

## **Committee on Development and Intellectual Property (CDIP)**

### **Sixth Session**

**Geneva, November 22 to 26, 2010**

### **FUTURE WORK PROGRAM ON FLEXIBILITIES IN THE INTELLECTUAL PROPERTY SYSTEM**

*Prepared by the Secretariat*

1. At the Fifth Session of the Committee on Intellectual Property and Development (CDIP), held from April 26 to April 30, 2010, the Secretariat was requested to present a proposed work program on flexibilities for the consideration of the Committee. The Summary by the Chair for the fifth Session of the CDIP states that;

*“the CDIP discussed document CDIP/5/4 on Patent-Related Flexibilities in the Multilateral Framework and their Legislative Implementation at the National and Regional Levels, noted its contents as a preliminary document, with the understanding that the Secretariat will revise it to reflect the comments from Member States and include new flexibilities. The Secretariat would submit to the CDIP a proposed program of work on flexibilities in other areas, avoiding duplication of work with other Committees of WIPO”.*

The present document addresses Recommendations 13, 14, 17, 22 and 25 of the WIPO Development Agenda.

2. The following elements of future work program on IP flexibilities are proposed for the consideration of the Committee:

**A. WORK IN THE AREA OF PATENTS**

Member States are invited to consider document CDIP/5/4 Rev., providing a revised version of the document taking into account the comments of Member States made during the fifth session of the CDIP. In addition to the flexibilities discussed in the document, work has significantly advanced on the following five patent-related flexibilities and may be submitted to the seventh Session of the CDIP:

- a) transitional periods;
- b) patentability of substances existing in nature;
- c) disclosure-related flexibilities;
- d) ex-officio IP Office control of contractual anticompetitive clauses; and
- e) examination systems.

**B. STOCKTAKING OF WIPO'S ACTIVITIES RELATING TO FLEXIBILITIES IN THE INTELLECTUAL PROPERTY SYSTEM**

The table at the Annex provides a summary of activities undertaken by WIPO related to the area of flexibilities, including work in the principal normative fields of copyright (including the work of the SCCR), patents (including the SCP), trademarks, industrial designs and geographical indications (including the SCT), and enforcement (including the ACE), and in the course of WIPO's provision of technical assistance and capacity building activities including through seminars, meetings, training materials and legislative advice.

In addition to the activities reported in the Annex, a number of activities addressing the above-mentioned recommendations and related to the issue of flexibilities have been undertaken by the Development Sector of WIPO, including the WIPO Academy and WIPO Singapore Office. For these activities, please see Document CDIP/6/3.

Based on the stocktaking of existing work presented in the Annex, the Committee may consider:

- a) work on flexibilities in the intellectual property system which may potentially be included in a future work program for this area; and
- b) where any such future work should take place within WIPO in order to make best use of available resources and avoid duplication.

**C. TECHNICAL ASSISTANCE IN THE USE OF FLEXIBILITIES**

The following elements describe a proposed strategy for WIPO's technical assistance in the area of flexibilities for the consideration of Member States:

- a) Incorporating information on IP flexibilities in the WIPO technical assistance program.

- b) Developing webpages on the WIPO website dedicated to flexibilities in the IP system. The webpages could contain the following:
  - i. Roadmap to WIPO work on flexibilities in the substantive sectors and Committees;
  - ii. Database containing:
    - (a) Survey of national legislation and experiences related to flexibilities in the IP system. The Secretariat could conduct the survey based on a questionnaire directed to Member States, and post information as provided in response. The survey questionnaire would be shared with Member States for comments in advance through the WIPO website.
    - (b) Links to literature and resources on flexibilities produced by the Secretariat and WIPO-commissioned experts, and links to resources on flexibilities produced by other relevant international organizations, such as the World Trade Organization (WTO), the World Health Organization (WHO), the Food and Agriculture Organization (FAO), and the United Nations Commission on Trade and Development (UNCTAD).
- c) Ensuring awareness of this strategy on the use of flexibilities in IP across the relevant sectors of the Secretariat, and integrate appropriate techniques for diffusion of information to Member States.
- d) Organizing national and regional level seminars to exchange practical experiences on implementation of flexibilities.

