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FEASIBILITY ASSESSMENT ON POSSIBLE NEW WIPO ACTIVITIES RELATED TO USING COPYRIGHT TO PROMOTE ACCESS TO INFORMATION AND CREATIVE CONTENT

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1. The Annex to this document contains a study entitled “The Feasibility Assessment on Possible New WIPO Activities Related to Using Copyright to Promote Access to Information and Creative Content”, undertaken in the context of the Development Agenda Project on Intellectual Property, Information and Communications Technologies (ICTs), the Digital Divide and Access to Knowledge.

2. *The Committee is invited to take note of the information contained in the Annex to this document.*

[Annex follows]

¹ The views and opinions expressed in this Paper are the sole responsibility of the author. The Paper is not intended to reflect the views of the Member States or the WIPO Secretariat.

1. INTRODUCTION

The Committee on Development and Intellectual Property (CDIP) adopted the “Project on Intellectual Property, Information and Communications Technologies (ICTs), the Digital Divide and Access to Knowledge”² (hereinafter “The Project on IP, ICTs, the Digital Divide and Access to Knowledge”) as part of the effort to implement Recommendations 19, 24 and 27 of the World Intellectual Property Organization (WIPO) Development Agenda.³ Under the copyright component of the Project there were two objectives, namely to:

- (a) Gather information and explore the potential of the copyright system, its flexibilities and different models for managing copyright for enhancing access to knowledge, with a particular focus on the following three areas: education and research; software development practices, including free and open source software; and e-information (e.g., e-journals and public sector information).
- (b) Conduct an interdisciplinary evaluation of opportunities for WIPO, within its mandate, to engage in new activities that help Member States achieve their development goals through enhancing access to knowledge.

In order to meet the first objective, the WIPO Secretariat commissioned a study on “Using Copyright to Promote Access to Information and Creative Content” (hereinafter “Study on Copyright and Access”) covering the three areas (education and research, software, and public sector information).⁴ The study was presented to the CDIP at the Ninth Session in May 2012. During that Session, however, the study was not discussed due to time constraints. The study was actively discussed only at the Tenth Session of the CDIP in November 2012.

Following the discussion, and taking into account the second objective of the copyright component of the project, the Member States agreed that:

“Taking into account the guidance given by the Member States, the Secretariat would arrange the preparation of an assessment of the feasibility for WIPO, within its mandate, to engage in new activities that could potentially assist Member States to achieve their development goals for submission to the next session of the Committee.” (See Summary of the Chair paragraph 10(g)).

This paper contains the feasibility assessment undertaken by an external consultant⁵. It provides a list of potentially appropriate activities or initiatives that WIPO could undertake with respect to education and research (E&R), software development, and public sector information. Activities or initiatives for each of the three areas are discussed separately in section 2 below.

² See WIPO document CDIP/4/5 Rev. Available at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=131424.

³ The recommendations are as follows: Recommendation 19 (Cluster B): 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; Recommendation 24 (Cluster C): 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); and Recommendation 27 (Cluster C): 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.

⁴ The Study can be found in WIPO document CDIP/9/INF/3. Available at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=216783.

⁵ The external consultant was earlier responsible for preparing the part on education and research for the “Study on Copyright and Access” – WIPO document CDIP/9/INF/3, *ibid*.

Overall, six (6) activities/initiatives are proposed. The activities or initiatives proposed range from technical assistance to capacity building, awareness-raising activities and internal organizational and management activities.

For each activity or initiative proposed, the paper provides a description of the activity/initiative and the reasons and justification for the activity/initiative, taking into account WIPO's mandate; the objectives of the activity; target beneficiaries; and an estimation of resources from a qualitative perspective.

