

Committee on Development and Intellectual Property (CDIP)

Ninth Session Geneva, May 7 to 11, 2012

SUMMARY BY THE CHAIR

1. The ninth session of the CDIP was held from May 7 to 11, 2012. The session was attended by 97 Member States and 38 Observers.
2. The Committee unanimously elected Ambassador Mohamed Siad Doualeh, Permanent Representative of Djibouti, as Chair, and Mrs. Alexandra Grazioli, Senior Legal Advisor, Swiss Federal Institute for Intellectual Property, who was elected during the previous session, continued as Vice-Chair.
3. The Committee adopted the Draft Agenda as proposed in document CDIP/9/1 Prov. 2.
4. The Committee decided to admit, on an *ad hoc* basis, one non-governmental organization (NGO), namely, COMMUNIA, International Association on the Public Domain (COMMUNIA), without implications as to its status for future CDIP meetings, for a period of one year.
5. The Committee adopted the Draft Reports of the seventh session of the CDIP (CDIP/7/8 Prov.) and the eighth session of the CDIP (CDIP/8/9 Prov.).
6. Under Agenda Item 6, the Committee listened to general statements from Regional Groups. As agreed by Members, delegations were requested to provide national statements in writing for inclusion in the Final Report.
7. With regard to the availability of documents, some Member States expressed concerns over the fact that only a summarized translation was provided for a significant number of documents and also that the translated versions of some documents were made available only a few days before the beginning of the Committee.
8. Under Agenda Item 7, the Committee considered the Report of the Director General (CDIP/9/2). Delegations appreciated the commitment of the Director General to the

implementation of the Development Agenda and the progress made in this regard. The Committee recognized the achievements made thus far in the implementation of the Development Agenda. The Director General's Report provided an overview of improvements made in mainstreaming of the Development Agenda, and an overview of the strategic approach adopted in implementation of the Development Agenda. Based on the questions raised, the Director General seized the opportunity to provide clarifications on the following issues: (i) the parameters of the Organization's work with other United Nations organizations; (ii) the Organization's role in the context of the Millennium Development Goals post 2015; and (iii) the Organization's role in the context of the New Partnership for Africa's Development. The Director General observed that the Secretariat carried out its work by exercising initiative where required, while respecting the fact that it was for the Member States alone to take policy decisions. Suggestions were made to enhance the information contained in future reports.

9. Under Agenda Item 7, the Committee addressed a number of project evaluations, as follows:

(a) Project Evaluation – Development Agenda Recommendation 2: Conference on “Mobilizing Resources for Development” (CDIP/9/3).

(b) Project Evaluation: Intellectual Property Technical Assistance Database (IP-TAD) (CDIP/9/4). The Committee noted the role of this Project in ensuring transparency in the delivery of technical assistance, and the need to continue to provide comprehensive and updated information through the Database.

(c) Independent Evaluation Report of the Project on Specialized Databases' Access and Support – Summary (CDIP/9/5). The Committee expressed its support for the Project in view of the positive outcomes for developing countries.

(d) Independent Report on Evaluation of the Pilot Project for the Establishment of “Start-Up” National IP Academies (CDIP/9/6).

(e) Independent Report on Evaluation of the Pilot Project on Intellectual Property and the Public Domain (CDIP/9/7). The Committee agreed that there was a need to ensure that the Project output relating to new tools and guidelines might be delivered in future through Member States' guidance in specific areas of intellectual property.

(f) External Independent Evaluation Report of the Project on Intellectual Property and Competition Policy (CDIP/9/8). Some delegations posed questions about a Project objective that had not been delivered. The Secretariat's significant contribution was aimed at improving the institutional framework so as to facilitate the accomplishment of the objective, and that contribution had been delivered.

10. Also under Agenda Item 7, the Committee discussed the Description of the contribution of the relevant WIPO Bodies to the implementation of respective Development Agenda Recommendations (CDIP/8/6 Rev.). Some delegations expressed their support for implementation of the General Assembly decision on Coordination Mechanism.

11. Under Agenda Item 8, the Committee considered a work program for the implementation of some adopted recommendations, as follows:

(a) The Committee discussed the Project on Specialized Databases' Access and Support – Phase II (CDIP/9/9) and approved the second phase of the Project. The Secretariat took note of comments made by delegations, including with respect to the sustainability of the Project.

