

# WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

## PROVISIONAL COMMITTEE ON PROPOSALS RELATED TO A WIPO DEVELOPMENT AGENDA

First Session  
Geneva, February 20 to 24, 2006

PROPOSAL BY THE UNITED STATES OF AMERICA TO ESTABLISH  
A PARTNERSHIP PROGRAM IN WIPO: AN ELABORATION OF  
ISSUES RAISED IN DOCUMENT IIM/1/2

*Document prepared by the Secretariat*

1. In a communication dated February 17, 2006, the International Bureau received a proposal from the United States of America for the establishment of a partnership program in WIPO: An elaboration of issues raised in document IIM/1/2, for consideration by Member States at the Provisional Committee on Proposals Related to a WIPO Development Agenda, to be held in Geneva from February 20 to 24, 2006.
2. The said proposal is annexed to this document.
3. *The PCDA is invited to note the contents of the attached proposal from the United States of America.*

[Annex follows]

PCDA/1/4

ANNEX

February 17, 2006

Mr. Kamil Idris  
Director General  
World Intellectual Property Organization  
34, Chemin des Colombettes  
1211 Geneva 20

Dear Mr. Idris:

It is with great pleasure that I enclose "*A Proposal by the United States of America To Establish A Partnership Program In WIPO: An Elaboration Of Issues Raised in Document IIM/1/2*" for consideration by Member States at the first meeting of the Provisional Committee on a Development Agenda for WIPO to be held here in Geneva February 20-24, 2006.

It is my hope that this proposal will help advance discussions on intellectual property and development in WIPO. The United States believes that intellectual property has an important role to play in promoting economic, social and cultural development, and strongly supports WIPO's efforts to increase its development assistance.

I look forward to working closely with you and your staff to achieve the best possible outcome during this and other PCDA meetings.

Regards,

Kevin Edward Moley  
Ambassador

Attachment

cc: Mr. Sherif Saadallah, Executive Director  
Office of Strategic Use of Intellectual Property for Development

**PROPOSAL BY THE UNITED STATES OF AMERICA TO ESTABLISH A  
PARTNERSHIP PROGRAM IN WIPO:  
AN ELABORATION OF ISSUES RAISED IN DOCUMENT IIM/1/2**

**INTRODUCTION**

On March 11, 2005, the United States of America presented a proposal for the creation of a WIPO Partnership Program, an Internet-based tool to facilitate the strategic use of intellectual property assets by developing countries and to maximize WIPO's positive impact on economic, cultural and social development. As explained in our original proposal, this tool would bring together all stakeholders to match specific needs with available resources and amplify the developmental impact of development-related intellectual property assistance. Important goals of the proposed Partnership Program include increasing the transparency of development-related intellectual property assistance, avoiding duplication of efforts, and helping to focus resources on the specific needs of developing countries. The United States also stated its belief that the proposed WIPO Partnership Program would create synergies through such partnerships, which would dramatically magnify current WIPO development-related IP efforts and facilitate the achievement of the concrete development goals of Member States.

During the 2005 meetings on IP and development, the United States was gratified by the positive reception of the proposed WIPO Partnership Program. The United States believes that it is useful to expand and elaborate upon our original proposal to establish a WIPO Partnership Program. In broad outline, this submission is organized around six topics (which include a number of possible action items): intellectual property's role in development; WIPO's role in development; national baseline surveys for economic growth; the economic contribution of creative and innovative industries; technology and economic growth; and the relationship of counterfeiting and intellectual property piracy to development. For each of the six topics, specific proposals are made. This submission is intended to contribute to the ongoing discussion of the development-related aspects of intellectual property rights.

**1. INTELLECTUAL PROPERTY'S ROLE IN DEVELOPMENT**

As noted in the original U.S. proposal for the Establishment of a Partnership Program in WIPO (IIM/1/2), an effective intellectual property (IP) system can facilitate economic and cultural development but alone cannot bring about such development. Rather, the protection of intellectual property is only one factor that leads to economic growth and the reduction of poverty. Other important factors include developing human capital (developing an educated and skilled labor force), liberalizing trade and investment policies, strengthening the rule of law, pursuing stable macroeconomic policies, and implementing pro-competitive regulatory policies. Conversely, endemic illegal copying and counterfeiting, ineffective government, and corrupt practices distort competitive markets, divert resources to non-productive uses, and deter investment and technology transfer.

