

**An External Review of WIPO Technical Assistance  
in the Area of Cooperation for Development**

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by

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# Summary of Main Conclusions and Recommendations

## 1. Background

In November 2009, the Committee on Development and Intellectual Property (CDIP), at its 4th Session in Geneva, approved the “Project on Enhancement of WIPO’s Results-Based Management (RBM) Framework to Support the Monitoring and Evaluation of the Impact of the Organization’s Activities on Development”<sup>1</sup> which includes the implementation of Development Agenda Recommendation 41, namely to conduct a Review of WIPO technical assistance activities in the area of cooperation for development.

Deliberations on WIPO’s development cooperation activities have been a central component of WIPO discussions since the proposal for the establishment of a Development Agenda for the organization was put forward in 2004.<sup>2</sup> Over the past six years, discussions on the WIPO Development Agenda have highlighted the importance of ensuring that WIPO’s development cooperation activities have a clear development-orientation and that they are grounded in national development priorities and needs.<sup>3</sup> The Development Agenda discussions have also revealed a shared interest among the diversity of WIPO’s Member States and stakeholders in ensuring the development impact, cost-efficiency, management, coordination, and transparency of WIPO’s development cooperation activities.<sup>4</sup>

The purpose of the review as stated in the terms of reference (TOR) was: “to conduct a macro level assessment of WIPO’s technical assistance activities in the area of cooperation for development to ascertain their effectiveness, impact, efficiency and relevance. In addition, the review will seek to determine the adequacy of existing internal coordination mechanisms for WIPO’s delivery of technical assistance for development, while acknowledging that the review will be conducted during a time when the Organisation is undergoing major changes in the way it operates and delivers services as articulated in the Director General’s Strategic Realignment Program (SRP).”

The main objective of the review was stated in the TOR as follows: “within the context of the WIPO Medium Term Strategic Plan 2010-15 (MTSP), the SRP and taking duly into account the WIPO Development Agenda (DA) Recommendations, to identify ways to improve WIPO’s technical assistance activities in the area of cooperation for development including ways to develop WIPO’s RBM framework to facilitate the monitoring and evaluation of the impact of WIPO’s activities on development.”

### *Definitions and Methodology*

For the purposes of this review, the definition of technical assistance activities is all activities related to:

- development of national intellectual property (IP) strategies, policies and plans in developing countries (including needs assessments);
- development of global, regional and national legislative, regulatory and policy frameworks that promote a balanced IP system (including related research and support for the engagement of developing countries in global decision-making and dialogue);
- building of modern state-of-the-art national IP administrative infrastructure;
- support-systems for users of the intellectual property system in developing countries;
- promotion of innovation and creativity, and access to knowledge and technologies in developing countries (including related research); and
- training and human capacity building in developing countries.

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<sup>1</sup> WIPO (2009). “Project on Enhancement of WIPO’s Results-Based Management (RBM) Framework to Support the Monitoring and Evaluation of the Impact of the Organization’s Activities on Development (Recommendations 33,38 and 41),” prepared by the Secretariat for the Fourth Session of the Committee on Development and Intellectual Property (CDIP), Geneva, November 16 – 20. CDIP/4/8 Rev.

<sup>2</sup> WIPO (2004).

<sup>3</sup> The External Review also sought to contribute to the assessment, recommended by the third session of the PCT Working Group (see WIPO document PCT/WG/3/14 Rev., paragraph 211bis) as to how well the PCT system has been functioning in terms of realizing its aims of organizing development cooperation activities for developing countries in the area of patents. This supplementary element was addressed by undertaking several dedicated meetings with staff in the PCT division and by ensuring focused coverage of patent-related issues in our review, including by talking with a broader set of WIPO staff working on patent-related issues than for some other issues (e.g., trademarks). The questionnaire for beneficiary countries included a number of patent-specific questions, and four of our six country visits were PCT members.

<sup>4</sup> Marchant and Musungu (2007).

Throughout the report, ‘technical assistance in the area of cooperation for development’ will be referred to as ‘development cooperation activities’.

The review was conducted by two independent external consultants selected by an internal selection committee established for that purpose. The period covered by the Review was the three-year period from 2008-2010. For the more in-depth country visits, the review considered a longer period, i.e. at least six years, in order to facilitate the assessment of outcomes and impact.

The focus of the Review was on generating evidence-based findings and capturing perceptions of WIPO staff, Member States and stakeholders. In line with the TOR for the Review, the process for the collection of relevant data and evidence included the following elements:

- a desk review of relevant WIPO documents and reports;
- interviews with staff from all Programs involved in WIPO development cooperation activities;
- six country case studies (involving field visits to national IP offices and a diversity of government stakeholders);
- consultations with Geneva-based missions;
- a request for comments and input from other stakeholders; and
- a literature review.

### *Structure of the Report*

This report has six Parts. Part 1 sets out the organizational arrangements for the management and provision of development cooperation activities as well as key trends in its distribution. It also provides a descriptive overview of the key elements of ongoing organizational change that are relevant to WIPO development cooperation activities. Part 2 describes and assesses the overall orientation and relevance of WIPO development cooperation activities. Part 3 provides an introduction to the issues of impact. To illustrate and elaborate on findings presented in Parts 2 and 3, Part 4 describes and assesses the relevance, orientation and impact of activities conducted under each of the six pillars (defined above) of WIPO’s development cooperation activities. Part 5 describes and assesses the management and cost-efficiency of WIPO’s development cooperation activities. Part 6 describes and assesses internal and external coordination in respect of development cooperation. Each Part is followed by a summary of selected recommendations relevant to the issues discussed in that section.

Following is an overview of the Report’s key findings regarding the strengths and weaknesses of the orientation, relevance, impact, management, efficiency and coordination of WIPO development cooperation activities for the period under review (2008 to 2010). The findings are followed by a compilation of the Report’s recommendations consideration by the WIPO Secretariat, Member States, and the organization’s stakeholders.

## **2. Overview of Key Findings**

This section begins with a summary of key trends in WIPO’s development cooperation activities. It then summarizes the findings according to each of the core themes for investigation outlined in the Terms of Reference for the External Review, namely: relevance and orientation, impact, management, efficiency and coordination.

### *Trends in WIPO Development Cooperation Activities*

The Review Team found significant shortcomings in WIPO’s internal processes for defining, measuring and monitoring the distribution of its budget and expenditure for development cooperation activities. This constrained the Review Team’s ability to present a comprehensive picture of trends in the composition of WIPO’s development cooperation activities, assess progress in development-orientation over time, or conduct a detailed assessment of impact or cost-efficiency.

For the period under review, the WIPO Secretariat was not able to produce a summary of its development cooperation activities by country, region, topic, objective or expected result with an accompanying breakdown of expenditure. Systematic internal processes for evaluating and reporting on impacts of particular categories of activity were absent. While there is regular reporting on Programs to Member States in the form of WIPO Program Performance Reports, this occurs at a high level of abstraction and aggregation. Although WIPO has devised an on-line database of its technical assistance activities, this remains at the preliminary stage of implementation and suffers numerous shortcomings (detailed below under Management).

The available estimates from the WIPO Secretariat suggest that the organization’s overall spending on development increased marginally in real terms and as a percentage of WIPO’s budget during the period under review. However, estimates of the development share of WIPO’s activities during the period under

Review were based on a vague definition and methodology for calculating what counted as a development cooperation activity. Indeed, during the period under review, there was no common understanding or agreed definitions across the organization of terms such as 'technical assistance', capacity building, development activity or 'development cooperation activity'. As noted also by a 2011 Internal Audit of WIPO Cooperation for Development Activities, conducted by WIPO's Internal Audit and Oversight Division (IAOD) it is thus not certain whether the actual budget share of development cooperation activities is in fact higher or lower than the available estimate.<sup>5</sup>

An examination of WIPO's regular Program and Budget alone does not reflect the totality of resources available to the WIPO Secretariat for its development cooperation activities. While the primary financial source for WIPO's development cooperation activities is the income derived from WIPO's treaty-related services (a portion of which is channelled through WIPO's regular Program and Budget to development activities), additional sources of finance include extra budgetary resources (such as Funds-in-Trust (FITs) for activities in donor countries and third countries) as well as in-kind support and the leveraging of resources through partnerships. There was also an appropriation from WIPO reserve funds for the implementation of the WIPO Development Agenda.<sup>6</sup> Drawing together available evidence, the Review Team total estimated that the total budget that WIPO devoted to development activities from 2008/09 to 2010/11 was over CHF 284 million (see Box 1.2 in Part 1 of this report).

The budget allocations associated with the implementation of CDIP projects represent a growing portion of WIPO's overall budget for development cooperation activities. The financial resources devoted to the 19 approved CDIP projects amounts to CHF 21.9 million (although, as noted in Part 1 of this report, the total figure may be higher if all personnel related costs to these projects are counted).<sup>7</sup> While an important sum, this represents less than 10% of the total WIPO budget for development cooperation activities. From 2008/09 to 2010/11, FITs represented 13 percent of the total estimated budget for WIPO's development activities (i.e., the financial resources for FITS activities are greater than those specifically allocated for Development Agenda projects approved by WIPO's Committee on IP and Development (CDIP)). For some of WIPO's Programs and activities, extra-budgetary FITs were a significant, equal or greater source of resources than those allocated from WIPO's regular Budget. In the period under review, however, none of the extra-budgetary resources associated with FITS were reported in an integrated way alongside or as part of the WIPO Program and Budget, nor was there any systematic reporting to Member States about how FIT-financed activities contribute to the organization's objectives or expected results in the area of development cooperation. Whilst there are efforts underway to leverage new additional extra-budgetary resources and to seek contributions to WIPO or to Member States from other potential donors, such as bilateral development agencies or private philanthropic sources, the Review Team found that these have not yet yielded concrete contributions.

Importantly, WIPO's development cooperation activities are conducted throughout the organization. Indeed, beyond the Development Sector, all of WIPO's seven Sectors are either directly involved in the planning or implementation of some development cooperation activities or indirectly play a support role. Similarly, all but a handful of WIPO's 29 Programs are involved in some aspects of its development cooperation activities. The growth of CDIP activities is also associated with a growing role for WIPO's substantive Sectors in the delivery of development cooperation activities. That said, the Review Team found that the greatest share of the WIPO regular budget that is allocated for development cooperation activities goes toward the activities of Program 9 (e.g., for the work of the Regional Bureaus). The proportion of total resources available to the Regional Bureaus is even higher if the allocations from FITs are added. The regional Bureaus also have the greatest number of staff posts overall devoted to development cooperation activities. As noted above, however, the WIPO Secretariat is not able to produce a total breakdown of region-by-region expenditure that also includes the activities of its other 28 Programs at the regional level.

### *Development Cooperation amidst Organizational Change*

This External Review occurred at a time when WIPO was undertaking a number of organizational change initiatives. For instance, to implement WIPO's Strategic Realignment Program (SRP), the WIPO Secretariat was working to better align its Programs, organizational structure, internal processes, and resource allocation to increase responsiveness to customers and stakeholders, deliver greater value for money, take stronger responsibility for its performance, and work in an ethical manner. The Review also took place amidst WIPO's efforts to implement and mainstream the WIPO Development Agenda. As such, the many WIPO development cooperation activities are under revision or in a pilot phase. The Review Team notes that the purpose and Recommendations of the WIPO Development Agenda go well beyond WIPO's

<sup>5</sup> WIPO (2011), Executive Summary, Draft IAOD Internal Audit Report: Review of Cooperation for Development Activities, WIPO: Geneva.

<sup>6</sup> These funds were originally from the regular WIPO budget. However, internal financial arrangements meant that these could not be carried over to the subsequent biennium, and so they were placed in reserve funds for use in the next fiscal period.

<sup>7</sup> This figure does not include the additional project approved during the 7<sup>th</sup> session of the CDIP in May 2011.

development cooperation activities to focus on a broader cultural change in how WIPO works across its entire suite of activities and in the balance of the global IP system. This report has not, however, sought to explore the development-orientation of WIPO's other activities, such as norm-setting, or their alignment with the Development Agenda Recommendations. (The CDIP has called for a separate review of the mainstreaming of the Development Agenda throughout WIPO's work at the end of the 2012/13 biennium.)

### 3. Findings by Theme

#### *Orientation*

The overall orientation of WIPO's development cooperation activities is set out in its biennial Program and Budget documents, which rely on input from Member States and the Secretariat and are approved by WIPO's Membership. The approved range of activities thus reflects a combination of the varying priorities of the cross-section of WIPO's Member States as well as the Secretariat. The Secretariat has room, nonetheless, for discretion in the interpretation and implementation of the mandate contained in the Program and Budget, particularly when it comes to designing the substance, format and prioritization of particular activities and workplans for their implementation. The Review Team found that the orientation (and impact) of WIPO's development cooperation activities is also a function of the interest, absorptive capacity, and engagement of beneficiary Member States, as well as their approach to managing their interaction with the WIPO Secretariat. Consultations between the Secretariat and individual Member States in the course of designing and implementing country-specific activities also affect the final orientation of activities.

During the period 2008 to 2010, the Review Team found that WIPO's senior management increased its focus on integrating the WIPO Development Agenda Recommendations into the organization's development cooperation activities. Since 2008/09, for instance, there have been improvements in the degree to which subsequent WIPO Program and Budgets – and the development cooperation activities described therein – reflect attention to the WIPO Development Agenda and its Recommendations, as well as to WIPO's nine Strategic Goals and its results-based management (RBM) framework. There are also a number of respectable plans and efforts at the Program and individual level to improve the development-orientation of some development cooperation activities, spearheaded by the 19 approved CDIP projects. The Review Team also found that the Secretariat is undertaking efforts to achieve an appropriate level of funding for the Development Agenda, although these have not yet translated into additional extra-budgetary resources.

However, the Review Team found that significant challenges remain to translate into action the various plans, principles, stated intentions and expected results in terms of stronger development-orientation. At least four different kinds of challenges were identified.

First, at the institutional level, the Review Team found that WIPO has not yet incorporated a sufficiently clear and broad understanding of the overall purposes of WIPO's development cooperation activities. Nor is there an adequate definition of what 'development-oriented' assistance, as called for in the Development Agenda Recommendations, actually means. To facilitate its own analysis, the Review Team proposed the components of a possible definition, which incorporated and expanded upon elements set out in the TOR for this Review (See Box 2.2 of the Report). According to the TOR, WIPO's assistance is meant to ensure 'that developing countries and least developed countries are able to benefit from the use of IP for economic, cultural and social development.' The TOR for this Review further stated that WIPO's development cooperation activities 'aim at contributing towards the reduction of the knowledge gap and the greater participation of the developing and least-developed countries (LDCs) in deriving benefits from the knowledge economy.' Importantly, the Review Team's analysis of the expected results detailed in the 2010/11 Program and Budget revealed that a relatively small proportion of expected results related to these two objectives. Moreover, according to analysis conducted by the Review Team, less than 15% of WIPO's total proposed budget in the proposed 2012/13 WIPO Program and Budget is allocated for activities related to these two objectives (see Part 3 of this Report on Relevance and Orientation).

