

# WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
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## PROVISIONAL COMMITTEE ON PROPOSALS RELATED TO A WIPO DEVELOPMENT AGENDA

### First Session

Geneva, February 20 to 24, 2006

PROPOSAL FOR THE ESTABLISHMENT OF A DEVELOPMENT AGENDA FOR  
WIPO: A FRAMEWORK FOR ACHIEVING CONCRETE AND PRACTICAL  
RESULTS IN THE NEAR AND LONGER TERMS

*Document prepared by the Secretariat*

1. In a communication dated February 17, 2006, the International Bureau received a proposal from Argentina, on behalf of the missions of Argentina, Bolivia, Brazil, Cuba, Ecuador, Egypt, Iran (Islamic Republic of), Kenya, Peru, Sierra Leone, South Africa, the United Republic of Tanzania, Uruguay and Venezuela, entitled "Establishment of a Development Agenda for WIPO: a framework for achieving concrete and practical results in the near and longer terms", 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 Argentina, Bolivia, Brazil, Cuba, Ecuador, Egypt, Iran (Islamic Republic of), Kenya, Peru, Sierra Leone, South Africa, the United Republic of Tanzania, Uruguay and Venezuela.*

[Annex follows]

ANNEX

**ESTABLISHMENT OF A DEVELOPMENT AGENDA FOR WIPO: A FRAMEWORK FOR ACHIEVING CONCRETE AND PRACTICAL RESULTS IN THE NEAR AND LONGER TERMS.**

**SUBMISSION BY ARGENTINA, BOLIVIA, BRAZIL, CUBA, ECUADOR, EGYPT, IRAN, KENYA, PERU, SIERRA LEONE, SOUTH AFRICA, TANZANIA, URUGUAY AND VENEZUELA**

**I. INTRODUCTION**

At its September 2004 session, the WIPO General Assembly decided to convene Intersessional Intergovernmental Meetings (IIM) to examine the proposals made by the Group of Friends of Development for the establishment of a Development Agenda for WIPO<sup>1</sup>, as well as any additional proposals received from Member States. Since then eight (8) substantive proposals have been formally presented by Member States advancing their ideas and views on how to establish a development agenda for WIPO<sup>2</sup>. All of these contributions have enriched the debate and demonstrated the broad willingness of Member States to move forward in the establishment of a “Development Agenda” for WIPO. In addition to the IIMs, on 2 and 3 May 2005 the WIPO Secretariat, jointly with the secretariats of the United Nations Conference on Trade and Development (UNCTAD), the World Health Organization (WHO), the United Nations Industrial Development Organization (UNIDO) and the World Trade Organization (WTO) organised an International Seminar on Intellectual Property and Development. At the seminar an interesting and informative debate ensued among different stakeholders.

Outside WIPO, there have been on-going discussions on the WIPO development agenda including a number of major international conferences and meetings, notably; the TransAtlantic Consumer Dialogue (TACD) Workshop on the Future of WIPO held in Geneva in September 2004, the TACD and Initiative for Policy Dialogue (IPD) Conference on New Approaches to Intellectual Property held at Columbia University, New York, in June 2005, and United Nations University

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<sup>1</sup> The proposal presented to the September 2004 session of the WIPO General Assembly is contained in document WO/GA/31/11.

<sup>2</sup> These are the proposals by: the United States, document IIM/1/2; Mexico, document IIM/1/3; the Group of Friends of Development, document IIM/1/4; the United Kingdom, documents IIM/1/5 and IIM/2/3; Bahrain and other co-sponsors, document IIM/2/2; the African Group, document IIM/3/2; and Chile, document PCDA/1/2.

Institute for New Technologies (UNU-INTECH) Seminar on Contributions to the Development Agenda on Intellectual Property held in Maastricht in September 2005. In essence, the discussions on the establishment of a WIPO development agenda are no longer a simple WIPO issue but a global discussion.

