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ASSEMBLIES OF THE MEMBER STATES OF WIPO

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

prepared by the Secretariat

1. The WIPO General Assembly, in its session held in September-October 2006, reviewed the positive discussions held during the two sessions of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), emphasized the need to continue discussions on the proposals submitted and placed in the six clusters during the IIM/PCDA process, and decided, *inter alia*, to renew the mandate of the PCDA for one year. It was also decided that the PCDA would hold two five-day sessions, in a manner that allowed for structured in-depth discussions, on all 111 proposals made during the sessions of the IIM and PCDA in 2005 and 2006 respectively, taking into account the decision of the 2005 General Assembly, on the deadline for submission of new proposals. The General Assembly decided that in order to facilitate the task and streamline the process for detailed examination of all proposals in an inclusive manner, the PCDA should undertake an exercise:

- (a) to narrow down the proposals, in order to ensure that there is no repetition or duplication;
- (b) to separate the proposals, which are actionable, from those which are declarations of general principles and objectives; and
- (c) to note those proposals, which relate to existing activities in WIPO and those, which do not.

In this regard, the Chair of the General Assembly was requested to produce, in consultation with Member States, initial working documents. It was also decided that the PCDA would report to the 2007 General Assembly, with recommendations for action on the agreed proposals, and on a framework for continuing to address, and where possible to move forward, on the other proposals following the 2007 General Assembly.

2. The third session of the PCDA, was held from February 19 to 23, 2007, and the fourth session from June 11 to 15, 2007. Ambassador C. Trevor Clarke, Permanent Representative of Barbados, and Ambassador Muktar Djumaliev, Permanent Representative of Kyrgyzstan, were Chair and Vice-Chair for both the sessions of the PCDA.

3. The third session of the PCDA was attended by 106 Member States and 48 Observers. The PCDA decided to admit, on an *ad hoc* basis, two non-accredited Non-Governmental Organizations (NGOs), namely Yale Information Society Project and Knowledge Ecology International, without implications as to their status for future WIPO meetings. The PCDA discussed the working document prepared by Ambassador Enrique A. Manalo, Chair of the General Assembly, and decided to use it as a working document of the PCDA (PCDA/3/2). The delegations expressed their views on the proposals listed in the various clusters, in Annex A of that document. After discussions, the PCDA agreed to a list of 24 proposals, contained in Annex 1 of document PCDA/3/3. However, the Delegation of Colombia expressed its reservation in respect of proposal 11 in Cluster B. It was also agreed that these proposals would form a part of the final list of agreed proposals, to be recommended for action to the 2007 General Assembly, after the June 2007 session of the PCDA. The Report of the third session is contained in document PCDA/3/3.

4. The fourth session of the PCDA was attended by 93 Member States and 40 observers. The PCDA decided to admit, on an *ad hoc* basis, three non-accredited NGOs, namely, the Centre for International Governance, School of Law, University of Leeds, United Kingdom; Institute for Trade, Standards and Sustainable Development, United States of America, and Global Economic Governance Programme, University of Oxford, United Kingdom, without implications as to their status for future WIPO meetings. The delegations expressed their views on the proposals listed in the various clusters, in Annex B of document PCDA/3/2, and agreed to a list of 21 proposals. The Report of the fourth session is contained in document PCDA/4/3.

5. The following recommendations were agreed to by the Meeting:

“The PCDA decided to make the following recommendations to the 2007 General Assembly:

- (a) To adopt the recommendations for action in the agreed proposals contained in Annex I.
- (b) To immediately implement the recommendations contained in the list submitted by the Chair of the PCDA, in accordance with paragraph 61 of the report of the fourth session of the PCDA.
- (c) A Committee on Development and IP be established immediately to:

- (i) develop a work-program for implementation of the adopted recommendations;
 - (ii) monitor, assess, discuss and report on the implementation of all recommendations adopted, and for that purpose it shall coordinate with relevant WIPO bodies;
 - (iii) discuss IP and development related issues as agreed by the Committee, as well as those decided by the General Assembly.
- (d) The Committee will be composed of the Member States of WIPO and open to the participation of all accredited intergovernmental and non-governmental organizations. It will consider and adopt rules of procedure based on the WIPO General Rules of Procedure at its first meeting, which will be convened in the first half of 2008. The number and duration of meetings of the Committee are to be decided by the General Assembly.
- (e) For the first meeting of the Committee, the present Chair of the PCDA is requested to prepare initial working documents, including a draft work program in consultation with Member States and the Secretariat. The draft work program should address, *inter alia*, the financial and human resources requirements for inclusion in WIPO's budgetary planning process.
- (f) The Committee will report and may make recommendations annually to the General Assembly.
- (g) The PCIPD shall cease to exist and the mandate of the PCDA will not be renewed.”