In the knowledge-driven economy of the 21<sup>st</sup> century, intellectual property will play an increasingly important role as a tool for economic, cultural and social development. WIPO is fully aware of the changing role of intellectual property in development and the related challenges and opportunities facing Member States. Most recently, for example, the Director General reported: “The increasing market value of knowledge-based creations and outputs, and the economic dynamism they can fuel, is generating new and broad-based opportunities for economies to create national wealth, as the basis for sustainable development, and to deliver more widespread welfare gains from technological development.”<sup>1</sup>

To maximize the use and effectiveness of IP as a tool for development, countries at various levels of development will need to adopt successful strategies that involve the sustained use and creation of knowledge. The World Bank Institute’s Knowledge for Development Program recently identified “four pillars” of the modern knowledge economy: (1) an educated, creative and skilled labor force, (2) an effective national innovation system (including research centers and universities), (3) modern and developed information infrastructure, and (4) an economic and institutional regime that provides good economic policies and incentives for creators and innovators (including adequate protection and enforcement of intellectual property rights).<sup>2</sup>

WIPO should play an important role for countries pursuing knowledge-based development strategies. WIPO, for example, could provide assistance to countries that identify intellectual property-related weaknesses in their economic and institutional regimes. Using the World Bank Institute’s “Knowledge Assessment Methodology” (KAM) benchmarking tool, for example, a WIPO Member State could identify a weakness in its innovation system and its economic and institutional regime. The Member State then could search the WIPO Partnership Database (described more fully in the U.S. original proposal) for assistance opportunities. Under the “WIPO Partners” section of the database, for instance, the Member State may be able to identify a regional development bank offering assistance in improving the Member State’s economic and institutional regime and an NGO offering assistance in strengthening the Member State’s innovation system.

**Proposal:** To facilitate this process, the proposed WIPO Partnership Office (described more fully in the original U.S. proposal document IIM/1/2) should aggressively seek out potential partners in other intergovernmental organizations development agencies, as well as international and regional development banks, NGOs, the private sector, academia, charitable organizations, and other institutions seeking to assist countries making the transition to or competing more effectively in the knowledge-economy.

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<sup>1</sup> WIPO, Proposed Program and Budget for 2006/07 at p. 8.

<sup>2</sup> Derek H. C. Chen and Carl J. Dahlman, “The Knowledge Economy, the KAM Methodology and World Bank Operations, The World Bank, October 19, 2005.

## 2. WIPO'S ROLE IN DEVELOPMENT

As outlined by Director General Kamil Idris in his book entitled *INTELLECTUAL PROPERTY: A POWER TOOL FOR ECONOMIC GROWTH*, intellectual property serves as an important tool in economic, social and cultural development by encouraging domestic innovation and creativity, investment and technology transfer. WIPO's current vision for the Millennium, as approved by its Member States, is to promote intellectual property strategies that facilitate the "journey from developing to developed." Consistent with the United Nations Millennium Development Goals (MDG), the WIPO Proposed Program and Budget for 2006/07 sets forth in Program 3 (Strategic Use of IP for Development) the following important objective: "To assist Member States in effectively utilizing the IP system for development, extending support to SMEs and implementing IP assets management capacity."<sup>3</sup>

One way that WIPO advances economic, social and cultural development is through its development cooperation activities. In July 2005, the International Bureau provided participants with an illuminating, 300-plus page document on WIPO development cooperation activities, January 2000-June 2005 (*See* WIPO/EDS/INF/1), which was updated for the September 2005 WIPO Assemblies meetings as a 561 page document (*See* WIPO/EDS/INF/1 Rev). In particular, WIPO provided information on, among other things, meetings, projects, expert missions, and study visits and legislative activities related to development cooperation activities.

The United States believes that WIPO/EDS/INF/1 and its updated version provide strong support for the view that WIPO's development assistance has been demand-driven by Member State requests and has not been limited to technical assistance. As the document makes clear, WIPO responded to a wide range of requests from Member States, including requests for assistance on the use of IP flexibilities, legislation, traditional knowledge and genetic resources; studies on the economic importance of copyright industries and the use of intellectual property as a tool to support innovation, competitiveness and sustainable economic development. Throughout the discussions on IP and development, many Member States commented on the usefulness of these activities in advancing their economic, social and cultural development.

