

Committee on Development and Intellectual Property (CDIP)

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COMPLETION REPORT OF THE PROJECT ON STRENGTHENING AND DEVELOPMENT OF THE AUDIOVISUAL SECTOR IN BURKINA FASO AND CERTAIN AFRICAN COUNTRIES – PHASE II

prepared by the Secretariat

1. The Annex to the present document contains the completion report of the Development Agenda (DA) project on Strengthening and Development of the Audiovisual Sector in Burkina Faso and Certain African Countries – Phase II. The report covers the entire period of the project implementation, i.e. from June 2016 to October 2018.

2. The report of an independent evaluation of the project is contained in document CDIP/23/6.

3. *The CDIP is invited to take note of the information contained in the Annex to the present document.*

[Annex follows]

PROJECT SUMMARY	
<u>Project Code</u>	DA_1_2_4_10_11
<u>Title</u>	Strengthening and Development of the Audiovisual Sector in Burkina Faso and Certain African Countries – Phase II
<u>Development Agenda Recommendation</u>	<p>Recommendation 1: WIPO technical assistance shall be, <i>inter alia</i>, development-oriented, demand-driven and transparent, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States. Activities should include time frames for completion. In this regard, design, delivery mechanisms and evaluation processes for technical assistance programs should be country-specific.</p> <p>Recommendation 2: Provide additional assistance to WIPO through donor funding, and establish Trust Funds or other voluntary funds within WIPO specifically for LDCs, while continuing to accord high priority to financing activities in Africa through budgetary and extra-budgetary resources, to promote, <i>inter alia</i>, the legal, commercial, cultural, and economic exploitation of intellectual property in these countries.</p> <p>Recommendation 4: Place particular emphasis on the needs of small and medium-sized enterprises (SMEs) and institutions dealing with scientific research and cultural industries and assist Member States, at their request, in setting up appropriate national strategies in the field of intellectual property.</p> <p><i>Recommendation 10:</i> To assist Member States to develop and improve national intellectual property institutional capacity through further development of infrastructure and other facilities with a view to making national intellectual property institutions more efficient and promoting a fair balance between intellectual property protection and the public interest. This technical assistance should also be extended to sub-regional and regional organizations dealing with intellectual property.</p> <p><i>Recommendation 11:</i> To assist Member States to strengthen national capacity for protection of domestic creations, innovations and inventions and to support development of national scientific and technological infrastructure, where appropriate, in accordance with WIPO's mandate.</p>
<u>Project Budget</u>	<p>Personnel costs: 110,000 Swiss francs</p> <p>Non-Personnel costs: 430,000 Swiss francs</p> <p>Total: 540,000 Swiss francs</p>

<u>Project Duration</u>	30 months
<u>Key WIPO Sectors Involved and Links to WIPO Programs</u>	Programs 9, 11, 15, 16
<u>Brief Description of Project</u>	<p>The Audiovisual (AV) industries have huge potential to support national economic development of African countries and play a significant role in the promotion of cultural identity. They also provide employment and promote innovation. However, concrete steps need to be taken to realize their full economic potential.</p> <p>The Phase II of the project (contained in document CDIP/17/7) was a follow up to the first Phase of this project (contained in document CDIP/9/13), which was based on a proposal made by the Delegation of Burkina Faso. Phase I was completed and independently evaluated at the end of 2016¹.</p> <p>The second phase of the project aimed at accelerating the development of the African AV sector through technical assistance and capacity building to increase understanding and use of the copyright system.</p> <p>The Project consisted of three main components:</p> <ul style="list-style-type: none"> - Research based initiatives; - Professional Development and Capacity Building; - Institutional and policy framework: Support to the Development of Skills and Tools. <p>All components sought to increase the use and profitability of intellectual property based transactions in the AV sector. The pilot beneficiary countries of the project were Burkina Faso, Cote d'Ivoire, Kenya, Morocco and Senegal.</p> <p>Phase II of the project built on the momentum created by Phase I to consolidate the project's sustainability in driving structural changes for the sector.</p>
<u>Project Manager</u>	Ms. Carole Croella, Senior Counsellor, Copyright Law Division, Culture & Creative Industries Sector
<u>Links to Expected Results in the Program and Budget</u>	<p><i>Strategic Goal III: Facilitating the Use of IP for Development</i></p> <p><i>Program 3</i></p>

¹ The Evaluation Report is contained in document CDIP/17/3

Summary overview of
Project
implementation

I. PROJECT BACKGROUND AND APPROACH

The project implementation started in June 2016 and concluded in October 2018. All planned activities were implemented and the budget was used as foreseen. The project was closely coordinated with the pilot countries. It took fully into account their identified priorities and needs. The contents of the project have been detailed in the project document CDIP/17/7.

