

Committee on Development and Intellectual Property (CDIP)

Ninth Session
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JOINT PROPOSAL BY THE DEVELOPMENT AGENDA GROUP AND THE AFRICA GROUP ON WIPO'S TECHNICAL ASSISTANCE IN THE AREA OF COOPERATION FOR DEVELOPMENT

1. The Secretariat, has received from the Permanent Mission of Algeria a document entitled "Joint Proposal by the Development Agenda Group and the Africa Group on WIPO's Technical Assistance in the Area of Cooperation for Development" for the consideration by the Ninth Session of the Committee on Development and Intellectual Property (CDIP). This document was also co-sponsored by Bolivia (Plurinational State of).

2. The above-mentioned document is contained in the Annex to this document.

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

[Annex follows]

Joint Proposal by the Development Agenda Group and the Africa Group on WIPO's Technical Assistance in the Area of Cooperation for Development

Introduction

At the 8th session of the Committee on Development and Intellectual Property (CDIP), the External Review on WIPO's Technical Assistance in the Area of Cooperation for Development (CDIP/8/INF/1) was presented to Member States and an *ad hoc* working group was established to review the recommendations of the External Review. During the inter-sessional period, the *ad hoc* working group met on several occasions and extensively discussed and exchanged views on the recommendations of the External Review as well as the Management response contained in document CDIP/9/14.

Following the discussions in the *ad hoc* working group, the Development Agenda Group (DAG) and the Africa Group are of the view that it is now timely to focus on specific proposals made in the External Review to improve WIPO's development cooperation activities. Accordingly below the Development Agenda Group and the Africa Group identifies and elaborates specific proposals aimed at improving WIPO's development cooperation activities.

A. Relevance and Orientation

1. Commission Experts to develop "**Guidelines**" providing specific detail on how to plan and implement more development-oriented assistance both in terms of substance and process.¹ Experts selected for this task should be leading experts in the field of IP and development with a good understanding of the development challenges facing developing countries. Selection of experts and design of the method of work will be done in consultation with Member states and with the approval of the CDIP.

The proposed set of Guidelines should be presented to the CDIP for its consideration and further action.

2. The Secretariat shall develop a comprehensive **Manual** on delivery of technical assistance.

(a) The Manual should provide the following information²:

- a 'menu' or catalogue of development cooperation activities that WIPO provides (e.g., by national, regional and Program) to help countries discern the scope of possible activities;
- focal points within WIPO for each of the activities;
- process for requesting assistance including the time-frame for receiving requested assistance;
- possible modes of cooperation;
- process for engaging other providers, experts in activities;
- processes and tools for monitoring and evaluation of the activities including procedures to submit complaints with regard to technical assistance received;

¹ See recommendation at pg. 61 of the External Review.

² This proposal elaborates on the recommendations at pg. 62 of the External Review that "WIPO Secretariat needs to improve outreach and guidance to Member States on the range of development cooperation activities it offers" and that "A 'menu' or catalogue of development cooperation activities be made available...". In the management response (CDIP/9/14) the Secretariat notes at pg 28, Annex 1 that : « The Organization agrees that a catalog, or 'menu' describing its development cooperation activities could be prepared and made available to Member States via the WIPO website, to enhance transparency, and assist in country ownership of development cooperation and in the current Country Planning exercise".

- considerations re country preparedness such as absorptive capacity, risks and matching resources required;
- processes by which member states can guide overall planning and prioritization of development cooperation activities;
- a full listing of and copies of policies, principles or recommendations approved by Member states or adopted by the Secretariat that are applicable to the delivery of technical assistance including the code of ethics/conduct guiding staff and experts in the provision of technical assistance;
- priorities for the relevant biennium as set out in the relevant Program and Budget;
- a full list and copies or links to tools and other relevant documentation used in the delivery of technical assistance with respect to each of the development cooperation activities;
- a summary of the process for the development of country assistance plans and IP strategies;
- criteria WIPO applies to decide what kinds of requests are approved or declined.

(b) Recommendations listed in the Appendix to this paper should be attached as an annex to the Manual.

(c) The Secretariat shall present the design and content of the Manual to the CDIP for its review and endorsement.

3. The Secretariat in consultation with Member states develop a draft policy on how WIPO should plan and organize training activities and its events including conferences, meetings, workshops, seminars etc. The policy will contain guidelines *inter alia* on the holding of joint events; to improve the development orientation of WIPO's training activities and events and the balance and diversity of speakers; to address WIPO's engagement with public interest groups and entities having and representing commercial interests as well as to address issues of conflicts of interest including disclosure of conflicts of interest.³

The draft policy should be presented to the CDIP/PBC for its review and endorsement.

B. Programme and Budget

1. The following recommendations fall within the mandate of the Programme and Budget Committee (PBC) and should be addressed at its meeting in September 2012.

- (a) Integrate budgets and planning for all development cooperation activities into the regular Programme and Budget (P&B) process. Activities supported by Funds-in-Trust (FITS) and associated resources should be reflected in WIPO's regular budget, programming and reporting processes.⁴
- (b) WIPO should continue its efforts to improve measures for estimating personnel and non-personnel budgets for development cooperation activities, and improve information systems for estimating/tracking actual expenditures. In future Program and Budgets and Program

³ At pg. 130, the External Review recommends: "There should be systems for ensuring that trainings provided by all and any WIPO programs are of the highest pedagogical quality to maximize impact, are aligned with WIPO Development Agenda Recommendations, and are consistent with development-oriented expected results as set out in the Program and Budget and in country plans". At pg. 63, the External Review recommends: "The Secretariat should put in place mechanisms to systematically monitor the diversity of stakeholders and experts involved in the provision of its assistance (e.g., as consultants, speakers and trainers)".

