regional Treaties and Conventions

- These agreements establish the legal basis for cooperation and harmonization of IP laws among member states
- E.g., the European Patent Convention (EPC) (protection of patents) and the African Regional Intellectual Property Organization (ARIPO) Harare Protocol
- What about CARIFORUM, CARICOM, OECS?

LEGAL BASIS

Legislative Harmonization

- Regional mechanisms may require member states to enact or amend domestic legislation to comply with regional standards and obligations
- Harmonizing national IP laws and regulations among member states

LEGAL BASIS

Institutional Framework

- Establish institutional frameworks to oversee the administration of IPRs.
- These institutions may include regional offices, tribunals, or administrative bodies responsible for registration, enforcement, and dispute resolution.

LEGAL BASIS

Enforcement Mechanisms

- May include cooperative enforcement agreements, border measures, and dispute resolution procedures

LEGAL BASIS

Capacity Building and Technical Assistance

- Provisions for capacity building and technical assistance to support member states in implementing and enforcing IP laws

LEGAL BASIS

International Cooperation and Compliance

- Regional mechanisms often promote international cooperation and compliance with international IP standards and obligations.
- Aligning regional practices with global norms, these mechanisms contribute to the coherence and effectiveness of the international IP framework

Caribbean Regional Context

Caribbean Regional Context

- In the Caribbean context, several regional treaties and conventions have been established to promote cooperation and harmonization in various areas, including intellectual property rights (IPRs).
- These agreements provide a legal framework for member states to collaborate on intellectual property matters and enhance protection and enforcement mechanisms within the region.

CARICOM: CSME - RTC

Basis for the Agreement & provisions related to regional harmonization

- The Revised Treaty of Chaguaramas (RTC) established the Caribbean Community (CARICOM), a regional integration organization comprising 15 member states in the Caribbean region.
- Initially signed in 1973 and subsequently revised in 2001
- The RTC Seeks to strengthen the regional integration process
- Seeks to adapt to changing geopolitical and economic circumstances – amendments can be made

CARICOM: CSME

- The CARICOM Single Market and Economy (CSME) is a collaborative agreement among CARICOM countries aimed at establishing an economic environment that enables unrestricted movement of skills, labor, commodities, services, capital, and technology.
- 13 CARICOM MS participate in the CSME - Bahamas and Montserrat not member of the CSME
- It grants CARICOM citizens the privilege to establish businesses in any participating CARICOM Member State
- List of countries: Antigua and Barbuda, Belize, Dominica, Grenada, Haiti, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, The Bahamas, Barbados, Guyana, Jamaica, Suriname, Trinidad and Tobago.

The Revised Treaty of Chaguaramas

Basis for the Agreement & provisions related to regional harmonization

- The legal context of the RTC is grounded in the principles of sovereignty, equality, and cooperation among member states.
- It provides a framework for deepening economic integration, fostering cooperation in various sectors, and promoting sustainable development within the Caribbean Community

The Revised Treaty of Chaguaramas

Basis for the Agreement & provisions related to regional harmonization

- The RTC primarily focuses on economic integration and cooperation, and therefore recognizes the importance of intellectual property rights (IPRs) in fostering innovation, creativity, and economic development.

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CARICOM: CSME - RTC

Basis for the Agreement & provisions related to regional harmonization

Article 66 (b) of the RTC speaks to the *‘Protection of Intellectual Property Rights’*

The Council and Trade and Economic Development (COTED): -

shall promote the protection of intellectual property within the Community by, inter alia: -

(b) the establishment of a regional administration for intellectual property rights except copyright

CARICOM: CSME - RTC

Basis for the Agreement & provisions related to regional harmonization

Article 64 of the RTC Addresses *‘Research and Development’*

Sub-clause 2 (d):

In the discharge of its mandate set out in paragraph 1 of this Article, COTED shall adopt measures to encourage, inter alia, inventions and innovation, and acquisition, transfer, assimilation, adaptation and diffusion of technologies in the Community.