2. POSSIBLE WIPO ACTIVITIES ON ACCESS TO INFORMATION AND CREATIVE CONTENT AND FEASIBILITY ASSESSMENT

In a nutshell, Recommendations 19, 24 and 27 of the WIPO Development Agenda were aimed at enhancing WIPO's contribution to increasing access to knowledge, bridging the digital divide and using IP to leverage ICT for growth and development. The three areas of study chosen for the Project on IP, ICTs, the Digital Divide and Access to Knowledge (education and research, software development practices and access to public sector information) provide viable areas where WIPO's mandate could be leveraged to make an important contribution. Following the analysis in the Study on Copyright and Access and the discussions by the Member States at CDIP/10, the question that arises is whether there are concrete and practical activities and initiatives that WIPO can undertake to make a real contribution to access to information and creative content. The feasibility assessment that follows below is intended to give Member States the relevant information to make informed decisions regarding what these activities/initiatives could be.

A number of the proposed activities/initiatives are new activities/initiatives in WIPO. In such cases, it is important to note that to undertake these new activities/initiatives will require that adequate human and financial resources be allocated. In some other cases, the proposed activities may be integrated with other on-going activities. In essence, in considering each of the proposed activities/initiatives the Member States should consider whether the proposed activity is linked to any on-going work where only minimal additional resources are required or is a new activity requiring specific new allocation of human and financial resources.

2.1 EDUCATION AND RESEARCH (E&R) RESOURCES

The analysis in the Study on Copyright and Access with respect to E&R focused on open access (OA) approaches as a model of copyright management to enhance access to E&R resources. Taking into account the study and the discussions of the Member States, the following activities and initiatives are proposed.

ACTIVITY 1

<i>Title of Activity/Initiative</i>	Pilot Project on Creation of a Centralized Database for Technical and Legal Support with respect to Making IP-Related E&R Resources Available on an Open Access (OA) Basis
<i>Nature of Activity</i>	(a) Capacity building. (b) Awareness-raising.

<p><i>Brief Description of the Activity/Initiative</i></p>	<p>WIPO's Strategic Goal 5 aims at making the organization a "World Reference Source for IP Information and Analysis". Through the work of the Economics and Research Division, the work of the WIPO Academy and other substantive divisions as well as work undertaken through the various committees, WIPO is the leading global provider of IP-related E&R resources. Other organizations, including regional IP organizations and national offices, as well as research and academic institutions also provide or produce IP-related E&R materials. Interest in IP related information, including educational materials on IP, has also grown significantly in the recent past. Developing countries represent a large proportion of the growing demand for IP information and resources as more and more educational institutions introduce IP courses and business seek to take advantage of IP.</p> <p>The pilot project will aim to develop a centralized database that will provide materials and information for technical and legal support with respect to accessing and/or making IP-Related E&R resources available on an open licensing basis, including with respect to doing so on an open access (OA) basis. In this regard, the Project will entail:</p> <ul style="list-style-type: none"> (a) Research and analysis of the current copyright management policies in WIPO and other institutions providing quality IP-related E&R resources; (b) Identify the nature and type of IP-related E&R resources that are produced or developed by these institutions; (c) Assess which of those IP-related E&R resources could be made available on an OA basis by undertaking a needs assessment in selected developing countries and least-developed countries (LDCs); and (d) Developing a centralized database with materials and information for technical and legal support with respect to OA and IP-related E&R resources.
<p><i>Objectives of the Activity/Initiative</i></p>	<ul style="list-style-type: none"> (a) Enhance the availability of the IP and related E&R resources, information and content. (b) Provide an opportunity for WIPO and its Member States as well as other stakeholders for lesson-learning and gaining experience on strategies and approaches to OA with respect to IP-Related E&R resources. The lessons and experience gained could be used in providing advice or assistance to those developing countries that are interested in using OA approaches in the area of E&R.
<p><i>Target Beneficiaries</i></p>	<p>Member States; international organizations; educational and research organizations, including academic institutions; IP researchers and civil society.</p>

<i>Estimated Resource Requirements (qualitative estimate)</i>	Both human and financial resources will need to be dedicated for this project. A wide range of sectors and divisions will have to contribute some level of resources to the project since it touches on most if not all sectors in WIPO. Collaboration will therefore be a key issue. In this regard, a dedicated coordinator located within the copyright sector of WIPO will probably be needed.
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ACTIVITY 2

