

PROVISIONAL COMMITTEE ON PROPOSALS RELATED TO
A WIPO DEVELOPMENT AGENDA (PCDA)

First Session

Geneva, February 20 to 24, 2006

Summary by the Chair

1. The WIPO General Assembly, in its session held in September – October 2005, decided to “constitute a Provisional Committee to take forward the IIM process 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”. It was also decided 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”. The First Session of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), was held from February 20 to 24, 2006.
2. Ninety-eight Member States and 48 Observers participated in the session.
3. The PCDA decided to admit, on an *ad hoc* basis, two non-accredited Non-Governmental Organizations, (NGOs) namely Association of 3D-Trade-Human Rights-Equitable Economy and The Authors Guild, without implications as to their status for future WIPO meetings.
4. The PCDA unanimously elected Ambassador Rigoberto Gauto Vielman, Permanent Representative of Paraguay, as Chair, and Ambassador Muktar Djumaliev, Permanent Representative of Kyrgyzstan, as Vice-Chair.
5. The PCDA adopted the draft agenda as proposed in document PCDA/1/1 Prov.
6. The PCDA discussed a proposal by the African Group, entitled “The African Proposal for the Establishment of a Development Agenda for WIPO” (IIM/3/2 Rev.), a proposal by Chile (PCDA/1/2), a proposal by Colombia (PCDA/1/3), a proposal by the United States of America, “For the establishment of a partnership program in WIPO: An elaboration of issues raised in document IIM/1/2” (PCDA/1/4), and a proposal by 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” (PCDA/1/5).
7. After consultations with the Regional Group Coordinators and the Member States/Groups, which had submitted proposals in ‘actionable and operational form’, the Chairman prepared a set of clusters and requested the said Member States/Groups to place their respective proposals in the most appropriate cluster. These clusters and proposals are contained in the Annex to this Summary. The Annex will form the basis for discussions at the Second Session of the PCDA, scheduled to be held from June 26 to 30, 2006.

8. The PCDA noted that the Draft Report of the First Session would contain all the interventions made during the current session and also the Chairman's Summary. This Draft Report will be prepared by the Secretariat and communicated to the Permanent Missions of the Member States by March 17, 2006. The Draft Report would also be made available, in electronic form and on the WIPO website, to the Member States, IGOs and NGOs by the same date. Comments on the Draft Report should be communicated in writing to the Secretariat by April 4, 2006. The revised Draft Report would then be available by April 25, 2006 and considered for adoption at the beginning of the Second Session of the PCDA.

9. *The PCDA considered and noted the contents of this Summary by the Chair.*

[Annex follows]

ANNEX

PROPOSALS BY CLUSTERS SUBMITTED FOR A WIPO DEVELOPMENT AGENDA

A. Technical Assistance and Capacity Building

1. To make technical assistance development-oriented and demand-driven. Furthermore, it should be targetted at specific areas and include timeframes for completion
2. To develop and improve national institutional capacity through further development of infrastructure and other facilities with a view to making national intellectual property (IP) institutions more efficient and ensuring a fair balance between IP protection and safeguarding public interest. This technical assistance should be extended to sub-regional and regional organizations dealing with IP
3. To strengthen national capacity for protection of local creations, innovations and inventions in order to develop national scientific and technological infrastructure
4. To provide increased assistance to WIPO through donor funding, so as to enable the organization meet its commitments in regards to technical activities in Africa
5. To establish a Trust Fund within WIPO to provide specific financial assistance for least developed countries (LDCs)
6. Development of agreements between WIPO and private enterprises, allowing the national offices of developing countries to access specialized databases for the purposes of patent searches
7. To expand WIPO's advice and technical assistance provided to SMEs and sectors dealing with scientific research and cultural industries
8. To request WIPO to assist Member States in setting-up national strategies in the field of intellectual property
9. To increase financial resources for technical assistance for promoting an IP culture with an emphasis on introducing intellectual property at different academic levels
10. To request WIPO to establish a voluntary contribution fund to promote the legal, commercial and economic exploitation of intellectual property rights in developing countries and LDCs