(b) The Committee discussed A Pilot Project for the Establishment of “Start-Up” National IP Academies – Phase II (CDIP/9/10 Rev.) and approved a revised version of the second phase of the Project contained in document CDIP/9/10 Rev1. The Committee agreed that the next phase of the Project should give priority to the needs of least developed countries and those countries already involved in phase I to the extent possible. Some delegations indicated that the initiative should form part of the regular program of the WIPO Academy and suggested a possible decision of the Program and Budget Committee (PBC) which allows for the availability of permanent funds.

(c) The Committee discussed the Work Program on Flexibilities in the Intellectual Property System – New Elements Proposed at CDIP/8 (CDIP/9/11). Some delegations emphasized the importance of WIPO’s work in the field of flexibilities in the IP system. Some delegations emphasized the need for the Committee to undertake this work efficiently and without duplications of the work taking place in other committees and/or forums. The Committee agreed on the element in 2(f) to provide information submitted by Members on their practical experience in the implementation of flexibilities through a database. In respect of paragraph 2(c) of document CDIP/9/11 (Work Program on Flexibilities in the Intellectual Property System – New Elements Proposed at CDIP/8), the Committee decided to proceed as follows:

(i) The Secretariat would prepare, for the next session of the Committee, a document showing if any of the four patent-related flexibilities listed in paragraph (ii) have already been addressed in the Standing Committee on the Law of Patents, and whether such work would be addressed from the same or a different perspective by the Committee. That document would also contain further explanation on the latter two points in paragraph (ii).

(ii) The Secretariat would invite Member States of the Committee to submit written comments on the list of the following four patent-related flexibilities by August 31, 2012:

- The scope of the exclusion from patentability of plants (TRIPS Art. 27)
- Flexibilities in respect of the patentability, or exclusion from patentability, of software-related inventions (TRIPS Art. 27)
- The flexibility to apply or not criminal sanctions in patent enforcement (TRIPS Art. 61)
- Measures related to security which might result in a limitation of patent rights (so-called “security exception”) (TRIPS Art. 73)

The Secretariat would compile the comments received by the above date in a document to be submitted to the next session of the Committee. The four above flexibilities and the comments received would form the basis for discussions at the next session of the Committee on patent-related flexibilities.

(iii) Additional flexibilities, including those in Article 27 of the TRIPS Agreement, may also be submitted and presented at the next session of the Committee, and Members may submit comments thereon intersessionally between the tenth and eleventh sessions of the Committee, for discussion and decision at the eleventh session of the Committee.

The Committee also discussed two documents on patent-related flexibilities: Patent-Related Flexibilities in the Multilateral Legal Framework and their Legislative Implementation at the National and Regional Levels – Part II (CDIP/7/3 and CDIP/7/3 Add.). Some delegations raised the importance of Article 27 of the TRIPS Agreement in

the context of flexibilities, while other delegations noted that this issue was being addressed in other committees and forums.

(d) The Committee discussed the Project on Strengthening and Development of the Audiovisual Sector in Burkina Faso and Certain African Countries (CDIP/9/13) and approved the Project as proposed. Some Delegations expressed that this project is a good example of using IP for development.

(e) Also under Agenda Item 8, the Committee discussed the Report on an External Review of WIPO Technical Assistance in the Area of Cooperation for Development (CDIP/8/INF/1). In this connection, the Committee also considered the Report of the *Ad Hoc* Working Group on an External Review of WIPO Technical Assistance in the Area of Cooperation for Development (CDIP/9/15), and the Management Response to the External Review of WIPO Technical Assistance in the Area of Cooperation for Development (CDIP/9/14). Some Member States requested clarifications on Cluster B of the Management Response. Some others expressed reservations on categorization in Annex II (document CDIP/9/14) including category B. Upon request by the Chair, the Secretariat identified the recommendations which, in its view, were both important and immediately implementable such as: the recommendations concerning the Organization's work on national intellectual property strategies, the external review of the WIPO Academy's work, and the recently launched initiative of establishing country plans for more coherent and transparent delivery of technical assistance in consultation with Member States. The Committee did not have sufficient time to discuss this issue. Some Delegations underlined the importance of enhancing and improving the delivery of technical assistance to the realization of the Development Agenda recommendations. Member States were invited to provide their contributions in writing for discussions well advance of the next session. The Committee agreed that the Deere/Roca Report, Management Response, and the Joint Proposal by the Development Agenda Group and African Group (CDIP/9/16) would be discussed at its next session with the view to considering implementing the recommendations.