<i>Title of Activity/Initiative</i>	Applicability of Open Licensing to E&R Resources produced by International Organizations
<i>Nature of Activity</i>	<ul style="list-style-type: none"> (a) Awareness-raising. (b) Capacity building. (c) Internal organization and management.
<i>Brief Description of the Activity/Initiative</i>	<p>Due to the growing importance and emerging evidence on the impact of open licensing, including open access (OA) approaches, in the management of E&R resources, international organizations have started investing in or considering this model of copyright management. For example, the United Nations Educational and Scientific Organization (UNESCO) has established a dedicated programme to promote OA with particular focus on scientific information. UNESCO together with the Commonwealth of learning (COL) has also developed guidelines for OA with respect to higher education. Many international organizations have also recognized and are seeking to take advantage of the opportunities arising due to the growth of ICTs to reach a broader global audience especially in developing countries. Other international organizations exploring open licensing, including OA include the World Bank.</p> <p>However, notwithstanding the growing interest in OA for E&R resources within international organizations, such as WIPO, UNESCO and the World Bank, there has been limited work done relating to international organizations providing access to E&R resources on an open licensing, including OA basis, taking into account their mandates and funding models. Because open licensing in the E&R sector ultimately relates to copyright management, WIPO can play an important role in studying and providing better information on how different international organizations have approached this issue or could approach it. Looking at a cross-section of international organizations covering different issues, with different mandates and funding models, will help in better understanding how international organizations can make a contribution in this area while understanding where this model works and where it might not be the appropriate approach.</p> <p>This activity/initiative links to a number of WIPO Strategic Goals including: Goal III – Facilitating the use of IP for development; Goal VI – International cooperation in building respect for IP; and Goal VII – Addressing IP in relation to global policy issues.</p>

<i>Objectives of the Activity/Initiative</i>	<p>(a) Enhance awareness and understanding of open licensing, including OA approaches within international organizations.</p> <p>(b) Lesson-learning and gaining experience on different approaches to open licensing for E&R resources from international organizations.</p> <p>(c) Build an evidence base and bibliography on open licensing, including OA for E&R resources from international organizations.</p>
<i>Target Beneficiaries</i>	Member States; international organizations; educational and research organizations, including academic institutions; IP researchers and civil society.
<i>Estimated Resource Requirements (qualitative estimation)</i>	This project will involve considerable research and data collection, including conducting surveys among select international organizations. It will also involve considerable work with other organizations within the UN system and beyond. For this reason, the project will require dedicated resources for research and coordination. Considering the nature of the project some external resources, in the form of consultants, may also be needed.

2.2 COPYRIGHT AND SOFTWARE DEVELOPMENT PRACTICES

In the area of copyright and software development practices, the Study on Copyright and Access examined the general treatment of software in copyright law at the international, regional and national level. In this context, the study found that generally, there is a lack of legislative or regulatory initiatives towards improving access to software through copyright exceptions or licensing where the main driver is not economic exploitation. The role of open source software was highlighted as an important area. Taking into account the Study and the discussions by the Member States, the following activities/initiatives are proposed in this area.

ACTIVITY 3:

<i>Title of Activity/Initiative</i>	Development of a Training Module on Licensing and Open Source Software Development
<i>Nature of Activity</i>	<p>(a) Capacity building and technical assistance.</p> <p>(b) Awareness-raising.</p>
<i>Brief Description of the Activity/Initiative</i>	One of the underlying objectives of the WIPO Development Agenda was to enable more people and enterprises in developing countries to participate in the IP system both at the national and international level. Licensing software through an open source model is seen as an important approach that allows software developers, particularly in developing countries, to create and add value in this area, while operating within the copyright system.

