

Twenty-Third Session **Geneva, May 20 to 24, 2019**

REVISED PROJECT PROPOSAL FOR THE DEVELOPMENT OF THE MUSIC SECTOR AND NEW ECONOMIC MODELS OF MUSIC IN BURKINA FASO AND IN CERTAIN COUNTRIES OF THE WEST AFRICAN ECONOMIC AND MONETARY UNION (WAEMU)

Document prepared by the Secretariat

1. At its twenty-second session, the Committee on Development and Intellectual Property (CDIP) examined document CDIP/22/12 entitled "Project: Strengthening and Development of the Music Sector in Burkina Faso and in Certain African Countries", proposed by the delegation of Burkina Faso. The Committee welcomed the project proposal, but asked the Secretariat to revise it in consultation with Burkina Faso for consideration at its next session.

2. A revised project proposal is contained in the annex to this document.

3. *The CDIP is invited to
consider the annex to this document.*

[Annex follows]

RECOMMENDATIONS Nos. 4, 10, 11, 23, 24 AND 27 OF THE ACTION PLAN FOR DEVELOPMENT

PROJECT DESCRIPTION

1. SUMMARY	
<u>Project code</u>	DA_1_4_10_11_23
<u>Title</u>	Development of the music sector and new economic models of music in Burkina Faso and in certain countries of the UEMOA zone
<u>Development Agenda Recommendations</u>	<p><i>Recommendation 1:</i> WIPO technical assistance shall be, <i>inter alia</i>, development-oriented, demand-driven and transparent, taking into account the priorities and special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should include timeframes for completion. In this regard, design, delivery mechanisms and evaluation processes of technical assistance programs should be country-specific.</p> <p><i>Recommendation 4:</i> Place particular emphasis on the needs of SME's, 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 intellectual property (IP).</p> <p><i>Recommendation 10:</i> 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 a 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.</p> <p><i>Recommendation 11:</i> To assist Member States to strengthen national capacity for protection of domestic creations, innovations and inventions to support development of national scientific and technological infrastructure, where appropriate, in accordance with WIPO's mandate.</p> <p><i>Recommendation 23:</i> 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.</p>

<u>Project Implementation Program</u>	3 Copyright and Creative Industries Sector
<u>Links to other related programs/projects for the Development Action Plan</u>	<p>Programs 9, 15, and 17</p> <p>The project aims to facilitate the use of legal and regulatory frameworks of copyright and related rights in the music industry, especially with regard to online use, and to strengthen the operational expertise and tools for the management of rights related to new business models of music in the digital environment.</p>
<u>Links to strategic goals</u>	<p><u>Strategic Goal I.2:</u> Tailored and balanced IP legislative, regulatory and policy frameworks.</p> <p><u>Strategic Goal III.4:</u> Strengthened cooperation arrangements with institutions in developing countries, LDCs and countries in transition tailored to their needs.</p> <p><u>Strategic Goal IV.2:</u> Enhanced access to, and use of, intellectual property information by IP institutions and the public to promote innovation and creativity.</p>
<u>Project duration</u>	30 months
<u>Project budget</u>	<p>Personnel costs: 114,200 Swiss francs</p> <p>Non-personnel expenditure: 454,000 Swiss francs</p> <p>Total: 568,200 Swiss francs</p>

2. PROJECT DESCRIPTION

Introduction

Music is one of the most promising economic sectors in Africa. It enjoys a high rate of growth, great potential in terms of jobs and contributes to the cultural influence of countries. Online music consumption in Africa has exploded, but the sector has not yet fully harnessed the opportunities of the digital environment and new business models of music. This leads to the following observations.

Digital technology is an opportunity for the production and worldwide distribution of African music content, in particular thanks to the massive dissemination of smart phones. Downloading is still widespread in Africa, while streaming has become one of the main drivers of growth in the music market. Sharing platforms and subscription services are expanding. New business models and new consumer behavior are developing at a very fast pace. New players have also entered the market, including telecommunications operators who are increasingly interested in audiovisual and music content.

Nevertheless, most of these new business models generate little revenue for holders of copyright and related rights, i.e., those who create and invest in content and services. This situation is in part due to the weak structure of the value chain, which relies on a fragile and fragmented cultural ecosystem. As for the users, they often have access to a limited repertoire owing to fragmentation of offers.