3. *The Committee is invited to consider the information provided in this document and its Annex.*

[Annex follows]

**A. Patents Utility Models, Integrated Circuits and Undisclosed Information**

<b>Description of activity</b>	<b>Status (completed/on going/proposed)</b>	<b>Relevant dates</b>	<b>Output (publications, links, deliverables)</b>	<b>Impact (for completed activities)</b>
Draft Comments on Patent Law of a country in the Latin American and Caribbean Region	Completed	Aug.12, 2009	Written document with comments	Comments are used as an input by the Authorities when considering the revision/implementation of the legal framework
Draft Comments on Patents, Utility Models, Integrated Circuits of a country in the Asian and Pacific Region	Completed	Sept. 11, 2009	Written document with comments	Comments are used as an input by the Authorities when considering the revision/implementation of the legal framework
Draft Comments on Patents, Utility Models, Integrated Circuits of a country in the Arab Region	Completed	Nov.6, 2009	Written document with comments	Comments are used as an input by the Authorities when considering the revision/implementation of the legal framework
Draft Comments on Patents and Integrated Circuits of a country in the Central European and Baltic Region	Completed	Dec.17, 2009	Written document with comments	Comments are used as an input by the Authorities when considering the revision/implementation of the legal framework
Draft Comments on Patents and Utility Models of a country in the Central European and Baltic Region	Completed	May 6, 2010	Written document with comments	Comments are used as an input by the Authorities when considering the revision/implementation of the legal framework
Draft Comments on Patents, Utility Models, Integrated Circuits and Undisclosed Information of a country in the Arab Region	Completed	July 8, 2010	Written document with comments	Comments are used as an input by the Authorities when considering the revision/implementation of the legal framework

Description of activity	Status (completed/on going/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
Draft Comments on Patents, Utility Models, Integrated Circuits and Undisclosed Information of a country in the Arab Region	Completed	Sept., 2010	Written document with comments	Comments are used as an input by the Authorities when considering the revision/implementation of the legal framework
Draft Comments on Patents and Undisclosed Information of a country in the African Region	Completed	July 1, 2010	Written document with comments	Comments are used as an input by the Authorities when considering the revision/implementation of the legal framework
Mission – Country in the Asian and Pacific Region	Completed	Aug.31 - Sept. 4, 2009		Formal consultations to discuss options available as well as to gather information on country needs and priorities. It is useful to better explain some legal or policy options that derive from the text under consideration
Mission - Country in the Asian and Pacific Region	Completed	Nov.10 - 11, 2009		Formal consultations to discuss options available as well as to gather information on country needs and priorities. It is useful to better explain some legal or policy options that derive from the text under consideration
Missions: - Country in the Arab Region  - Country in the Latin American and Caribbean Region	Completed	Feb 15 - 18, 2010 May 17 - 18, 2010  May 11 - 12, 2010		Formal consultations to discuss options available as well as to gather information on country needs and priorities in order to best present legal and policy options that derive from the text under consideration

Description of activity	Status (completed/on going/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
Participation in seminar organized by the Organization of Eastern Caribbean States (OECS) (Dominica): Consultation on the review process of Art. 27.3(b) and the relationship with National agenda on these matters (SCP and IGC)	Completed	Oct. 28 - 29, 2010		Awareness raising on the use of flexibilities available within the multilateral framework
Participation in seminar organized by OEPM-EPO (Spain): Seminar for Judges	Completed	Nov. 30, 2009		Awareness raising on the use of flexibilities available within the multilateral framework
Participation in workshop organized by WIPO - Lebanon: Seminar on IP and Development	Completed	May 17 - 18, 2010		Awareness raising on the use of flexibilities available within the multilateral framework
Participation in meeting organized by OECD on Patents, Innovation and Competition Policies	Completed	June 11, 2010		Awareness raising on the use of flexibilities available within the multilateral framework
Participation in meeting organized by WTO - Nigeria, Kenya, Regional Seminar for English Speaking Countries	Completed	Jan. 20 - 22, 2010		Awareness raising on the use of flexibilities available within the multilateral framework
Elaboration of a document on flexibilities	Completed		Revised Document on Flexibilities CDIP/5/4 Rev.	Included comments made by Delegates

