

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

PROVISIONAL COMMITTEE ON PROPOSALS RELATED TO A WIPO DEVELOPMENT AGENDA

Second Session
Geneva, June 26 to 30, 2006

PROPOSAL ON THE DECISION OF THE PCDA ON THE
ESTABLISHMENT OF A WIPO DEVELOPMENT AGENDA

Document prepared by the Secretariat

1. In a communication dated June 22, 2006, the International Bureau received a proposal from Argentina, on behalf of the missions of Argentina, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Egypt, Iran (Islamic Republic of), Kenya, Peru, Sierra Leone, South Africa, the United Republic of Tanzania, Uruguay and Venezuela, entitled "Decision of the PCDA on the establishment of a WIPO Development Agenda", for consideration by Member States at the Provisional Committee on Proposals Related to a WIPO Development Agenda, to be held in Geneva from June 26 to 30, 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, Dominican Republic, Ecuador, Egypt, Iran (Islamic Republic of), Kenya, Peru, Sierra Leone, South Africa, the United Republic of Tanzania, Uruguay and Venezuela.*

[Annex follows]

ANNEX



From: Permanent Mission of the Republic of Argentina, Geneva

To: World Intellectual Property Organization (WIPO), Geneva

MGA/jgz
IV/200
No. 266/06

Geneva, June 22, 2006

The Permanent Mission of the Republic of Argentina to the international organizations in Geneva presents its compliments to the World Intellectual Property Organization and has the pleasure to enclose herewith, on behalf of the delegations of Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania, Uruguay and Venezuela, a proposed recommendation for the second session of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), to the next WIPO General Assembly.

The aim of the document is to help the PCDA to fulfill the mandate entrusted to it by the 2005 General Assembly, by submitting a report with recommendations to the next General Assembly. In this connection, the document contains a series of decisions relating to normative activities, public policies and the public domain, technology transfer, access to knowledge, technical assistance, impact studies and assessments, and WIPO's governance and mandate.

The proposal is an effort to facilitate the PCDA's work, through the submission of formulations for a decision to be taken on the 111 proposals identified individually by the respective proponents at the last meeting, a structure which at all events does not replace the documentation containing the proposals put forward during the work of the General Assemblies, the Intersessional Intergovernmental Meeting (IIM) and PCDA.

As regards technical cooperation for example, an effort has been made with the language in order to accommodate almost all the proposals put forward by the African Group, Bahrain and a group of countries, United States of America and the Group of Friends of Development. On that basis, the proposal would provide a basic framework for technical assistance that would allow effective progress to be made on issues that require further technical debate, as is the case for example with the proposals relating to financing mechanisms. Certain proposals of the Group of Friends of Development, which have not been included in this proposed recommendation, will be subject to further consideration at the 2007 General Assembly.

As to WIPO's normative activity, flexibilities, public policies and the public domain, the broad language used in the wording of the proposal was intended to cover the vast majority of proposals put forward by the developing countries; in other words, the African Group, Chile and the Group of Friends of Development, some of which have been the subject of debate since 2004.

On the transfer of technology, the document likewise includes recommendations that reflect the vast majority of the proposals put forward by the African Group and the Group of Friends of Development, as well as all the proposals put forward by Bahrain and a group of countries. As with other subjects, the proposals awaiting a decision must be dealt with by the WIPO General Assembly in 2007.

Finally, the document includes recommendations relating to other matters such as anti-competitive practices, interest groups and NGOs, the Advisory Committee on Enforcement and the renewal of the PCDA's mandate in order to tackle the issues which are awaiting a decision.

The Permanent Mission of the Republic of Argentina would be grateful if this note and the attached proposal are published jointly as an official document for the second session of the PCDA.

The Permanent Mission of the Republic of Argentina to the international organizations in Geneva reiterates to the World Intellectual Property Organization the assurances of its highest consideration.

Proposal by Argentina, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leona, South Africa, Tanzania, Uruguay and Venezuela

Decision of the PCDA on the establishment of a WIPO Development Agenda

The PCDA recommends to the General Assembly of WIPO,

1. To initiate a process for the adoption of a high-level declaration on intellectual property and development;
2. To reaffirm the commitment of WIPO Member States with the principles and goals of the UN system – mainly economic and social development –, and with the mandate of WIPO as a UN-specialized agency by adopting the following declaration: “Nothing in the 1967 WIPO Convention prevents WIPO from undertaking any initiative to consider various models of innovation other than intellectual property. Attempts to pursue upward harmonization of laws on IP protection, without proper consideration of the potential social and economic costs for developing countries and LDCs, runs contrary to WIPO’s UN mandate”.
3. To adopt the following principles on Technical Assistance: a) The provision of technical assistance should be development oriented; b) The technical assistance programmes and activities should be mutual supportive and coherent with relevant international instruments and national development policies; c) Technical assistance programmes and activities should adopt an integrated approach, expanding its coverage to include matters related to competition policy and related regulatory regimes; d) The provision of technical assistance should be neutral, of advisory nature and non-discriminatory among recipients or issues to be addressed; e) The technical assistance programmes and activities should ensure that IP laws and regulations are tailored -made and demand-driven; f) WIPO’s technical assistance staff and consultants should be fully independent; g) WIPO’s technical assistance programmes and activities should be continually evaluated independently and internally to ensure its effectiveness; h) Transparency in all aspects of technical assistance should be ensured;
4. To set up guidelines and disciplines, based on those principles, to ensure, *inter alia*:
 - (a) transparency, including by means of making readily and publicly available all information about design, delivery, cost, financing and implementation of technical assistance programs;
 - (b) the development of the technical capacity of countries to fully use in-built flexibilities existing in the intellectual property international system to advance national pro-development policies and, in particular, the pro-development provisions of the TRIPs Agreement, and the Doha Declaration on the TRIPS Agreement and Public Health;

