

Committee on Development and Intellectual Property (CDIP)

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CONTRIBUTION OF THE RELEVANT WIPO BODIES TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS

prepared by the Secretariat

1. The WIPO General Assembly at its fifty-first session held in Geneva, from September 30 to October 9, 2019, considered the document WO/GA/51/11 on “Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations”.
2. The WIPO General Assembly took note of the contents of the above-mentioned document and decided to forward to the Committee on Development and Intellectual Property (CDIP) the reports referred in that document.
3. Accordingly, the contributions of the Standing Committee on the Law of Patents (SCP) and the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) to the implementation of the respective Development Agenda Recommendations are reproduced below from their reports to the WIPO General Assemblies:

Report on the SCP, document WO/GA/51/6, paragraph 8:

“8. With respect to the developments in the SCP during 2018 and its contribution to the implementation of respective Development Agenda (DA) Recommendations, reference is made to paragraphs 42 to 45 of document CDIP/23/2.1 During the thirtieth session of the SCP, the Delegation of Uganda, speaking on behalf of the African Group, recalled the decision of the WIPO General Assembly in 2010 concerning “Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities”, and requested the Secretariat to include in its annual report to the Assemblies, a description of the SCP’s contribution to

the implementation of the respective Development Agenda Recommendations. The Delegation of Canada, speaking on behalf of Group B, noted that the established and agreed practice for the consideration of such issues should be followed.”

Report on the IGC, document WO/GA/51/12, paragraphs 14 and 15:

“14. Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations”, IGC 40 also discussed the contribution of the IGC to the implementation of the Development Agenda (DA) Recommendations.

“15. In this regard, the following statements were made at IGC 40. These will also appear in the initial draft report of IGC 40 (WIPO/GRTKF/IC/40/20 Prov.), which will be made available, as requested by the IGC, by September 9, 2019:

“The Delegation of the Islamic Republic of Iran said that DA Recommendation 18 was dedicated to the IGC’s work. It proved that the work and the negotiations in the IGC to protect TK, TCEs and GRs could contribute very positively to the development of IP. It encouraged all Member States to engage more positively in the discussion and expedite the work to finalize and conclude the main issues on the IGC agenda. Furthermore, the technical assistance to Member States and capacity-building projects by the TK Division was another aspect that had a very positive impact on the DA recommendations. It encouraged and invited the TK Division to continue their support in delivering technical assistance to Member States.

“The Delegation of Brazil said the DA was a major landmark in the history of WIPO. It recalled Recommendation 18, which explicitly concerned the IGC. Regarding the renewal of the IGC mandate, Recommendation 18 assisted the IGC in its reflection on how to accelerate the process and deliver concrete outcomes. Concerning Cluster A, the Secretariat had a very important role to play in providing assistance to Member States, including legislative assistance and capacity-building, enabling indigenous peoples and local communities (IPLCs) to enjoy the fruits of the IP system. It urged all to show a constructive spirit in contributing to the discussions in light of Recommendation 18.

“The Delegation of Uganda, speaking on behalf of the African Group, underscored the principle underpinning the DA recommendations, i.e. to change the character of WIPO from its primary focus on protection of IP to introduce development dimensions of the programs and activities in line with the wider aspirations of the UN system. That principle reflected the strong ambition of WIPO to ensure that developing countries effectively used IP as a tool for encouraging and promoting creativity and innovation for sustainable development. As a mechanism for measuring progress made in the implementation of the DA recommendations, the WIPO GA in 2010 had directed all of the WIPO bodies, including the IGC, to include in their annual report to the GA, a description of their contribution to the implementation of the DA recommendations. The African Group commended the Secretariat for inviting Member States to provide their own assessment of the IGC’s contribution. There were tangible traces of progress made thus far by the IGC in the implementation of the DA recommendations through the mainstreaming of development in its program and activities. The IGC negotiations were the subject of DA Recommendation 18. The IGC’s mandate in the 2018-2019 biennium reflected

the strong ambition of the IGC to continue to expedite its work with the objective of reaching an agreement on an international legal instrument(s) relating to IP, which would ensure the balanced and effective protection of GRs, TK and TCEs. However, after almost two decades of negotiations and 12 years since the DA recommendation had come into play, the IGC was yet to finalize its work. One wondered if the phrase 'expedite its work', which was always put in the mandate, had real meaning, if year after year there was no conclusion of the IGC's work. The IGC continued to be guided in its work by DA Recommendations 15, 40, and 42 respectively. With regard to the preservation of the public domain within WIPO normative processes and its implications (DA Recommendation 16), there was a significant conceptual misunderstanding of the public domain and its relationship and limits when linked with TK/TCEs. The concept of the public domain was inherent to the IP system and often reflected in the careful balancing of the interests of rights holders and users. In the IGC, there was the contention by a few Member States that large facets of TK/TCEs were in the public domain. That was a conceptual misunderstanding of the public domain. Furthermore, the DA enjoined WIPO and its bodies to take into account flexibilities in international IP agreements in line with Recommendations 12, 14 and 17, as well as the UN Sustainable Development Goals, in line with Recommendation 22. One of the relevant goals of the IGC related to the conservation of biological diversity and the work of the IGC on the international protection of GRs and TK contributed to that goal.

"The Delegation of India said that the DA ensured that development considerations formed an integral part of WIPO's work. India, along with hundreds of other countries, was affected by misappropriation and biopiracy. Accordingly, an early finalization of an international legal instrument(s) on all three issues was highly solicited. The absence of any such legally-binding instrument would continuously allow the misappropriation and biopiracy of GRs and TK, thereby resulting in an imbalance of the global IP system. It looked forward to an early finalization of a balanced legal framework(s) on GRs, TK and TCEs through the IGC.

"The Delegation of Nigeria aligned itself with the statement made by the Delegation of Uganda, on behalf of the African Group. It took notice of the statement made by the Delegation of Brazil, with reference to DA Recommendation 18. The IGC had to accelerate its process. It was holding down the advancement of the DA at the IGC. That was contrary to what it was expected to be doing. Negotiating ad infinitum was undermining the DA and therefore running contrary to the mandate. It called attention to the bias of impact studies and assessments in the context of the litany of one-sided industry biased and sponsored studies that had bombarded the IGC for quite a while. If Member States wanted to be very serious and sensitive to the dictates of the DA, they should be inclined toward impact studies that created balance as to the impact of lack of protection of TK, TCEs and GRs that hurt IPLCs. In order to be faithful to the DA, Member States needed to be serious with the kind of studies the IGC accepted in its deliberations and whether those studies actually created the balance required to advance the DA.

"The Delegation of Egypt agreed with all the statements that had been made with regard to the DA, particularly Recommendation 18. It wondered why, after 20 years of work and negotiation, the IGC had not fulfilled its mandate under Recommendation 18. In the upcoming two years, the IGC should significantly accelerate its work and put aside all attempts to waste time on secondary issues that were not directly linked to the essential ones. It hoped to really commit to the DA on the ability for countries to control GRs, TK and TCEs to allow for sustainable development in those countries. That ownership had to be managed by those

countries in order to accelerate the IGC's work and arrive at a binding instrument(s)."

4. *The CDIP is invited to take note of the information contained in this document.*

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