11. WIPO Partnership Program Database: Create a WIPO Partnership Program Database, an Internet-based tool to facilitate the strategic use of intellectual property by developing countries by bringing together all stakeholders to match specific IPR-related development needs with available resources, thereby amplifying the impact of intellectual property development assistance
12. Competing in the Knowledge Economy: Recognizing the importance to the economic and cultural development of effectively participating in the “knowledge economy,” the WIPO Partnership Office (described more fully below under cluster E) should aggressively seek out potential partners to assist countries making the transition to or competing more effectively in the knowledge-economy
13. To implement principles and Guidelines for technical assistance to ensure, *inter alia*: (a) transparency; (b) that flexibilities existing in international treaties are taken full advantage of; (c) that technical assistance is tailor-made and demand-driven
14. To create a web page containing technical assistance information provided by WIPO and other relevant international organizations, in order to enhance transparency, by including, for example, requests of technical assistance made by Member States
15. To make publicly available all information about design, delivery, cost, financing, beneficiaries and implementation of technical assistance programmes as well as the results of internal and external independent evaluation
16. To establish in the Program and Budget Committee consistent pluriannual programs and plans for cooperation between WIPO and developing countries aiming at strengthening national intellectual property offices, so that they may effectively become an acting element in national development policy. Those programs should be guided, moreover, by the principles and objectives as proposed in document WO/GA/31/11
17. To take into account the different levels of development of various countries in designing, delivering and evaluating technical assistance
18. To expand the coverage of technical assistance programmes to include matters related to the use of competition law and policy to address abuses of intellectual property and practices that unduly restrain trade and the transfer and dissemination of technology
19. To provide neutral technical assistance of an advisory nature based on actual and expressed needs. The assistance should not discriminate among recipients or issues to be addressed and should not be perceived as being a reward system for supporting certain positions in WIPO negotiations

20. To ensure that laws and regulations are tailored to meet each country's level of development and are fully responsive to the specific needs and problems of individual societies. The assistance should correspond to the needs of various stakeholders in developing and least developed countries and not just the intellectual property offices and right holders
21. To separate the norm-setting functions of the WIPO Secretariat from those of technical assistance
22. To establish a Code of Ethics for the Secretariat technical assistance staff and consultants
23. To make publicly available roster of consultants for technical assistance
24. To ensure that WIPO technical assistance staff and consultants are fully independent and avoid potential conflicts of interest
25. To provide technical cooperation to developing countries, at their request, in order to better understand the interface between intellectual property rights and competition policies
26. To ensure that legal-technical and technical assistance activities provided to developing and least developed countries are able to implement the pro-development provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), for example, *Articles 7, 8, 30, 31 and 40*, in addition to subsequent pro-development decisions, such as the Doha Declaration on the TRIPS Agreement and Public Health
27. To mainstream development dimension into all of WIPO's substantive and technical assistance activities and debates, including the way in which the Organization deals with "enforcement" issues
28. To ensure that technical assistance is demand-driven in the sense that it corresponds to the needs and global political objectives of developing and least developed countries, taking also into account the legitimate interests of various stakeholders and not only those of right holders
29. To orient technical assistant to ensure that national regimes are set up to implement international obligations in an administratively sustainable way and do not overburden scarce national resources that may be more productively employed in other areas
30. To ensure that technical cooperation contributes towards maintaining the social costs of IP protection at a minimum

31. To ensure WIPO's legislative assistance tailors national laws on intellectual property to meet each country's level of development and is fully responsive to the specific needs and problems of individual societies

32. To promote model approaches on how to implement the relevant provisions on anti-competitive practices of the TRIPS Agreement

B. Norm-Setting, Flexibilities, Public Policy and Public Domain

1. To request WIPO to examine the flexibilities under the TRIPS Agreement and Doha Summit decisions with a view to giving practical advice to developing and least developed countries on how to enable them gain access to essential medicines and food, and also to elaborate a mechanism to facilitate access to knowledge and technology for developing and least developed countries

2. To request WIPO to adopt an internationally binding instrument on the protection of genetic resources, traditional knowledge and folklore in the nearest future

3. To elaborate a mechanism to facilitate access to knowledge and technology for developing and least developed countries