**Proposal:** The United States believes that much work remains to be done in evaluating WIPO's current development cooperation activities as a baseline for responding to new and changing demands from Member States in the future. Accordingly, the United States believes that WIPO Member States, building on WIPO/EDS/INF/1 and 1 Rev., could conduct a quantitative and qualitative "stock-taking" of current WIPO development cooperation activities with a longer-term view of developing a statement of core policies and objectives in the area of cooperation and development activities. The United States believes that the Provisional Committee is an appropriate forum to begin this discussion and the Permanent Committee on Intellectual Property and Development (PCIPD) is the proper place to continue the work.

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<sup>3</sup> WIPO, Proposed Program and Budget for 2006/07 at p. 38.

### 3. BASELINE NATIONAL SURVEYS FOR ECONOMIC GROWTH

In making the transition to or expanding the use of intellectual property assets as a tool for economic development, Member States will need to conduct economic surveys of specific sectors targeted for growth as the first step in developing practical strategies with achievable goals. The surveys should identify specific problems and opportunities they face in each sector targeted for growth. Countries may wish to pay special attention to the needs of small and medium-sized businesses (SMEs). Examples of such country-level assessments include:

- A developing country seeking to develop its creative industries will need to evaluate, among other factors, available sources of investment, the adequacy of support services, methods of improving participation of local creative industries in domestic intellectual property regimes, the level of development of marketing and distribution systems, and possible deficiencies in its intellectual property rights system, including enforcement.
- A country seeking to enhance domestic productivity by attracting foreign technologies may wish to tailor a national survey to focus on possible impediments to the transfer of technology such as weaknesses in its intellectual property regime (including inadequacies in both norms and enforcement) and legal or regulatory obstacles to licensing and establishing business arrangements.

**Proposal:** The WIPO Secretariat should play a leading role in this initiative, for example by helping Member States interested in conducting such targeted surveys to develop survey methodologies. The results of the surveys should be made available to other Member States through the proposed WIPO Partnership Database, which also may be useful in identifying partners and resources for follow-on action. Based on the national experiences evidenced within the information collected through these surveys, Members should establish “best practices” relating to enhancing domestic environments for the development of creative industries and attracting foreign investment and technologies through strong intellectual property protection. Such best practices could be foreseen with respect to measures regarding, e.g., outreach efforts to local creative industries with respect to maximizing innovative capacity and participation in domestic intellectual property regimes and measures providing effective enforcement (in conjunction with the Advisory Committee on Enforcement) of intellectual property rights.

### 4. GLOBAL ECONOMIC CONTRIBUTION OF CREATIVE AND INNOVATIVE INDUSTRIES

In developing a successful strategy for the creation and use of knowledge as an engine of economic growth, Member States need accurate and current data on the economic contribution of their creative and innovative industries. WIPO already has recognized the importance to policy makers of quantifying the economic contributions of these industries and has taken an important step by publishing the *WIPO Guide for Surveying the Economic Contribution of the Copyright-based Industries*. A number of WIPO Member States are using the *Guide* to gather economic data on the contribution made by IP to their national

economies. Over time such studies will permit comparisons of national experience among countries at various levels of development.

**Proposal:** Data from these studies should be disseminated widely to WIPO Member States, including through the proposed WIPO Partnership Database. Building on this successful project, WIPO should expand the *Guide* to include the patent-based innovative industries. The WIPO Secretariat should explore the feasibility of WIPO conducting its own economic surveys on a regular basis to support the creative and innovative sectors with useful data and monitor growth of intellectual property-based industries. Aggregate economic data obtained through such surveys should be made available to Member States.