- (c) that the relationship between intellectual property and competition law are fully explored to ensure an integrated approach;
 - (d) strengthening of national capacity for the protection of local creations, innovations and inventions in order to develop national scientific and technological infrastructure;
 - (e) independency and transparency in cooperation programs;
 - (f) that the social costs of intellectual property protection and enforcement are maintained at a minimum in developing countries;
 - (g) the implementation of international obligations in an administratively sustainable way, that does not overburden scarce national resources;
 - (h) independence of providers;
 - (i) continuous evaluation to ensure its effectiveness.
5. To agree on the promotion of model approaches, overseen by Member states, on how to implement the relevant provisions on anti-competitive practices, and flexibilities and limitations of the TRIPS and WIPO's agreements;
6. To set up financial mechanisms aimed at promoting development-friendly technical assistance to developing and least developed countries (LDCs), particularly in Africa;
7. To adopt the following principles, guidelines and correlative treaty provisions to ensure that WIPO norm-setting activities:
- (a) are based on Member- driven and transparent work plan and strategic vision;
 - (b) take into account the differences in the level of economic, social and technological development among Members and do not promote harmonization initiatives detrimental to developing and least-developed countries;
 - (c) preserve and protect a robust and lively public domain, while safeguarding exceptions and limitations;
 - (d) reflect not only the interests of developed countries and IP rights holders, but also those of developing countries, the public stakeholders and civil society;
 - (e) are fully compatible with and actively support other international instruments that reflect and advance development objectives, in particular Human Rights international instruments;
 - (f) provide developing countries with policy space commensurate to their development needs and requirements through flexibilities, exceptions, limitations and the provision of protection adequate to the level of development and national conditions of each country;

- (g) are preceded and effectively guided by debates and public hearings, with open participation by all member-countries and all stakeholders, with a view to assessing potential impacts as well as the desirability of new norm-setting activities;
 - (h) put in place a system, overseen by member-countries, to ensure continuous objective evaluation of the impact and costs, especially for developing countries, of higher standards of IPR protection;
 - (i) provide mechanisms designed to curb anticompetitive IP-related practices.
8. To agree on the inclusion 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 for developing countries;
 - (f) flexibilities and “policy space” for the pursuit of public policies;
 - (g) exceptions and limitations.
9. To set up, within WIPO, a mechanism to carry out, on a Member-driven basis, independent and evidence-based “Development Impact Assessments” with respect to norm-setting and technical assistance activities, including by means of compilation of empirical evidence, analysis of cost-benefit of norms and the examination of alternatives within and outside the IP system. These endeavors should precede and guide any norm-setting activity within WIPO and should ensure a continuous evaluation of the actual impact and costs of treaties and norms that have been adopted, so that the objectives pursued by means of new treaties or the revision of existing ones can be achieved always under the lowest possible levels of monopoly of knowledge. In the case of technical assistance and capacity building indicators and benchmarks for evaluation should be established.
10. To separate the norm-setting functions of the WIPO Secretariat from those of technical assistance;
11. To agree on the promotion and development of alternative innovation- protection models and open collaboratively projects such as Free and Open Source Software and Creative Commons;
12. To agree to launch negotiations on a Treaty on Access to Knowledge and Technology;

13. To initiate negotiations on a multilateral agreement where signatories would place into the public domain, or find other means of sharing at affordable cost, the results of publicly funded research;
14. To develop, adopt and promote development-friendly principles, guidelines and disciplines on transfer of technology that, *inter alia*:
 - (a) enable a dynamic technological cooperation between developed and developing countries;
 - (b) enable developing countries to have access to technologies from developed countries;
 - (c) mainstream transfer of technology in WIPO's norm-setting activities;
 - (d) set up multilateral supportive measures for the promotion and dissemination of technology.
15. To establish a new body, within WIPO, for promoting transfer of technology;
16. To formulate recommendations on policies and measures industrialized countries could adopt for promoting transfer and dissemination of technology to developing countries;
17. 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 and to promote measures to effectively curb and combat IP-related anti-competitive practices, and abuse of misuse of rights by rights holders;
18. To ensure wider participation of public interest groups in WIPO discussions, adopting UN criteria regarding NGO's terminology, acceptance and accreditation;
19. 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 best to ensure the implementation of those provisions in existing IP treaties, including TRIPS, that provide for exceptions and limitations to the rights conferred;
20. To renew the process of the PCDA to further discuss and effectively address all issues related to a Development Agenda work-program for WIPO that may not have been the subject of decision during the 2006 General-Assembly. In this regard three meetings will be organized until July 2007, which shall report back and formulate recommendations to the 2007 General Assembly on necessary and appropriate actions to be taken with regard to the pending proposals;

21. To take fully into account the interests of developing countries Members in the process of elaboration and approval of the program and budget of the Organization and to implement the decision of the 41st General Assembly of WIPO: “(...) adjustments to the Program and Budget for 2006-2007 shall be carried out in order to take into account any programmatic and budgetary implications resulting from on-going discussions on the WIPO Development Agenda and other issues”.

[End of Annex and of document]