⁴ See recommendation at pg. 61 of the External Review. See also Management's Response at para 11, pg. 11 Annex 1 of CDIP/9/14 which states: "The Program & Budget for 2012-13, demonstrated a further step in the integration of FITs in the regular budget, as well as planning and reporting. In future budgetary cycles, the Organization will explore ways to further integrate voluntary contributions into the regular budget. »

Performance Reports, the reporting on development activities by each Program, should be supplemented by a section summarizing the expected and actual results of development activities across the Organization's Program as a whole.⁵

- (c) Future P&Bs should include a new budget category reporting on budget allocations by 'mode of delivery'.⁶
- (d) The expected results in the P&B should be refined to explicitly address how the different components of development orientation (e.g. such as those set out in Box 2.2⁷ of the Report) are integrated across WIPO's programs, and activities.⁸
- (e) WIPO Secretariat and its Member States should refine and reorient the organization's Strategic Goals, outcomes and outcome indicators in the MTSP to reflect a comprehensive conception of development orientation (e.g. such as those set out in Box 2.2 of the Report).⁹

Box 2.2. Co-authors Definition of Development Oriented Assistance. See pg. 39 of the External Review

From a substantive view point, development-oriented assistance is that which:

- Reduces the knowledge gap between developed and developing countries so that developing countries are more actively involved in innovating, producing, using and absorbing technologies as well as propelling new forms of expressions, creativity and knowledge;
- Enables greater participation of developing countries in deriving broader benefits and reducing the costs of using the IP system at the global, regional and national level;
- Helps countries devise coherent national IP strategies, policies, laws and regulations that are linked to broader development and public policy objectives and tailored to respond to specific needs and problems.
- Aligns national or regional demands for support and activities with development needs as well as national IP strategies/policies;
- Takes into consideration the social and economic context and the regulatory and institutional environment of the country;
- Takes into account the priorities and special needs of developing countries ...as well as the different levels of development..." (DA Rec. 1)
- Facilitates access to knowledge and technology for developing countries and LDCs to foster creativity and innovation" (DA Rec. 19);
- Enables developing countries to fully understand and benefit from different provisions, pertaining to flexibilities provided by international agreements..." (DA Rec. 25);
- Builds national and regional capabilities of IP offices to administer the protection and enforcement of rights in ways that advance development goals and meet international obligations where they exist; and
- Enables developing countries (including all relevant stakeholders) to make use of IP and the IP system to boost local development as a tool to contribute to protect their own inventions and creations on the international market and enforce their rights.

⁵ See recommendation at pg. 168 of the External Review

⁶ See recommendation at pg. 168 of the External Review

⁷ See pg. 39 of the External Review

⁸ See recommendation at pg. 61 of the External Review

⁹ See recommendation at pg. 61 of the External Review.

C. Extra-budgetary Resources

1. The Secretariat shall present the draft Partnerships and Resource Mobilization Strategy to the PBC for review and endorsement.¹⁰

2. The Secretariat shall prepare a draft policy on Extra-budgetary Resources including FITs for the consideration of the PBC. The draft policy should contain guidelines that *inter alia*:

- covers all extra-budgetary resources including access to external funding mechanisms, and resources involving the private sector¹¹;
- guides negotiations between WIPO, the intended beneficiary member states and the donor for additional extra-budgetary resources¹²;
- stresses on flexible arrangements to ensure costs associated with management and administration of extra-budgetary resources are adequately recovered from and financed by donors¹³;
- ensures that all development cooperation activities funded by extra-budgetary resources are aligned with the development goals, priorities and results of WIPO¹⁴;
- ensures activities supported by such resources are reflected in WIPO's regular budget, programming and monitoring, reporting and evaluation processes¹⁵;
- ensures transparency with regard to mobilization and utilization of extra-budgetary resources and the development impact of the funded activities;
- ensures that the development cooperation activities funded through extra-budgetary resources and being undertaken in the beneficiary country are guided by the needs, interests and priorities of the beneficiary country or countries;
- adequately addresses conflicts of interests particularly where commercial interests are involved;
- sets up appropriate and systematic accountability mechanisms. This includes independent monitoring and evaluation mechanisms to ensure that activities funded have a positive development impact for the beneficiary country and that lessons learned are integrated into future programming.

3. The Secretariat shall further elaborate on its response in paragraph 11, pg. 12 of Annex 1 of CDIP/9/14 in relation to steps it has undertaken following the WIPO Conference on Building Partnerships for Mobilizing Resources for Development.¹⁶

¹⁰ The Secretariat has in the Management Response noted that it has developed a draft Partnerships and Resource Mobilization Strategy in 2011, which is being reviewed internally and will shortly be more widely available. See para 11, pg 12, Annex 1 of the Management Response (CDIP/9/14)

¹¹ The Secretariat has in the Management Response (see para 11, pg 12, Annex 1 of CDIP/9/14) noted that it is in the process of developing guidelines for private sector partnerships using the UN Business Partnering Guidelines, adding that Member states will be consulted on the issue in 2012. However as a draft policy on extrabudgetary resources is being proposed, all extrabudgetary resources including that involving the private sector should be addressed through the proposed policy.