Description of activity	Status (completed/on going/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
Report on the International Patent System	Documents completed  Discussions ongoing at the SCP	Feb. 3, 2009 (SCP/12/2 Rev.2) Oct. 12, 2009 (SCP/14/6) Aug. 27, 2010 (SCP/15/2)	Documents SCP/12/2 Rev.2, SCP/14/6, SCP/15/2	The Report served as a basis for discussions at the Standing Committee on the Law of Patents (SCP)
Preliminary study on exclusions from patentable subject matter and exceptions and limitations to the rights	Document completed; Discussions ongoing at the SCP	Feb. 4, 2009	Document SCP/13/3	The preliminary study served as a basis for discussions at the SCP
Study on Exclusions from Patentability and Exceptions and Limitations to Patentees' Rights established by external experts	Document completed; To be discussed in the SCP	Published on WIPO's website Sept. 2, 2010	Document SCP/15/3	To be discussed in the SCP. Possible follow-up to be decided by Member States
Various preliminary studies prepared for the SCP (other than the one listed above)	Documents completed; Discussions ongoing at the SCP	Various dates 2009 - 2010	For example, documents SCP/13/2, SCP/14/4, SCP/14/5	The preliminary studies served as a basis for discussions at the SCP
WIPO Academy: Interregional Intermediate Seminar on Industrial Property	Completed	June 2010	Training course	Enhanced knowledge of the participants on implementation and operation of the rights and flexibilities contained in the TRIPS Agreement

**B. Trademarks, Industrial Designs and Geographical Indications**

Description of activity	Status (completed/on going/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
Program 2, and work of the SCT: Balanced evolution of the international normative framework for IP in relation to trademarks, industrial designs and geographical indications	Completed	N/A	SCT working documents (WIPO/STrad/INF/3)  <a href="http://www.wipo.int/export/sites/www/sct/en/meetings/pdf/wipo_strad_inf_3.pdf">http://www.wipo.int/export/sites/www/sct/en/meetings/pdf/wipo_strad_inf_3.pdf</a>	N/A
A number of outcomes offering some form of flexibilities to Member States in their application, starting with the legal form in which they were adopted, are being discussed in the SCT	Completed	N/A		N/A
Opposition procedures are dealt with in the SCT	Completed	N/A	(Doc. WIPO/STrad/INF/4) <a href="http://www.wipo.int/export/sites/www/sct/en/meetings/pdf/wipo_strad_inf_4.pdf">http://www.wipo.int/export/sites/www/sct/en/meetings/pdf/wipo_strad_inf_4.pdf</a>	N/A
Grounds for refusal for all types of marks	Completed		(Doc. SCT/23/2) <a href="http://www.wipo.int/edocs/mdocs/stlt/en/sct_23/sct_23_2.pdf">http://www.wipo.int/edocs/mdocs/stlt/en/sct_23/sct_23_2.pdf</a>	
Technical and procedural aspects relating to registration of collective and certification marks			(Doc. SC/23/3) <a href="http://www.wipo.int/edocs/mdocs/sct/en/sct_23/sct_23_3.pdf">http://www.wipo.int/edocs/mdocs/sct/en/sct_23/sct_23_3.pdf</a>	