The Review Team also found that the culture of collaboration, public engagement and openness to different perspectives on the IP system necessary for improved development-orientation is not yet institutionalized within WIPO, but rather depends on the particular efforts of individual staff. Many staff interviewed by the Review Team view WIPO's primary role as being the guardian of the international IP system. While this role is clearly one of the organization's core functions, it is also responsible for the pro-IP institutional culture observed within WIPO. While that uncritical pro-IP culture is being tempered by greater consideration of development concerns, the Review Team still found that many staff interpret the Development Agenda narrowly. There needs to be greater guidance and leadership from WIPO Member States and the Secretariat that the WIPO Development Agenda – and the associated calls for shifts in the orientation of development cooperation activities – include, but go beyond, 'IP for development'. The organization should indeed show how IP can work for development, and help countries to achieve that, but

it should also not lose sight of the broader intention of the Development Agenda, namely to render WIPO a more effective multilateral forum for critical discussion, debate and problem-solving on issues at the intersection of IP and development and a source of greater assistance to countries in designing, implementing and benefiting from a more balanced framework at the global, regional and national level. In this regard, the Review Team found that while some of the necessary improvements in the development-orientation of WIPO assistance are underway and simply require more time for progress to be realized, there are still areas where more structural and underlying problems in terms of understanding, awareness, openness to different perspectives, and staff motivation need to be addressed.

Second, in terms of the overall balance in the orientation of WIPO's development cooperation activities, a comparison of the 2008/09 Program and Budget and the proposed 2012/13 Program and Budget reveals that the overall orientation of activities and budget allocations for development cooperation activities is shifting. Weaknesses in the way WIPO's Program and Budget document is structured and presented (see Part 1 of this report) meant that the Review Team was not able to clearly establish the relative distribution of resources across the development cooperation activities undertaken by WIPO Programs, Sectors, and divisions. It was not possible to establish where the majority of the development cooperation budget goes and thus to assess whether this distribution adequately reflects the degree of priority particular issues/activities deserve from the point of view of development. This challenge was exacerbated by the fact that a significant proportion of the overall development spending is allocated to Program 9, where the description of activities contained in the Program and Budget documents does not provide any classification or summary of budget allocation by the Bureaus according to particular issues, objectives or expected results.

The Review Team's analysis of the narrative sections of the 2008/09 and 2010/11 Program and Budget documents revealed a strong orientation of WIPO's assistance toward improvements in IP administration, public awareness of the IP system, training administrators of the IP system, and the adoption of legislation across the full spectrum of IP issues, as well as promoting understanding of and accession to WIPO treaties. The Review Team found that the range and intensity of activities in the area of industrial property, and budget allocations, was greater than for copyright and related rights, despite the fact that creative and cultural industries represent one of the strongest potential development areas for many developing countries. While there were WIPO activities to address issues such as geographical indications and traditional knowledge, these were less well resourced than other issues. In the case of TK, the Review Team found, for instance, that the diversity of activities underway was broad but the resources available for implementation and follow up were limited. The 2010/11 Program and Budget document suggests that the scale and intensity of WIPO development activities on global public policy issues, rebalancing the IP system to reflect development priorities, research on IP and development, and reducing the knowledge gap through technology transfer and access to knowledge do not yet properly reflect the degree of priority that developing country Member States accord to them (as indicated, for instance, by priorities expressed by those Member States that responded to the Review Team's survey of beneficiary countries).

The Review Team's analysis of the two relevant Program and Budget documents (i.e., 2008/09 and 2010/11) further revealed WIPO's portfolio of activities to be stronger in terms of assisting developing countries to derive broader benefits from the global IP system, than it was to help them with the flip-side of the same agenda – to lower the costs developing countries and their stakeholders face in using the IP system. There were relatively few activities, for instance, that clearly contributed to goals such as: a) the use of TRIPs flexibilities; b) promoting access to medicines and education; c) enlarging the public domain; d) ensuring efforts to address counterfeiting and piracy are aligned with national needs and conditions; e) the alignment of IP laws with efforts to protect natural resources, cultural expressions or TK and genetic resources from unfair use; and/or f) the promotion of competition in the area of IP. There was also a low overall emphasis on development cooperation activities that would directly contribute to the goal of reducing the knowledge gap, such as for instance activities that would help countries to: a) attract, absorb, learn from and produce technologies and/or promote affordable access to knowledge that could contribute to local innovation processes; b) promote the coherence of IP policies and other areas of national public policy; c) make practical use of various exemptions or sui generis legal/policy options that would improve access to foreign technologies and/or manage the degree of protection they receive; d) support developing countries to protect their knowledge, creative products or technologies in international markets and to enforce their rights in other jurisdictions; and e) establish and use mechanisms that could improve balance in national IP systems, such as those related to pre- and post-opposition to patents.

Third, the Review Team found that weaknesses in the development relevance and orientation of WIPO's activities were closely linked to its planning processes. While beneficiary countries were involved in the design and implementation of activities in their country, the relationship between the country-level planning process (bottom up) and WIPO's organization-wide planning processes (top-down) was weak. Further, for most countries, the Review Team found that there was no systematic process of needs assessment, priority-setting or yearly or strategic multi-year planning of WIPO's activities. In the absence of IP strategies



or the determination by beneficiaries of their priorities for WIPO assistance, development activities were undertaken on an ad-hoc, request-driven basis (usually in response to requests from IP offices) or were driven by the workplans of WIPO's Programs and those associated with WIPO FITs. In 2011, the Development Sector is embarking for the first time on designing a template for use by all the Bureaus for country planning and IAOD will conduct its first country-level evaluation of WIPO's assistance in the form of a Country Portfolio Evaluation (CPE) of Kenya.

The Review Team also found confusion among Member States and within the Secretariat about the meaning of the term 'demand-driven'. *Development-oriented* demand-driven assistance is that which is aligned with national development needs. This in turn requires a dialogue between national beneficiaries and the WIPO Secretariat about national development strategies, priorities and needs and about WIPO's obligations to advance the Development Agenda. Too often, staff interpret the term 'demand-driven' to mean that they are obliged to respond to Member State requests, even where links to national needs or the WIPO Development Agenda are unclear, or where activities are not likely to be cost-efficient or yield impact. 'Request'-driven assistance is not necessarily, however, commensurate with development-oriented assistance. The Review Team found that perceptions among staff that they should 'never say no' to requests contribute to problems of morale and motivation - ranging from frustration to complacency among some staff in respect of their sense of accountability for outcomes. WIPO development cooperation activities should properly be seen by both parties as an ongoing partnership where mutual contributions are required for activities to be successful. The Review Team found that there is inadequate discussion between WIPO staff and Member States on the risks associated with activities or the local conditions and requirements that would facilitate or constrain the success of activities (even where WIPO staff are well aware of the constraints).

The Review Team also found examples where the activities provided resulted from offers or suggestions from the WIPO Secretariat, which was accepted by beneficiary Member States, rather than the other way round. Further, in the case of workshops and conferences undertaken at the regional or sub-regional level, beneficiary countries exerted less influence on the structure and content of the program and speakers, deferring more to the WIPO Secretariat to take the lead on preparation, than was the case for national-level activities. This is not to say that such regional activities were never useful or that the WIPO Secretariat should be prevented from proposing activities. Rather, the point is the need for transparency about the origins of Secretariat proposals for activities at the regional level, a clear relationship to broader strategic planning, results-management and priority-setting processes at the country and organization-level, and opportunities for Member States and stakeholders to provide input to ensure the appropriate development-orientation of activities.

Fourth, the Review Team found that progress in mainstreaming of the Development Agenda Recommendations is uneven at the implementation level, particularly in terms of the design of Program workplans and the conduct of concrete development activities. While the 19 CDIP projects underway represent a key force for change (which is not surprising given that they emerge from CDIP discussions intended to help guide the transformation of WIPO's overall development orientation), they account for only a small proportion of the overall budget devoted WIPO's development cooperation activities and, at the time this review was completed, it remained too early to judge their outcomes. Following is a selection of examples of challenges at the implementation- and activity-level derived from the Review Team's Pillar-by-Pillar examination of WIPO development cooperation activities (see Part 4 of this report).

In regard to WIPO's assistance to countries for the formulation of national IP strategies, for instance, the Review Team found that the Secretariat does not yet use a satisfactory methodology for assisting developing countries to assess their development needs, IP capabilities and appropriate strategies.<sup>8</sup> While WIPO is concurrently developing at least two such methodologies (see Part 4.2 of this Report), both remain in the early stages of implementation. Meanwhile, beyond the pilot strategies being pursued as part of a CDIP project on IP Strategies, an ad hoc approach to support for IP strategies exists. The Review Team found several shortcomings in the development orientation of the tools that form the basis of the CDIP project, but noted that the responsible staff demonstrate a strong commitment to revising the methodology in light of lessons learned as the project unfolds. The Review Team observes that the development-relevance of the two IP strategy projects will demand active engagement with a diversity of external stakeholders and expert (e.g., including, for instance, the WTO, WHO, UNCTAD, development agencies, and NGOs) and consistent internal coordination on the substantive and procedural aspects of each project.

In terms of WIPO's support for legislative, regulatory and policy frameworks in developing countries, the Review Team's efforts to evaluate the development orientation of WIPO's legislative advice (e.g., such as evidence of incorporation of advice on flexibilities in international treaties) were thwarted by the confidentiality of WIPO's country-specific legislative advice. The Review Team found that WIPO no longer

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<sup>8</sup> WIPO has developed and used an 'Audit Tool', which is essentially a questionnaire for IP offices to assess their needs, but this has not been comprehensively used.

uses model laws as a basis for its legislative assistance to countries. Evidence gathered by the Review Team showed that support related to legislative systems in developing countries is not only provided through specific legal advice, but also through seminars and through WIPO supported IP plans and strategies. In these cases, the Review Team found that when discussing international treaties, the orientation of plans was toward promoting accession to international treaties administered by WIPO. While the importance of flexibilities was noted, practical and proactive advice on how to use such opportunities was limited. The Review Team found that WIPO provided only sporadic advice, on request, to developing countries on ongoing international negotiations, multilateral or bilateral, or the implementation of bilateral agreements (although some advice is provided with all of the countries' obligations in mind). While some countries did seek and receive advice on the implementation of IP provisions in bilateral FTAs, WIPO did not provide assistance in examining the possible development impacts of these or any other international IP negotiations or implementation options.

In terms of activities to enhance support systems for users of the IP system, the Review Team found that there is a gradual move toward greater support for the use of 'IP for development.' However, the integration of critical development perspective to the conceptualization and planning of such activities is often missing. The Review Team found, for instance, inadequate attention to assessment of the needs of a diversity of potential users and stakeholders at the national level, and to strategic prioritization among them based on development priorities. Without such assessments, the focus remains on promoting the use and usefulness of the system to existing and potential IP right-holders in developing countries. While this may be an important priority for some countries, there is a need also for greater attention to activities that might help governments and other national stakeholders address the challenges of ensuring a balanced and development-oriented IP legislative, regulatory or policy framework.

With regard to WIPO support for the modernization of IP office infrastructure in developing countries, the Review Team found that the focus of WIPO activities was stronger in the area of patents and trademarks, than for areas that some countries indicated were of higher priority, such as copyright and creative industries, traditional knowledge, and industrial designs. Further, attention to modernization activities that focused on supporting collaboration, information-sharing and coordination among developing countries was low as a proportion of the overall activities underway.

A final aspect of orientation considered by the Review Team was the degree and diversity of external stakeholder engagement in the provision of WIPO assistance and as its beneficiaries. The Review Team found that the diversity of recipients at the national level is steadily growing – and include stakeholders ranging from universities and SMEs to indigenous communities and Ministries of Science and Technology. However, the dominant beneficiaries and participants in activities at the national level remained national IP offices and organizations representing the interests of IP-right holders and legal community. Recipients from civil society and NGO communities were much less prevalent. Part 4.2.2 of this Report notes that WIPO's global events predominantly featured speakers from IP offices, IP right-holders, the IP legal community, and other industry-related stakeholders. The Review Team also found individual examples where assistance activities were sub-contracted to consultants and other providers known also to be funded by or to conduct work primarily for the benefit of developed country industry clients. No examples were found of similar arrangements with developing country research institutes or civil society organizations for the provision of WIPO assistance (although the Review Team acknowledge that individual consultants that work with NGOs or developing country research institutes have been contracted for certain activities). In the absence of greater disclosure of the substantive content of particular activities (such as the content of legislative assistance and presentations made in national and global events) or a mapping of the degree to which different stakeholders are involved across the spectrum of WIPO's development cooperation activities, the Review Team could neither confirm nor rule out problems associated with disproportionate influence of particular companies, international industry associations, or right holders organizations on the orientation of assistance.

### *Impact*

WIPO's portfolio of development cooperation activities comprises a vast number of individual activities and projects, with a diversity of outputs on a broad number of issues for the benefit of a range of stakeholders. The Review Team's survey results and country visits affirm that most national IP offices consider support from WIPO and other developed country donors to be very important for their operations.<sup>9</sup>

Even where the overall amounts of money spent are small relative to larger scale development agencies, the impact of WIPO's work to modernize IP systems in developing countries is significant, particularly in terms of legislative and regulatory frameworks. In this respect, the level of resources allocated for particular development cooperation activities is not necessarily indicative of the scale of impact they may have on development outcomes. For instance, while the provision of legislative and policy advice generally requires

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<sup>9</sup> Deere (2008), and Leesti and Pengelly (2002).

relatively small resources (i.e., compared to activities to modernize IP office infrastructure), the use of such advice may have long-run and deep implications for the distribution of costs and benefits of the IP system within and across countries.

The Review Team's ability to offer an assessment of the impact of WIPO's activities on developing countries was hindered by the absence of systematic monitoring, reporting and evaluation of the impact of WIPO's development cooperation activities against their expected results by category of activity or by country during the period under Review. It was thus also not possible for the Review Team to make any independent comparative assessment of the impact of activities over time.

Evaluation of WIPO's performance in this respect was further complicated by the absence of a systematic information management system where detailed information on the content of projects is provided. While some information was available in the Program and Budget documents, and the Program Performance Reports, these documents do not provide activity-specific information and are at a high level of generality. A further source of information was the annual WIPO report to the WTO TRIPS Council on its activities relevant to the implementation of the TRIPS Agreement. However, neither this report nor WIPO's new Technical Assistance Database provide anything beyond a basic description of information (such as the title, date and location of the activities). Together, these sources still fail to provide the level of detailed information on WIPO's activities by objective, content, expected results, country, region or topic, nor on the related expenditures. In short, there is a limited empirical basis for impact assessment, effective management, monitoring of progress or critical evaluation by the Organization, its Member States or stakeholders.

The Review Team found that WIPO staff increasingly understand the need to measure impact and to demonstrate the development outcomes of their activities, but that the challenges in this respect are high. WIPO generally did not have adequate data from the national level to assess impact in short or long-term. The Review Team also found a lack of clarity within the organization about what 'development impact' means at different levels and for the diverse range of activities in which WIPO is involved.

On this point, the Review Team observes that there are considerable empirical, methodological and conceptual challenges to evaluating the relationship between IP systems and development, and the role of development assistance. The attribution of impact to particular development cooperation activities is fraught with risks of over-attribution as well as under-acknowledgement of unpredicted challenges or circumstances for which the organization is not responsible. Further, for many development cooperation projects and activities, there is not necessarily a direct and straight line relation between particular activities and ultimate impact, and impact can be assessed at many different levels. The focus could be on the macro, sectoral or micro level; the short or long-term; or on the extent to which activities produce concrete impacts on national development indicators at the aggregate level (such as the level of GDP per capita or FDI) or on specific socio-economic indicators (such as access to public health or education levels). There is also a need for different kinds of measures and indicators of impact according to the varying purposes of interventions (e.g., institutional change, balanced legislative frameworks, public awareness, the capacity of users, the quality of national expertise on IP issues, or an enabling regulatory environment for the realization of development goals). To date, the Review Team found that WIPO lacks the relevant diversity of methodologies and tools to help countries measure the impact of changes in IP policies and laws on development and other strategic objectives, or to properly assess how its development cooperation activities may influence the achievement of such impacts.