Though the proposals by the African Group and Chile are yet to be discussed in the Provisional Committee, the three IIM meetings held in 2005, as well as the September 2005 session of the WIPO General Assembly, allowed for a very good discussion. Through the discussions at the IIMs and at the General Assembly, Members States were able to debate, exchange information and ideas, and as result have been able to reach a better understanding of each others perspectives. At the same time, other stakeholders, including civil society groups, NGOs and industry, have provided useful information and insights all of which have made all of us the wiser. In the seminars, meetings and conferences, in and outside of WIPO, the discussion by Member States has been enriched and broadened.

A significant amount of time in the IIMs and virtually all the time at the 2005 General Assembly was, however, taken up by discussions on procedure. That question was definitively settled by the General Assembly when it established the Provisional Committee to take forward the work which began in the IIM process. This year, 2006, should therefore be a year, as emphasised by the General Assembly, for producing “concrete and practical results”.

## II. THE MANDATE OF THE PROVISIONAL COMMITTEE

All WIPO Member States agreed at the General Assembly on the critical need to continue and finalise the discussion on proposals for establishing a development agenda for WIPO. It is in this context that the General Assembly resolved to establish a Provisional Committee. The Assembly established the Committee “*to make progress in integrating the development dimension in WIPO broadly so that concrete and practical results can be achieved in the most timely and efficient manner*”.<sup>3</sup> Consequently, the mandate given to the Provisional Committee “to accelerate and complete the discussions on proposals relating to a WIPO Development Agenda and report with any recommendations to the General Assembly at its September 2006 session” means that the Provisional Committee is to employ expeditious and efficient means in order to come up with concrete and practical results by the end of its second session on 30 June 2006.<sup>4</sup> It is indeed for

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<sup>3</sup> See paragraph 146 of the Report of the General Assembly, document WO/GA/32/13.

<sup>4</sup> The second session of the Provisional Committee is scheduled for 26 – 30 June 2006.

this reason that the General Assembly established a deadline for the submission of new proposals.<sup>5</sup>

The mandate given to the Provisional Committee by the General Assembly therefore envisages deepened discussions, and more importantly, concrete recommendations for a framework for action starting at the 2006 General Assembly.

### **III. SYNTHESIS OF PROPOSALS BY MEMBER STATES ON HOW TO ESTABLISH A DEVELOPMENT AGENDA FOR WIPO**

There have so far been more than 50 specific proposals made by Member States, though many of these are interlinked, not necessarily in terms of their approach, but with regard to the issues they seek to address. Consequently, although Members have different positions and ideas on different issues, with their ideas more convergent on some issues than on others, there are common threads uniting all the proposals. The fact that there are a large number of proposals on the table does not mean that the level of divergence among Member States is that significant, or that the number of issues to be addressed is really that large.

In addition to the common threads running through all the proposals, in practice progress has already been made with regard to a number of proposals. For example, there has been progress in ensuring wider participation by public interest groups in WIPO discussions. In this regards, we thank the International Bureau, the IIM and the General Assembly for expediting the processes for admission of NGO observers to discussions on the Development Agenda. In addition, there was unequivocal agreement by all Members that WIPO, as a specialised agency of the United Nations (UN) had the responsibility to promote development as an integral part of its programme. As pointed out by the Delegation of the UK on behalf of the European Community (EC), its Member States and the Acceding States of Bulgaria and Romania at the General Assembly, this means that, “WIPO had a specific mandate to promote development...” and consequently, “WIPO had to continue to play its role, together with other UN bodies, putting its mandate into action and making a concrete difference to the goals and aspirations of all Members States and their citizens”.<sup>6</sup> In essence therefore, while history is important and needs to be taken into account, the issue today is not so much what WIPO did or did not do in the past, but how the organisation should be positioned in the 21<sup>st</sup> Century to contribute fully and

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<sup>5</sup> The Decision of the Assembly provides that “the Provisional Committee shall have two one-week sessions, and the deadline for submission of new proposals shall be the first day of the first session of the Committee.”

<sup>6</sup> See paragraph 117 of the Report of the General Assembly, *supra* note 3.

meaningfully to addressing the development challenges which all WIPO Members agree is the most critical global challenge we face today.