Collective management organizations (CMOs) are playing a bigger role in the digital world. These companies are now facing an unprecedented rise in data volumes and cross-border use. However, they operate in ill-defined legal frameworks given the rights and digital flows to be managed; contractual practices are often ambiguous; licensing mechanisms need to adapt to digital services; and there is a lack of technical resources and tools.

The result is low remuneration for rightholders and an increase in unauthorized use. In 2018, global remuneration for copyright was nearly 8.3 billion euros,¹ but the share of the entire African continent in this remuneration, all rights combined, was less than 1%, with revenues from digital content remaining very low.

Lastly, illegal music services are still widespread and piracy patterns change quickly, driven by the ease with which this content can be circulated and shared on digital networks. Added to that is the widespread perception that content is free in the digital environment, coupled with the weakness of regulatory mechanisms, which many countries still lack.

2.2. Objectives

- I. Promote a better understanding and use of legal and regulatory frameworks for copyright and related rights among beneficiary Member States and professionals, in light of the new uses and exploitation of online music.
- II. Promote knowledge of collective management and contract negotiation mechanisms pertaining to digital rights management among music professionals and users.
- III. Facilitate and develop management and licensing practices for online use that will make it possible legally to exploit content on streaming and other online platforms, generate revenue for rightholders and combat piracy.
- IV. Allow regulators in the communication sector to modernize their specifications to take better account of copyright issues.
- V. Analyze the conditions for establishing a regional strategy to promote the digital music market in the beneficiary countries, with a view to making the sector a driver of sustainable growth.
- VI. Promote improvement in the social conditions of creators in order to foster the design and development of an innovative and consistent chain of trades in the music industry.
- VII. Develop reference tools that allow judicial officers to deal with music-related disputes in the digital environment.
- VIII. Support the design of a regional strategy to promote the development of appropriate tools.

¹ CISAC report on global royalties.

Note: The project will also deal with some elements of the audiovisual sector that are important in the field of music, including the management of music rights in the audiovisual sector, video streaming, video clips and remuneration for private copying. In this regard, the project is in line with Project CDIP/17/7 on “Strengthening the audiovisual sector in Burkina Faso and Certain African Countries”.

1. Implementation strategy

The project will be based on the following activities:

A. Scoping study

It will provide an up-to-date overview of legal frameworks for digital music services in the beneficiary countries, contractual practices and licensing patterns for new online uses. The study will identify stakeholders in each country.

It will make recommendations on how to define priority areas to be considered in the implementation of the project, which actions to take and which goals to achieve in order to translate international experience to the local level.

B. Other activities

The activities will be further refined once the scoping study is finalized and in view of the first coordination meeting with the project focal points.

At this stage, the following activities are planned:

- A. An annual coordination meeting with the focal points for project monitoring.
- B. Four training workshops (three days each) for the project’s beneficiary companies on the licensing of online usage and contractual practices; representatives of African countries with relevant experience may be invited to these workshops as observers/resources persons.
- C. In addition to the training workshops, there will be a public/private cross-sectoral dialogue between the main actors in the music industry, to exchange information and experiences on digital business models and the adaptation of offers and licensing mechanisms. The dialogue will help explore opportunities for the development of a regional strategy to expand the digital music market and will make recommendations.
- D. On-site training in CMOs, sharing of tools and operational expertise allowing CMOs to manage music rights in the digital domain more effectively and profitably; training on the implementation of private copying in the beneficiary countries, especially UEMOA members.
- E. Training of judicial officers on music contracts through a workshop for the beneficiary countries.
- F. Preparation of annotated guide on the benchmark case law in French-speaking African countries. This compendium will make the pertinent decisions available, namely those that have a similar purpose in spite of legislative differences.
- G. Development of a distance-learning module on the management of music rights in the audiovisual sector, which will complement the “copyright for audiovisual professionals” training.

H. Strengthening partnerships with regulators by establishing a group bringing together experts, copyright offices and regulators and by drafting a voluntary charter on relations with broadcasting organizations.

2. Scope and implementation strategy

C. Beneficiaries countries and selection criteria

The beneficiaries of the project will be Burkina Faso and three or four other interested WAEMU member countries.

WAEMU is already implementing a regional economic integration policy and copyright and culture play a key role in its common development policy. Countries in this zone have been chosen because there is already a sub-regional mechanism that will facilitate the implementation of the project, which is part of structural measures aimed at supporting and enhancing the potential of the music industry and new digital services. This approach is fully in line with the Development Agenda and is part of the process of sustainable cultural and economic development of WAEMU countries.