4. To formulate and adopt measures designed to improve participation by civil society and other stakeholders in WIPO activities, relevant to their respective domains and interests

5. Best Practices for Economic Growth: Compile and disseminate the "best practices" of Member States related to fostering the development of creative industries and attracting foreign investment and technologies based, at least in part, on the baseline national surveys for economic growth, which are discussed more fully below under cluster D

6. Increasing understanding of the adverse effect of counterfeiting and piracy on economic development: Through the WIPO Advisory Committee on Enforcement (ACE), conduct analyses of the relationship between high rates of counterfeiting and intellectual property piracy and technology transfer, foreign direct investment and economic growth

7. Draw up proposals and models for the protection and identification of, and access to, the contents of the public domain

8. Consider the protection of the public domain within WIPO's normative processes

9. To establish in WIPO an area of analysis and discussion of incentives promoting creative activity, innovation and technology transfer, in addition to the intellectual property system, and within the intellectual property system, for example emerging exploitation models. This could be achieved through either of two mechanisms:

(i) An electronic forum maintained by WIPO for the exchange of information and opinions. It could have a limited duration (e.g. one year), after which proposals and discussions could be summarized in a document. If there is interest and critical mass, we would analyze if and how to proceed. Discussions in the forum could be organized under the following sections: Tools within the intellectual property system (e.g. utility models, systems of free and open licenses and creative commons), and those complementary to the intellectual property system (e.g. subsidies, Treaty on Access to Knowledge, Treaty on Medical R&D).

(ii) To include this issue as a permanent item in the agendas of the WIPO Committees.

10. To adopt development-friendly Principles and Guidelines for norm-setting activities

11. To undertake debates on the feasibility and desirability of new, expanded or modified rules, prior to engaging in norm-setting activities, especially by means of public hearings

12. To ensure member-driven procedures in which the WIPO´ Secretariat does not play a role by endorsing or supporting particular proposals, particularly in the negotiation of international Treaties and norms

13. To ensure that norm-setting activities recognize the different levels of development of Member States and reflect a balance between benefits and costs of any initiative for developed and developing countries

14. To pursue a balanced and comprehensive approach to norm-setting, emphasizing the design and negotiation of rules and standards that are guided by and fully address the development objectives and concerns of developing and least developed countries and of the international community

15. To preserve the interests of the society at large, and not only those of IP owners in norm-setting activities

16. To reflect the priorities of all WIPO Members, both developed and developing countries, in all norm-setting activities

17. To ensure that norm-setting activities are fully compatible with and actively support other international instruments that reflect and advance development objectives, in particular Human Rights international instruments
18. To include in treaties and norms provisions on, *inter alia*: (a) objectives and principles; (b) safeguard of national implementation of intellectual property rules; (c) against anti-competitive practices and abuse of monopoly rights; (d) promotion of transfer of technology; (e) longer compliance periods; (f) flexibilities and “policy space” for the pursuit of public policies; (g) exceptions and limitations
19. To include in all treaties and norms operative and substantial special and differential treatment provisions for developing and least developed countries
20. To ensure that norm-setting activities provide developing countries with policy space commensurate with their national development needs and requirements
21. To ensure that norm-setting activities help identify and maintain a robust public domain in all WIPO’s Member States
22. To examine non-intellectual property type and/or non-exclusionary systems for fostering, creativity, innovation and transfer of technology (e.g., free software development and creative commons models)
23. To ensure that new subjects and areas for norm-setting are identified on the basis of clear defined principles and guidelines and on assessment of their development impact
24. To establish a Treaty on Access to Knowledge and Technology
25. To development an international framework to deal with issues of substantive law relating to anti-competitive licensing practices, primarily those that adversely affect the transfer and dissemination of technology and restrain trade
26. To protect and promote in all negotiations the development oriented principles and flexibilities contained in existing Agreements, such as the TRIPS Agreement
27. To promote models based on open collaborative projects to develop public goods, as exemplified by the Human Genome Project and Open Source Software
28. To set objectives and issues to be addressed in each proposed treaty or norm based on the views of all stakeholders, with special emphasis on participation by public interest groups