Annex I referred to in paragraph 5(a) is reproduced in the Annex to the present document.

6. The WIPO General Assembly is invited to consider and approve the proposal, as contained in paragraph 5 of this document.

7. The WIPO Conference is invited to consider and approve the proposal relating to the Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD), as contained in paragraph 5(g) of this document.

[Annex follows]

ANNEX

CLUSTER A: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

1. WIPO technical assistance shall be, *inter alia*, development-oriented, demand-driven and transparent, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should include time frames for completion. In this regard, design, delivery mechanisms and evaluation processes of technical assistance programs should be country specific.
2. Provide additional assistance to WIPO through donor funding, and establish Trust-Funds or other voluntary funds within WIPO specifically for LDCs, while continuing to accord high priority to finance activities in Africa through budgetary and extra-budgetary resources, to promote, *inter alia*, the legal, commercial, cultural, and economic exploitation of intellectual property in these countries.
3. Increase human and financial allocation for technical assistance programs in WIPO for promoting a, *inter alia*, development-oriented IP culture, with an emphasis on introducing intellectual property at different academic levels and on generating greater public awareness on IP.
4. Place particular emphasis on the needs of SMEs and institutions dealing with scientific research and cultural industries and assist Member States, at their request, in setting-up appropriate national strategies in the field of IP.
5. WIPO shall 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 the Member State(s) and other recipients concerned, for which the activity was implemented.
6. WIPO's technical assistance staff and consultants shall continue to be neutral and accountable, by paying particular attention to the existing Code of Ethics, and by avoiding potential conflicts of interest. WIPO shall draw up and make widely known to the Member States a roster of consultants for technical assistance available with WIPO.
7. Promote measures that will help countries deal with IP related anti-competitive practices, by providing technical cooperation to developing countries, especially LDCs, at their request, in order to better understand the interface between intellectual property rights and competition policies.
8. Request WIPO to develop agreements with research institutions and with private enterprises with a view to facilitating the national offices of developing countries, especially LDCs, as well as their regional and sub-regional IP organizations to access specialized databases for the purposes of patent searches.
9. Request WIPO to create, in coordination with Member States, a database to match specific IP-related development needs with available resources, thereby expanding the scope of its technical assistance programs, aimed at bridging the digital divide.

10. To assist Member States to develop and improve national IP institutional capacity through further development of infrastructure and other facilities with a view to making national IP institutions more efficient and promote fair balance between IP protection and the public interest. This technical assistance should also be extended to sub-regional and regional organizations dealing with IP.

11. To assist Member States to strengthen national capacity for protection of domestic creations, innovations and inventions and to support development of national scientific and technological infrastructure, where appropriate, in accordance with WIPO's mandate.

12. To further mainstream development considerations into WIPO's substantive and technical assistance activities and debates, in accordance with its mandate.

13. WIPO's legislative assistance shall be, *inter alia*, development-oriented and demand-driven, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should include time frames for completion.

14. Within the framework of the agreement between WIPO and the WTO, WIPO shall make available advice to developing countries and LDCs, on the implementation and operation of the rights and obligations and the understanding and use of flexibilities contained in the TRIPS Agreement.

CLUSTER B: NORM-SETTING, FLEXIBILITIES, PUBLIC POLICY AND PUBLIC DOMAIN

15. Norm-setting activities shall:

- be inclusive and member driven;
- take into account different levels of development;
- take into consideration a balance between costs and benefits;
- be a participatory process, which takes into consideration the interests and priorities of all WIPO Member States and the viewpoints of other stakeholders, including accredited inter-governmental organizations and non-governmental organizations; and
- be in line with the principle of neutrality of the WIPO Secretariat.

16. Consider the preservation of the public domain within WIPO's normative processes and deepen the analysis of the implications and benefits of a rich and accessible public domain.

17. In its activities, including norm-setting, WIPO should take into account the flexibilities in international IP agreements, especially those which are of interest to developing countries and LDCs.

18. To urge the IGC to accelerate the process on the protection of genetic resources, traditional knowledge and folklore, without prejudice to any outcome, including the possible development of an international instrument or instruments.

19. To initiate discussions on how, within WIPO's mandate, to further facilitate access to knowledge and technology for developing countries and LDCs to foster creativity and innovation and to strengthen such existing activities within WIPO.
20. To promote norm-setting activities related to IP that support a robust public domain in WIPO's Member States, including the possibility of preparing guidelines which could assist interested Member States in identifying subject matters that have fallen into the public domain within their respective jurisdictions.
21. WIPO shall conduct informal, open and balanced consultations, as appropriate, prior to any new norm-setting activities, through a member-driven process, promoting the participation of experts from Member States, particularly developing countries and LDCs.
22. WIPO's norm setting activities should be supportive of the development goals agreed within the UN system, including those contained in the Millennium Declaration.