The Review Team found that the focus of any internal assessments that do take place is generally on the short-term results (e.g., over two years), not long-term or cumulative impact. For instance, in the area of training, although WIPO's training activities appear to be highly appreciated by Member States and the Secretariat is able to list a great number of individuals and institutions that have received training, the ultimate development impact of these activities is not well explained or monitored. For instance, WIPO conducts a number of trainings to increase in the number of patent examiners in developing countries, but there is no evaluation of whether such training has made a difference in terms of, for example, the ability of the recipient country to process a broader range of applications or to do so more efficiently. The Review Team's country visits revealed that a number of seminars, professional training and activities, conferences were not properly adapted to the specific needs of recipients, and there was a lack of follow up to ensure usefulness and exploitation of any benefits.

In addition to the challenges that inadequate needs assessment posed to the prospect of development impact, the Review Team found evidence of variation in the degree of local ownership of activities, attention to the sustainability of results, and follow-up on the part of the WIPO Secretariat.

## *Management*

The Review Team found that the management and oversight of development cooperation activities by the WIPO Secretariat and its Member States was poor in the period under review.

As noted above, the WIPO Secretariat was not able to provide meaningful summaries or evaluations of development cooperation activities, budgets or expenditure by country, region or expected results for the period under Review. Further, for the 2008/09 and 2010/11 Program and Budgets, WIPO lacked an adequate definition of what counted as a development cooperation activity for the purposes of the Program and Budget process. Effective monitoring and evaluation mechanisms for development cooperation activities were not in place. Indeed, effective monitoring and evaluation were impossible in the absence of an effective information management system for maintaining an updated, substantive information about the activities completed, underway and planned, the associated budgets and expenditures (personnel and non-personnel) or the content, impacts and evaluation. This poor management frustrated efforts to promote a strong development-oriented results based-framework at the institutional, Program and country level and undermined efforts to improve the development orientation, impact and cost-efficiency of WIPO's development cooperation activities or to monitor progress made in regard to the 19 Development Agenda Recommendations for immediate implementation.

For the period under review, many Programs had not yet devised appropriate expected results and the monitoring of such results was frustrated by poor data gathering at national and institutional level. Even where data on the results of activities was gathered, there were methodological challenges in discerning the causal links between WIPO's specific activities and immediate results, and measuring the relationship between such results and longer-term development impacts. The Review Team also notes that WIPO has not yet devised RBM frameworks for its development activities at the country or regional level.

While the WIPO Member States approved WIPO's Program and Budgets during the period under Review, they were not provided an adequate strategic overview of WIPO's development cooperation priorities, activities and budget allocation. In light of weak reporting, monitoring and evaluation, the Review Team found that it was not possible for WIPO Senior Management or Member States to provide effective oversight of WIPO's development cooperation activities. Transparency and accountability were thus weak. For the period under review, WIPO Member States could and some did provide input to the WIPO Secretariat on development activities through the Program and Budget Committee's processes, such as through feedback and comments on the draft Program and Budget documents and on Program Performance Reports. However, there was (and remains) an absence of clarity about the appropriate forum and opportunities for Member States to perform an oversight function of WIPO's development activities on an ongoing basis. WIPO's Program and Budget Committee is invited to comment and provide input on WIPO's draft Program and Budget, and the Program Performance Reports, but these do not provide specific reference or details on development assistance as a whole, whether by region, country, topic or orientation. Moreover, a review of Program and Budget Committee meeting records reveals, however, that there was little substantive discussion of the overall strategic direction and content of development cooperation activities in the Program and Budget Committee. Similarly, while the CDIP discusses issues related to the alignment of WIPO's development cooperation activities with the Development Agenda Recommendations, and has approved specific projects, it is not involved in the planning or assessment of the development cooperation activities of the organization as a whole on a regular basis (although it did call for this External Review). The Review Team notes that some WIPO bodies (such as the PCT Working Group) are discussing how and where to best review the organization's patent-related development cooperation activities.

Important efforts to improve WIPO's RBM framework and its implementation were underway in the latter part of the period under Review and represent a significant step in the right direction. At the organizational level, the Review Team found evidence of a comprehensive and serious effort on the part of the organization's Senior Management to boost consistency between strategic outcomes and outcome indicators at the organizational level. Similar efforts were underway at the Program and Budget level in terms of the quality of expected results, performance indicators and baselines. Some of these efforts at the Program and Budget are reflected in the proposed 2012/13 Program and Budget. As the organization's work to implement its results-based framework advances, there will be an ongoing need for the WIPO Secretariat, its Member States, stakeholders and experts to refine and update expected results and appropriate baselines and performance indicators for their measurement. Given the outstanding challenges with the overall orientation of WIPO's assistance described above, this task must be recognized as being about more than incremental improvements or cosmetic changes in language or buzz-words used, but needs to be associated with substantive shifts in thinking among staff and with external collaborators on how to design and implement long-term activities that will improve the development-orientation and outcomes of IP systems. Additional challenges remain in terms of strengthening the RBM framework to monitor performance and results at the evaluation level and to devise appropriate tools for reporting to stakeholders at the end of the results chain.

The Review Team also found inadequate use by the WIPO Secretariat of project management tools for planning, design and implementation of activities. Beneficiaries of WIPO assistance were not necessarily experienced with the use of project management and monitoring tools. Indeed, such tools sometimes

overwhelm the capacity of offices charged with using the diversity of tools deployed by different donors to review the relevance and impact of projects. On the Secretariat side, the introduction of Progress Reports on individual WIPO CDIP Projects represent important foundations for building a culture of greater accountability for results within the organization and should be more widely adopted across the organization.

The Review Team found evidence of problems with the timely implementation and completion of WIPO development cooperation activities. These difficulties highlighted inadequate assessment and discussion by the WIPO Secretariat and beneficiary Member States of the risks associated with proposed development cooperation activities, country preparedness, institutional and resource constraints in beneficiary countries, and absorptive capacity. Although many recipients at the national level reported that they enjoy good communications with the WIPO Secretariat, the Review Team found that this interaction too rarely involved frank exchanges and dialogue on potential challenges with activities, thus limiting the scope for these to be foreseen or anticipated at the outset. The Review Team also found that the effectiveness of projects was undermined by short time-frames for implementation. Many activities were either one-off or were conceived on a 1 to 2 year time-frame, whereas they should properly have been designed as part of a longer term 3-5 year process, with several phases.

In some areas, the Review Team found that WIPO was trying to do too much with too little staff, capacity or expertise. While some use of outside expertise may be appropriate, particularly where specific local knowledge or technical skills are needed, the Review Team found an over-reliance on consultants to fill gaps where the organization should properly be investing resources in more appropriately qualified staff and that the organization does not always have the ability to properly supervise the quality or orientation of consultants' work.

The Review Team found uncertainty on the part of Member States about the appropriate contact people within the Secretariat for development cooperation activities. Conversely, it also found uncertainty on the part of the WIPO Secretariat about the appropriate national focal point in beneficiary countries. For many of WIPO's development cooperation activities, national IP offices were the core beneficiaries. Indeed, IP offices have traditionally been WIPO's core interlocutors and remain their main focal points in Member States' capitals. The Review Team found that WIPO Secretariat staff widely favoured focusing their interactions on national IP offices as their core 'clients', which they consider to be 'closest to the ground' and to national needs, particularly compared to Geneva-based missions charged with representing national interests. That said, the Review observed that WIPO is working to broaden its relationships at the national level, particularly by reaching out to Ministers at the national level and Geneva-based Ambassadors.

The Review Team found that country IP offices did not have a clear overview of what support other parts of their governments or national stakeholders received from WIPO. There was often, for instance, weak communication between IP offices on the one hand, and foreign affairs and trade ministries that are often responsible for international IP negotiations and diplomacy at WIPO on the other. Similarly, there were often weak contacts between IP officials and other government officials charged with broader economic development planning either within their Ministry or beyond. In most beneficiary countries, governments lack effective processes for internal coordination on IP decision-making and the quality of stakeholder consultation or engagement varies, although the number of countries establishing committees for these purposes is growing steadily. In the meantime, IP-related development assistance is often requested in a silo, separate from other development cooperation activities.

The Review Team also found that there has been inadequate attention to the broader *public* transparency of the organization's development activities, which is important for the purposes of external evaluation, learning, credibility and accountability. WIPO's website was not, for instance, properly harnessed, maintained or updated to serve either as an effective instrument for communication about WIPO's development assistance activities, as a platform for collaboration or critical evaluation, or as a source of technical assistance and resources for potential beneficiaries.

### *Cost Efficiency*

The Review Team identified a number of factors that unduly raised the cost of WIPO development cooperation activities, including inadequate use of project planning tools, weak attention to cost-considerations, duplication, institutional bottlenecks or procedures, and inadequate access to qualified staff or consultants for some activities. WIPO's financial reporting methodology for the period 2008-2011 did not facilitate an analysis of the extent to which certain modes of delivery of development cooperation activities are used, the relative resources devoted to them, and their cost-effectiveness. The Program and Budget documents and Financial Management Reports during the period under review presented an overview of WIPO's budget 'by object of expenditure.' The categories that defined objects of expenditure were not, however, well aligned with the kinds of modes of delivery used by the organization for its development

cooperation activities. The information the Review Team could glean about the proportion of activities offered via particular modes of delivery and their cost-effectiveness was thus minimal.

The Review Team found that many WIPO staff complain of lack of resources (personnel and/or non-personnel) for achieving results. Without an in-depth activity-by-activity evaluation it was not possible to determine how accurate these complaints are and how resources could be better allocated.

### *Internal Coordination*

The WIPO Secretariat faces difficulties ensuring internal coordination of the diversity of development cooperation activities undertaken by different Sectors and Programs of the organization. A core challenge during the period under Review was the limited use of systematic needs assessments, national IP and development strategies, or country plans to set the framework for WIPO's assistance at the country level. Further, the role and responsibilities of the various Programs and Sectors for liaising with Member States, implementing activities, monitoring and evaluating progress toward objectives and expected results, and ensuring follow up were not well defined. In addition, the internal mechanisms for promoting coordination and collaboration were inadequate.

The Review Team's Pillar-by-pillar review of WIPO's development cooperation activities revealed examples of duplication. The Review also revealed equally significant challenges of failures to harness adequately the potential synergies between activities. Shared responsibility for Programs need not necessarily be a problem if roles and responsibilities are clear, and coordination is high. However, there was not often the case in the period under Review. There was too little direct knowledge among staff about the activities of other Programs and Sectors in related areas or about concurrent activities within the same country. The Review Team found inadequate connections between assistance delivered by Regional Bureaus, WIPO's external offices and the substantive Sectors. There was inadequate strategic clarity about the roles, responsibilities and accountability of the external offices in the delivery of development cooperation activities, and whether and what their comparative advantages might be. As noted above, the implementation of CDIP projects has already set in motion a shift toward the substantive sectors in implementation of activities (i.e., the Development Sector does not implement most CDIP projects, although many are implemented collaboratively).

As this Review was being concluded, important efforts were underway in the context of the proposed 2012/13 Program and Budget to streamline planning to clarify the roles and responsibilities of WIPO's Sectors for realising the objectives and expected results of each Program, and of those working on particular Programs in contributing to the Strategic Goals of the organization. The remaining challenge is to put management mechanisms in place to ensure that coordination occurs in practice, both for the design and the implementation of WIPO's Programs.

### *External Coordination*

The Review Team found variation in the degree and effectiveness of WIPO's coordination with other international organizations, donors and stakeholders in regard to its development cooperation activities. Overall, there was inadequate strategic thinking on the part of Member States or the Secretariat on the diversity of external partnerships and collaborations needed to fulfill the Development Agenda mandate. The Review Team did not find evidence of systematic mapping by any Program that undertook technical assistance activities of other relevant actors and potential collaborators, or competitors, in the field.

The Review Team found important examples of collaboration pertinent to advancing the organization's development goals on some issues. Nevertheless, it also found many instances where there was too little effort to benefit from or learn from similar activities underway by other providers of assistance. In the absence of collaborations and partnerships with an adequate diversity of national development cooperation agencies, international organizations, and stakeholders, WIPO has not been able to learn and benefit from their experience, share information, data and expertise or to build synergies with their programming at the national, regional, or issue-level. In short, in its efforts to become more development-oriented, WIPO has been missing the opportunity to benefit from the experience of the broader international development community. The Review Team acknowledges, however, that WIPO alone cannot be held responsible for cases where coordination is weak, as there is a need for interest in coordination and collaboration to be expressed by other actors.

The Review Team found that even where collaboration with certain international organizations and donors at the institutional level has been improving (e.g., among Secretariats of international organizations on certain global events), this did not necessarily extend to activities at the national level, where a multiplicity of donors, sometimes with competing views, were active in advising or supporting countries on similar areas of activity. Member States with limited absorptive capacity sometimes received a series of disjointed activities from multiple actors. The absence of country plans for assistance, made it difficult for WIPO or the Member State to consult with multiple partners on the appropriate division of labour and/or partnerships on

potential activities. Instead, the Review Team found evidence of duplication and overlap with other actors, particularly national or regional IP offices that have their own development assistance budgets and programs. A further implication was that the organization was not able to benefit from work already conducted by others. This problem was particularly prominent in the area of training, but also in office modernization, needs assessment and the development of IP strategies and policies. For instance, the Review Team found no efforts to collaborate with other international agencies on the formulation of methodologies and implementation of activities related to national needs assessments and IP strategies for development.

During the period under review, a primary focus of WIPO's efforts to forge partnerships was on resource-mobilization, both to boost funds for WIPO's activities and to help Member States directly access funding to meet their national needs. While important, these resource mobilization efforts should not overshadow the need for WIPO to pursue partnerships with the purpose of supporting, learning from, or collaborating with the diversity of other donors and stakeholders active in providing development assistance to developing countries on IP-related needs, and on related areas of public policy, such as public health, innovation, science and technology.

The Review Team found that WIPO's engagement with stakeholders on development cooperation activities varied according to the issue (e.g., indigenous knowledge, public health, industrial designs, and cultural industries) and type of activity (e.g., events, trainings, national seminars). Overall, there was greater evidence of WIPO's engagement with IP right-holders, their associations and private sector IP experts than with civil society actors (e.g., consumer rights, public health, library, development actors or public interest lawyers), research institutes and universities, particularly those from developing countries. WIPO engaged regularly as a participant and a co-sponsor of events with organizations such as the International Chamber of Commerce and various right-holders organizations. By contrast, WIPO had relatively little collaboration with several international organizations (such as UNDP, the South Centre, UNCTAD) and civil society groups active in promoting development-oriented approaches to IP policy and practices (such as the International Centre for Trade and Sustainable Development, Third World Network and Knowledge Ecology International). For such organizations, WIPO's interaction was generally limited to participating or speaking at their events where invited. The implication of WIPO's weak engagement with a range of international and national stakeholders and potential partners in the implementation of development cooperation activities is that countries do not benefit from a diversity of expertise, experience and views. In short, the WIPO Secretariat has significant scope to forge and sustain a greater diversity of partnerships and to pursue these more systematically to improve its development cooperation activities.

## 4. Summary of Recommendations

The recommendations set forth in this Report draw from the Review Team's findings, as well as the input of Member States conveyed through the survey responses and recommendations gathered in the course of country visits and consultations, a public consultation process, and interviews with WIPO staff.