Description of activity	Status (completed/on going/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
The Singapore Treaty and the work of the Working Group for review of Rule 3(4) to (6) of the Singapore Treaty with related outcomes	Ongoing discussions among Member States in the Working Group		(Doc. STLT/WG/1/3 ) <a href="http://www.wipo.int/edocs/mdocs/stlt/en/stlt_wg_1/stlt_wg_1_3.pdf">http://www.wipo.int/edocs/mdocs/stlt/en/stlt_wg_1/stlt_wg_1_3.pdf</a>	N/A
Possible areas of convergence in industrial design law and practice			(Doc. SCT/23/5) <a href="http://www.wipo.int/edocs/mdocs/stlt/en/sct_23/sct_23_5.pdf">http://www.wipo.int/edocs/mdocs/stlt/en/sct_23/sct_23_5.pdf</a>  (Doc. SCT/24/3) <a href="http://www.wipo.int/edocs/mdocs/sct/en/sct_24/sct_24_2.pdf">http://www.wipo.int/edocs/mdocs/sct/en/sct_24/sct_24_2.pdf</a>	N/A
Protection of names of States against registration and use as trademarks			(Doc. SCT/24/2) <a href="http://www.wipo.int/edocs/mdocs/sct/en/sct_24/sct_24_2.pdf">http://www.wipo.int/edocs/mdocs/sct/en/sct_24/sct_24_2.pdf</a>	
Trademarks and the Internet			(Doc. SCT/24/4) <a href="http://www.wipo.int/edocs/mdocs/sct/en/sct_24/sct_24_4.pdf">http://www.wipo.int/edocs/mdocs/sct/en/sct_24/sct_24_4.pdf</a>	
Trademarks and International Nonproprietary Names (INNs)			(Doc. SCT/24/5) <a href="http://www.wipo.int/edocs/mdocs/sct/en/sct_24/sct_24_www_140895.pdf">http://www.wipo.int/edocs/mdocs/sct/en/sct_24/sct_24_www_140895.pdf</a>	
WIPO Singapore Office: Policy Dialogue on Emerging Issues on Trademarks	Completed	July 26 – 27, 2010	Policy dialogue included flexibilities of the Madrid System	Enhanced understanding of the participants of the subject matter and facilitation of decision-making in adhering to the Madrid System <sup>7</sup>

Description of activity	Status (completed/on going/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
Eighteen (18) comments on laws and draft laws provided in response to requests from the Authorities of; five countries in the African Region, four countries in the Asian and Pacific region, one country in the Caucasian Central Asian and Eastern European Countries, two countries in the Central European and Baltic Region, and five countries in the Latin American and Caribbean Region	Completed	Jan. 1, 2009 – Sept. 13, 2010	Comments on laws and draft laws were provided to the requesting Authorities	Member States obtained elements needed to take informed policy and legislative decisions on, <i>inter alia</i> , the use of options that are available under the TRIPS Agreement, WIPO-administered treaties and industrial property law, taking into account Articles 7, 8 and 41 of the TRIPS Agreement
Legal advice regarding a variety of topics of IP law in response to 19 requests from; one country in the Arab Region, five countries in the Asian and Pacific Region and seven countries in the Latin American and Caribbean Region	Completed	Jan. 1, 2009 – Sept. 13, 2010	Information and answers to queries were provided to the requesting authorities	Government Authorities were able to better understand policy issues and options and take informed policy and legislative decisions on, <i>inter alia</i> , the use of options that are available under the TRIPS Agreement, WIPO-administered treaties and industrial property law, taking into account Articles 7, 8 and 41 of the TRIPS Agreement

Description of activity	Status (completed/on going/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
<p>Fifteen advisory missions undertaken to; two countries in the African Region, one country in the Arab Region, two countries in the Asian and Pacific Region, one country in the European Region and eight countries in the Latin American and Caribbean Region to discuss with Government Authorities new or revised legislation, consult on specific topics of IP law, including advice on legal options and flexibilities available under relevant international norms, and provide information and awareness on IP law in courses or seminars</p>	<p>Completed</p>	<p>Jan. 1, 2009 – Sept. 13, 2010</p>	<p>Discussions held with Government Authorities</p> <p>Presentations delivered at courses and seminars</p>	<p>Consultations to enable National Authorities to take informed policy or legislative decisions on, <i>inter-alia</i>, the use of legal options available under the TRIPS Agreement, WIPO-administered treaties and industrial property law, taking into account Articles 7, 8 and 41 of the TRIPS Agreement</p> <p>Participants at the courses and seminars acquired better understanding and awareness of the legal options available under the TRIPS Agreement and WIPO-administered treaties, and under the law of trademarks, GIs and industrial designs</p>