The WIPO Secretariat, without prejudice to the outcome of Member States considerations, should address in its working documents for norm-setting activities, as appropriate and as directed by Member States, issues such as: (a) safeguarding national implementation of intellectual property rules (b) links between IP and competition (c) IP-related transfer of technology (d) potential flexibilities, exceptions and limitations for Member States and (e) the possibility of additional special provisions for developing countries and LDCs.

23. To consider how to better promote pro-competitive IP licensing practices, particularly with a view to fostering creativity, innovation and the transfer and dissemination of technology to interested countries, in particular developing countries and LDCs.

CLUSTER C: TECHNOLOGY TRANSFER, INFORMATION AND COMMUNICATION TECHNOLOGIES (ICT) AND ACCESS TO KNOWLEDGE

24. To request WIPO, within its mandate, to expand the scope of its activities aimed at bridging the digital divide, in accordance with the outcomes of the World Summit on the Information Society (WSIS) also taking into account the significance of the Digital Solidarity Fund (DSF).
25. To explore IP-related policies and initiatives necessary to promote the transfer and dissemination of technology, to the benefit of developing countries and to take appropriate measures to enable developing countries to fully understand and benefit from different provisions, pertaining to flexibilities provided for in international agreements, as appropriate.
26. To encourage Member States, especially developed countries, to urge their research and scientific institutions to enhance cooperation and exchange with research and development institutions in developing countries, especially LDCs.
27. Facilitating IP-related aspects of ICT for growth and development: Provide for, in an appropriate WIPO body, discussions focused on the importance of IP-related aspects of ICT, and its role in economic and cultural development, with specific attention focused on assisting

Member States to identify practical IP-related strategies to use ICT for economic, social and cultural development.

28. To explore supportive IP-related policies and measures Member States, especially developed countries, could adopt for promoting transfer and dissemination of technology to developing countries.

29. To include discussions on IP-related technology transfer issues within the mandate of an appropriate WIPO body.

30. WIPO should cooperate with other intergovernmental organizations to provide to developing countries, including LDCs, upon request, advice on how to gain access to and make use of IP-related information on technology, particularly in areas of special interest to the requesting parties.

31. To undertake initiatives agreed by Member States, which contribute to transfer of technology to developing countries, such as requesting WIPO to facilitate better access to publicly available patent information.

32. To have within WIPO opportunity for exchange of national and regional experiences and information on the links between IP rights and competition policies.

CLUSTER D: ASSESSMENT, EVALUATION AND IMPACT STUDIES

33. To request WIPO to develop an effective yearly review and evaluation mechanism for the assessment of all its development-oriented activities, including those related to technical assistance, establishing for that purpose specific indicators and benchmarks, where appropriate.

34. With a view to assisting Member States in creating substantial national programs, to request WIPO to conduct a study on constraints to intellectual property protection in the informal economy, including the tangible costs and benefits of IP protection in particular in relation to generation of employment.

35. To request WIPO to undertake, upon request of Member States, new studies to assess the economic, social and cultural impact of the use of intellectual property systems in these States.

36. To exchange experiences on open collaborative projects such as the Human Genome Project as well as on IP models.

37. Upon request and as directed by Member States, WIPO may conduct studies on the protection of intellectual property, to identify the possible links and impacts between IP and development.

38. To strengthen WIPO's capacity to perform objective assessments of the impact of the organization's activities on development.

CLUSTER E: INSTITUTIONAL MATTERS INCLUDING MANDATE AND GOVERNANCE

39. To request WIPO, within its core competence and mission, to assist developing countries, especially African countries, in cooperation with relevant international organizations, by conducting studies on brain drain and make recommendations accordingly.

40. To request WIPO to intensify its cooperation on IP related issues with UN agencies, according to Member States' orientation, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially WTO in order to strengthen the coordination for maximum efficiency in undertaking development programs.

41. To conduct a review of current WIPO technical assistance activities in the area of cooperation and development.

42. To enhance measures that ensure wide participation of civil society at large in WIPO activities in accordance with its criteria regarding NGO acceptance and accreditation, keeping the issue under review.

43. To consider how to improve WIPO's role in finding partners to fund and execute projects for IP-related assistance in a transparent and member-driven process and without prejudice to ongoing WIPO activities.

44. In accordance with WIPO's member-driven nature as a United Nations Specialized Agency, formal and informal meetings or consultations relating to norm-setting activities in WIPO, organized by the International Bureau, upon request of the Member States, should be held primarily in Geneva, in a manner open and transparent to all Members. Where such meetings are to take place outside of Geneva, Member States shall be informed through official channels, well in advance, and consulted on the draft agenda and program.

CLUSTER F: OTHER ISSUES

45. To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that "the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations", in accordance with Article 7 of the TRIPS Agreement.

[End of Annex and of document]