¹² See recommendations at pg. 172 of the External Review

¹³ See pg. 172 of the External Review

¹⁴ See recommendation at pg. 61, External Review

¹⁵ See recommendations at pgs. 61, 159, External Review

¹⁶ See Management Response in para 11, pg 12 of Annex 1 of CDIP/9/14 which states: "Following the convening of the WIPO Conference on Building Partnerships for Mobilizing Resources for Development (November, 2009)..... WIPO has taken steps to implement the next steps identified at the Conference; activities included the development and submission of a project to support the establishment of technology transfer organizations in the Arab region to the African Development Bank: outreach to, for example, USAID, the World Bank, the Asian Development Bank, the Islamic Development Bank, the Executive Coordinator of the UN Multi-Donor Trust Funds, InfoDev (World Bank), the UN Office for Partnerships, the UN Foundation, the Gates Foundation, the Rockefeller Foundation, AusAid, DFID and others; the Secretariat also organized the second WIPO FIT donors meeting aimed at improved sharing of information".

D. Human Resources

1. The Secretariat shall revise the Code of Ethics in Appendix 3 of CDIP/9/14 and present the draft revised version to the CDIP for its consideration and to the Coordination Committee for endorsement. The Code of Ethics should be revised to:

- apply it only to WIPO's staff members with the aim that staff members will be obliged to read and sign the code of ethics¹⁷;
- to include a reference to the UN-WIPO Agreement of 1974 in the preambular paragraph and other relevant sections of the Code (e.g. paragraph on "Loyalty");
- to include a reference to Development Agenda (DA) recommendations in the preambular paragraph and other relevant sections of the Code (e.g. paragraph on "Loyalty");
- to include provisions specifically related to those staff engaged in the provision of development cooperation activities, which for example highlights the importance of providing technical assistance according to DA recommendation 1 with only the best interests of the country receiving technical assistance in view; and requires the Staff to review the DA recommendations.

2. The Secretariat shall swiftly conclude a 'gap analysis' of staff skills and competences to understand where it lacks skills, competencies and expertise relevant to improving the orientation, impact and management of its DC activities.¹⁸ The outcome of the "gap analysis" should be presented to the CDIP for its consideration and further action.

3. The Secretariat shall take steps to integrate the DA throughout WIPO's recruitment and PMSDS processes and to harness the recruitment and PMSDS processes as opportunities to promote a development oriented culture and mindset within the organization.¹⁹ The Secretariat should regularly update Member States on progress made in implementation.

E. Experts & Consultants

1. The Secretariat shall prepare a draft Code of Ethics specifically applicable to all experts/consultants engaged in development cooperation activities, whether engaged in a paid capacity, with honorarium or expenses covered or on a voluntary basis, with the aim that all such experts/consultants will be obliged to read and sign the Code of Ethics and a violation of the code will result in termination of the contract.²⁰ The Code of Ethics should *inter alia*:

- stress on principles such as integrity, independence, objectivity, impartiality, respect for human rights and accountability, with suitable clauses applicable to experts/consultants engaged in development cooperation activities;
- reflect the DA recommendations and require the experts/consultants to adhere to the DA recommendations;
- address the issue of conflicts of interest including by requiring that the experts/consultants complete conflict of interest disclosure statements;
- require that professional advice given is both timely and appropriate to the level of development, needs, interests and priorities of the beneficiary country;

¹⁷ See pg. 170 of the External Review which recommends: "All WIPO staff, experts and consultants should be obliged to read and sign the Code of Ethics, complete conflict of interest disclosure statements, and review the Development Agenda principles (which should be included as an amendment to all contracts)."

¹⁸ See recommendation at pg. 170 of the External Review

¹⁹ See recommendation at pg. 170, External Review.

²⁰ See pg. 170 of the External Review which recommends: "All WIPO staff, experts and consultants should be obliged to read and sign the Code of Ethics, complete conflict of interest disclosure statements, and review the Development Agenda principles (which should be included as an amendment to all contracts)."

- require that experts/consultants permit for their information to be submitted to the Roster of Consultants (ROC);
- require that experts/consultants agree for their work to be monitored and evaluated.

The Secretariat should present the draft Code of Ethics to CDIP for its review and endorsement.

2. The Secretariat shall prepare guidelines to ensure transparent processes for selecting external experts.²¹ The guidelines *inter alia* should address the following :

- Contracts be awarded through an open bidding process, wherever possible;
- Consultants be evaluated after each assignment and reports must be available to other WIPO staff for review before a consultant is re-contracted;
- WIPO should take a multi-disciplinary approach, using professionals and experts with a development orientation, from different backgrounds and disciplines;
- An obligation for experts/consultants to join and provide information to the ROC;
- An obligation for experts/consultants to sign the Code of Ethics mentioned above and to complete conflict of interest disclosure statements.

The Secretariat shall present the draft guidelines to the CDIP for its review and endorsement.