(d) develop and implement technological policies and strategies, having due regard for the importance of technology management and protection of intellectual property rights

CARIFORUM

- CARIFORUM is a sub-grouping within the wider African, Caribbean, and Pacific Group of States (ACP).
- CARIFORUM's membership includes the 15 Caribbean Community (CARICOM) states, plus the Dominican Republic
- The primary objectives of CARIFORUM are to enhance economic cooperation, foster sustainable development, and promote regional integration among its member states.

CARIFORUM

The Georgetown Agreement

- Formally established the African, Caribbean and Pacific Group of States, the 'ACP Group' (2003)
- Consist of six geographical regions, namely Central Africa, East Africa, Southern Africa, West Africa, the Caribbean and the Pacific

CARIFORUM

The Georgetown Agreement

Article 2 The Objectives of the ACP Group

- To contribute to the development of greater and closer economic, political social and cultural relations among developing countries and, to that end, cooperation between the ACP States mainly in the fields of trade, science and technology, industry, transport and communications, education, training and research, information and communication, the environment, demography and human resources

OECS - Revised Treaty of Basseterre

- The Organisation of Eastern Caribbean States (OECS) was founded on June 18, 1981, The treaty was signed capital city of St. Kitts and Nevis
- Revised Treaty of Basseterre Establishing the Organisation of Eastern Caribbean States Economic Union came into effect On 21 January 2011

OECS - Revised Treaty of Basseterre

- The protocol members of the Organisation of Eastern Caribbean States (OECS) are:
 - Antigua and Barbuda
 - Commonwealth of Dominica
 - Grenada
 - Montserrat
 - St. Kitts and Nevis
 - Saint Lucia
 - St. Vincent and The Grenadines

OECS - Revised Treaty of Basseterre

Objective:

To deepen integration and functional cooperation among Member States, and to coordinate and harmonise policies towards the optimal and sustainable development of Member States.

With Regards regional mechanism for innovation and IP the Revised Treaty provides in Article 4.2

“In achieving the purposes of the Organisation the Member States shall implement decisions of the Organisation under this Treaty and otherwise endeavour to co-ordinate, harmonise and undertake joint actions and pursue joint policies particularly in the fields of..... (n) Intellectual property rights.....”.

Situation Analysis

- None exist
- Several studies and drafts documents exists including:
 - Draft Caribbean Patent Convention
 - Draft CARIFORUM Agreement on the Protection of Geographical Indications
 - Economic and financial feasibility study for the regional administration of trademarks
 - Economic and financial feasibility study of the establishment of an IP directorate for the OECS countries for the administration of TM and ID
 - Several rounds of discussions at CARICOM level in the past

DRAFT CARIBBEAN PATENT CONVENTION : Context

- Furthering the mandate of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy to establish a regional administration for intellectual property rights;
- Allowing for Contracting Parties to maintain their sovereignty to develop their national systems for protection of inventions

DRAFT CARIBBEAN PATENT CONVENTION : Context

Objectives:

- i. To grant Caribbean patents
- ii. To promote the harmonization and development of the patent laws, and matters related thereto, appropriate to the needs of its members and of the region as a whole;
- iii. To foster the establishment of a close relationship between its members in matters relating to patents;
- iv. To establish such common services or organs as may be necessary or desirable for the coordination, harmonization and development of the patent activities affecting its members;

DRAFT CARIBBEAN PATENT CONVENTION : Context

Objectives:

- v. To establish schemes for the training of staff in the administration of patent laws;
- vi. To organize conferences, seminars and other meetings on patent matters;
- vii. To promote the exchange of ideas and experience, research and studies relating to patent matters;
- viii. To promote and evolve a common view and approach of its members on patent matters;

DRAFT CARIBBEAN PATENT CONVENTION : Context

Objectives:

- ix. To assist its members, as appropriate, in the acquisition and development of technology relating to patent matters;
- x. To promote, in its members, the development of patent rights and ensure that patent rights contribute to the economic, social and cultural development of members and of the region as a whole;
- xi. To do all such other things as may be necessary or desirable for the achievement of these objectives