Further, some of the proposals on the establishment of a Development agenda are being tested already, thereby demonstrating the willingness of the General Assembly to take up these issues and give them practical expression. We note, for example, that, to a degree, the proposal for holding public hearings prior to the initiation of any norm-setting activities is being applied, though in slightly different context, to the process on the draft Substantive Patent Law Treaty (SPLT). In that process the General Assembly decided that before the Standing Committee on Law of Patents could consider how to proceed on the question of the SPLT, there should first be an open forum bringing together a variety of stakeholders to discuss a variety of issues. This demonstrates that it is possible to move from broad public consultation and debate on the basis of which members can take decisions and proceed with less risks of standstill.

Bearing in mind these considerations, and taking into account the discussions in the IIMs and at the General Assembly as well as the decisions taken already, we have arrived at a stage where it has become possible to identify certain key issues which seem to run through most or all proposals. These issues may be synthesized into five (5) core issues or questions which need to be answered in order to position WIPO to contribute fully and meaningfully to addressing the global development challenges. The five (5) core issues or questions seem to be:

1. What should be the new procedural and substantive approaches to WIPO norm-setting activities to ensure that:
  - (a) norm-setting priorities reflect the priorities of all WIPO Members, in particular, that the priorities reflect the interests of both developed and developing countries;
  - (b) the objectives and issues to be addressed in each proposed treaty or norms are set based on the views of all stakeholders, with special emphasis on participation by public interest groups;
  - (c) before commencing norm-setting activities potential impacts, especially development impacts are analysed and the potential costs, especially for developing countries, are evaluated by means of strengthened member-driven evaluation, study and research mechanisms;
  - (d) WIPO treaties and norms reflect the profound factual economic and social differences among WIPO Members;

- (e) once treaties are adopted, there is a system, overseen by Member states, to ensure continuous objective evaluation of the actual impact and costs, especially for developing countries?.
2. What member-driven mechanisms, procedures or rules are necessary to enable WIPO to undertake independent and objective research and studies as well as evaluation, including evaluation of development impacts of intellectual property rules?
  3. Technical assistance and development cooperation activities of WIPO are important areas of the organisation's work programme and an area of particular interest to many developing countries and especially LDCs. In this regard, in what practical and concrete ways can the technical assistance activities be strengthened to ensure:
    - (a) increased impact and continued relevance and usefulness to recipient countries in a changing world.
    - (b) improved availability and sharing of information on these activities;
    - (c) the protection of the integrity and credibility of the programmes; and
    - (d) continuous evaluation and impact assessment including development impacts?
  4. Considering that WIPO has a constitutional mandate, by virtue of the Agreement with the UN, to facilitate transfer of technology, what measures are needed within the organisation to address transfer of technology issues, including related competition policies and the facilitation of the transfer of essential technologies to developing countries?
  5. Considering the growing importance of access to knowledge, of protecting and promoting access to the cultural heritage of peoples, countries and humanity, and the need to maintain a robust public domain through norm-setting activities and enforcement of exceptions and limitations to intellectual property rights, what measures are needed within WIPO to:
    - (a) facilitate access to knowledge generally around the world and specifically in developing countries for example by means of a Treaty on Access to Knowledge; and

(b) maintain and build a robust public domain in all WIPO Member States and other countries.

6. Recognizing that WIPO is an integral part of the United Nations System and, as such, is committed to promoting the cause of development within the broad UN framework, thereby ensuring that developing countries will be provided with policy space commensurate with their national development needs and requirements, what measures will be taken to review WIPO treaties and conventions under the guise of the Development Agenda?

#### **IV. THE WAY FORWARD: CONSOLIDATING PROGRESS, AND FORMULATING CONCRETE AND PRACTICAL OUTCOMES**

In thinking of the way forward in this process, it is important to recall what the development agenda for WIPO is aimed at achieving. As expressed by the Group of Friends of Development, the African Group and other Members, and as agreed in the Decision of the General Assembly establishing the Provisional Committee, the aim of the discussion on a WIPO development agenda is “*integrating the development dimension in WIPO broadly*”.