3. The Secretariat shall regularly update the online Roster of Consultants and upgrade/redesign the ROC²², that is:

- The scope of the online ROC be broadened to include information on all consultants and experts engaged in development cooperation activities, whatever their contracts or location. The information provided by the ROC should also include their full CVs (including prior experience and current employment), explicit disclosure of actual or potential conflicts of interests, the terms of references of their contracts, consultancy rates. Information on the outputs of the experts/consultants' work, and any WIPO evaluations or reports on the results of the activity carried out by the experts/consultants should also be provided where such output, evaluation or report is publicly available or concerns activities undertaken at the global, regional or sub-regional levels.
- The online ROC shall also be searchable according to the total number of consultants in the database, the year, their nationality, their area of expertise and types of affiliations (e.g. independent consultants, industry, former government officials etc.)
- Experts/consultants that agree to accept WIPO's invitation to engage in development cooperation activities must also be willing to permit for their information to be submitted to the ROC.²³

F. Transparency & Communication

1. The Secretariat shall ensure that WIPO's website is upgraded to serve as a more effective vehicle for communicating about WIPO's development cooperation activities and as a resource.²⁴

²¹ See recommendations at pg. 171 of the External Review

²² See recommendation at pg 171 of the External Review; See also Management response in para 5, pg. 27 of Annex 1 which states "...it is agreed that the updating of detailed profiles of consultants in the ROC could be more systematically maintained, in order to facilitate accurate information about WIPO's partners in the provision of development cooperation" See also pg. 163 of the External Review.

²³ See pg. 163 of the External Review

²⁴ See pg. 170 of the External Review

(a) WIPO must undertake immediate measures to improve the accessibility and searchability of information, research, and statistics on its website.²⁵

(b) WIPO should ensure that the narrative sections of WIPO's website are updated promptly to accurately reflect and describe WIPO's development cooperation activities.²⁶

In particular the Secretariat shall ensure that information on all WIPO events (e.g. trainings, seminars, conferences, workshops, organized or co-organized at the global, regional and country levels) are made promptly available on WIPO's website. WIPO should ensure that at least the concept paper on the WIPO event, the draft program, the draft list of speakers and participants are made available for a reasonable period of time prior to the WIPO event taking place. On completion of the event, all relevant documentation should be made promptly available (e.g. the final program, list and bios of speakers, list of participants, the presentations/papers delivered, summary of discussion, outcomes of the event etc..)]

The Secretariat is requested to update CDIP regularly on its implementation efforts in relation to 1(a) and (b).

2. The Secretariat is requested to report to the CDIP on WIPO events that take place before the CDIP session and events that have been planned following the CDIP session. The report shall contain a brief description of the event, the objectives, the topics featured or to be featured, and the list of speakers, their affiliations and category actor (e.g. industry association, research institute, civil society, government agency etc.)²⁷

3. Each WIPO Program should produce a breakdown of partners and providers used across its activities, particularly its development cooperation activities, including according to the category actor (e.g., NGO, developed/developing country government agency, research institute, industry association, or company)²⁸.

Information on partners and providers used by each WIPO Program in its development cooperation activities must be made publicly available on WIPO's website every quarterly.

The Secretariat is requested to regularly update CDIP on its implementation efforts.

4. The Secretariat should take appropriate steps to ensure that all development cooperation activities are routed through Geneva based missions and such missions shall serve as the focal point for liaising with WIPO on the details of assistance including in communicating national needs and priorities.²⁹

²⁵ See pg. 170 of the External Review

²⁶ See recommendation at pg. 170 of the External Review

²⁷ At pg. 130, the External Review recommends: "There should be systems for ensuring that trainings provided by all and any WIPO programs are of the highest pedagogical quality to maximize impact, are aligned with WIPO Development Agenda Recommendations, and are consistent with development-oriented expected results as set out in the Program and Budget and in country plans". At pg. 63, the External Review recommends: "The Secretariat should put in place mechanisms to systematically monitor the diversity of stakeholders and experts involved in the provision of its assistance (e.g., as consultants, speakers and trainers)".

²⁸ See recommendation at pg. 63 of the External Review

²⁹ This proposal is aimed at operationalizing recommendations at pg. 62 of the External Review that: "Governments need to clearly define and communicate to WIPO their preferences in terms of the key focal point between their government and WIPO for development cooperation activities" and "The role of Geneva-based missions in the process of communicating national needs and priorities, and in liaising with WIPO on the details of assistance, warrants more careful definition by countries"

G. Technical Assistance Database

1. The Secretariat should take steps to redesign the Technical Assistance Database to³⁰:
 - facilitate internal and public searching of activities according to the WIPO Program, region, country, expected results, type of activity, time-frame, categories of beneficiary and modes of delivery;
 - to ensure that the design of the database is better aligned with the organization's overarching RBM framework and Program Performance Report process ;
2. The Secretariat should ensure more systematic and regular updating of the database by all its programmes³¹ to facilitate implementation of Recommendation 5 of Development Agenda. The database should contain complete information on technical assistance activities at least from 2007. In relation to technical assistance activities undertaken at the global, regional or sub-regional levels, the Secretariat should also make available general information on the activity such as the objectives, expected and actual outcomes, recipients, participants, donors, experts, consultants, speakers, evaluation reports, and other relevant documentation.³² (e.g. programs, presentations, CVs of speakers/experts/consultants, list of participants).

The Secretariat is requested to regularly update CDIP on its implementation efforts.