**C. Copyright and Related Rights**

Description of activity	Status (completed/on going/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
Studies on Limitations and Exceptions	Completed	Presented during sessions of the SCCR. The last five studies presented during SCCR/20 (June 21 - 24, 2010)	<p>Study on the Limitations and Exceptions to Copyright and Related Rights for the Purposes of Educational and Research Activities in Latin America and the Caribbean, 2009</p> <p>Study on Limitations and Exceptions for Copyright and Related Rights for Teaching in Africa, 2009</p> <p>Study on Copyright Limitations and Exceptions for Copyright for Educational Purposes in the Arab Countries, 2009</p> <p>Study on Copyright Limitations and Exceptions for the Benefit of Educational Activities for Asia and Australia, 2009</p> <p>Study on Copyright Limitations and Exceptions for Educational Activities in North America, Europe, Caucasus, Central Asia and Israel, 2009</p> <p>Study on Copyright Limitations and Exceptions for the Visually Impaired, 2006</p>	Achievement of awareness-raising goals

Description of activity	Status (completed/on going/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
			<p>Study on Automated Rights Management Systems and Copyright Limitations and Exceptions, 2006</p> <p>Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment, 2003</p> <p>Exceptions and Limits to Copyright and Neighboring Rights, 1999</p> <p>Link to the nine published studies:  <a href="http://www.wipo.int/copyright/en/limitations/studies.html">http://www.wipo.int/copyright/en/limitations/studies.html</a></p>	
Vision IP Initiative	Ongoing	Launch of the project in January, 2009	Full details at: <a href="http://www.visionip.org/news/en/index.html">http://www.visionip.org/news/en/index.html</a>	
Other activities on Limitations and Exceptions	Completed, ongoing, and proposed	N/A	Full details at: <a href="http://www.wipo.int/copyright/en/limitations/index.html">http://www.wipo.int/copyright/en/limitations/index.html</a>	Achievement of awareness-raising goals
Comments on the draft law on copyright and related rights of a country in the Asian and Pacific Region	Completed	Feb.2009	Written document with comments	Enabling policy-makers and legal experts to make informed decisions on the use of legal options and flexibilities available in the international legal framework, including the TRIPS Agreement, in national law

Description of activity	Status (completed/on going/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
Comments on the draft law on copyright and related rights of a country in the Central European and Baltic States Region	Completed	June 2009	Written document with comments	Enabling policy-makers and legal experts to make informed decisions on the use of legal options and flexibilities available in the international legal framework, including the TRIPS Agreement, in national law
Advisory mission, and draft comments on the draft law on copyright and related rights of a country in the Asian and Pacific Region	Completed	Oct. 2009	Written document with comments	Enabling policy-makers and legal experts to make informed decisions on the use of legal options and flexibilities available in the international legal framework, including the TRIPS Agreement, in national law
Comments on the draft law on copyright and related rights of a country in the Central European and Baltic States Region	Completed	Nov. 2009	Written document with comments	Enabling policy-makers and legal experts to make informed decisions on the use of legal options and flexibilities available in the international legal framework, including the TRIPS Agreement, in national law
Comments on the draft law on copyright and related rights of a country in the Asian and Pacific Region	Completed	Sept. 2009	Written document with comments	Enabling policy-makers and legal experts to make informed decisions on the use of legal options and flexibilities available in the international legal framework, including the TRIPS Agreement, in national law
Draft law on copyright and related rights of a country in the African Region	Completed	Jan. 2010	Written document with comments	Enabling policy-makers and legal experts to make informed decisions on the use of legal options and flexibilities available in the international legal framework, including the TRIPS Agreement, in national law
Advisory mission and comment on the draft law on copyright and related rights of a country in the African Region	Completed	March – June 2010	Written document with comments	Enabling policy-makers and legal experts to make informed decisions on the use of legal options and flexibilities available in the international legal framework, including the TRIPS Agreement, in national law