This sub-regional approach was encouraged in the evaluation report for the “Strengthening the Audiovisual Sector in Burkina Faso and Certain African Countries, Phase II”² project. This is why it is also proposed to establish collaboration with the WAEMU Secretariat to promote joint action on certain project activities of common interest.

Every Member State concerned will appoint a focal point, who will provide the Secretariat with information on the following:

- expressions of interest from the copyright office and, if possible, an organization representing music professionals;
- whether there are national IP instruments to protect copyright and related rights, in the event of online music exploitation;
- provisions and practices for the management of copyright and related rights related to digital exploitation;
- information or details of strategies concerning private copying compensation regimes;
- information on cooperation with the digital media regulator; and
- details on the relevance of the project in light of the issues in the sector and the expected results.

D. Approach

Member States will be invited to provide the Secretariat with preliminary and regular information as follows.

- Each country will designate a focal point. To ensure project success, these focal points should have well-established working relationships with

² Document CDIP/23/6, https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=430691.

- stakeholders and the music sector. They should also have a knowledge of, copyright and good speaking and project management skills.
- The focal points will coordinate the project implementation plan in their respective countries in consultation with the project manager. They will suggest experts selected to implement the project.
 - When project implementation starts, each country should share information on desired activities, on the strategy to integrate the project's activities at the national level and on the expected results.
 - The project's priority targets will be countries, national institutions, industries and professionals from the relevant sectors.

2.4. Risks and mitigation strategies

Main risks:

- institutional or political instability in the beneficiary countries;
- lack of information and contributions from beneficiaries on their practices and the changing needs in light of technological developments; and
- number of proposed activities in each country exceeds the available budget.

The project is founded on an efficient partnership with the beneficiary countries. Its success will depend on the ability to prioritize requests, to undertake activities with the appropriate local partners, and to adapt the implementation of the project to differing national priorities and to rapid changes in technologies and processes.

The mitigation strategy assumes that the implementation schedule can be adjusted in the event of unforeseen events related to certain changes in the legal or political framework or institutional restructuring in the beneficiary countries.

All the risks will require detailed planning and regular monitoring and coordination with focal points in each country. If a country does not contribute effectively to the implementation of the project, it may be suspended in that country.

3. REIVIEW AND EVALUATION

3.1. Project review schedule

3.2. Self-Evaluation Report

In addition to the self-evaluation of the project, there will be an independent evaluation of the project.

Project outputs

Indicators of successful completion
(outcome indicators)

Designating focal points
Annual coordination meetings

1. The focal points are designated according to the implementation schedule

	<ol style="list-style-type: none"> 2. Meetings held regularly, with the adoption of a follow-up on the implementation
Scoping study	<ol style="list-style-type: none"> 1. The needs of the beneficiary countries are clarified by the scoping study 2. The study is approved by the beneficiary countries
Four sub-regional workshops	<ol style="list-style-type: none"> 1. Presentation of a “benchmark” of recommended practices 2. Drafting of standard contractual provisions
Inter-sectoral dialogue of the music industry – support for the implementation of legislation	<ol style="list-style-type: none"> 1. Stakeholders are identified and participate in meetings 2. The legislation is implemented in at least three countries 3. The conditions for devising a sub-regional cooperation strategy are identified
Training on rights management in each country, including private copying	<ol style="list-style-type: none"> 1. Percentage of beneficiaries (user groups per country) who rated the content positively 2. The tools and training are applied by the beneficiaries 3. Closer cooperation between the offices is established on the basis of agreements
Development of the relevant case law guide	<ol style="list-style-type: none"> 1. Establishment of the working group of two experts and meeting of the group 2. Digitization of decisions and making them available online via hyperlinks 3. The tools developed are accepted and used
Sub-regional workshop for judicial officers on contracts	<ol style="list-style-type: none"> 1. The case law tools developed are accepted and used by the beneficiaries 2. Percentage of beneficiaries (user groups per country) who positively assessed the content