H Assessing Impact, Monitoring & Evaluation

1. Commission external experts to elaborate on independent monitoring and evaluation mechanisms found in other international organizations (such as in UN agencies and institutions such as in the World Bank and IMF) including providing details on the design of such mechanisms. The experts should also identify elements relevant for the development of an independent monitoring and evaluation mechanism in WIPO.³³
2. The Secretariat shall undertake independent evaluation of the Country Portfolio Evaluation (CPE) framework, the pilot country studies and the DA evaluation framework to assess its adequacy including in terms of scope and methodology. The Country Portfolio Evaluation, and the DA evaluation framework should also be made available for public comment.³⁴
3. The Secretariat shall regularly update Member States on the progress made including mechanisms/ processes developed to achieve the following:
 - (a) An Expert Review Team to review and elaborate on an iterative basis the tools for measuring impact, and WIPO's RBM tools and framework.³⁵ This should include refining the definition of appropriate targets, results and performance indicators, and continuing to

³⁰ See recommendation at pg. 170 of the External Review.

³¹ See recommendation at pg. 170 of the External Review

³² These elements have been agreed as part of CDIP/3/INF/2

³³ This proposal takes forward recommendation of the the External Review that ensuring WIPO's technical assistance serves development necessitates a monitoring and evaluation mechanism that is independent of the WIPO Secretariat and reports directly to Member States, although it would be funded through the WIPO budget. Currently, no such mechanism exists at WIPO (although such a mechanism is common in all other international organizations). Such a mechanism would also receive feedback from relevant stakeholders and take action that is appropriate following investigation of the complaint. See pg. 168 of the External Review.

³⁴ See recommendation at pg. 169 of the External Review, which recommends that "The final framework and pilot country studies should be reviewed by an expert group composed of internal and external experts on evaluation, IP and development. In addition, the evaluation framework already being devised for the Development Agenda should be made available for public comment".

³⁵ See recommendations at pg. 74 and 168 of the External Review

improve baselines for each. The team should be comprised of senior internal staff and external experts in IP, development to assist WIPO regularly.

- (b) Devise and deploy tools/processes to better measure the *impact* of DC activities at country, sectoral and institutional level. WIPO's new Section on Economic Analysis and Statistics should take leadership on devising a set of rigorous methodological papers and comparative studies of practices in other fields of development assistance in this respect³⁶ ;
- (c) Develop tools/processes to improve institutional learning, monitoring, follow-up, institutional memory and staff accountability for development activities, including to³⁷:
- improve horizontal communications between WIPO sectors/programs to generate ideas and share experiences;
 - ensure systematic electronic-based collection of information about activities by topic, country and expected results in a format accessible to colleagues. For each topic there should be a general overview of the issue or activity, previous experiences, constraints, limitations and evaluations of outcomes;
 - processes to keep staff informed about the latest developments in their given area, and incorporate most recent knowledge and lessons learned on effective assistances both internally and externally, even if on different issues or regions.
- (d) Devise processes to boost oversight of WIPO's development cooperation activities at the regional level including reviewing its development activities for regional IP offices, such as by consulting with Member States on how to improve the development-orientation of these offices and bolster the national expertise necessary for them to provide oversight of such regional IP arrangements.³⁸
- (e) Systematic and regular monitoring, evaluation, reporting and follow-up is needed to focus on longer term results and the cumulative impact of WIPO's development cooperation activities, particularly those aimed at improving long-term institutional capacity: This could be achieved through more systematic ex-post evaluations of expected results of development cooperation at program/activity level over a 5-10 year period.³⁹
- (f) Gather and systematize data to measure WIPO's performance. This must be complemented by support for Member States to also gather data relevant to measuring the relationship between IP policy, legal and regulatory frameworks and various development outcomes, and the impact of WIPO development cooperation activities.⁴⁰ Such data can also be used to inform the definition and monitoring of baselines/performance indicators of development cooperation activities;⁴¹
- (g) Support efforts to build knowledge/expertise internally and externally on the relationship between various IP systems, rules, policies and practices and their development impacts at varying levels and for different sectors to help understand the degree to which development cooperation activities contribute to particular development outcomes;⁴²

³⁶ See recommendation at pg. 74 of the External Review

³⁷ See recommendation at pg. 74 of the External Review

³⁸ See recommendation at pg. 63 of the External Review

³⁹ See recommendation at pg. 75 of the External Review

⁴⁰ See recommendation at pg. 168 of the External Review

⁴¹ See recommendation at pg. 75 of the External Review

⁴² See pg. 74 of the External Review

- (h) Greater attention is needed to ensuring the development-orientation, internal and external peer-review, quality, communication strategy and availability of research and studies conducted by WIPO.⁴³

I. IP Policies & Strategies

1. The Secretariat shall take steps to ensure that the independent review of the tools/methodologies used to inform IP strategies in the context of the DA project enquire more intently particularly about: the framework/systems for innovation that exist in the particular country (e.g. technological capacity, human capacity, availability of financing, the research strength in the public sector and the private sector), national development priorities and needs by sector and specific area of public policy (e.g. in the education sector, in improving access to health care, in ensuring food security (e.g. by ensuring access to seeds etc.), as well as the economic sectors that are of priority (e.g. pharmaceutical, electronics, cultural industries. etc.). Questions about the type of IP system that is or should be in place in a country should properly follow, and not precede, efforts to understand the national development strategy, priorities and those aspects of the IP system that might yield the greatest benefits for the country at hand.⁴⁴

(a) The Secretariat is requested to make available information on the external consultant engaged to independently review the tools and methodologies used to inform IP strategies as well as the Terms of Reference of the Review.

(b) Once the review is completed the tools/methodologies should be made publicly available for a reasonable period for comment. The comments made on the tools/methodologies shall also be publicly available.