The recommendations are offered to spur reflection and debate within and between the WIPO Secretariat, its Member States and stakeholders. They are divided into three main sections: (i) recommendations related to each of the core themes highlighted in the Review TOR; (ii) recommendations for each of the six Pillars of WIPO development cooperation activities analysed in this Report; and (iii) recommendations specifically for beneficiary countries. Please note that the recommendations for each of the six Pillars also include recommendations related to the themes highlighted in the Review TOR.

Many of the recommendations presented call for improvements in the internal processes of planning and management that impact the orientation, impacts and results of WIPO development cooperation activities, and would not require any additional resources. Some recommendations represent opportunities for cost savings and could significantly mitigate problems of resource wastage that might otherwise occur if not implemented. There are also some recommendations where new resources would need to be allocated for their implementation.

## 5. Selected Recommendations by Theme

Recommendations in this section cover the five key themes covered by the TOR for this Review: (i) relevance and orientation; (ii) impact; (iii) management; (iv) cost-efficiency; and (v) internal and external coordination.

### *Relevance and Orientation*

#### *Integration of Development Agenda Principles, Guidelines and Best Practices*

The Development Agenda provides clear guidance on the principles that should guide WIPO's development cooperation activities, namely that it should be development-oriented, demand-driven,

flexible, and be adapted to the different interests, socio-economic realities and levels of development of Member States (see in particular Cluster A of the Development Agenda Recommendations). The challenge now is to **ensure that progress achieved in integrating Development Agenda priorities and principles at the planning level is translated into better results at the implementation level.**

#### *Improve the Development-orientation of Activities*

WIPO's development cooperation activities should **adhere to widely accepted principles, guidelines and best practices in the broader field of development cooperation (such as the OECD's Paris Principles)**. All WIPO staff and consultants involved in development cooperation activities should be informed about and follow these principles and best practices. They should also be engaged in ongoing training on key developments in the broader realm of development assistance.

The WIPO Secretariat should devise "development guidelines" providing specific detail on how to plan and implement more development-oriented assistance, both in terms of substance and process, based on the Development Agenda principles. These development guidelines should be supplemented by a specific manual that details best practices and appropriate content for each of the main topics and modes of delivery of IP-related cooperation. The development guidelines should be used by all Programs and stakeholders engaged in WIPO development cooperation activities, including consultants, along with a Code of Ethics for individual providers and experts, whether WIPO staff, consultants or unpaid speakers/experts (discussed in Part 5 of this Report on Management).

The expected results set out in WIPO's Program and Budget need further refinement to address explicitly the different components of development orientation (e.g., such as those set out in Box 2.2 of this Report) are integrated across WIPO's Programs, projects and activities.

The WIPO Secretariat and its Member States should refine and reorient the organization's Strategic Goals, outcomes and outcome indicators in the MTSP to reflect a comprehensive conception of development-orientation. In particular, these should better reflect the two core objectives of WIPO's development cooperation activities as stated in the TOR for this Review (i.e., reducing the knowledge gap and increasing the participation of developing countries in the benefits of the IP system – and reducing its costs). The importance of Programs and activities devoted to these two objectives should be more visible within the organizational hierarchy and budget of WIPO, and in the activities undertaken at country and regional level. A working group could be established to elaborate a paper on strategies to advance progress in these two areas.

#### *Improve Prioritization and Balance of Activities Undertaken*

The WIPO Secretariat and its Member States need to **devise clearer objectives and priorities for its development cooperation activities, a process for prioritization of activities, and criteria for determining what activities fall within those priorities.** Internal processes for the prioritization of activities by Program, expected results, and Country, and the allocation of the regular funds in the Program and Budget process should be more transparent. There is a need for greater attention to integrating and streamlining development goals and *priorities* across WIPO's various Programs from the top down through the Program and Budget process, and from the bottom up by ensuring that the overarching organization-wide Programs, development cooperation activities and priorities are informed by and aligned with country needs and priorities.

There are six potential sources of input into the prioritization and planning of development cooperation activities that need to be integrated. First, the country needs assessment and planning processes should bring a 'bottom-up' perspective on an iterative basis, including to priority-setting for the Program and Budget processes. Second, the Program and Budget process should focus more on the identification of core priorities and their integration into Programs. Third, the WIPO Development Agenda's vision about the role of WIPO in IP and development should be incorporated. Fourth, the results of improved evaluation processes (discussed below) should generate lessons about priorities and successful activities that should be reflected in future planning. Fifth, the WIPO CDIP can play a role in identifying and proposing projects and activities. The CDIP could, for instance, establish an "expert group" on development issues to advise the Secretariat and Member States on cross-national initiatives to promote a more balanced IP system and complement country-based, demand-driven proposals.

#### *Integrate Budgets and Planning for all Development Cooperation Activities*

A key prerequisite for such prioritization is for all development activities and resources to be integrated into WIPO's regular Program and Budget process. **Activities supported by Funds-in-Trust (FITs) and associated resources should be reflected in WIPO's regular budget, programming and reporting processes.** Activities supported by FITs should also be integrated into the country planning process. WIPO should adopt guidelines to ensure the alignment of FITs activities with the development goals, priorities, and expected results outlined through WIPO's Program and Budget Process and RBM Framework. There



is a need to ensure greater member state oversight of the content of FITS workplans and their evaluation. The creation of multi-donor funds on particular topics, rather than individual funds for each donor should be considered.

The prioritization process demands **greater reflection about WIPO's comparative advantage among the community of donors and providers of IP-related development assistance, the strategic role of the organization and the modalities that it is best positioned to use.** Questions for consideration include: How much should WIPO's focus be on implementation of activities at the national level versus facilitating the coordination of activities among many donors or brokering access to new resources at the request of Member States? To what extent should WIPO serve as a training institute and where should its priorities lie? To what extent can and should the organization build and diversify its in-house expertise to address the expanding range of demands it faces? To what degree should its work be outsourced to consultants or conducted through institutional partnerships?

*Improve Demand Management, Partnership and Outreach for Development Cooperation*

**Development cooperation activities should be conceived as a *partnership* between the WIPO Secretariat and beneficiary Member States.** Governments need to clearly define and communicate to WIPO their preferences in terms of the key focal point between their government and WIPO for development cooperation activities. This is increasingly important because as the scope of WIPO's development cooperation activities grows, the beneficiaries at the national level will further multiply and evolve. For some activities, there may be a need for greater flexibility in the use of channels of communication and focal points at the national level. This will boost the need for coordination by national governments to ensure the overall coordination and impact of the portfolio of WIPO's activities in a country. The role of Geneva-based missions in the process of communicating national needs and priorities, and in liaising with WIPO on the details of assistance, warrants more careful definition by countries. The challenge is to link the local knowledge of national needs that emerges from government ministries and stakeholders in capital with the political expertise, strategic overview and experience of international organizations that is the comparative advantage of Ministries of Foreign Affairs and Geneva-based missions.

The WIPO Secretariat needs to **improve outreach and guidance to Member States on the range of development cooperation activities** it offers. A 'menu' or catalogue of development cooperation activities should be made available to help countries discern the scope of possible activities that might feature in their country plans. This guide should detail what kinds of development cooperation activities that WIPO provides (e.g., by region and Program), the process for requesting assistance, the time-frame for receiving requested assistance, possible modes of cooperation (e.g., one-off or multi-year projects, overarching cooperative agreements that combine several activities, country plans, etc), and the appropriate focal points within WIPO. The guidelines should provide advice on whether assistance can be at the regional, national, district or city level, the kinds of stakeholders at the national level that can request assistance and through what channels; and the process for engaging other providers, donors, or experts in the activities. In addition, the guidelines should set out the process for monitoring and evaluating country-level activities and considerations in respect of country-preparedness, such as absorptive capacity, risks, and matching resources required. Finally, the guidelines should indicate the processes by which Member States can guide the overall planning and prioritization of WIPO development cooperation activities. The guidelines should be reviewed, updated on an annual basis, and made prominently available on WIPO's website.

The **meaning of the term demand-driven needs clarification.** The emphasis on demand-driven development cooperation activities does not mean the WIPO Secretariat should be passive in the face of requests for assistance that are conveyed in the absence of needs assessments, that are inconsistent with national development needs or with the WIPO Development Agenda, or that are not cost-effective or sustainable. WIPO's development cooperation must be based on a dialogue in the context of national development needs and strategies and WIPO's obligations to advance the Development Agenda. The focus of WIPO's development cooperation activities should not be on 'responding to requests' but rather on promoting a dialogue with and among member states about needs and priorities and the appropriateness of different kinds of assistance given a country's level of development, preparedness, absorptive capacity and risks, as well as the competing demands on WIPO's resources and its obligations to advance the WIPO Development Agenda. Staff should address obstacles and risks frankly with national authorities so that expected outcomes and results are realistic. Stronger efforts should be made to identify options and discuss alternatives; where such activities are beyond the scope of those WIPO is in a position to undertake, the Secretariat should help countries identify alternative providers.

WIPO Member States and the Secretariat should **consider whether WIPO's development cooperation activities offerings need to be altered, supplemented or complemented to address the needs of particular categories of countries** (in addition to the LDC category already in use). It would be useful to consider groupings that acknowledge the commonalities that can exist between, for instance, small versus large IP offices, countries with or without search and examination capabilities (for industrial property), and

large emerging countries versus middle income developing countries. These groupings could be useful to help the organization learn lessons across countries on some issues and to devise appropriate versions of their activities to align with those specificities. Further, several of WIPO's larger emerging developing country Member States may no longer be significant *demandeurs* of development cooperation activities as currently defined, but they may have strategic needs and interests in the changing global IP environment to which WIPO should respond.

**Greater attention to development cooperation activities that enable South-South cooperation should be a priority.** For instance, the sharing of experiences and expertise among developing countries could be enhanced as a way to deliver more development-oriented and efficient activities.

#### *Boost Country Ownership*

**WIPO should improve efforts to better tailor its development cooperation activities to national development objectives and circumstances.** A development-oriented approach must consistently integrate and acknowledge the importance of the social and economic context, national development goals and priorities, and the broader regulatory and institutional environment of the country.

The WIPO Secretariat should **assist countries to undertake and update national needs assessment for IP-related development cooperation activities**, ideally informed by national IP and development policies or strategies formulated with input from relevant government departments and stakeholders. Needs assessments should be used to **improve country-level planning of development cooperation activities** that are linked to clear expected results, targets and performance indicators. The WIPO Secretariat and Member States should be informed about concurrent efforts by other providers to develop and use toolkits for such assessments and work to coordinate with or complement them.<sup>10</sup>

WIPO should continue to refine and then deploy a flexible template for the preparation of multi-year country plans for its assistance. The template should be used in conjunction with national IP policies and strategies, and needs assessment tools, to prioritize WIPO assistance. Country plans should be a focal point for dialogue with Member States and for all WIPO staff planning activities in a particular country to enhance coordination, prioritization and efficient use of resources. The country plans should be compatible with the Development Agenda Recommendations, WIPO's strategic goals, the RBM framework, and the organization's financial and human resources. The plans should include a mapping of the activities of other donors and actors and specify the appropriate niche for WIPO's interventions. WIPO should also encourage and help Member States to put in place a strategy for soliciting and managing the assistance it receives, and assist them to identify and facilitate access to other sources of assistance.

**The WIPO Secretariat and beneficiaries must pursue a more meaningful dialogue on preparedness, challenges and risks.** The WIPO Secretariat should make greater up-front efforts to inform countries of the demands development cooperation activities may place on national resources – institutional, human and financial – from the needs assessments phase through to the design and implementation of country plans. The Secretariat should tailor, adjust or postpone proposed activities based on an assessment of internal resources available in beneficiary countries. The country planning process should be a tool for building mutual understanding of resource constraints and the need for priority-setting.

The WIPO Secretariat and Member States should **devise processes to boost oversight of its development cooperation activities at the regional level.** WIPO should also review its development activities for regional IP offices, including by consulting with Member States on how to improve the development-orientation of these offices and bolster the national expertise necessary for them to provide oversight of such regional IP arrangements.

#### *Broaden Stakeholder Engagement, Ensure Balance of Perspectives and Boost Transparency*

**WIPO should support countries' efforts to establish national committees on development and IP involving the full range of relevant government agencies** working on public policy in areas impacted by IP reforms (such as health, education, cultural, agricultural and industrial agencies) **and non-government stakeholders** (e.g., civil society groups, industry and academic analysts active in the fields of IP, investment, innovation, health, education, development, science and technology). This should **include support for public consultation and engagement** in the formulation of country plans and the design and delivery of IP-related development assistance.

To ensure a balance of perspectives in the assistance provided, and to protect against undue influence of more powerful or better-resourced stakeholders, WIPO should more systematically monitor the diversity of stakeholders and experts involved in the provision of its assistance (e.g., as consultants, speakers and trainers). As part of their regular reporting responsibilities, each WIPO Program should produce a breakdown of partners and providers used across its activities, particularly its development cooperation

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<sup>10</sup> See, ICTSD/Saana Consulting Needs Assessment Toolkit (2007) and the WTO's needs assessments for LDCs.

activities, according to the category actor (e.g., NGO, developed/developing country government agency, research institute, industry association, or company).

Alongside more comprehensive reporting by the WIPO Secretariat on the content and outcomes of its development cooperation activities, better development-orientation demands a stronger institutional culture on the part of the Secretariat in favour of engagement with and learning from a diversity of external stakeholders and researchers, as well as a more open approach to media relations that recognises the importance not only of drawing attention to WIPO's successes but to open dialogue about the challenges WIPO faces in the field of development cooperation and substantive debates on IP and development.

#### *Improve the Development-orientation and Accessibility of Research and Evidence-base for Development Cooperation Activities*

Greater attention is needed to ensuring the development-orientation, internal and external peer-review, quality, communication strategy and availability of research and studies conducted by WIPO.

(Also see recommendation on data-gathering on IP and development in Part 3 of this Report on Impact.)

## **Impact**

### *Strengthen Tools and Processes for Measuring Impact*

WIPO needs to devise **and deploy tools and processes to better measure the impact of development cooperation activities** at the country, sectoral and institutional level. WIPO's new Section on Economic Analysis and Statistics should take leadership on devising a set of rigorous methodological papers and comparative studies of practices in other fields of development assistance in this respect. An expert group, comprised of WIPO staff and external experts, should be established to help review on an iterative basis the tools for measuring impact, as well as the organization's RBM tools more broadly (also see recommendations below on Management).

Discrete measures will be needed to discern the impact of different kinds of assistance activities: legislative advice and assistance; office modernization; institutional capacity-building; public awareness-raising; training, etc. The impact of WIPO's development cooperation activities on institutional capacity-building will be easier to assess, for instance, if efforts to determine impact and indicators are unbundled according to different stages of a 'results chain': 1) the immediate improvements in the technical capabilities of beneficiaries; 2) the ability of beneficiaries to apply and use that increased capability; and 3) the ultimate outcomes or impact on the efficiency or orientation of institutions.