Five pilot countries, namely Burkina-Faso, Senegal, Kenya, Cote d'Ivoire and Morocco, participated in the project, as approved by the CDIP.

The project focused on the following elements:

- Research based initiatives;
- Professional development and training activities; and
- Strengthening of the institutional and policy framework :
Support to the Development of Skills and Tools

Phase II of the project aimed to accelerate the development of the African audiovisual sector through technical assistance and capacity building to increase understanding and use of the copyright system. It enabled capitalizing on Phase I, which laid the first foundations to create awareness and knowledge on the use of IP in the sector.

The project implementation has involved collaboration with the following stakeholders and partners during the various stages of its practical implementation :

A. National focal points :

The project secured effective planning and coordination of activities with participating countries by cooperating with national focal points. Each pilot country appointed a representative. Focal points played a key role in ensuring that the activities designed were suitable for the countries, in their organizations and in the selection of the local participants. To facilitate the sustainability objective of the project, several coordination meetings were organized with the focal points.

B. National institutions and authorities:

Those included essentially the national institutions responsible for copyright policy and film policy namely:

- The Bureau Burkinabé du Droit d'Auteur (BBDA), Burkina-Faso
- The Kenya Copyright Board (KECOBO), Kenya
- La Sénégalaise du Droit d'Auteur (SODAV), Sénégal
- The Ministry of Culture of Senegal, Cote d'Ivoire
- Le Centre Marocain du Cinéma (CMC). Morocco ;
- Kenya Film Commission (KFC), Kenya
- La Direction de la Cinématographie, Sénégal.

C. Film professionals :

The project sought to include a broad range of professionals of the AV value chain with a particular emphasis on film directors, producers, distributors, performers, collective management organizations and online platforms. The needs of small and medium-sized enterprises (SMEs) were also addressed as the AV industries in the pilot countries are largely SMEs themselves. In a few instances, the project also brought together representatives of financial institution and of the banking sector.

D. Regulatory authorities :

The project also targeted in its activities media regulators namely:

- La Haute Autorité de la Communication Audiovisuelle (HACA), Cote d'Ivoire
- The Communication Authority, Kenya
- La Haute Autorité de la Communication Audiovisuelle (HACA), Morocco
- Le Conseil National de Régulation de l'Audiovisuel (CNRA), Sénégal

The project reached out to all of them and they participated in specific activities addressing their missions in the audiovisual and broadcasting sectors. The main reason of this innovative partnership is linked to the current digital landscape, which has led to an explosion of broadcasting services throughout Africa. Communication regulators could play a key role in ensuring compliance with regulatory policies for the audiovisual sector including copyright compliances. The project contributed by giving them an exposure to copyright issues, which in turn contributed to a clarification of their role.

E. Judges and lawyers :

Training was provided to legal communities to enhance skills and professional practices in accordance with international standards and to enable them to assist local audio-visual stakeholders with new services related to AV law. The increasing number of commercial transactions in the AV sector is faced by a shortage of specialized skills from the judiciary and qualified lawyers experienced in contractual aspects of the AV sector.

F. Resource persons and experts:

The delivery of the Project was based on cooperation with leading professionals with expert knowledge in their various fields. About 40 experts/instructors were mobilized for the implementation of the project. Most of them were highly qualified resource persons with extended experience of the African and international AV sector, who ensured the quality of the training provided.

Local skills and national expertise were prioritized whenever available. International experts originated from Africa (Algeria, Cameroun, Mozambique, Nigeria, Uganda), and other parts of the world such as the (Belgium, Canada, France, Italy, Luxembourg, United Kingdom, United States of America, Switzerland).

Most of them contributed to the designing of the training programs, and contributed to the assessment of the activities.

G. Other partners

Some activities were jointly organized with the following organizations :

- Organisation Internationale de la Francophonie (OIF)
- Confédération Internationale des Sociétés d'Auteurs et de Compositeurs (CISAC)
- Union Africaine de Radiodiffusion (UAR)
- Producers Alliance for Cinema and Television (PACT).
- European Association of Performers Rights Organizations (AEPO).

The participation of officials of the Economic Community of West African States (ECOWAS) and of the West African Monetary Union (UEMOA) in some activities (Burkina Faso and Senegal) provided an opportunity to coordinate some activities related to the AV sector in beneficiary countries.