2. The Secretariat shall regularly update/inform CDIP on:

- the independent review of the tools/methodologies, its outcomes and outcomes of the public comment;
- its efforts to improve its support to developing countries for the formulation of national IP strategies and to deploy a consistent set of methodologies that are evaluated, validated and refined over time with an eye to constantly assuring and improving their development-orientation⁴⁵;
- the engagement of an Expert Review Team to review the evolution of the tools used to inform IP strategies, their suitability for purpose, the quality and development orientation of the strategies produced and the degree of their use by the Organization and Member States⁴⁶;
- the « WIPO Framework for Developing National IP Strategies » including the objective, purpose, methodology, expected outcomes of the Framework. This includes information on its relationship to the CDIP project on IP strategies;
- the actual outcomes of the project on “WIPO Framework for Developing National IP Strategies for Innovation”, and the framework that is developed to inform development of IP Strategies as a result of the projects on the Framework and the DA project on IP Strategies⁴⁷.

⁴³ See recommendation at pg. 63 of the External Review

⁴⁴ The proposal reflects recommendation at pg. 86 of the External Review and the Management Response (CDIP/9/14), para 23, pg 16 of Annex 1, wherein the Secretariat has noted that “An external consultant has been engaged to independently review the IP Audit Tool, Questionnaire and methodologies used to inform the IP Strategies being developed in the context of the DA project and evaluate their consistency and suitability for purpose”.

⁴⁵ See recommendation at pg. 86 of the External Review

⁴⁶ See recommendation at pg. 86 of the External Review

⁴⁷ In para 23, pg. 16, Annex 1 of CDIP/9/14, the Secretariat states that it is “currently undertaking two projects directed at improving the Organization’s assistance in the development of national IP strategies and policies”. The 2

3. The Secretariat shall make publicly available tools, methodologies and other relevant documentation (e.g. the IP Audit tool, questionnaires) used to inform the development of IP strategies.⁴⁸

4. IP strategies, policies and plans supported by WIPO shall at the request of the Member State be made publicly available for comments, prior to completion. At the request of the Member State WIPO shall also make publicly available on its website all completed IP strategies, policies and plans.⁴⁹

J. Legislative & Regulatory Assistance

1. The Secretariat should create a system on its website that enables interested Member States to upload and make available voluntarily the content of WIPO's legislative or regulatory advice.⁵⁰

2. Without abusing confidentiality assurances an in-depth review of WIPO's legislative assistance be conducted by a team of external legal experts to evaluate attention to the expressed request of countries, development priorities, country circumstances and to the full range of flexibilities and options available to countries. The Review should include an in-depth examination of the content of draft laws and comments on draft laws provided by WIPO, as well as of the content of seminars/training events on legislative matters.⁵¹

3. The Secretariat should commission independent studies on the costs and benefits of acceding to WIPO treaties taking into account the different levels of developments and economic and social conditions of developing countries⁵².

4. The Secretariat shall regularly update Member States on:

(a) The independent studies on the cost and benefits of acceding to WIPO treaties;

(b) Outcomes of the meeting planned on patent policy and legislative implementation mentioned in the Management response, para 32, pg. 20 of Annex 1 of CDIP/9/14.

(c) Efforts to promote information-sharing among developing countries about their experiences with IP legislation and development outcomes, including information on comparative law and the range of options available. This should include analysis of the historical experience of developed countries when they were building their industrial base and development potential⁵³;

(d) Efforts to devote greater attention to legal and regulatory challenges related to the misappropriation and enforcement of developing country IP in the global arena, emerging IP

[Footnote continued from previous page]

projects refer to the DA project (DA_10_05): Development of National Intellectual Property Strategies and the DG-led project on a Framework for Designing National Intellectual Property Strategies for Development.

⁴⁸ See pg. 86 of the External Review

⁴⁹ See pg. 87 of the External Review

⁵⁰ The proposal is aimed at operationalizing Rec. at pg. 101 of the External Review i.e. "Beneficiary countries should simultaneously make publicly available the advice and assistance received from WIPO to facilitate evaluation, review and debate by external experts."

⁵¹ See recommendation at pg. 101 of the External Review.

⁵² This proposal is aimed at operationalizing recommendation at pg. 102 of the External Review, i.e. « WIPO should support Members to evaluate the costs and benefits of accessing to WIPO Treaties »

⁵³ See recommendation at pg. 102 of the External Review

issues of great interest to developing countries and on practical regulatory and administrative issues relevant to the promotion of a balanced IP system. For instance, WIPO should explore the potential for providing advice on the practices and strategies of companies that abuse the IP system (e.g., through ever-greening of patents), and how countries can guard against and/or manage such practices; methods for opposing patents that are wrongfully granted in the country of origin and in foreign countries (e.g., patents on inventions in the public domain, patents that fail to acknowledge prior art in developing countries, or patents that concern the national genetic resources of developing countries); and patent opposition proceedings and patent examination processes that safeguard the public interest.⁵⁴

K. IP Office Modernization, Training & Capacity Building, User Support Systems

1. Commission an in-depth independent evaluation by external experts on IP and Development of WIPO's activities and advice for IP office modernization and user support systems.⁵⁵ The evaluation should provide a mapping of WIPO's technical assistance activities in the area of IP office modernization and user support systems and identify its purpose, and assess from a development perspective WIPO's technical assistance activities and advice including its relevance, development-orientation, development impact and suitability of the activity and advice for developing countries at different levels of development, taking into account financial and administrative constraints.