### *Strengthen Processes to Boost Institutional Learning, Follow Up and Accountability for the Impact of Activities*

The WIPO Secretariat needs to **develop tools and processes to improve institutional learning, monitoring, follow-up, institutional memory and staff accountability for development activities**. These could include tools and processes to: 1) improve horizontal communications between WIPO Sectors and Programs to generate ideas and share experiences; and 2) ensure the systematic electronic-based collection of information about activities by topic, country and expected results in a format that is accessible to all staff across the organization. For each topic, there should be a general overview of the issue or activity, previous experiences, constraints, limitations and evaluations of outcomes.<sup>11</sup> Processes are also needed to keep staff informed about the latest developments in their given area and to incorporate the most recent knowledge and lessons learned on effective assistance, from within and beyond WIPO, even if these are on different issues or in different regions.<sup>12</sup>

### *Support Data-gathering, Analysis and Lessons Learned about the Intersection of IP and Development.*

WIPO should support efforts to **build knowledge and expertise within and beyond the organization on the relationship between various IP systems, rules, policies and practices and their development impacts at varying levels and for different sectors**. This would then form an important basis for understanding the degree to which WIPO's development cooperation activities contribute to particular development outcomes.

WIPO should support efforts at the national level to gather data that would assist evaluations of the impact of IP systems on national development goals. This data could also be used to inform the definition and monitoring of baselines and performance indicators of WIPO development cooperation activities.

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<sup>11</sup> See WIPO (2009) Strengthening Development Cooperation: Elements for Discussion, Internal Discussion Paper, October.

<sup>12</sup> Ibid.

### *Strengthen Results and Impact Monitoring, Evaluation and Reporting*

**WIPO's RBM framework should be applied consistently to emphasize the importance of results and impacts, rather than inputs or the number of development cooperation activities.** Greater attention to reporting on impacts, as well as the challenges of achieving impact, should be integrated into the Secretariat's tools for reporting to the WIPO General Assembly and the CDIP on development cooperation activities.

**More systematic and regular monitoring, evaluation, reporting, evaluation and follow up** is needed to focus on the longer term results and the cumulative impact of WIPO development activities, particularly those aimed at improving institutional capacity over the longer-term. This could be achieved through more systematic ex-post evaluations of expected results of development cooperation at the Program and activity level over a 5 to 10 year period. (The WIPO 2010-15 Evaluation Strategy foresees the completion of up to 10 country and 5 Program evaluations in the next 4-5 years).

In assessing impact and results, WIPO staff should be more cautious in attributing successes or failures to their own development cooperation activities. Greater attention to devising **realistic expected results and up-front acknowledgement of risks** will help diminish the challenges of accurate attribution. Given the high institutional emphasis on demonstrating commitment to development issues, Senior Management should be vigilant in ensuring incentives for realistic indicators of performance and expected results as well as accurate reporting.

(Also see recommendations in Part 5 of this Report on Management).

### *Expand range of non-government stakeholder collaborations to help sustain results and promote diversity of perspectives*

WIPO should **expand the range of non-government stakeholders with which it collaborates and consults in the planning and delivery of development cooperation activities to diversify the perspectives on the IP system and development that inform its work.** To boost sustainability of results, WIPO should pursue greater collaboration with a broadened range of durable local actors in countries, particularly NGOs, research centres in developing countries, local chambers of commerce, SMEs, and inventors' associations, through activities such as the co-organization of events, research, technical assistance activities and training.

### *Adopt a Policy on External Partnerships and Stakeholder Engagement*

The WIPO Secretariat should draft an **organization-wide policy and strategy on outreach, engagement and partnerships with** IGOs and non-government stakeholders, including NGOs, industry, academia and IP practitioners, for approval by Member States.

The policy should include **guidelines for engagement with stakeholders** in the planning, implementation and evaluation of its development cooperation activities (e.g., such as through the Program and Budget process and formulation of country plans), for engagement in joint events and development cooperation activities, and for financial support for participation in meetings and seminars. Regular briefings of a broader range of stakeholders would boost accountability and understanding of the organization's work.

The policy should also include guidelines for the involvement of the private sector in WIPO development cooperation activities that would **ensure disclosure of conflicts of interest.**

## **Management**

### *Review Organizational Structures for Oversight and Management*

**The process for Member State review and guidance on WIPO development cooperation activities needs to be boosted.** WIPO Member States have an important role to play in the substantive planning, review and evaluation of the content of the organization's development assistance over time. A decision should be made about the most appropriate organizational focal point for that review – whether the Program and Budget Committee, the CDIP or some other specifically-tasked body. The decision should be taken with due consideration of the overall reporting burden on the Secretariat. As the IAOD publishes its Country Portfolio Evaluations (CPE) of WIPO assistance, these will also need to be discussed in detail by an appropriate Member State body within WIPO's Committee structure.

Ensuring WIPO's technical assistance serves development necessitates a monitoring and evaluation mechanism that is independent of the WIPO Secretariat and reports directly to Member States, although it would be funded through the WIPO budget. Currently, no such mechanism exists at WIPO (although such a mechanism is common in all other international organizations). Such a mechanism would also receive feedback from relevant stakeholders and take action that is appropriate following investigation of the complaint.

From a governance perspective, WIPO's organizational structure for the delivery of WIPO development assistance deserves in-depth consideration by the Secretariat and Member States. Development cooperation activities should be insulated from debates about the fees for WIPO's treaty-related service and the use of resources generated, as well as from normative pressures that may emerge in the process of discussion and negotiation of new treaties (including the possible use of assistance to advance specific agendas or interests in the norm-setting process). Options should be explored for making capacity-building activities organizationally distinct from WIPO's other activities, particularly those that related to the administration and negotiation of WIPO treaties (and to ongoing policy debates in WIPO Committees) and to the services provided under these treaties (e.g., collection of payments from right-holders under the PCT and Madrid Treaties).

#### *Strengthen RBM Framework.*

The Secretariat must continue to improve its RBM Framework to facilitate better planning, monitoring and evaluation of the impact of WIPO's activities on development. This should include refining the definition of appropriate targets, results and performance indicators, as well as continuing to improve baselines for each of these. The refinement of these RBM tools will be an ongoing process requiring consistent leadership from WIPO's senior management, in particular to motivate staff engagement at both the planning and implementation phases. Failure to engage seriously in this endeavour will result in meaningless performance management tools and measures.

The Secretariat should **form an Expert Review Team for the review and elaboration of WIPO's RBM framework.** An expert Review Team comprised of senior internal staff and external experts in IP, development and RBM should be established to assist the organization in the iterative process of developing and refining meaningful baselines, targets, expected results and indicators. This should include ongoing consultation and interaction with other multilateral and development agencies on their practices and experience in this respect.

The organization should **invest greater attention to its own gathering and systematization of data used to measure its performance.** This must be complemented by support for Member States to also gather data relevant to measuring the relationship between IP policy, legal and regulatory frameworks and various development outcomes, and the impact of WIPO's development cooperation activities. At the outset of major activities, WIPO staff and local authorities should agree on how progress and success of the activity will be measured, and the process for gathering the data needed to make such assessments.

#### *Improve Measurement and Monitoring of Development Cooperation Activities, Expenditures and Results*

WIPO should continue its efforts to **improve measures for estimating the personnel and non-personnel budgets for development cooperation activities and improve its information systems for estimating and tracking actual expenditures.** For the 2012/13 biennium, the Secretariat has introduced improvements so that it will be possible to report all of the organization's activities – and costs – according to categories of expected results and to see what share of the budget for each expected result is counted as development-related. In future Program and Budgets and Program Performance Reports, the reporting on development activities by each Program, should be supplemented by a section summarizing the expected and actual results of development activities across the organization's Programs as a whole.

WIPO urgently needs an electronic information management system for managing, monitoring and evaluation and sharing information and coordination on the plans and status of development cooperation activities. All inputs, outputs, baselines, expected results and performance indicators should be included in the system to facilitate ex-post tracking.

Future WIPO Program and Budgets should further improve the budget categories used. The traditional presentation of the budget by 'object of expenditure' has been usefully supplemented in the proposed 2012/13 Program and Budget with a presentation of the 'budget by expected results.' This could be further improved in future biennia by reporting on budget allocations by 'mode of delivery'.

#### *Devise and Implement an Effective Evaluation Framework for WIPO's Development Cooperation Activities*

To deliver real benefits to developing countries and value for money for all, the WIPO Secretariat and Member States must **devise a more comprehensive, systematic framework for monitoring and evaluating WIPO's development cooperation activities.** These evaluations must employ a relevant and publicly-available set of qualitative and quantitative indicators and development benchmarks, based on principles and guidelines reviewed through consultations with international experts. The indicators and benchmarks should be built into the newly-evolving country-level needs assessment and country planning processes in order that these are designed with expected results and evaluation in mind. A useful tool for evaluating WIPO's development cooperation activities would be a table that lists WIPO's performance indicators and enables their comparison with different possible types or levels of development outcomes.

**A core focus of evaluation should be to facilitate learning about where and how activities are successful, what factors most impact the degree of success, where progress is being made or not, and how improvements could be made.** Moreover, evaluation processes should facilitate effective decision-making about future Program activities and priorities. Where activities are not achieving expected results, the evaluation process should be a trigger an end or adaptation of such activities.

Evaluations should be undertaken at various levels of the organization – at the Program and country-level, at the project level, and according to expected results. The focus of evaluations should be on development-orientation, development-impact, management, cost-efficiency and coordination. The most appropriate types of evaluation will vary depending on the type of activity and the purpose of the evaluation. There are four relevant approaches to evaluation: (1) internal evaluations conducted within Programs to promote learning and improve activities, as well as organization-wide self-reporting on overall Program Performance; (2) independent internal evaluations at the country, Program, sectoral or project level undertaken by WIPO staff not directly involved in the activities under evaluation or by IAOD; (3) joint internal and external evaluations; and (4) independent external evaluations.

**All evaluations should seek to use and build on WIPO's evolving RBM framework and process.** The results of such evaluations should be reflected in WIPO's Program Performance Reports. These Reports should in turn be improved to ensure that progress in defining expected results, targets and performance indicators is translated into improved monitoring, evaluation and reporting.

The piloting and review of **the Country Portfolio Evaluation (CPE) framework being developed by WIPO's IAOD should be considered a top organizational priority.** The country evaluation framework should build on the significant resources WIPO is already investing in its RBM framework, strategies on IP and Development, and country planning, as well as research conducted under the auspices of the WIPO Chief Economist. The final framework and pilot country studies should be reviewed by an expert group composed of internal and external experts on evaluation, IP and development. In addition, the evaluation framework already being devised for the Development Agenda should be made available for public comment.

#### *More Strategic Decision-making and Planning of CDIP Projects*

WIPO Member States have already approved new processes for ensuring that all CDIP projects, like other development cooperation activities, should have clear links to the organization's RBM framework (e.g., they should all have clear links to specific WIPO objectives and expected results) and the integration of CDIP projects into the organization's Program and Budget process. The next stage is **to ensure that the process for reviewing, possibly extending, and/or mainstreaming existing CDIP projects is also properly integrated into future Program and Budget processes and is aligned with strategic planning at the organizational, Program and country level.** The respective roles of Member States and WIPO Member States in the elaboration of future CDIP projects should be clarified, as should the process for identifying beneficiary countries and priorities.

The CDIP has already foreseen a review of the current Coordination Mechanism and the implementation of the Development Agenda in the 2012/13 biennium. In the interim, there should be no automatic extension or expansion of CDIP projects in the absence of evaluations at the end of project periods, particularly in the case of pilot projects and projects designed to test methodologies. After such evaluations, WIPO Member States and WIPO's Senior Management must take the lead in ensuring that successful CDIP projects, where consistent with strategic goals, organizational capacities, and Member State interests, are properly mainstreamed into the development cooperation programming of the organization.

#### *Improve Transparency, Reporting and Communication of Development Cooperation Activities*

**WIPO's development cooperation activities must be more effectively reported and communicated to Member States, major stakeholders and staff as well as to other donors and providers active in the field.**

**An integrated information management system is urgently needed** to: generate timely management reports to inform; assist managers in effective decision-making and coordination; facilitate access to systematic and consolidated information on the content of WIPO's development cooperation interventions at the activity and country level; enable internal and external monitoring and evaluation; and facilitate partnerships with others. As the implementation of WIPO's Enterprise Resource Planning (ERP) System advances, this should provide organization-wide opportunities for more systematic monitoring of the development cooperation activities contained in Program workplans.

WIPO Member States should clarify and broaden their Development Agenda Recommendation with respect to the purpose and nature of WIPO's Technical Assistance Database.<sup>13</sup> The purpose must be broadened so that the Database can serve as a vehicle for critical review of WIPO's development cooperation activities for relevance and effectiveness; to enable structured evaluation of the implementation of Development Agenda Recommendation 1 regarding development-orientation; and to facilitate comparison of the activities on offer, particularly by potential recipients and other donors.

Specifically, the Technical Assistance Database should be redesigned to facilitate internal and public searching of activities according to the WIPO Program, region, country, expected results, type of activity, time-frame, categories of beneficiary and modes of delivery with associated information about resource-allocation and expenditures. The results of internal and external independent evaluations of activities should be made publicly available in an accessible and searchable format through the database. The design of the database should also be better aligned with the organization's overarching RBM framework and Program Performance Report process.

The WIPO Secretariat should **ensure more systematic and regular updating of its content by all Programs**. Ultimately, the Technical Assistance Database should be integrated with WIPO's Enterprise Resource Planning System as it comes on-line, but should also maintain a discrete identity as a tool for public transparency.

**WIPO's website should be upgraded to serve as a more effective vehicle for communicating with stakeholders, beneficiaries and other donors about WIPO development cooperation activities.** To boost the website's potential element to help enhance the engagement of developing countries in the international IP system and serve as a training resource, WIPO must undertake immediate measures to improve the accessibility and searchability of information, research, and statistics. The narrative sections of WIPO's website need updating to accurately reflect and describe WIPO's development cooperation activities as approved in the Program and Budget.

*Better Integrate Development-Orientation into Human Resources Management of Staff and Consultants.*

WIPO should swiftly **conclude a 'gap analysis' of staff skills and competences** to understand where it lacks skills, competencies and expertise relevant to improving the orientation, impact and management of its development cooperation activities.

**WIPO's recruitment and PMSDS processes should be harnessed as opportunities to align the organization's human resources management with development goals.** To properly mainstream development principles, attention to the Development Agenda needs to be integrated throughout WIPO's hiring process, including its recruitment advertisements. To improve the breadth of experience and expertise of WIPO staff and consultants, and to promote a more development-oriented culture and mindset within the organization, WIPO's recruitment processes should be expanded to target candidates beyond the traditional pool of IP experts to other fields (development economics, business development, politics, non-IP fields of law, health, agriculture, etc.).

The PMSDS process should be harnessed to boost staff incentives for maximising the development-orientation, impact, and efficiency of the development assistance activities in which they are involved. Instructions for staff and consultants with regard to Development Agenda principles should be more binding (i.e., by linking employment incentives and professional rewards to development-related performance indicators), with clear metrics for monitoring and evaluation. The WIPO Secretariat needs to improve **systems for tracking staff time devoted to development activities**. WIPO managers and staff are already expected to set out goals on an annual basis as part of the PMSDS. This process could also be used to monitor and gather data on the proportion of time staff budget and spent on contributing to the achievement of particular expected results. One option could be to incorporate into all job descriptions and annual workplans an estimate of the anticipated proportion of time that will be allocated to expected results with a development component (Note that the Review Team does not propose a burdensome process of filling in timesheets but rather to take advantage of existing processes, such as the PMSDS).

WIPO should **adopt a Code of Ethics** for WIPO staff and consultants that reflects the principles of the Development Agenda and includes provisions on conflict of interests. The most expeditious approach would be to include provisions on development cooperation in WIPO's new draft Code of Ethics (which is being devised to complement the regular UN staff rules and WIPO's staff code of conduct). All WIPO staff, experts and consultants should be obliged to read and sign the Code of Ethics, complete conflict of interest disclosure statements, and review the Development Agenda principles (which should be included as an amendment to all contracts).