	<p>The open source model, as demonstrated by the Study on Copyright and Access, has important economic benefits and provides unique incentives for inclusion, collaboration and participation. With growing interest in the model as a copyright management approach in the software sector, it is important that there is proper education and training for different cadres of persons involved with IP and copyright. A dedicated training module will offer an important opportunity for practitioners and policy makers to learn about the model and its costs and benefits.</p> <p>This training module could be used by the WIPO Academy and other WIPO divisions involved in training as well as adopted by other institutions to undertake their own training. As with many WIPO training modules or materials, it will have a multiplier effect and will constitute a durable project component.</p> <p>This activity/initiative links to a number of WIPO Strategic Goals, namely: Goal III – Facilitating the use of IP for development; and Goal V – World reference source of IP information and analysis.</p>
<i>Objectives of the Activity/Initiative</i>	<p>(a) Enhance awareness of the possibilities and advantages of open source software development.</p> <p>(b) Build an evidence base and bibliography on open source software as a licensing model for software within the traditional copyright regime, with special emphasis on developing countries.</p>
<i>Target Beneficiaries</i>	Member States; private sector; educational and research organizations, including academic institutions; IP researchers; civil society organizations
<i>Estimated Resource Requirements (qualitative estimation)</i>	Course development is a time intensive process requiring specialized skills. This activity/initiative will therefore require dedicated human, time and financial resources. Both internal and external human resources may need to be utilized.

ACTIVITY 4:

<i>Title of Activity/Initiative</i>	Integrating Open Source Licensing in WIPO Copyright Related Courses and Training Programs
<i>Nature of Activity</i>	<p>(a) Capacity building and technical assistance.</p> <p>(b) Awareness-raising.</p>
<i>Brief Description of the Activity/Initiative</i>	WIPO offers a number of copyright related trainings in the context of its general courses, advanced courses and executive program. These include the advanced course on copyright and related rights and the executive program course on IP licensing agreements. The growing reach of IP, including in the area of copyright, also means that licensing has growing importance generally and in developing countries in particular.

	<p>Taking into account the importance of open source software as a strategic licensing approach in the area of software development and the growing importance of software development in the ICT sectors in developing countries, specialized training and opportunities for learning on open source software development and licensing is critical. In order to ensure that open source software development is seen and understood in the context of the broader copyright system, it is important that courses on licensing and related topics specifically incorporate a component on this subject.</p> <p>This activity/initiative links to a number of WIPO Strategic Goals, namely: Goal III – Facilitating the use of IP for development; and Goal V – World reference source of IP information and analysis.</p>
<i>Objectives of the Activity/Initiative</i>	<p>(a) Enhance awareness and build a better understanding of the licensing options in the area of software.</p> <p>(b) Build an evidence base on crosscutting policies related to copyright, software licensing and development.</p>
<i>Target Beneficiaries</i>	<p>Member States; private sector; educational and research organizations, including academic institutions; IP researchers; civil society organizations</p>
<i>Estimated Resource Requirements</i>	<p>This activity/initiative can be implemented in the context of on-going and regular updating of WIPO training courses. While it will need some additional resources, these are expected to be relatively modest.</p>

2.3 ACCESS TO AND RE-USE OF PUBLIC SECTOR INFORMATION

The component on public sector information in the Study on Copyright and Access examined the role of copyright in facilitating access to and re-use of public sector information. The analysis here found that there is increasing recognition that promoting re-use of government produced documents and data and permitting its commercial exploitation may provide important stimulus to emerging information economies. The analysis also found that governments have approached the issue of copyright in public sector information along three broad models, namely: (a) placing all public sector information in the public domain, (b) excluding only official acts from copyright protection and allowing re-use of other types of public sector information under permissive (open) licenses, or (c) protecting all public sector information but allowing re-use through copyright waivers or permissive (open) licenses. In the context of the Study findings in this area and the discussions of the Member States at CDIP 10, the following activities/initiatives are proposed.