2. Commission an independent panel of leading academic authorities on IP and Development to review all of WIPO's training materials and curricula to ascertain and ensure their development orientation. The Review also should from a development perspective assess the quality, delivery and orientation of training by the WIPO Programs, as well as the overall balance of training activities and the diversity of speakers with an eye to ensuring the activities reflect the Development Agenda recommendations and are suitable and relevant for the beneficiary developing countries.⁵⁶

3. The Secretariat shall make available the Terms of Reference of WIPO commissioned external review of the WIPO Academy.⁵⁷ In addition, the outcomes of the external review should be made publicly available.

L. Coordination

1. The Secretariat is requested to regularly update/provide information on:

(a) The outcomes of DG's consultation on the policy related to the WIPO's External Office;⁵⁸

⁵⁴ See recommendation at pg. 103 of the External Review

⁵⁵ This proposal builds on recommendation at pg. 117 of the External Review i.e. "WIPO should devise and implement a process and criteria for a detailed impact assessment of its activities for office modernization" and on recommendation at pg.139 of the External Review, i.e. « The WIPO Member States and Secretariat should undertake an organization wide review of WIPO's current activities and future priorities in terms of support for users of the IP system. WIPO should undertake a mapping of all its user-related services »

⁵⁶ See recommendation at pg. 130.

⁵⁷ See para 12 of the Management Response (CDIP/9/14) at pg. 30, Annex 1, whereby the Secretariat has noted it has commissioned an external review of the activities of the WIPO Academy.

⁵⁸ The External Review recommends that « The Director-Generals' on-going consultation process on WIPO External Offices should incorporate a review and clarification of their role in the design and delivery of development cooperation activities. This will in turn warrant detailed discussion of appropriate budget and staff resources, and relevant locations of offices. There is also need for more strategic guidance on the role of the External Offices in advancing the goals and work of the Development Agenda" (see pg. 187 of the External Review). The management response states that the: "The role of WIPO's External Offices needs to be reviewed taking into account the political issues involved and the diverse roles performed by each External Office.....In this context, the Director General is currently conducting a consultation process with Member States on the issue of WIPO External Offices." (see para 42, pg 34, Annex 1 of CDIP/9/14)

- (b) Measures to increase to increase transparency, coordination and communication within WIPO on what activities the organization as a whole is undertaking in each country⁵⁹.
- (c) The roles and responsibilities of WIPO's Sectors and their sub-divisions in the implementation of WIPO's Programs including the roles and responsibilities of the Regional bureaus and desk officers.⁶⁰

2. The Secretariat should improve the quality of its collaboration with the UN family⁶¹. The Secretariat should update CDIP on its implementation efforts as well as report to the CDIP annually on the activities it has undertaken with the UN family, as well as the development orientation and development impact of the activities.

M. Follow-up

1. The Secretariat is requested to:
 - (a) Make publicly available the planning and delivery model mentioned in paragraph 13, pg. 12 Annex 1 of CDIP/9/14;
 - (b) Provide more information and update Member States on WIPO's efforts to strengthen its risk management framework and risk mitigation strategies including making publicly available templates of agreements used in relation to office automation support as mentioned in paragraph 14, pg. 13 Annex 1 of CDIP/9/14 ;
 - (c) Make publicly available the PCT International Cooperation work plan for 2012 mentioned in para 31, pg 20, Annex 1 of the CDIP/9/14 ;
 - (d) Regularly update Member states in relation to implementation of activities mentioned in paragraphs 10 (i),(ii), (iii) (iv), (v), (vi), (vii) at pgs. 10-11 of CDIP/9/14 ;
 - (e) Make publicly available templates of country plans used as a planning and delivery tool for development cooperation activities as mentioned in paragraph 3, pg. 4, Annex 1 of CDIP/9/14 ;

[Appendix follows]

⁵⁹ See pg. 187 of the External Review

⁶⁰ See pg. 186-187 of the External Review.

⁶¹ See pg. 187 of the External Review

APPENDIX

1. Development cooperation must be based on a dialogue in the context of national development needs and strategies and WIPO's obligations to advance the Development Agenda. The focus of WIPO's development cooperation activities should go beyond 'responding to requests', and promote a dialogue with and among member states about needs and priorities and the appropriateness of different kinds of assistance given a country's level of development, preparedness, absorptive capacity and risks, as well as the competing demands on WIPO's resources and its obligations to advance the WIPO Development Agenda⁶².
2. WIPO staff should address obstacles and risks frankly with national authorities so that expected outcomes and results are realistic.⁶³
3. Stronger efforts should be made to identify options and discuss alternatives; where activities are beyond the scope of those WIPO is in a position to undertake.⁶⁴
4. Greater attention to development cooperation activities that enable South-South cooperation should be a priority. For instance, the sharing of experiences and expertise among developing countries could be enhanced as a way to deliver more development-oriented and efficient activities.⁶⁵
5. WIPO should improve efforts to better tailor its development cooperation activities to national development objectives and circumstances. A development-oriented approach must consistently integrate and acknowledge the importance of the social and economic context, national development goals and priorities, and the broader regulatory and institutional environment of the country.⁶⁶
6. WIPO should assist countries to undertake and update national needs assessment for IP-related development cooperation activities informed by national IP and development policies or strategies.⁶⁷
7. Needs assessments should be used to improve country-level planning of development cooperation activities that are linked to clear expected results, targets and performance indicators.⁶⁸
8. The WIPO Secretariat and beneficiaries must pursue a more meaningful dialogue on preparedness, challenges and risks. The WIPO Secretariat should make greater up-front efforts to inform countries of the demands development cooperation activities may place on national resources – institutional, human and financial – from the needs assessments phase through to the design and implementation of country plans. The Secretariat should tailor, adjust or postpone proposed activities based on an assessment of internal resources available in beneficiary countries. The country planning process should be a tool for building mutual understanding of resource constraints and the need for priority-setting.⁶⁹