DL module on music in audiovisual sector	1. The distance learning module is implemented and used by beneficiaries
Dialogue/regulatory training	<ol style="list-style-type: none"> 1. At least two multi-country meetings organized with regulators 2. At least two countries modify their specifications/legislation on regulation
Project objectives	Indicators of success in achieving project objective (outcome indicators)
Contribute to enhanced use of the copyright and related rights system in the distribution and exploitation of online music content, including the operationalization of private copying systems	<ol style="list-style-type: none"> 1. Participants make greater use of the acquired skills for management of online music rights (to be ascertained via an evaluation questionnaire sent to participants approximately six months after the completion of the training) 2. Operationalization of remuneration for private copying in at least one country 3. Increase the number of IP-related transactions and distributions in at least two beneficiary countries in the area of online use (baseline to be determined through the scoping study and the national plans)
Promoting a more respectful environment for rights for the development of effective measures and tools to boost the music industry and online businesses	Beneficiary countries have devised appropriate plans for rights management in case of online music exploitation and use and for ensuring compliance with these rights by stakeholders

4. **IMPLEMENTATION TIMELINE**

Activity	Quarters											
	1 st	2 nd	3 rd	4 th	1 st	2 nd	3 rd	4 th	1 st	2 nd	3 rd	4 th
Annual coordination meeting of focal points	x				x				x			
Scoping study	x											
Licensing workshop		x		x			x			x		
On-site training in CMOs and private copying organizations			x	x	x	x	x	x	x			
Inter-sectoral dialogue on music in combination with licensing workshops		x		x			x			x		
Training for judicial officers (a sub-regional workshop)				x								
Guide to case law		x	x	x	x	x	x	x				
Dialogue/training for regulators		x				x						
DL module on music in audiovisual content			x	x	x	x						
Project evaluation											x	

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TOTAL RESOURCES PER RESULT

(a) 2020-2021 biennium

Project results	2020		2021		Total		Total
	Staff	Other	Staff	Other	Staff	Other	
Scoping study		20,000				20,000	20,000
Annual coordination meeting of focal points		23,000		23,000		46,000	46,000
Licensing workshop		66,000		33,000		99,000	99,000
On-site training in CMOs and private copying organizations		47,000		37,000		84,000	84,000
Training for judicial officers (sub-regional workshop)		33,000				33,000	33,000
Inter-sectoral dialogue on music in combination with licensing workshops		3,000		3,000		6,000	6,000
Guide to case law		20,000		17,000		37,000	37,000
DL module		8,000				8,000	8,000
Dialogue/training for regulators		21,000		21,000		42,000	42,000
Total Non-staff		241,000		134,000		375,000	375,000
Staff (G4 temp) 50%	57,100		57,100		114,200		114,200
Total	57,100	241,000	57,100	154,000	114,200	375,000	489,200

(b) 2022Biennium

Project results	2022		Total		Total
	Staff	Other	Staff	Other	
Annual coordination meeting of focal points		23,000		23,000	23,000
Licensing workshop		33,000		33,000	33,000
Inter-sectoral dialogue on music in combination with licensing workshops		3,000		3,000	3,000
On-site training in CMOs and private copying organizations		10,000		10,000	10,000
Project evaluation		10,000		10,000	10,000
Personnel					
Total		79,000		79,000	79,000

NON-STAFF EXPENDITURE BY CATEGORY OF COST

(b) 2020-2021 biennium

<i>(In Swiss francs)</i>								
Activities	Travel, training and allowances			Contractual services				Total
	Missions by officials	Third-party travel	Training and travel-related allowances	Conferences	Publications	Individual contractual services	Other contractual services	
Scoping study							20,000	20,000
Annual coordinating meeting for focal points	10,000	30,000		6,000				46,000
Licensing workshop	15,000	45,000		9,000		30,000		99,000
On-site training in CMOs and private copying organizations	8,000			6,000		70,000		84,000
Training for judicial officers (sub-regional workshop)	4,000	26,000		3,000				33,000
Inter-sectoral dialogue on				6,000				6,000

music in combination with licensing workshops								
Guide to case law				5,000		32,000		37,000
DL module						8,000		8,000
Dialogue/training for regulators	4,000	32,000		6,000				42,000
Total	41,000	133,000		41,000		140,000	20,000	375,000

(b) Year 2022

	<i>(in Swiss francs)</i>							
Activities	Travel, training and allowances			Contractual services				Total
	Missions by officials	Third party travel	Training and travel-related a	Conferences	Publications	Individual Contractual services	Other contractual services	
Annual coordinating meeting for focal points	5,000	15,000		3,000				23,000
Licensing workshop	5,000	15,000		3,000		10,000		33,000
On-site training in CMOs and private copying organizations						10,000		10,000
Inter-sectoral dialogue on music in combination with licensing workshops				3,000				3,000
Project evaluation						10,000		10,000
Total	10,000	30,000		9,000		30,000		79,000

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