## 5. TECHNOLOGY AND ECONOMIC GROWTH: CHALLENGES AND OPPORTUNITIES

A decade ago information and communications technology (ICT) was not widely regarded as central to the achievement of national economic growth and the reduction of poverty. Today such technologies are commonly viewed as a key component to the achievement of both goals. According to a recent study by the Organization for Economic Cooperation and Development (OECD), there is clear evidence that ICT acts as a driver of economic growth for many industrialized countries.<sup>4</sup>

There are, nonetheless, persistent concerns about the disparities related to the spread of information and communications among rich and poor countries, a problem often referred to as the “digital divide.” The G8’s Digital Opportunity Task Force provided a useful description of this concept: “This ‘digital divide’ is, in effect, a reflection of existing broader socio-economic inequalities and can be characterized by insufficient infrastructure, high cost of access, inappropriate or weak policy regimes, inefficiencies in the provision of telecommunications networks and services, lack of locally created content, and uneven ability to derive economic and social benefits from information-intensive activities.”<sup>5</sup>

Harnessing ICT to advance a country’s economic development goals requires developing and least developed countries to address complex issues related to infrastructure, investment, regulation, and human capital. It is clear that many of these issues are beyond WIPO’s mandate, specialized competence, and institutional capacity. However, consistent with WIPO’s core objective to support developing and least developed countries to maximize the use and effectiveness of IP as a tool for economic and social, and cultural development, WIPO has an important role to play.

In many ways, WIPO’s development-related work in the area of ICT is already well advanced. WIPONET, for example, provides Internet connectivity to all WIPO Member States, permitting access to intellectual property digital libraries, which contain important development-related technological information. More recently, WIPO noted that, from an IP perspective, the digital divide might be viewed as a “content gap,” marked by a lack of online material, including works protected and managed through IP rights, originating from

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<sup>4</sup> OECD, *ICT and Economic Growth: Evidence from OECD Countries, Industries and Firms*

<sup>5</sup> Report of the Digital Opportunity Task Force (DOT Force), “Digital Opportunities for All: Meeting the Challenge” (May 11, 2005) at p. 6.

creators and innovators in developing countries.<sup>6</sup> Viewed from a content perspective, WIPO is well positioned to further assist countries to use the intellectual property system to compete more effectively in the digital economy.

**Proposal:** To build on these and other efforts, the WIPO Standing Committee on Information Technologies (SCIT) could be a forum for discussion focused on the importance of intellectual property-related aspects of ICT and its role in economic and cultural development. Specific attention should be focused on assisting Member States to identify practical strategies to use IP/ICT for economic, social and cultural development. Once a Member State has identified specific projects with achievable goals, the proposed WIPO Partnership Database may play a useful role in matching IIP/ICT development-related needs and opportunities.

## **6. COUNTERFEITING AND INTELLECTUAL PROPERTY PIRACY: DEVELOPMENT'S ANTONYM**

Counterfeiting and intellectual property piracy is having a devastating effect on large companies, SMEs, and individual authors, artists and inventors around the world. The OECD estimates that counterfeiting and intellectual property piracy costs companies as much as \$638 billion per year. There is also significant and growing evidence that rampant counterfeiting and intellectual property piracy is a brake on economic development and a deterrent to foreign direct investment (FDI) and technology transfer.

There are important implications for development as a result of uncontrolled counterfeiting and piracy. Countries with inadequate intellectual property systems are often isolated from technological advances, fail to provide their citizens with incentives to create and innovate and disseminate new knowledge, and lose the collateral benefits of FDI and technology transfer, including increasing the tax base and educating a skilled work force for follow-on creativity and innovation. Conversely, there is mounting evidence that reductions in counterfeiting and intellectual property theft are positively correlated with the acceleration of investment in knowledge-intensive industries such as software and information technology, sectors that are critical for countries making the transition to the knowledge economy.

**Proposal:** Although the costs of counterfeiting and intellectual property piracy (and the benefits of reducing counterfeiting and piracy) are beginning to come into sharper focus, more work remains to be done. To help fill some of these knowledge gaps, the WIPO Advisory Committee on Enforcement should discuss and analyze the relationship between the rates of counterfeiting and piracy of intellectual property and technology transfer, foreign direct investment and economic growth. The WIPO Secretariat could assist in the collection of data on piracy rates.

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<sup>6</sup> WIPO, Report on the Online Forum on Intellectual Property in the Information Society," June 1 to 15, 2005 (WIPO/CRRS/INF/1)



[End of Annex and of document]