There are many proposals on the table, as already noted, and a key priority for the Provisional Committee is to organise its work in a manner that ensures concrete and practical results. At the General Assembly, all Member States emphasised, over and over again, that what was needed was an in-depth consideration of the proposals tabled by Member States with a view to arriving at concrete recommendations for action.

In order to do this, and to fulfil the mandate given to the Provisional Committee by the General Assembly, there are two considerations to take into account in deciding the way forward. These are to ensure that:

1. all proposals submitted by Members within the deadline established by the General Assembly (the first day of the first session of the Provisional Committee) are given equal treatment and consideration; and
2. by the close of business on **30 June 2006**, the Provisional Committee has arrived at concrete and practical results, that is, concrete and practical recommendations which would ensure that the General Assembly at its September 2006 session can take decisions to integrate the development dimension in WIPO broadly.

In order to ensure that our mandate is properly discharged and that concrete and practical recommendations are in effect submitted to the next General-Assembly, it

is clear that the Provisional Committee will have to structure and rationalize its work. Given the large number of proposals submitted by Member States, an effort at prioritization will be required. In this regard, without leaving behind any of the proposals submitted by Member States, it is suggested that, after reviewing the latest proposals, the Provisional Committee should move to set up an effective and cross-cutting Program of Work on the establishment of a Development Agenda for WIPO for the short, medium and long terms. However, the prioritization and organization of issues under different possible time-frames shall not undermine the integral and holistic nature of a WIPO Development Agenda as put forth by proponent Member States.

For the short term, the Provisional Committee should, bearing in mind and building upon the interlinkages and convergences that have been identified between different proposals submitted by Member States, arrive at some concrete recommendations for immediate action by the next General-Assembly. For the medium and long terms, the Committee should agree on a set of actions requiring a longer and more in-depth discussion among Member States. With regard to the long and medium terms, one must consider whether those proposals which are not addressed in the context of the short term process should be referred to the General Assembly or other competent WIPO bodies, or possibly to a new body created specifically for the purpose of addressing those proposals. The consideration of these and other hypothesis on future work would require a consensus building exercise by Member states, under procedures and mechanisms conducted and overseen by them with the support of the International Bureau, and taking into account the cross-cutting nature of the Development Agenda concept.

As a contribution to advancing the work of the Provisional Committee in a more structured form, we will look forward to contributing to the decisions that we will have to take in the next Session of the Committee by proposing courses of action for the consideration of the next General Assembly.

## **V. SUMMARY**

- The last General Assembly established the Provisional Committee to take forward the work which began in the IIM process.
- The mandate given by the General Assembly to the Provisional Committee “to accelerate and complete the discussions on proposals relating to a WIPO Development Agenda and report with any recommendations to the General Assembly at its September 2006 session” means that the Provisional

Committee is to employ expeditious and efficient means in order to come up with concrete and practical results by the end of its second session.

- Through the discussions at the IIMs and the General Assembly, Members States were able to debate, exchange information and ideas. As a result of this process they have been able to reach a better understanding of each others perspectives.
- Although Members have different positions and ideas on different issues, there are common threads uniting all the proposals. In addition to the common threads running through all the proposals, in practice progress has already been made with regard to a number of proposals. For example, there has been progress in ensuring wider participation by public interest groups in WIPO discussions. In addition, there was unequivocal agreement by all Members that WIPO, as a specialised agency of the United Nations (UN) had the responsibility to promote development as an integral part of its programme. Further more, some of the proposals on the establishment of a Development agenda are being tested already, thereby demonstrating the willingness of the General Assembly to take up these issues and give them practical expression (for example, to a degree, the proposal for holding public hearings prior to the initiation of any norm-setting activities is being applied, though in slightly different context, to the process on the draft Substantive Patent Law Treaty).

In conclusion, we have arrived at a stage where it has become possible to identify certain key issues which seem to run through most or all proposals. The Provisional Committee can arrive at concrete recommendations for immediate action by the next General Assembly in the framework of an effective and cross-cutting Program of Work for the short, medium and long terms for the establishment of a Development Agenda for WIPO, that shall not undermine the integral and holistic nature of the WIPO Development Agenda as put forth by proponent Member States.

[End of Annex and of document]