DRAFT CARIBBEAN PATENT CONVENTION : Context

Part I of the Caribbean Patent Convention addresses the Caribbean Patent Organisation and include provisions for, among other aspects, the following:

Establishment

Membership

Tasks and objectives

Administrative Council

Caribbean Patent Office

Financial Provisions

Headquarters

Legal Status of the Caribbean Patent Organisation

Draft CARIFORUM Agreement on the Protection of Geographical Indications

- Creates a regional CARIFORUM approach for protecting GIs
- Allows for a harmonized approach to protecting GIs in CARIFORUM and enforcing GI protection
- Consistent with the TRIPS Agreement
- Consistent with the GI obligations contained in the EPA
- All CARIFORUM STATES – Cuba not party to the EPA but is included

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Draft CARIFORUM Agreement on the Protection of Geographical Indications

ARTICLE 2 (Objective and Scope)

- The Agreement seeks to provide legal protection for GIs designating goods originating within CARIFORUM States and to establish mechanisms for cooperation among CARIFORUM States concerning geographical indications

Draft CARIFORUM Agreement on the Protection of Geographical Indications

ARTICLE 12 establishes the CARIFORUM Geographical Indications Committee

- responsible for administering and facilitating the effective functioning of this Agreement
 - exchanging information on legislative and policy developments on geographical indications and any other matter of interest
 - promoting co-operation and dialogue on geographical indications
 - resolve disputes that may arise regarding the interpretation or application of this Agreement
 - supervising and monitoring the implementation
- serve as an advisory body to the CARIFORUM Council of Ministers

Enforcement, Disputes

- Established in 1967 by the West Indies Associated States Supreme Court Order No. 223 of 1967
- Has unlimited jurisdiction in the Member States, in accordance with the respective Supreme Court Acts. Section 17 of the Court's Order empowers the Chief Justice and two judges of the Supreme Court, selected by the Chief Justice, to make rules of court for regulating the practice and procedure of the Court of Appeal and the High Court.
- Facilitated by national legislation in the member states

- The Caribbean regional judicial tribunal which was established on 14 February 2001 by the Agreement Establishing the Caribbean Court of Justice
- Hybrid institution comprising: *(1) a municipal court of last resort and (2) an international court vested with original, compulsory and exclusive jurisdiction in respect of the interpretation and application of the RTC*
- Can play a significant role in the interpretation and application of the RTC in relation to litigation related to the granting and enforcement of IPRs

Article XIII – “Advisory Opinions of The Court” provides that the CCJ can deliver advisory opinions related to any interpretation of the RTC.

- 1. The Court shall have exclusive jurisdiction to deliver advisory opinions concerning the interpretation and application of the Treaty.*
- 2. Advisory opinions shall be delivered only at the request of Contracting Parties or the Community.*

Article XII which speaks to “Jurisdiction of the Court in Contentious Proceedings” provides that:

1. Subject to the Treaty, the Court shall have exclusive jurisdiction to hear and deliver judgment on:

- a) disputes between Contracting Parties to this Agreement;
- b) disputes between any Contracting Parties to this Agreement and the Community;
- c) referrals from national courts or tribunals of Contracting Parties to this Agreement;
- d) applications by nationals in accordance with Article XXIV, concerning the interpretation and application of the Treaty.

2. For the purposes of this part, "national courts" includes the Eastern Caribbean Supreme Court.

Call for Action

ACTION

- Centralisation of IPRs administration be undertaken while respecting sovereign rights of MS
- Legal framework - the drafting and ratification of the treaty for the regional mechanism
- Decision on final court of appeal
- Capacity building of the IPOs – e.g. Online registries – full participation on Caribbean class as a start; Automated systems – WIPO IPAS, WIPO Publish
- Legislative amendments to the allow for data sharing, data protection and mining of data generated
- Financing mechanisms
- Identifying the business model best suited which allows IPOs to function along with the regional mechanism
- Possibility of starting with the OECS first and then broadening scope to the wider Caribbean/CARIFORUM

Thank you * Gracias * Merci * Bedankt

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