II. PROJECT IMPLEMENTATION

The project experienced some delays in commencing activities. All countries were able to designate or confirm their national focal point for the implementation of the project by the end of 2016 with the exception of Morocco, which provided the information in July 2017, due to some internal changes. In some countries, the focal point was replaced in the course of implementation of the project.

The project was implemented in accordance with the approved timeframe. The resources were also used in accordance with the approved budget and where possible, back-to-back meetings were organized in countries, for cost saving objectives and efficiency.

Most of the activities were organized in an inclusive cross-country approach to reach out to all the beneficiary countries. Due consideration of gender parity was also taken. Most activities secured the participation of representatives of each of the other pilot countries at the maximum and expand the reach of the activities implemented.

With regard to the specific outputs of the Project, the following are the main outputs achieved :

1. RESEARCH

- A. A feasibility report was commissioned on "The collection of economic data in the AV sector". The report addressed the importance of knowledge of the AV markets, for the development of the markets and outlined the many obstacles and challenges that exist in a range of countries for the collection of such data. A major conclusion of the study was the need to increase the awareness of AV industry stakeholders with regard to the importance of enhancing the collection of economic data for both the development of the markets and the potential for generation of income from intellectual property.
- B. A brochure on "*Copyright and the AV Industry in Kenya*": A practical Guide for Film Makers" was developed and printed.
- C. The Distance-Learning module on Copyright for African Film Professionals was elaborated. The contents have been completed and the project needs to move to the final operational stage of testing and implementation in close coordination with the WIPO Academy.

2. CAPACITY BUILDING AND PROFESSIONAL DEVELOPMENT

Continuing education and training sessions were organized in all the pilot countries. They had a practical orientation (addressing real-life case studies), and provided in-depth information on the topics covered. The Project involved in particular three categories of stakeholders:

- a) Producers, film director and distributors and in some cases performers, copyright offices;
 - b) Broadcasters and Regulators;
 - c) Magistrates and lawyers.
- In addition, the project also contributed to develop skills to improve or develop the individual exercise of rights and collective management of audio-visual rights, where the type of exploitations makes it easier to manage rights collectively. Collective management of AV area is an emerging area for most of the pilot countries. Challenges addressed included the negotiating skills with digital platforms, broadcasters and implementation of private copying schemes.

A. BURKINA FASO

The following training sessions were organized :

- Regional seminar on Copyright and the financing of the AV sector as part of the Pan African Film and Television Festival (FESPACO) : February 2017;
- Sub regional training on « Le droit d'auteur et la structuration de l'économie des séries audiovisuelles en Afrique » as part of the pan African market « SERIES-SERIES » : February 2018 in the framework of the professional AV market « Séries-Séries »;
- Legislative Advice workshop on the new copyright framework: April 19, 2018.

B. COTE D'IVOIRE

The following training activities took place :

- International Conference on « La Régulation de l'Audiovisuel, à l'ère du Numérique », organized with the Haute Autorité de la Communication Audiovisuelle (HACA) : May 2017 ;
- Sub regional training for lawyers on AV contracts, in cooperation with the Cote d'Ivoire Bar : July 2018.

C. KENYA

The following training sessions were organized :

- Seminar on Copyright, Development, Financing, Regulation and Marketing in the AV Sector with the Kenya Copyright Board – (KECOBO) and The Kenya Film Commission (KFC): April 2017;
- A high-level roundtable with the support of TV and film experts from the independent British producer's trade association (PACT) : March 24, 2018;
- A high level roundtable on the film policy at *Kalasha International Film & TV Festival and Market*: March 27, 2018.
- An arbitration and mediation training for the film sector: March 26, 2018.

D. MOROCCO

- Sub Regional Seminar on Collective management of AV Rights and adoption of the AI Jadida Recommendations: January 2018.

E. SENEGAL

The following training sessions were organized:

- Sub regional training on AV law and copyright contracts for the judiciary: December 2017;
- Sub regional practical training on management of rights in the broadcasting sector : December 2017;
- Sub regional practical training on the implementation of the private copying remuneration schemes: September 2018.

3. INFRASTRUCTURE SUPPORT AND POLICY FRAMEWORKS

The project provided a practical framework for the development of skills and practices. It also provided legislative support on a demand driven basis to national authorities in their efforts to regulate the AV sector enabling a healthy regulatory environment. Such governmental strategies included the update of copyright and communications law frameworks.

The following results can be reported :

A. BURKINA FASO

- Adoption of a new copyright and related rights law in line with requirements of the digital age and ratification of the WIPO Beijing Treaty on AV Performances in 2018.
- A large and high-level consultative workshop was organized in May 2018, bringing all stakeholders to discuss the legislative options of the new law and to facilitate understanding from all the relevant stakeholders.