Description of activity	Status (completed/on going/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
Draft provisions on limitations and exceptions for the law on copyright and related rights of a country in the African Region	Completed	May 2010	Written document with comments	Enabling policy-makers and legal experts to make informed decisions on the use of legal options and flexibilities available in the international legal framework, including the TRIPS Agreement, in national law
WIPO Singapore Office: Participation in a seminar in the region dedicated for diplomats	Completed	April 22 - 23, 2010	Explanation of various built-in flexibilities for the usage of copyright materials for education and libraries	Enhanced understanding of participants of the matter and facilitation of decision-making in adhering to the WIPO treaties
WIPO Singapore Office: Participation in a seminar in the region dedicated for artists	Completed	March 2 - 3, 2010	Explanation of various built-in flexibilities in the WIPO copyright treaties, e.g., remunerating related rights in the music field, option of including resale rights in national copyright legislation	Enhanced understanding of participants on how to implement equitable remuneration for secondary use; the benefits and challenges of resale rights

**D. Enforcement of IP Rights**

Description of activity	Status (completed/ongoing/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
<p>Advisory Committee on Enforcement (ACE): Guided by Strategic Goal VI of the WIPO 2010/2011 Program &amp; Budget, as well as WIPO Development Agenda Rec. 45. Formal proposal, in 2007, by various Member States that the ACE should focus its work in the fifth session on the theme "Enforcement of rights, taking into account limitations and exceptions" (paragraph 11 of document WIPO/ACE/4/10). The Committee considered that proposal, among many others, but selected different themes in its subsequent sessions</p>	<p>Ongoing</p>	<p>Sixth session of the ACE Dec. 1 - 2, 2010</p>	<p>Working documents and Conclusions by the Chair; <a href="http://www.wipo.int/meetings/en/topic.jsp?group_id=142">http://www.wipo.int/meetings/en/topic.jsp?group_id=142</a></p>	<p>Support of a constructive and balanced international policy dialogue, taking into account Rec. 45 of the Development Agenda</p>
<p>Legislative assistance</p>	<p>Ongoing</p>		<p>Written documents with comments; consultations with Member States</p>	<p>Member States are assisted in taking informed legislative decisions on, <i>inter-alia</i>, the use of options that are available to implement Part III of the TRIPS Agreement, taking into account the balances and safeguards introduced by the Agreement, including in its Articles 7, 8 and 41</p>



Description of activity	Status (completed/on going/proposed)	Relevant dates	Output (publications, links, deliverables)	Impact (for completed activities)
Training, policy consultations	Ongoing	Listed at: <a href="http://www.wipo.int/enforcement/en/activities">http://www.wipo.int/enforcement/en/activities</a>	Analysis and discussion of, <i>inter alia</i> , the enforcement provisions of the TRIPS Agreement, including with a view to the options that are available to implement Part III, and the balances and safeguards introduced by the Agreement.	Enhanced understanding and awareness of participants of the enforcement system under the TRIPS Agreement
WIPO Academy: WIPO-WTO Advanced Course on IP for Government Officials in cooperation with the World Trade Organization (WTO)	Completed	April 26 – May 5, 2010	Lectures, discussions, WIPO publications	Effectively raised IP awareness of policy makers
WIPO Academy: WIPO-WTO Colloquium for Teachers of IP in cooperation with the World Trade Organization (WTO)	Completed	June 28 – July 9, 2010	Lectures, discussions, WIPO publications	Updated the knowledge of IP teachers on implementation and operation of the rights and obligations and the understanding and use of flexibilities contained in the TRIPS Agreement

[End of Annex and of document]