C. Technology Transfer, Information and Communication Technology (ICT) and Access to Knowledge

1. To develop criteria and methodology to select essential technologies, monitor and facilitate the transfer and the diffusion of such technologies in accessible and affordable cost to developing countries and LDCs
2. To contribute effectively to individual nation's self-reliance, including through relaxation of patent rules in the area of technology by facilitating access to foreign patented information on technology and technical resources
3. To create a new body for formulating, coordinating and assessing all transfer of technology policies and strategies
4. To develop and maintain, in collaboration with other intergovernmental organizations, a list of essential technologies, know-how, processes and methods that are necessary to meet the basic development needs of African countries aimed at protecting the environment, life, health of human beings, animals and plants, promoting education and improving food security
5. To work on any initiative intended to facilitate the implementation of technology-related provisions of Multilateral Environmental Agreements (MEAs), so as to ensure that countries where biological, traditional or other environmental resources originate from, participate in the process of research and development
6. To request WIPO to expand the scope of its activities aimed at bridging the digital divide in accordance with the outcomes of the World Summit on the Information Society (WSIS) in its future activities, especially in respect of existing proposals within the context of the development agenda that should also take into account the significance of the Digital Solidarity Fund (DSF)
7. To devise innovative ways and means, including the fostering of transfer of technology, to enable SMEs take better advantage of flexibilities as provided by relevant international agreements
8. To request developed countries to encourage their research and scientific institutions to enhance cooperation and exchange with research and development institutions in developing countries and LDCs
9. Facilitating IP-related aspects of ICT for growth and development: Provide for a forum in WIPO Standing Committee on Information Technologies (SCIT) for discussion focused on the importance of IP-related aspects of ICT and its role in economic and cultural development, with specific attention focused on assisting Member States to identify practical strategies to use IP/ICT for economic, social and cultural development

10. To adopt development-friendly principles and guidelines on transfer of technology
11. To explore policies, initiatives and reforms necessary to ensure the transfer and dissemination of technology to the benefit of developing countries
12. To adopt specific measures that ensure transfer of technology to developing countries;
13. To incorporate in intellectual property treaties and norms relevant provisions dealing with anti-competitive behavior or abuse of monopoly rights by rights holders
14. To debate on supportive IP-related Policies and measures industrialized countries could adopt for promoting transfer and dissemination of technology to developing countries.
15. To promote measures that will help countries combat IP related anti-competitive practices
16. To devise a mechanism whereby countries affected by anti-competitive practices request Developed Countries authorities to undertake enforcement actions against firms headquartered or located in their jurisdictions
17. To establish a special fee on applications through the Patent Cooperation Treaty, the revenues of which would be earmarked for the promotion of research and development activities in the developing and least developed countries
18. To establish a WIPO Standing Committee on IP and Technology Transfer and a dedicated Program on these issues, including related Competition Policies
19. To adopt commitments like those contained in *Article 66.2* of the TRIPS Agreement, expanded to benefit all developing countries
20. To establish an intermediary conduit to reduce the asymmetric information problem in private transactions between technology buyers and sellers, for knowledge about successful technology-acquisition programs that have been undertaken by national and sub-national governments in the past
21. To negotiate a multilateral agreement where signatories would place into the public domain, or find other means of sharing at modest cost, the results of largely publicly funded research. The objective would be to set out a mechanism for increasing the international flow of technical information, especially to developing countries, through expansion of the public domain in scientific and technological information, safeguarding, in particular, the public nature of information that is publicly developed and funded without unduly restricting private rights in commercial technologies