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<sup>13</sup> WIPO Development Agenda Recommendation 5 calls for the Secretariat to display 'general information on all technical assistance activities on its website, and shall provide, on request from Member States, details of specific activities, with the consent of Member State(s) and other recipients concerned, for which the activity was implemented.

WIPO should **adopt Guidelines to ensure transparent processes for selecting external experts and consultants**. Contracts should be awarded through an open bidding process. Consultants should be evaluated after each assignment and reports must be available to other WIPO staff for review before a consultant is re-contracted. WIPO should take a multi-disciplinary approach, using professionals and experts from different backgrounds and disciplines as well as those with different views on the IP system. It should work to harness and build local expertise through consulting assignments. To increase transparency and accountability, WIPO's new Roster of Consultants should be enhanced to include the full CVs of consultants and explicit disclosure of potential conflicts of interest. For those wishing to take WIPO contracts, there should be an obligation to join the Roster and provide such information. The Roster should also include links to the outputs of consultants' work and to any WIPO evaluations or reports on the results of the activity.

An additional measure that could broaden the pool of development expertise and experience within WIPO and help build links with the broader international development community would be to broaden WIPO's program for secondments to and from the organization (to prioritize secondments to and from other UN agencies, development donors, and a range of national government agencies, in addition to IP offices) .

#### *Review Modes of Delivery Activities and Functional Expertise*

The WIPO Secretariat should **undertake assessments of the various modes of delivery for WIPO's development cooperation activities** to establish lessons learned and best practices for future planning, design and implementation. This could include an assessment of the various tools used for needs assessment, strategic planning and evaluation, as well as cross-cutting categories of activities, such as conferences, on-line courses, seminars, study visits, provision of equipment, etc. It would, for instance, be useful to establish how effective the design and implementation of WIPO conferences and meetings are in terms of yielding results, whether in terms of follow-up actions, new expertise or new collaborations. A review in this area would need to involve consideration of the WIPO Conference Services Section and the relevant Programs responsible for planning the substance, agenda, and participation in meetings.

The organization should **explore ways to build functional expertise**, including by clearly designating internal staff as focal points or experts on various modes of delivery, such as training, public outreach, the design of workshops/conferences/seminars, etc. To date, for instance, WIPO's Program Management and Performance Section has been designated as a focal point for questionnaires that are used to measure performance. Given that questionnaires are widely used as a tool by many Programs (e.g., for needs assessments, to gather input on Programming, and to solicit data on IP-related trends, etc), it would be useful to have a designated focal point for in-house expertise on the effective design and use of questionnaires. Similarly, the Communications Division's role as a reference point for activities related to public outreach and the publication of research and studies could be enhanced.

#### *Adopt a Structured, Project Management Approach to Development Activities*

**A more structured, project-management approach to development cooperation activities is needed.** A project-based approach aid more careful negotiations with recipients on the content of activities, and facilitate improved monitoring and evaluation. The 'paper-based' project document templates currently being used for CDIP projects could be adapted to this purposed, while a more effective electronic information management system is developed (e.g., as part of the WIPO Enterprise Resource Planning System).

The WIPO Secretariat needs to **ensure that processes are in place to learn from pilot development cooperation activities and projects**. This is particularly the case for Development Agenda activities, where current demand for many projects exceeds the original intended scale of projects and where many projects were launched as 'pilots' for testing and refining before expansion. Efforts to review successes and failures before the replication of projects in multiple countries will help ensure realistic expectations and preparedness on the part of countries that request participation in the projects.

### *Cost Efficiency*

#### *Review Internal Cost Efficiency*

To improve efficiency and sustainability, WIPO should **reduce duplication and overlap of activities within the organization and with other providers** (see recommendations on External Coordination below). Improvements in cost-efficiency demand **improved transparency of the cost and resource allocation associated with WIPO's development activities**.

**A review of cost-efficiency is needed to help WIPO identify opportunities for cost-savings.** This review should include consideration of costs according to 'mode of delivery'; appropriateness of staff in terms of their qualifications; institutional bottlenecks/procedures that may unduly raise the costs of



activities; and whether **resources are adequate for achieving and sustaining expected results**. Inadequate estimation of resources is likely to impede effectiveness and thus waste of resources.

**Greater use of South-South cooperation as a basis for learning and exchange of experiences could be a strong source of cost-efficiency.** Further options the Secretariat should explore include: greater use of a diversity of regional and local experts and consultants as providers of technical assistance; outsourcing some IT functions; boosting use of open-source software; greater use of video-conferencing for WIPO training activities; web-casting of WIPO events at global, regional and national level; greater use of Skype or other VOIP tools for telephonic communications; and stronger attention to the training of trainers in regions and at the country level.

Improved attention to the sustainability and long-term impact of activities at the country and Program level will also help boost cost-efficiency. In this regard, a planning horizon of 3-5 years for many activities, rather than a two-year biennial cycle, would focus attention on medium and long-term results. (Many of the recommendations offered above on Program management, evaluation, follow up and sustainability will contribute to cost-efficiency. Also see recommendations below on cost-efficiency for each of the six Pillars of development cooperation activities).

#### *Improve the Predictability of Development Cooperation Budgets and Activities*

The WIPO Secretariat and Member States should **ensure that resources for development cooperation activities are, at minimum, maintained at current levels and increased for those activities where the needs and impacts are greatest**. Effective multi-year planning for development cooperation, particularly where assistance includes institution-building activities, demands predictability in the level of resources available over time. As noted above, WIPO Member States should be encouraged to make decisions on Program goals and strategies that extend beyond a two-year biennial budget cycle. The definition of multi-year Programs and country activities would facilitate contributions by donors beyond WIPO.

To improve predictability and boost resources for priority activities, WIPO should sustain its efforts to: (i) broaden the base of donors supporting WIPO development cooperation beyond its traditional IP office partners, and (ii) facilitate the access of WIPO Member States to funding and technical support from other inter-governmental, bilateral or independent sources. In particular, the WIPO Secretariat should boost efforts to help countries access and leverage resources for the implementation of their IP and development strategies and policies at the national level.

The WIPO Secretariat should work with its Member States **to devise a policy to guide its negotiations for additional external resources, including FITs**. Notably, WIPO should insist on flexible arrangements for the management and administration of such donor resources to ensure that Program support costs are adequately recovered and financed.

#### *Cost-sharing and Grants*

**WIPO should pursue more cost-sharing partnerships, collaborations, and in-kind arrangements.** Such efforts could enable WIPO to reduce its exposure to the transaction and administrative costs which cannot be fully recovered for many externally-financed projects. However, ensuring a diversity of collaborations will be important as will measures to guard against undue influence of powerful stakeholders. (See Recommendations on Stakeholder Engagement in the sections on Relevance and Orientation above and under Coordination below).

**WIPO should also consider the potential for greater cost-sharing with higher-income developing countries.** Many WIPO development cooperation activities already require a commitment of resources in terms of staff time and government resources, such as for ongoing support for the maintenance of IT infrastructure. For some projects and activities in higher-income developing countries, requirements for counterpart funding or 'matching commitments' for development assistance activities could help secure a higher degree of ownership and engagement on the part of beneficiaries, and thus impact.

To reduce institutional and staff costs to WIPO and help build national capacity, the provision of grants to Member States to implement certain kinds of activities themselves should be considered, as should the appropriate criteria and reporting requirements.

#### *Coordination*

##### *Clarify Roles and Responsibilities of Sectors and their sub-Divisions.*

**The roles and responsibilities of WIPO's Sectors and their sub-divisions in the implementation of WIPO's Programs need clearer definition.** A strategic review of WIPO's internal organizational structure should be undertaken to ensure it is aligned with organizational goals and development-related priorities as set out in the MTSP (and associated Member State comments), the Program and Budget, and the Development Agenda. To deliver on the expected results of development cooperation activities, Programs

and sub-divisions within Sectors need to have the prominence they warrant within the organizational structure in terms of access to resource planning processes, budget, and seniority of staff.

**Special attention is needed to an improved definition of the roles and responsibilities of the Regional Bureaus, including the role and functions of desk officers.** Areas where the substantive responsibility of Regional Bureaus should be enhanced are the formulation of national IP strategies, country-level planning, coordination, monitoring and evaluation, mapping of donors, donor coordination at the request of Member States, local intelligence, and collaboration with other donors and local stakeholders. Staff should be required to have not just political knowledge of the country but substantive knowledge of IP systems and related debates and policy initiatives underway relevant to national development policies. The elaboration and updating of country plans may facilitate this shift, but extra mechanisms will be needed, such as through staff appraisal processes and through job descriptions. The FITs managed by the Regional Bureaus and the LDC Bureau could still be coordinated by them, but the resources for activities would be allocated to the relevant WIPO Program and Sector responsible for achieving particular expected results.

The role of Regional Bureaus in the direct provision and implementation of activities should be limited to regional and sub-regional activities that are on issues that cut across the expertise of the substantive sectors. The implications of this shift in emphasis in the function of regional bureaus in budgetary terms may vary. In some cases, this refinement of functions may require more resources, but may also mean that the non-personnel budgets of the Regional Bureaus will be shifted toward Sectors and Programs involved in the delivery of specific development cooperation activities.

The Review Team found no compelling cost-benefit case for establishing a greater WIPO presence in any country or by region in the form of External Offices for the provision of development cooperation activities. Many sectors across the organization do not perceive the existing Offices as a substantive resource for their work but rather as a logistical contact. The Director-Generals' ongoing **consultation process on WIPO External Offices should incorporate a review and clarification of their role in the design and delivery of development cooperation activities.** This will in turn warrant detailed discussion of appropriate budget and staff resources, and relevant locations of offices. There is also need for more strategic guidance on the role of the External Offices in advancing the goals and work of the Development Agenda.

The decentralisation of some development cooperation activities and services should be considered by the WIPO Secretariat and its Member States. Examples of activities that could be decentralized include IT support services (some such decentralization already exists). It would also be useful to explore possibilities for a 'WIPO desk' in key regional centres where development-related strategic planning and discussion occurs (such as in regional locations where there is a critical mass of UN development agencies or regional offices of international organizations). Such a 'WIPO desk' would provide an opportunity to gather regional intelligence and build external collaborations with stakeholders and other donors.

*Improve Internal Communication about Development Cooperation.*

There is a need for **increased transparency, coordination and communication within WIPO on what activities the organization as a whole is undertaking in each country.**

**The Program and Budget Process should be harnessed as a mechanism for improving coordination and strategic prioritization across WIPO.** The effort undertaken for the proposed 2012/13 Program and Budget to devise organization-wide expected results, drawing from the expected results of each of the individual Programs, represents an important basis for further coordination. There will need, however, to be clear mechanisms for Programs to exchange information and collaborate for the achievement of those joint expected results.

*Improve Collaboration with the UN Family and Development Agencies.*

**WIPO should improve the quality of its collaboration with the UN family and with development cooperation agencies, and seek to define modalities for that cooperation.** The Secretariat should seek to participate in and provide input to processes that seek to establish a coherent framework for development assistance from a range of donors at the country level. In particular, WIPO's development cooperation activities should be conducted within the framework of UN country-based Development Assistance Frameworks and WIPO should report on a regular basis to the UN system on how its development cooperation activities contribute to the achievement of UN priorities on development. **A key goal of external coordination should be for WIPO to learn and integrate into its activities a broader view on IP and development.**

Collaboration with the UN family should be approached from a development-oriented not an IP-centric perspective. **The challenge is not simply one of greater coordination or collaboration with the UN family, but to improve the quality, nature and content of that collaboration.** The objective of

collaboration should not be to coordinate a uniform view on IP-related development cooperation within the UN family or to establish WIPO as *the* UN voice on IP. While WIPO should make its expertise available to other organizations, other UN agencies should not be encouraged to defer to WIPO merely on IP issues on the grounds that they are ‘technical,’ especially where other agencies may have superior specialized sector-specific knowledge on IP issues.

#### *Diversify and Strengthen Collaborations with Other Donors*

**WIPO should improve collaboration with a diversity of development-oriented partners across its Pillars of development activities.** WIPO should boost its outreach and collaborations with development-oriented partners. Its focus should extend beyond resource-mobilization to identifying new expertise, perspectives and experiences to feed into WIPO’s development activities, as well as partners for building synergies on broader development activities underway within developing countries.

**WIPO should establish an Annual Roundtable of IP-related donors to boost information-sharing, synergies and coordination.** The Roundtable should involve all major IP offices involved in the provision of development-related activities as well as any other bilateral, multilateral or non-state actors actively involved in the delivery of IP-related development assistance activities.

To improve WIPO’s interaction with development assistance donors and partners, the Secretariat should create a guide on how potential partners can engage with the organization. If WIPO succeeds in attracting more donors, it will become increasingly necessary to structure WIPO’s arrangements for managing FITs to be multi-donor rather than single-donor. To ensure the usefulness of its new IP-Development Matchmaking Database to both providers of IP-related technical assistance and potential beneficiaries, the Secretariat should also keep abreast of lessons-learned from other technical assistance databases, such as the WTO’s Global Trade-related Technical Assistance Database (GTAD) and the U.S. government’s IP assistance database. Further, the IP-Development Matchmaking Database, should be linked to WIPO’s own Technical Assistance Database on its own development cooperation activities.

The Review Team notes that from the beneficiary country perspective, the potential to choose from a range of development cooperation providers representing a variety of perspectives may be desirable (e.g., they may prefer a mix of consultants from WIPO, academia, industry or NGOs). For the same reason, some parallel activities by multiple providers may be desirable for some beneficiaries as it could yield opportunities to consider different options and advice (e.g., on legislative reforms). That said, in cases where two organizations both offer similar activities or advice to a given country on the same issue from a similar perspective there is clearly a case for stronger coordination to avoid duplication and resource wastage. One proposal that warrants deeper consideration is the pooling of capacity building resources from a number of donors, including WIPO, into a joint fund (either a general purpose fund or one focused on a specific topic or issue), managed by an executive director appointed by a board of internationally recognized experts (or by a board comprised equally of developed and developing country governments), with which developing countries could negotiate packages of support.

#### *Strengthen WIPO-WTO Coordination*

**The coordination between WIPO and the WTO in their existing cooperation arrangement for the provision of technical assistance related to the TRIPS Agreement should be improved.** In particular, they should boost attention to information-sharing, joint planning and collaboration on needs assessments in order to avoid duplication and maximise the potential for synergies, learning and cost-efficiency.

A clear area for improved cooperation concerns each organization’s respective needs assessment processes for LDCs. Ideally, WIPO, the WTO and Member States would collaborate on such assessments so that neither countries, the WTO nor WIPO waste resources repeating similar exercises.

All WIPO technical assistance on TRIPS-related issues, including budget information, should be systematically reported to the WTO Global Trade-Related Technical Assistance Database.

#### *Adopt a Policy to Guide WIPO’s Engagement with Stakeholders*

**The WIPO Secretariat and its Member States should adopt a Policy to guide WIPO’s engagement with external stakeholders.** Also see recommendations in Part 3 of this Report on Impact regarding WIPO’s engagement with stakeholders.

## 6. Selected Recommendations by Pillars of Development Cooperation

This section summarizes some of the key recommendations for WIPO’s development cooperation activities under each of the six Pillars reviewed in this study. As noted in Part 4 of this report, an in-depth evaluation of activities undertaken for each of these Pillars was beyond the scope of this review. The Review Team’s focus for each Pillar was instead to consider broad strategic issues raised in the thematic questions in the Review TOR.