B. KENYA

- In September 2018, KECOBO signed a Memorandum of Understanding (MOU) with the WIPO Arbitration and Mediation Center to formalize cooperation in resolving copyright disputes.
- Based on the conclusions of the Study on *Collective Negotiation of Rights and Collective Management of Rights in*

the AV Sector,² achieved under Phase I of the project, steps were taken to bring together music and AV stakeholders for the setting up a collective management of AV rights. Developments are ongoing but have not reached a final stage.

- The project cooperated with KFC in providing legislative advice on audiovisual developments and copyright issues related to the finalization of the national film policy, a forward-looking national strategy for the sector.

C. MOROCCO

An onsite expert mission was organized for members of the BMDA in Belgium at the Belgium Society of Authors (SABAM).

D. SENEGAL

- Legislative advice was provided on the draft Communications & Press Bill to ensure that the policy framework for the AV sector was in line with international standards of the digital environment and copyright law. A high-level intergovernmental consultation took place in February 2017 to discuss the proposed amendments to the text. The project also secured the expertise of Morocco through the participation of experts of the HACA. The Bill was adopted in June 2017 with the recommended amendments. The text set a precedent for the regulation of the AV sector in West Africa.
- Training was also provided in the area of AV rights and performers rights to “SODAV”. The training was undertaken through cooperation with the European Association of Performers Rights (AEPO). Following an expert mission, a work plan was established to support the development of the structure.

In the collective management area, support has also been provided by the WIPO Global Infrastructure Sector through the development of the WIPO CONNECT software. While it does not yet cover AV rights, its development has been followed by the CMO’s who consider it a useful tool to develop efficient data management in this area.

It is also to be reported that UEMOA adopted on a directive harmonizing legislation of its member states in the AV sector.³ Most of the beneficiaries of the project contributed to the negotiation of the text and its adoption.

4. MONITORING AND FEEDBACK

² document CDIP/14/INF/2.

³ Directive 02/2018/CM/UEMOA of September 21, 2018.

	<p>Close monitoring was essential considering the diversity of activities and stakeholders that the project involved as well as the experiences, needs and specificities of each pilot country. Considering the characteristics of each pilot country and the speed of technological and market developments, some degree of flexibility in implementing the project was necessary.</p> <ul style="list-style-type: none">(i) Evaluation forms: at the end of each training session, and following completion of the project, the participants were requested to complete evaluation forms and to provide comments and suggestions.(ii) Regular contacts: formal and informal meetings, conference calls and exchange of emails facilitated the management of the project.(iii) Regular progress report were also presented to the CDIP. <p>The feedback received by the Secretariat and the survey were very positive. They showed that the project was of relevance to the beneficiary countries and the stakeholders and that it was designed in an appropriate way to meet the needs of the beneficiary countries.</p>
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<p><u>Results/impact of project and key lessons</u></p>	<ol style="list-style-type: none">1. The project provided a meaningful opportunity to show a practical example of usage of copyright in Africa in a fast developing creative market. It laid solid foundations for increased use of copyright in the AV sector.2. The design and implementation modalities of the project objectives were developed in close consultation with pilot countries and in conformity with their needs. The sustained coordination with local focal points facilitated the development of a common approach and agreed goals. Though focal points were not remunerated, the project received efficient support and commitment from all the beneficiary countries. It was implemented in a timely manner despite the fact that significant time was often spent on coordination of administrative issues and organizational arrangements.3. As regards the training methodology, the project faced a low level of awareness of how copyright could be used as a tool for the development of the sector. A significant part of film professionals has been operating in isolation with few contacts with national authorities and other players of the AV scene. The training sessions and the horizontal approach of the project were therefore found useful to create and structure a sustained dialogue between film professionals and government officials.4. This contributed to increased government support initiatives in terms of promoting local content, film funds, and respect for copyright and an improved tone in terms of relationships between the various sectors of the industry. Some positive outcomes were also observed such as :<ul style="list-style-type: none">- <i>A more systematic use of IP contracts and registration of AV works</i>- <i>Clearer copyright documentation for chain of titles</i>- <i>Policy and regulatory achievements at national and sub-regional levels</i>- <i>Increased use and skills of lawyers and judges in AV law and contracts.</i>5. The beneficiary countries are markets in transition impacted by the fast evolving transition to digital technology and the growth of disruptive new economic business models such as streaming platforms. These evolutions have a profound and continuous impact on the protection and the modalities of managing rights and most of the countries are struggling to come to grips with them. This that has led to a steady market demand by key players for continued guidance and support to strategically use copyright for the audiovisual sector's sustainable growth.6. As a result, a time bound project is not sufficient to achieve substantial structural changes. Those will take a longer time than the project duration.
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<p><u>Risks and Mitigation</u></p>	<p>Risks:</p> <ol style="list-style-type: none"> 1. Difficulties in designing activities for a wide range of stakeholders and to cater for different interests, within a limited period of time and with a limited budget. In addition, the project had to address legal needs of pilot countries representing both common law and civil law countries. 2. Difficulties in addressing in a comprehensive manner the practical needs of the financial and legal community sectors, due to an increased demand of project activities. 3. Rapid adaptation to some external factors linked to local political and security developments which, in a few instances, slowed down the proper execution of the project. <p>Mitigation:</p> <ul style="list-style-type: none"> - The project management provided flexibility in the design and implementation of activities to meet evolving needs and external constraints. - Close coordination on the risks was ensured with local focal points who played a key role in leveraging institutional support and facilitating progress in implementation. - As a result, most of these elements had a limited impact on the performance of the project.
<p><u>Project Implementation Rate</u></p>	<p>The budget utilization rate was 100%</p>
<p><u>Previous Reports/documents</u></p>	<p>This is the third progress report submitted to the CDIP.</p> <p>The first report is contained in document CDIP/20/2 and the second in document CDIP/22/2.</p>
<p><u>Follow-up</u></p>	<ul style="list-style-type: none"> - To sustain, in some ways, the market demand and results achieved in the implementation of the project to ensure that the AV industry grows in the beneficiary countries and beyond on a firm foundation of a general understanding for copyright and the sustained use of contracts; - Further awareness of audiovisual industry stakeholders with regard to the importance of enhancing the collection of economic data is also required; - A useful tool will be the operationalization of the DL component of the project provided regular updates of its contents are made, based on a thorough monitoring and continuous structured dialogue with African film professionals; - It seems also useful to address the needs related to the establishment and development of collective management of AV rights where appropriate.