(f) The Committee considered the document on Scenarios and Possible Options Concerning Recommendations 1(c), 1(f) and 2(a) of the Scoping Study on Copyright and Related Rights and the Public Domain (CDIP/9/INF/2). Member States discussed the description of options and scenarios contained in document CDIP/9/INF/2.

With respect to Recommendation 1c):

Some Members were concerned that the Study needed to be balanced in catering for the interests of both users and right owners. Moreover, the Study should not promote any specific regime but merely showcase the different approaches implemented in different countries. The language in document CDIP/9/INF/2 would be revised to reflect these concerns. Moreover, proposed terms of reference for a Comparative Study on Copyright Relinquishment will be submitted to the next session of the Committee.

With respect to Recommendation 1f):

Different views were expressed in regard these issues. It was agreed that a meeting of interested Member States would be organized to discuss their priorities in regard to copyright infrastructure.

With respect to Recommendation 2a):

Some States requested to eliminate from the document any reference to traditional knowledge, traditional cultural expressions and folklore in order to dissipate concerns relating to overlap with the public domain, taking into account the work undertaken in the

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). It was agreed that the document would be revised accordingly. With regard to the participation of WIPO in the UNESCO International Conference on Memory in the World in the Digital Age: Digitization and Preservation, it was also noted that WIPO would take careful consideration of the need to keep both notions separate.

(g) The Committee took note of the document on Using Copyright to Promote Access to Information and Creative Content (CDIP/9/INF/3) and agreed to consider the document at its next session.

(h) The Committee discussed a Revised project paper with redistributed budget and updated timeline of the Project paper on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions (CDIP/9/INF/4), and agreed to the implementation of the Project deliverables in line with the proposed new budget and timeline.

(i) The Committee took note of a Study on Misappropriation of Signs (CDIP/9/INF/5), and agreed to consider the document at its next session.

(j) The Committee discussed a Study on the Anti-Competitive Enforcement of Intellectual Property Rights: Sham Litigation (CDIP/9/INF/6). The Secretariat confirmed the understanding articulated by one delegation concerning the scope of the Study. The Secretariat agreed to convey the observations made by the Delegation to the Author.

(k) The Committee took note of the Interface between Exhaustion of Intellectual Property Rights and Competition Law (CDIP/8/INF/5 Rev.).

(l) The Committee discussed a Scoping Study on Copyright and Related Rights and the Public Domain (CDIP/7/INF/2). The Committee expressed diverse views on the recommendations contained in the Study. Some delegations proposed the analysis of scenarios and possible options concerning additional recommendations. Other delegations did not agree on this initiative. Some delegations proposed that this issue be discussed in the next session. Some delegations opposed the continuation of that discussion in the next session. The Chair concluded that this issue will be discussed in the consultations on the future work

(m) The Committee addressed a Proposal for a CDIP New Agenda Item on Intellectual Property (IP) and Development (CDIP/6/12 Rev.) and could not reach an agreement, but agreed to retain the Proposal on the Agenda for its next session. In the context of discussions on a proposed international conference on Development and IP, the Committee agreed to discuss the modalities of this proposal in the intervening period before the next session with the guidance of the Chair.

12. Under Agenda Item 9 on Future Work, the Committee considered a number of suggestions. The Chair will hold intercessional consultations on draft agenda items for the next session.

13. The Committee noted that the Draft Report of the ninth session would be prepared by the Secretariat and communicated to the Permanent Missions of the Member States, and would also be made available to Member States, IGOs and NGOs, in electronic form, on the WIPO website. Comments on the Draft Report should be communicated in written form to the Secretariat, preferably eight weeks before the next meeting. The Draft Report will then be considered for adoption at the tenth session of the Committee.

14. This Summary, together with the Summary by the Chair of the eighth session and the Director General's Report to the Committee (CDIP/9/2), will constitute the Committee's report to the General Assembly.

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