## *IP Strategies and Policies*

### *Improve Development Orientation*

WIPO should improve its support to developing countries for the formulation of national IP strategies that address development priorities. Building on work underway, WIPO's activities in this area should **deploy a consistent set of methodologies that are evaluated, validated and refined over time with an eye to constantly assuring and improving their development-orientation**. Progress in this direction will require several steps.

First, there is a need for WIPO's support for **IP strategies to devote boosted attention to issues of creativity and cultural industries**, in addition to innovation.

Second, the tools that form the basis of the CDIP Project (such as the questionnaire) need considerable refinement to serve as an appropriate tool for drafting of a development-oriented national IP strategy. Questionnaires, or any other tools used to inform the development of IP strategies, should enquire more intently about: the framework/systems for innovation that exist in the particular country (e.g. technological capacity, human capacity, availability of financing, the research strength in the public sector and the private sector), national development priorities and needs by sector and specific area of public policy (e.g. in the education sector, in improving access to health care, in ensuring food security (e.g. by ensuring access to seeds etc.), as well as the economic sectors that are of priority (e.g. pharmaceutical, electronics, cultural industries. etc.).

Questions about the type of IP system that is or should be in place in a country should properly follow, and not precede, efforts to understand the national development strategy, priorities and those aspects of the IP system that might yield the greatest benefits for the country at hand. In some instances, this might shift the appropriate degree of attention in questionnaires and interviews (e.g., it might highlight the need for more attention to focus on IP issues related to protection of genetic resources, TK, industrial designs and utility models as compared to patent-related issues).

### *Emphasise Consultative Processes for the Formulation of Strategies*

WIPO's **support for IP strategies and policies should be embedded in and accompanied by efforts to support the emergence of national IP coordination and consultation mechanisms** that link IP decision-making to a broader, development-oriented public policy framework and to the full range of both government and non-government stakeholders.

### *Boost External Coordination*

Greater efforts should be made to **collaborate with other international organizations and stakeholders engaged in efforts to devise methodologies and tools relevant to the development of national IP strategies**. This collaboration should be enhanced at a country-by-country level during the elaboration of IP strategies as well as in the process of elaborating and refining the IP strategy tools developed and used by WIPO.

### *Review, Evaluate and Coordinate WIPO's Activities on IP Strategies*

The WIPO Secretariat should **ensure that plans for close coordination between the CDIP IP Strategies Project and the DG-led project to formulate a 'WIPO Framework for Developing National IP Strategies for Innovation'** are realized in practice. As both projects are scheduled for completion by the end of 2012, all support for IP strategies and policies planned for that year or beyond should be led or informed by the combined lessons of these projects, bearing in the mind the need to adapt and tailor to the specific requests of countries.

The Review Team notes that the CDIP IP Strategies Project will be reviewed in 2013 as part of the broader evaluation of the implementation of the WIPO Development Agenda. As part of the evaluation process for the pilot phase of that project, **WIPO should engage an expert Review Team to review the evolution of the tools used to inform IP strategies, their suitability for purpose, their link to the work of other IGOs and of NGOs, the quality and development-orientation of the strategies produced, and the degree of their use by the organization and Member States**. To facilitate the critical review and improvement of WIPO's tools and methodologies over time, these should be made publicly available on WIPO's website.

The WIPO Secretariat and Member States should ensure that the tools and lessons from the CDIP IP Strategies Project and the Project for a *'WIPO Framework for Developing National IP Strategies for Innovation'* are integrated across future development cooperation activities, both those conducted by the Development Sector and WIPO's substantive sectors. **IP strategies should be used to help devise country needs assessments and as the basis for country plans for development cooperation activities**. Member States requesting other assistance for the formulation of IP strategies should be informed about the tools and methodologies produced by WIPO and by other actors in the field. WIPO

should no longer offer ad hoc assistance in the area of IP policies and strategies that is not based on the lessons learned from these tools.

#### *Enhance Transparency*

Given their intended centrality to national IP policymaking and to WIPO's technical assistance, **all IP strategies, policies and plans supported by WIPO should be made publicly available for external review by national and/or international stakeholders** before completion. Upon completion, with the approval by individual member states, WIPO should make all IP strategies, policies and plans publicly available on its website.

#### *Legislative and Regulatory Assistance*

##### *Boost the Transparency and Evaluation of Legislative Advice*

**WIPO should, with the consent of Member States, make the content of its legislative advice to countries publically available.** Beneficiary countries should simultaneously make publicly available the advice and assistance received from WIPO to facilitate evaluation, review and debate by external experts and national stakeholders.

WIPO and its Member States should **devise a mechanism whereby, without abusing confidentiality assurances and in consultation with WIPO staff, an in-depth review of legislative assistance could be conducted by a team of external legal experts**, to evaluate its attention to the expressed request of countries, development priorities, country circumstances and to the full range of flexibilities and options available to countries, in consultation with WIPO staff. This Review should include an in-depth examination of the content of draft laws and comments on draft laws provided by WIPO, as well as of the content of seminars on legislative matters.

WIPO's senior management should ensure that all Sectors and Programs submit full information to the WIPO technical assistance database on their legislative activities.

Stronger efforts should be undertaken to define appropriate expected results and indicators for the results of WIPO's legislative assistance so that these can be properly accounted for in the organization's reporting of performance.

##### *Use Country Needs Assessments and IP Strategies to Inform Legislative and Regulatory Advice*

**Before responding to a request for legislative assistance, WIPO should work with the country to investigate its development priorities, its sector-by-sector needs (e.g. agriculture, health, education, information technology, etc), and its relevant international commitments.** A key resource in this process should be national IP strategies or processes for their formulation (as discussed in Part 4.1 of this report).

##### *Adopt a Proactive Approach to Development Priorities and Flexibilities*

The objective of WIPO legislative assistance should be to serve the developmental objectives of the beneficiary country. A narrow compliance-oriented approach to international commitments must be avoided. In the case of requests from LDCs, WIPO staff should not hesitate to advise countries where they do not require IP laws or where some IP laws or provisions may be inappropriate until they reach a higher level of development. Similarly, where the country seeking technical assistance is not a WTO member, WIPO should not advocate in favour of TRIPS standards or TRIPS-'plus' standards.

WIPO should **present developing countries the range of options and flexibilities available in international laws. It should also explain and/or share experiences of how different options may hinder or advance their pursuit of development targets.** WIPO should also build the technical capacity of countries to pursue a coherent development-oriented approach to the implementation of international IP commitments; to decide whether and how to use in-built flexibilities in international agreements to advance pro-development policies; and to promote coherence and mutual supportiveness with other relevant international instruments. Assistance should extend to options related to ensuring a vibrant public domain, boosting access to essential technologies and knowledge, and to different models for stimulating innovation and technology transfer.

**WIPO should publish, in collaboration with international experts and stakeholders, a series of development-oriented framework documents on the legislative issues for which WIPO provides advice.** These documents should set out: basic legal requirements for meeting international obligations in that area of IP; the range of relevant public policy goals and public interest considerations; a coherent set of definitions; explanations of possible exemptions, exceptions and limitations to IP rights; implications for various stakeholder groups. Each framework document should be accompanied by a short explanatory note; and relevant evidence of impacts and experience in other countries.

### *Promote Impact Analysis and Information-Sharing*

**WIPO should increase support for analysis of the positive and negative impacts on national development and public policy goals of new international IP agreements, as well as on the opportunities and constraints provided by various exclusions, exemptions, flexibilities and options available in international laws.**

**WIPO should promote information-sharing among developing countries about their experiences with IP legislation and development outcomes**, including information on comparative law and the range of options available. This should include analysis of the historical experience of developed countries when they were building their industrial base and development potential.

**WIPO should support Members to evaluate the costs and benefits of acceding to WIPO Treaties.** This should include presenting WIPO Treaties and their implications to a range of national stakeholders, including parliamentarians expected to ratify such treaties.

**WIPO should unify its various databases on legislation and regulatory practices to make them accessible through one common portal** (rather than through issue specific websites) and link these to legislative databases of related laws hosted by other international organizations (e.g., the WHO, UNESCO, FAO, World Customs Organization (WCO), etc). In collaboration with the WTO, WIPO should provide a web-based tool for comparative cross-national search and analysis of legislation, which should include the ability to compare national use of flexibilities and options.

### *Improve Internal Coordination on Legislative Advice*

WIPO should **ensure greater communication and collaboration among staff located in different Sectors that are responsible for legislative assistance.** The Regional Bureaus should play a stronger role in promoting such collaboration and pooling of staff knowledge about national policy debates and priorities, lessons from legislative assistance in other areas of IP, and experiences of countries with similar legal regimes and development challenges. The Regional Bureaus should ensure that staff or consultants providing legislative assistance are properly aware of any IP strategies and policies the beneficiary country may have as well as relevant policy debates, local expertise, stakeholder consultations and inter-ministerial processes that could be used to ensure that the advice reflects development considerations.

### *Provide More Assistance on Emerging Legal, Regulatory and Policy Issues for Developing Countries*

WIPO should **explore ways to devote greater attention to advising and informing countries on IP negotiations and treaties, and their potential effects, whether positive or negative.** WIPO could organize, for instance, open seminars with external speakers and other international organizations on topical issues of negotiation. Fact sheets and policy briefs could be developed on issues of complex negotiations for national governments and stakeholders, including IP offices, Geneva-based delegates and other government agencies.

WIPO's activities on legislative, regulatory and policy frameworks should include **greater support for development-oriented advice on the negotiation and implementation of bilateral, regional and South-South IP arrangements, negotiations, dialogue and cooperation** (such as those advanced through regional economic communities, regional political organizations, or regional intellectual property offices).

**WIPO should devote greater attention to legal and regulatory challenges related to the misappropriation and enforcement of developing country IP in the global arena, emerging IP issues of great interest to developing countries** (such as those related to traditional knowledge, folklore and genetic resources), **and on practical regulatory and administrative issues relevant to the promotion of a balanced IP system.** For instance, WIPO should explore the potential for providing advice on the practices and strategies of companies that abuse the IP system (e.g., through ever-greening of patents), and how countries can guard against and/or manage such practices; methods for opposing patents that are wrongfully granted in the country of origin and in foreign countries (e.g., patents on inventions in the public domain, patents that fail to acknowledge prior art in developing countries, or patents that concern the national genetic resources of developing countries); and patent opposition proceedings and patent examination processes that safeguard the public interest.

WIPO should also support mechanisms that would help developing countries and their stakeholders to overcome the legal, financial and practical barriers they face in challenging the wrongful granting of IP rights and/or abuse of developing country IP rights in other countries, and boosting the recognition and enforcement of their IP rights in developed countries.

*Improve Collaboration with other Actors with a Diversity of Views and Expertise*

**WIPO should boost its collaboration with other international organizations and seek greater input from a diversity of stakeholders to guide its approach to the provision of legislative and regulatory assistance.**

*Improve Guidelines on Participation and Development-orientation of Global and Regional Events*

**WIPO should develop, in consultation with Member States, guidelines for the selection of developing country nationals to participate in WIPO meetings** to maximize the development benefit to countries and cost-effectiveness. WIPO should increase web-casting of events and take advantage of technologies to enable remote participation of speakers.

As part of the proposed WIPO Policy on Stakeholder Engagement, WIPO needs guidelines on ensuring an appropriate development orientation and balance of speakers in WIPO's global and regional meetings and events, with a particular focus on increasing the range of national and international stakeholders and developing country experts involved (discussed in Recommendations for Part of this Report on Relevance and Orientation and Part 3 on Impact).

### *IP Office Modernization*

*Improve Support for IP Office Modernization and Broaden Attention to Emerging IP Issues*

WIPO should continue efforts to improve the effectiveness of its provision of IT equipment, software and training to national offices. To boost effectiveness in this area, WIPO should devise and implement a process and criteria for a detailed impact assessment of its activities for office modernization.

WIPO should pursue consider strategies for greater differentiation in the kinds of modernization activities and packages it provides for larger, more advanced offices as compared to smaller, start-up offices.

WIPO and its Member States should also explore aspects of modernization, digitization and automation that might be of greater or equal to member states than priorities currently being pursued. In some Member States, for instance, **support for national approaches to the creation and/or digitization of databases of traditional knowledge** may be key priorities.

*Boost Attention to the Institutional Aspects of IP Office Modernization*

WIPO should **devote greater attention to studying and reporting on the impacts of different approaches to the governance, structure, financing, and scope of IP offices** at both the regional and national levels. To ensure these are tailored to respond to the particular circumstances and priorities of each country. To supplement its work on technical modernization, WIPO should document lessons-learned and commission comparative studies on how different approaches to the institutional framework, governance and management of IP offices. Issues that could be covered include: human resources management; the benefits and challenges associated with building a search/examination IP office (and options such as work-sharing and building capacity on a sub-set of substantive IP issues); different institutional models (e.g., such as the decision to be an autonomous or semi-autonomous IP offices); benefits and trade-offs associated with pursuing a combined national IP office; and considerations relevant to broadening or decentralizing the range of IP office functions).

*Increase Support for Regional and South-South Modernization Priorities*

WIPO should offer greater **support to modernization activities designed to boost cooperation, facilitate exchanges and information-sharing between developing country IP offices and related government agencies within and among regions**. WIPO should **strengthen support to enable South-South sharing of experiences in regard to office modernization**. WIPO should commission a detailed study of the various options, benefits and challenges with regard to different potential levels of regional cooperation in the area of IP legal frameworks, institutional structures and administration.

*Improve Risk Assessment and Management*

**Greater attention should be paid to up-front assessment of risks and to dialogue with beneficiary countries on the conditions for success of IP office modernization projects and the ongoing follow up and commitment required on the part of beneficiary countries.**

WIPO should conduct a **detailed analysis and risk assessment of its activities to design and deploy various software and online services for developing countries**. Key issues for consideration include: synergies/coordination between the various software packages under development; the challenges of delivering cutting-edge products and services in the context of rapid technological changes and of how can WIPO and beneficiary countries could adapt the implementation of activities more swiftly as country needs

evolve. The studies should include consideration of whether and which aspects of its activities could better be undertaken in-house, out-sourced, or conducted through regional experts.

A detailed risk assessment is needed to review the comparative advantages and cost-effectiveness of PATENTSCOPE in a context where a number of other public and private patent search services exist. WIPO's Access to Research for Development and Innovation (aRD<sub>i</sub>) program and its Access to Specialized Patent Information (ASPI) program should also be reviewed to understand reasons for the relatively low rate of use of these services by intended beneficiaries and to address the risks that the business model may not be sustainable (e.g., the changing business environment means that major companies providing content may not be willing to continue the low-cost or free licensing that underpins such services).

#### *Broaden Range of Assistance to National Governments*

In some countries, there is a need for diversification of national stakeholders trained to use databases and other outputs of modernization efforts (e.g., several survey respondents highlighted the need for greater training of customs officers in the use of trademark-related databases). In many offices, for instance, greater efforts to simplify procedures or boost training related to using international standards for the classification of IP rights is vital to improving the rate of use of WIPO software.

In the patent area, WIPO should provide **countries greater assistance to review international search and examination reports and/or reports by any other national patent offices, in light of national legislation, particularly in areas of critical importance to national development goals**. It should also explore how better to assist those countries keen to build and focus their expertise on particular areas of public policy concern or where they have particular provisions of their laws that are distinct from those of other countries.