ACTIVITY 5:

<i>Title of Activity/Initiative</i>	Development of Model Copyright Policies and Legal Provisions for Different Copyright Approaches to Public Sector Information
<i>Nature of Activity</i>	<p>(a) Capacity building and technical assistance.</p> <p>(b) Awareness-raising.</p>
<i>Brief Description of the Activity/Initiative</i>	<p>Governments traditionally produce large amounts of information and data that is relevant for citizens and other players generally as well as for commercial and other entities involved in business, research and policy work. The growth of ICTs has meant that the information produced by governments and other public agencies can now be widely made available not only within a country but also worldwide. In this context, there has been a growing interest in the development of national government online portals to make available and disseminate public sector information.</p> <p>As the efforts to make available public sector information gather pace and taking into account the potential commercial value of this information as well as the interest in access to information by the public, copyright has become an important issue. The research findings of the Study on Copyright and Access show that governments have approached the question of copyright in public sector information in different ways, some contradictory. In this context, there is an important role that WIPO can play to help clarify the issues involved and offer options for possible model policies and/or legal provisions on copyright and licensing public sector information.</p> <p>This activity/initiative links to a number of WIPO's Strategic Goals, including Goal I – Balanced evolution of the international normative framework for IP; Goal III – Facilitating the use of IP for development; and Goal V – World Reference Source of IP information and analysis.</p>
<i>Objectives of the Activity/Initiative</i>	<p>(a) Offer model approaches to copyright through model policies and legal provisions under various approaches to public sector information.</p> <p>(b) Enhance awareness of the possibilities and advantages of different approaches to copyright in public sector information.</p>
<i>Target Beneficiaries</i>	Member States; public sector research organizations; educational and research organizations, including academic institutions; IP researchers; civil society organizations
<i>Estimated Resource Requirements</i>	Development of model legal provisions and policies can be a time consuming and intensive process. While WIPO already has internal capacity on development of model laws and policies this initiative will need to be consultative and interactive. Both internal and external human resources would likely need to be utilized.

ACTIVITY 6:

<i>Title of Activity/Initiative</i>	International Conference for Least-Developed Countries (LDCs) on Copyright and the Management of Public Sector Information
<i>Nature of Activity</i>	(a) Awareness-raising
<i>Brief Description of the Activity/Initiative</i>	<p>Considering that efforts to make available public sector information are gathering pace and that governments have approached the question of copyright in public sector information in different ways, this activity will aim to build awareness on the issues involved and offer a forum for exchange of information and ideas among Member States and other stakeholders. A key focus will be on LDCs, which are likely to benefit significantly from gaining more awareness in this area.</p> <p>This activity is linked to activity 5 above. On the one hand the tools developed under activity 5 may be used as material for this activity. On the other hand, the discussions at the conference could offer further information and insights and serve as a peer-review exercise for the tools being developed under activity 5.</p>
<i>Objectives of the Activity/Initiative</i>	(a) Enhance awareness of the possibilities as well as the advantages and disadvantages of different approaches to copyright in public sector information.
<i>Target Beneficiaries</i>	Member States, especially LDCs; public sector research organizations; educational and research organizations; civil society organizations,
<i>Estimated Resource Requirements</i>	The main resource requirements for this activity will relate to travel for LDC participants and conference speakers. Other conference related resources, both human and financial, will be needed.

3. CONCLUSION

It has already been noted in this paper that Recommendations 19, 24 and 27 of the WIPO Development Agenda were aimed at enhancing WIPO's contribution to the promotion of access to knowledge, bridging the digital divide and using IP to leverage ICT for growth and development. In all three recommendations, it is clear that the Member States recognized that while these areas are important, the issues involved go beyond WIPO's mandate. There was therefore considerable emphasis in the Study on identifying how WIPO could make a contribution in the context of its mandate in framing the three recommendations.

The Study on Copyright and Access made a number of recommendations on the possible activities/initiatives that WIPO could undertake to make a greater contribution in promoting access to knowledge, bridging the digital divide and enhancing the use of IP to leverage ICT for growth and development. Taking into account these recommendations and the feedback received from the Member states during the discussion of the Study on Copyright and Access at the 10th Session of CDIP, this paper has proposed a number of concrete activities/initiatives that could be undertaken by WIPO in this area. These activities/initiatives (six in total) have been suggested as most feasible and relevant within WIPO's mandate and strategic goals, taking into account the overriding objectives of Recommendations 19, 24 and 27 of the WIPO Development Agenda.

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