⁶² See pg. 62 of the External Review

⁶³ See pg. 62 of the External Review

⁶⁴ See pg. 62 of the External Review

⁶⁵ See pg. 63 of the External Review

⁶⁶ See pg. 63 of the External Review

⁶⁷ See pg. 63 of the External Review

⁶⁸ See pg. 63 of the External Review

⁶⁹ See pg. 63 of the External Review

9. WIPO should at the request of a Member state support efforts to establish national committees on development and IP involving the full range of relevant government agencies working on public policy in areas impacted by IP reforms (such as health, education, cultural, agricultural and industrial agencies) including providing support for public consultation and engagement in the formulation of country plans and the design and delivery of IP-related development assistance.⁷⁰
10. WIPO should ensure a balance of perspectives and diversity of stakeholders and experts involved in the provision of technical assistance.⁷¹
11. Greater attention is needed to ensuring the development-orientation, internal and external peer-review, quality, communication strategy and availability of research and studies conducted by WIPO.⁷²
12. WIPO should support efforts to build knowledge and expertise within and beyond the organization on the relationship between various IP systems, rules, policies and practices and their development impacts at varying levels and for different sectors. This would then form an important basis for understanding the degree to which WIPO's development cooperation activities contribute to particular development outcomes.⁷³
13. WIPO should invest greater attention to its own gathering and systematization of data used to measure its performance. This must be complemented by support for Member States to also gather data relevant to measuring the relationship between IP policy, legal and regulatory frameworks and various development outcomes, and the impact of WIPO's development cooperation activities. At the outset of major activities, WIPO staff and local authorities should agree on how progress and success of the activity will be measured, and the process for gathering the data needed to make such assessments.⁷⁴
14. WIPO should improve its support to developing countries for the formulation of national IP strategies that address development priorities. WIPO's assistance in the area of IP policies and strategies must be based on tools and methodologies that have been thoroughly evaluated, refined and validated.⁷⁵
15. To facilitate the critical review and improvement of WIPO's tools and methodologies used to inform IP strategies, these should be made publicly available on WIPO's website.⁷⁶
16. Member states requesting assistance for the formulation of IP strategies should be informed about the tools and methodologies produced by WIPO and by other actors in the field.⁷⁷
17. The objective of WIPO's legislative assistance should be to serve the developmental objectives of the beneficiary country.⁷⁸
18. Before responding to a request for legislative assistance, WIPO should work with the country to investigate its development priorities, its sector-by-sector needs (e.g. agriculture, health, education, information technology, etc), and its relevant international commitments⁷⁹

⁷⁰ See pg. 63 of the External Review

⁷¹ See pg. 63 of the External Review

⁷² See pg. 64 of the External Review

⁷³ See pg. 75 of the External Review

⁷⁴ See pg. 168 of the External Review

⁷⁵ See pg. 86 of the External Review

⁷⁶ See pg. 86 of the External Review

⁷⁷ See pg. 87 of the External Review

⁷⁸ See pg. 102 of the External Review

⁷⁹ See pg. 102 of the External Review

19. WIPO should present developing countries the range of options and flexibilities available in international laws. It should also explain and/or share experiences of how different options may hinder or advance their pursuit of development targets.⁸⁰
20. WIPO should support Members to evaluate the costs and benefits of acceding to WIPO Treaties.⁸¹
21. IP education should not be pursued in isolation, but linked to other areas of education and broader public policy issues such as innovation policy, science and technology, education, cultural industries, etc.⁸²
22. Greater attention should be paid to up-front assessment of risks and to dialogue with beneficiary countries on the conditions for success of IP Office modernization projects and ongoing follow up and commitment required by beneficiary countries.⁸³
23. WIPO should ensure a greater balance between its support for traditional users of the IP system (rightholders) and for users of IP-protected products and services (researchers, libraries, students, citizens seeking access to technology).⁸⁴
24. Even where there is high demand by Member States for WIPO's activities for users, such as for TISCs, the success of pilot projects already underway should be evaluated before their expansion. The evaluation could then serve as a basis for applying lessons to any future work in this area; assessing how the activities could be best mainstreamed or integrated with WIPO's other development cooperation activities; and prioritizing the requests of countries in line with national IP strategies, needs assessments and country plans for WIPO assistance.⁸⁵
25. WIPO's activities on innovation and creativity must be informed by broader debates and experience on innovation systems, development strategies and public policy goals, such as access to knowledge. WIPO's role should be to build understanding of where and how IP-related mechanisms and strategies may or may not assist developing countries to advance progress in these areas and place that analysis and assistance more firmly in the context of the range of other policy measures and institutional actions needed.⁸⁶

[End of Appendix and of document]

⁸⁰ See pg. 102 of the External Review

⁸¹ See pg. 102 of the External Review

⁸² See pg. 130 of the External Review

⁸³ See pg. 118 of the External Review

⁸⁴ See pg. 139 of the External Review

⁸⁵ See pg. 140 of the External Review

⁸⁶ See pg. 143-144 of the External Review