Recommendations from survey respondents included requests for boosting the intensity of training for supervisors in industrial property offices, including through attachments to other offices; assisting interested developing countries to become part of the PATENTSCOPE Document Access Service (DAS); helping countries to reduce the patent backlog; and supporting the translation of patent claims. Some survey respondents also called on WIPO to broaden its outreach activities on the PCT system for the benefit of industry and SMEs. In addition, some survey respondents proposed that WIPO should do more to facilitate the use of the international patent system, such as through the provision of more comprehensive information on effective patent search strategies.

In the copyright area, survey respondents called on WIPO to **boost attention to the modernization of copyright offices and collective management societies**. To this end, WIPO should initiate studies and continue activities that assist countries to review and select appropriate models for the collective management of rights, particularly in light of the changing digital environment.

#### *Training and Human Resource Capacity-building*

##### *Strategic Prioritization*

WIPO should **devise more strategic and specific goals, priorities, and expected results for its portfolio of training and human resource capacity-building activities**. The focus of training should be transformed from one of training 'more and more' people to building a critical mass of substantive, politically-informed expertise within developing countries on IP and development through more intensive capacity building and mentoring of experts. In terms of reporting and evaluation, WIPO should move beyond reporting on the number of individuals and types of beneficiaries trained to how training was used in practice and its contribution to the achievement of development goals.

##### *Review Development-Orientation of Training*

**An independent panel of leading academic authorities should review all WIPO training materials and curricula to ascertain and ensure their development-orientation.** The Review should include a focus on the quality, design, delivery and orientation of training by the WIPO Academy and by WIPO Programs, as well as on the overall balance of training activities with an eye to ensuring they reflect the Development Agenda recommendations.<sup>14</sup>

The Review should include an assessment of emerging best practices in development-oriented IP courses at universities around the world. Such best practices include making curricular and course materials transparent, relying on open access learning materials whenever possible, reflecting a diverse range of views on public policy-related issues, and empowering participants and students to think critically and independently.

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<sup>14</sup> In this regard, the Review Team notes that the IAOD is currently conducting an Audit of the WIPO Academy.



The Review Team recommends that **IP education should not be pursued in isolation but linked to other areas of education and with broader public policy issues, such as innovation policy, science and technology, education, cultural industries, etc.** WIPO's efforts to support IP-related capacity-building in national academic contexts, such as in national universities, should be evaluated and reoriented in light of this recommendation. In particular, before further expansion, the CDIP Project on National IP Academies should be carefully evaluated with an eye to learning lessons and to ensuring that the approach and type of training activities is consistent with this development-oriented approach to IP training.

WIPO should **increase the availability of development-oriented IP-related educational materials on its website and their translation.** It should build, for instance, an accessible on-line inventory of scholarly literature and teaching materials on IP and development and support public access to new multidisciplinary research publications and curricular materials on these topics. All of WIPO's curricula should be distributed and publically available free of charge to academics around the world, particularly those in developing countries who otherwise have constraints in updating and accessing relevant teaching materials.

There should be systems for ensuring that trainings provided by all and any WIPO Programs are of the highest possible pedagogical quality to maximize impact, are aligned with WIPO Development Agenda Recommendations, and are consistent with development-oriented expected results as set out in the Program and Budget and in country plans.

#### *WIPO's Niche and External Partnerships*

There should be an **in-depth and critical external review of the strategic niche of WIPO's training activities, and particularly those of the WIPO Academy, in the context of other training initiatives around the world.** The review should include an examination of the offerings of leading academic institutions on IP, and on related issues of technology, innovation and development. It should explore the potential for such institutions to advise or partner with the Secretariat with an eye to broadening the development-orientation of its training. The review should explore opportunities to reduce overlap with and improve collaboration and coordination with other training institutions on specific technical IP issues (e.g., EPO, USPTO academy and with IP offices from developing countries). To complement (or replace) fellowships for participation in courses that WIPO runs or co-organizes, WIPO could explore opportunities to support fellowships for courses run by leading international academic centres.

#### *Improve Internal Coordination on Training*

All of WIPO's training activities, whether conducted by the Academy or Program/Sectors, should be more transparent and better coordinated. For instance, there should be stronger synergies and joint planning of **of the professional training activities of the WIPO Academy and the Programs/Sectors,** whether short-term or long-term, for a small target group (such as operators of new software) or a larger community (such as on broad policy issues for government officials at large).

#### *Improve Cost-efficiency*

WIPO should seek to enhance cost-efficiency through **greater use of on-line courses, partnerships with regional training centres, video-conferencing tools, training of trainers, and evaluation** of where and how WIPO training is used by various stakeholders and how it makes a practical difference.

### *User Support Systems*

#### *Review Development-orientation and Priorities for User Support Systems*

The WIPO Member States and Secretariat should **undertake an organization-wide review of WIPO's current activities and future priorities in terms of support for users of the IP system.** As part of this review, WIPO should **undertake a mapping of all of its user-related services.** Through the review, the WIPO Secretariat and its Member States should develop criteria for devising 'user support' priorities for WIPO that would yield greatest benefits for development. These criteria should be used, in conjunction with country needs assessments, IP strategies, and country assistance plans, to filter the selection of activities and projects to be pursued.

#### *Promote Greater Development-Orientation and Balance in the Range of User Activities Supported*

WIPO's support for users of the IP system should consider the range of objectives and components of development-oriented approach; it should boost attention to activities that would help reduce costs of participation in the IP system; enlarge benefits for local creative and cultural industries; and reduce the knowledge and technology gap, both in terms of generation and access.

WIPO should ensure **a greater balance between its support for traditional users of the IP system (i.e., users that are right-holders or potential right-holders) and for user of IP-protected products and**

**services** (such as researchers searching assistance with licensing inputs for their research, libraries, students, citizens seeking access to technologies, etc).

The mapping mentioned above should consider those user groups or types of IP that warrant greater attention, particularly in light of needs arising from efforts to devise national IP strategies to advance innovation and creativity in ways that support development. Such a mapping may reveal the need for greater attention to practical support for initiatives related to indigenous or traditional knowledge, cultural expressions or folklore, cultural industries, or to industrial designs. It may also point to national 'user' priorities that do not otherwise receive systematic attention from WIPO, such as helping IP offices reach out to user groups that may be located in universities, industries, or research institutes located outside national capitals.

The review should critically consider how better to support the needs of developing country IP-rights holders abroad (e.g. to protect and enforce their IP rights in international markets) and ensuring that the balance of users that benefit from WIPO's activities at the national level are domestic as well as foreign (who remain at present the majority of the users of the IP system in most developing countries).

#### *Mapping of Other Donors and Actors Working to Support User Communities*

As part of the aforementioned review, WIPO should **undertake a systematic review of the activities of other relevant actors, potential collaborators and competitors active in supporting stakeholders in developing countries on issues of IP and development, and closely related initiatives**. The mapping should be undertaken with an eye to shedding light on the potential for greater synergies between WIPO activities and those of other donors and interested stakeholders. This may include, for instance, activities related to support systems for creators, artists and performers on the range of potential business, IP and licensing strategies, as well as models for engaging successfully in the entertainment and creative industry markets. It should include a careful review of the SME related activities of international development banks and philanthropic, NGO and academic initiatives to support indigenous communities in the stewardship of their traditional knowledge.

#### *Improve the Management of WIPO's Interaction with a Range of Stakeholders at the National Level*

**As the range of WIPO's activities to support user groups expands, the mechanisms used by national governments and the WIPO Secretariat to manage and coordinate the planning, implementation and evaluation of such activities need refinement.** Where recipients of assistance are not national IP offices, WIPO and its Members will need to consult on appropriate communication mechanisms and ensure that WIPO has appropriate contact information and outreach strategies for reaching stakeholders beyond its traditional focal points. National consultation processes and committees on IP and development can serve as a useful mechanism for facilitating coordination at the national level, as well as coordination between national stakeholders, national governments and the WIPO Secretariat. Beyond the formalities of deciding upon appropriate processes for communication, success in this area will require WIPO to **invest in improved tools for tracking and maintain its internal databases of a diversity of national contacts**, both at the Program and organizational-level, as well as its electronic and internet-based communication tools for disseminating information and receiving feedback.

#### *Ensure Evaluation before Expansion of Activities and Projects*

Even where there is high demand by Member States for WIPO's activities for users, such as for Technology and Innovation Support Centres (TISCs), the **success of pilot projects already underway should be evaluated** before their expansion. The evaluation could then serve as a basis for applying lessons to any future work in this area; assessing how the TISC activities could be best mainstreamed or integrated with WIPO's other development cooperation activities; and prioritizing the requests of countries in line with national IP strategies, needs assessments and country plans for WIPO assistance.

### *Promotion of Innovation, Creativity, Access to Knowledge and Technologies*

#### *Bolster Activities to Promote Access to Knowledge and Technology Transfer*

WIPO's **activities in the area of access to knowledge and technology transfer should be strengthened**. While there are activities underway, particularly through CDIP projects, many of these are at the early stages of implementation, or are yet to begin, and account for only a relatively small proportion of WIPO's overall development cooperation budget. Several of the activities conducted to date are analytical level, and have not yet translated into concrete proposals for activities that would contribute to practical improvements in access to knowledge or technology transfer.

#### *Integration across WIPO's Development Cooperation Activities*

The WIPO Secretariat and its Member States should **explore ways to better integrate the promotion of access to knowledge and technology, innovation and creativity across the full range of WIPO's**

**development cooperation activities.** For instance, the WIPO Secretariat should make greater effort to ensure that the research it conducts, such as research requested by various WIPO committees (e.g., on the use of limitations and exceptions, the public domain, and access to knowledge and technologies) is integrated into the other development activities of the organization, such as legislative advice and regulatory assistance, as well as the development of IP strategies and policies.

Progress on this front will require the WIPO Secretariat and officials within Member States to identify and engage appropriate stakeholders on these issues at the national level. Support for inter-ministerial committees and stakeholder consultations in the process of formulating national IP policies and strategies are one way that WIPO and its Member States could facilitate a focus on these issues.

#### *Place the IP Dimension of Innovation and Creativity Promotion in Context*

**WIPO's activities on innovation and creativity must be informed by broader debates and experience on innovation systems, development strategies and public policy goals, such as access to knowledge.** WIPO's role should be to build understanding of where and how IP-related mechanisms and strategies may or may not assist developing countries to advance progress in these areas and place that analysis and assistance more firmly in the context of the range of other policy measures and institutional actions needed.

#### *Identify WIPO's Strategic Niche*

The WIPO Secretariat should **undertake a mapping of other inter-governmental initiatives and non-government efforts to promote innovation, creativity, technology transfer and access to knowledge.** The WIPO Secretariat should forge, and help countries forge links, with other relevant international organizations and stakeholders with expertise in these areas. Such a mapping would also help the WIPO Secretariat and its Member States to **identify WIPO's strategic niche and relevant partnerships with a range of external actors** that may have a stronger comparative advantage,

Attention to issues of innovation and creativity take WIPO beyond its traditional expertise on IP and into rapidly evolving areas of business and government practice on issues related to IP, and also into cutting-edge debates on a broad array of public policy issues, from education, science and technology policy to sectoral issues on public health, biotechnology, etc. The risk is that WIPO will be engaged in areas where its experience is weak and its resources spread too thinly to make a difference at the country level.

## 7. Recommendations for WIPO Member States

#### *Ensure Clarity of Objectives and Needs Assessment*

Countries requesting WIPO development cooperation activities should carefully identify needs (seeking WIPO assistance for this task where relevant), determine its objectives, and assess how the possible outcome of assistance could contribute to the fulfilment of the development goals. Countries should also identify priorities, in terms of categories of IP to be covered (e.g. patents, trademarks, global issues, infrastructure, etc.), the substantive or procedural nature of issues to be considered, and the sectors involved (e.g. agriculture, mechanical industry, health, etc.).

#### *Improve Internal Coordination and Consultation*

Governments should boost their attention to the formulation of a national IP and development strategy to complement the conventional emphasis on building administrative and technical capacity of IP offices. They should commit to greater internal coordination government to help ensure development cooperation projects and objectives attract the broad government support necessary for success. While IP offices have an important role to play, the likelihood that WIPO's development cooperation activities will support development outcomes will be highest where governments have effective inter-agency coordination and public consultation. Action is needed at three levels. First, IP offices must be engaged in relevant strategic processes led by other government actors within their country, for instance, in regard to science and technology policies, and strategies for the support of cultural industries. Second, IP offices should seek to facilitate cooperation and communication among the broad range of government and non-government stakeholders. Third, Geneva-based representatives of developing country governments have an important role in bringing coherence to the country's representation at the international level and to act as interlocutors with the WIPO Secretariat on development cooperation activities.

#### *Consultation and Collaboration with National Stakeholders*

Development-oriented IP assistance requires efforts by governments and donors to identify and consult the groups potentially affected by the outcomes of development assistance activities (e.g. farmers, consumers, authors, small and medium-size enterprises, universities, education, business, finance, musicians, artists and scientists). Governments should adopt a multi-disciplinary approach that involves many government and stakeholders. They should seek the active participation of relevant stakeholders in the assessment of

technical cooperation priorities and needs, and in discussions of the appropriate design, delivery, outcomes and evaluation of development cooperation activities. Importantly, governments should recognize that the degree of influence of some stakeholders does not necessarily match the importance they should have for the determination of the appropriate development-oriented IP policy in certain areas and should seek ways to facilitate the engagement of otherwise under-represented interest groups.

#### *Designate Focal Points for the Coordination and Oversight of Development Cooperation Activities*

Governments need to make clear decisions on how to manage their government's relationships with WIPO, including for development cooperation activities, and other donors. The diversification of WIPO's interactions at the national level has implications for national governments. Instead of delegating to IP offices to serve as the main interlocutors with WIPO on issues of development cooperation, governments should use structured consultative processes and/or coordination mechanisms to ensure the involvement of representatives of other relevant government agencies in the design, implementation and review of development cooperation activities.

Governments should adopt guidelines and procedures for reviewing and ensuring the development-orientation of technical assistance activities. Governments should be engaged in reviewing the selection of staff or consultants for the provision of technical assistance. Where relevant, they should propose alternate staff or consultants; encourage the use of local/regional experts; require disclosure of potential conflicts of interest from providers; require consultants agree to comply with a code of ethics for technical cooperation providers; and request evidence of the qualifications, prior work experience and evaluations (where available) of proposed providers of development cooperation activities.

#### *Ensure Government Commitment to Partnership on Development Cooperation Activities*

Commitment from Member States is vital to improving the efficiency, relevance and impact of WIPO development cooperation activities. Countries should be prepared to commit internal institutional and human resources, ensure appropriate political sponsorship from relevant government agencies, and demand the effective evaluation of projects. Governments should carefully negotiate country plans and activities, as well as the implementation plans, expected results, and timeframes. Countries should commit to formulating multi-year country plans for WIPO assistance that include an assessment of the development needs, results and impact of any proposed development cooperation activity, taking into account the objectives identified by the recipient country. This should be tied to efforts by countries to articulate a national strategy in the area of IP (which in turn should be informed by broader strategies related to innovation, science and technology, health, etc.).

Governments should also take responsibility for identifying the seek a team of development assistance providers that have economic, legal, and issue-specific expertise. This should include identifying and using in-country resources and expertise from local universities, research institutes, NGOs and experts.

#### *Improve Data-gathering at the National Level*

Measuring development impact and orientation at the national level demands improved attention to establishing national-level baselines and benchmarks, and to systematic processes of data gathering and compilation. Where resources or expertise are lacking, governments should request assistance in this respect.