D. Assessments, Evaluation and Impact Studies

1. To request WIPO to develop an effective review and evaluation mechanism, on an annual basis, for the assessment of all its development-oriented activities
2. To establish an independent development impact assessment with respect to technical assistance, technology transfer and norm-setting on developing and least developed countries (LDCs)
3. To conduct a study in developing countries and LDCs on obstacles to intellectual property protection in the informal sector, with a view to creating substantial programs, including the tangible costs and benefits of IP protection with regards to generation of employment
4. To request WIPO to undertake studies to demonstrate the economic, social and cultural impact of the use of intellectual property systems in Member States.
5. Baseline National Surveys for Economic Growth: Provide assistance through the WIPO Secretariat to Member States requesting help to conduct base-line national economic surveys and make the results of such surveys available to other Member States
6. Measuring the contribution of national creative and innovative industries: Expand the successful WIPO Guide for Surveying the Economic Contribution of the Copyright-based Industries to include the patent-based innovative industries
7. Conducting Global economic surveys of the creative and innovative sectors: Explore the feasibility of WIPO conducting its own economic surveys on a regular basis to support the creative and innovative sectors with useful data
8. Collecting Data on Global IPR Piracy and Counterfeiting: The WIPO Secretariat should assist in the collection of data on global piracy and counterfeiting rates with a view toward making the information widely available
9. WIPO should deepen the analysis of the implications and benefits of a rich and accessible public domain
10. Study to evaluate the appropriate levels of intellectual property, to identify the links between IP and development. For example, a study of a limited, but representative, number of countries, with participation on a voluntary basis, in specific areas of IP, such as patents, exceptions and limitations and institutional capacity to administrate the IP system, including costs to government, as well as to individuals (cost in GDP)
11. To establish, through a member-driven process, an independent Evaluation and Research Office (WERO) that would be responsible for, *inter alia*, evaluation of all WIPO's programmes and activities and carrying out of "Development Impact Assessments" in norm-setting activities, and technical cooperation

12. To undertake independent, evidence-based “Development Impact Assessments” with respect to norm-setting activities that could be carried out by the proposed WERO
13. To compile empirical evidence and carry out cost-benefit analysis that consider, *inter alia*, alternatives within and outside the IP system. These endeavors should form the basis of norm-setting activities that attain the objectives pursued with less monopoly of knowledge
14. To continuously evaluate WIPO’s technical assistance programmes and activities to ensure their effectiveness
15. To establish Indicators and benchmarks for evaluation of technical assistance
16. To establish a mechanism, overseen by Member States, to ensure a continuous objective evaluation of the actual impact and costs of treaties that have been adopted, especially for developing countries

E. Institutional Matters including Mandate and Governance

1. To request WIPO to assist African countries, in cooperation with relevant international organizations, to create, as appropriate, legal and regulatory framework in order to reverse brain drain into brain gain
2. To request WIPO to intensify its cooperation with all UN agencies, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially WTO in order to strengthen the coordination and harmonization for maximum efficacy in undertaking development programmes
3. Proposal to reinvigorate the PCIPD
4. WIPO Partnership Office: Establish within the WIPO International Bureau a Partnership Office staffed by WIPO personnel deployed for the purpose of evaluating requests by Member States for assistance related to IPR and development and actively seeking to find partners to fund and execute such projects
5. Stocktaking of WIPO Development Activities: Conduct a quantitative and qualitative stocktaking 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
6. To amend WIPO Convention, bringing it in line with WIPO’s mandate as an UN-specialized agency

7. To undertake measures to ensure wider participation of civil society and public interest groups in WIPO's activities
8. To adopt UN system criteria regarding NGO acceptance and accreditation
9. To maintain the mandate of WIPO's Advisory Committee on Enforcement within the limits of a forum for exchange of information on national experience, excluding norm-setting activities. The ACE agenda of discussion should also tackle how to best ensure the implementation of all TRIPS-related provisions, including those that provide for exceptions and limitations to the rights conferred
10. To reinforce WIPO's member-driven nature as a United Nation system organization. That would include, *inter alia*, that formal and informal meetings or consultations held between Members or organized by the International Bureau upon request of the Member States should be held in Geneva, in an open and transparent manner that involves all interested Member States

F. Other Issues

1. To establish a working group on the Development Agenda to further discuss issues of the Development Agenda and the Work-Programme for WIPO that were not subject of decision in the 2006 General-Assembly
2. To adopt measures that provide for membership and functions of the Policy Advisory Commission (PAC) and the Industry Advisory Commission (IAC) being determined by Member States
3. To approach intellectual property enforcement in the context of broader societal interests and development-related concerns, in accordance with *Article 7* of the TRIPS Agreement
4. To adopt a high-level declaration on intellectual property and development

[End of Annex and of document]