PROJECT SELF-EVALUATION

Key to Traffic Light System (TLS)

****	***	**	NP	NA
Fully achieved	Strong progress	Some progress	No progress	Not yet assessed/discontinued

Project Outputs⁴ (Expected result)	Indicators of Successful Completion (Output Indicators)	Performance Data	TLS
Feasibility study on collection of market data	The feasibility study completed and published on WIPO website.	Study presented and follow up presented to CDIP.	****
Expert workshops	Workshops conducted with positive evaluation by participants	Higher level of professional skills, organization of the sector and use of professional standards	****
Onsite training /capacity building	Activities conducted with positive evaluation by participants.	Improved licensing skills to distribute content to users	****
Development of institutional and policy framework	Systems, services and tools developed and accepted and put into practice.	Strengthening of the collective management infrastructure in relation to AV rights.	****
Development of distance learning program	Contents of the distance learning developed. The DL course is expected to be launched in the second quarter of 2019.	Establishment of a lasting training component for film professionals in Africa.	***

⁴ As per the original Project Document, Section 3.2.

Project Objective(s)	Indicators of Success in Achieving Project Objective(s) (Outcome Indicators)	Performance Data	TLS
To contribute to enhanced use of the intellectual property system for the financing, production and distribution of AV works	<p>Participants make greater use of the acquired skills for financing, producing and distributing AV works (to be ascertained via evaluation questionnaire sent to participants after the completion of training)</p> <p>Increase in the number of intellectual property related transactions in the AV sector in relation to production and distribution.</p>	<p>Capacity building workshops and training activities regarding best practices organized with high level of satisfaction. Evaluation sheets available. Enhanced integration and use of IP in the contracts and improved copyright documentation.</p>	***
To advance the development of an effective infrastructure, skills and tools for intellectual property rights-based transactions and licensing and related skills to enhance financial returns to AV creators and the industry	<p>Increase in the number of intellectual property-based transactions for the licensing of AV rights through collective negotiations and collective licensing practices and implementation of guidelines.</p> <p>Develop and increase the infrastructure for the licensing of AV rights compatible with international standards notably through collective management organizations. Progressive implementation of appropriate tools and business rules for the management of AV works compatible with international standards</p>	<p>Progressive management of AV rights by CMO's and implementation of private copying remuneration schemes.</p> <p>Project had a positive and concrete influence on authorities in their policy reforms and support to the sector.</p> <p>Enhanced use of IP confirmed through contractual practice, documentation and registration of works.</p>	***

[End of Annex and of document]