

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

**Ninth Session**  
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### **STRENGTHENING AND DEVELOPMENT OF THE AUDIOVISUAL SECTOR IN BURKINA FASO AND CERTAIN AFRICAN COUNTRIES**

*Document prepared by the Secretariat*

1. The Annex to this document containing a Project proposal on the strengthening and development of the audiovisual sector in Africa addresses WIPO's Development Agenda Recommendations 1, 2, 4, 10 and 11. This document was submitted in a Communication dated November 9, 2011, by the Delegation of Burkina Faso and revised by the Secretariat in collaboration with the above-mentioned Delegation. The estimated cost for the Project amounts to 542,700 Swiss francs, of which 106,700 Swiss francs are related to personnel costs and 436,000 Swiss francs to the non-personnel costs.

2. *The CDIP is invited to consider and approve the Annex to this document.*

[Annex follows]

**DEVELOPMENT AGENDA RECOMMENDATIONS 1, 2, 4, 10 AND 11**

**PROJECT DOCUMENT**

1. SUMMARY	
<u>Project Code</u>	<b>DA_1_2_4_10_11</b>
<u>Title</u>	<i>Strengthening and Development of the Audiovisual Sector in Burkina Faso and Certain African countries</i>
<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 the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States. Activities should include time frames for completion. In this regard, design, delivery mechanisms and evaluation processes for technical assistance programs should be country-specific.</p> <p><i>Recommendation 2</i> 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 financing activities in Africa through budgetary and extra-budgetary resources, to promote, <i>inter alia</i>, the legal, commercial, cultural, and economic exploitation of intellectual property in these countries.</p> <p><i>Recommendation 4</i> Place particular emphasis on the needs of small and medium-sized enterprises (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 intellectual property.</p> <p><i>Recommendation 10</i> To assist Member States to develop and improve national intellectual property institutional capacity through further development of infrastructure and other facilities with a view to making national intellectual property institutions more efficient and promoting a fair balance between intellectual property protection and the public interest. This technical assistance should also be extended to sub-regional and regional organizations dealing with intellectual property.</p> <p><i>Recommendation 11</i> 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.</p>

<p><u>Brief Description of Project</u></p>	<p>The sustainability of the African audiovisual sector is an important development challenge. The role of intellectual property to maintain its viability and support its expansion is poorly understood. The proposed Project seeks to develop a sustained framework for the audiovisual sector on the basis of improved professional structures, markets and regulatory environment. It seeks to enhance the understanding and strategic use of the IP system as a key tool to foster production, marketing and distribution in the African audiovisual sector. The Project consists of two main components. The first component is in the field of professional development and training. The second component addresses the regulatory framework, and will seek to strengthen the relevant institutional capacity and infrastructure.</p> <p>The Project is a pilot focussed on a limited number of beneficiary countries to ensure successful synergy and exchange of experiences between some of the rapidly expanding African audiovisual industries.</p> <p>The distance-learning module to be developed in the ambit of this Project will provide a tangible and durable element to cater educational training in the audiovisual sector which will be made available to WIPO stakeholders and partners.</p>
<p><u>Implementing Program</u></p>	<p>Program 3</p>
<p><u>Links to other related Programs/ DA Projects</u></p>	<p>Programs 9, 11 and 17</p>
<p><u>Links to Expected Results in the Program and Budget</u></p>	<p>Program 3</p>
<p><u>Project Duration</u></p>	<p>24 months</p>
<p><u>Project Budget</u></p>	<p>Total Personnel cost: 106,700 Swiss francs Non Personnel cost: 436,000 Swiss francs</p>

## 2. PROJECT DESCRIPTION

### 2.1. Introduction

The emergence of a market-driven audiovisual sector (the term will be understood to include television and film in the Project) presents unique opportunities for socio-cultural transformation in Africa. It is one of the most creative assets of the knowledge economy and a critical sector for Africa's economic growth and development.

The spread of new technologies has stimulated independent film makers to enter in global market places while also affecting the value of different intellectual property rights in the film industry. At the same time, the African audiovisual market is facing tremendous challenges. It has remained very much fragmented between small companies and has been unable to generate industrial processes and mechanisms to support wealth creation through new sources of income and remuneration of creativity due to poor skills and lack of supporting institutions and infrastructures. So as to integrate the audiovisual sector into development policies, countries should expand on their efforts to protect and promote the interests of their film industries on the basis of recognized customs and processes to foster investment confidence and enable the creative community to maximize the value of their creative assets.

The objective of the Project is to power the development of the African audiovisual sector through technical assistance and institutional capacity building to increase understanding of the interplay of the copyright system in the audiovisual sector. It will address how IP rights may be used strategically to support the most critical stages of the film making process such as development, production, distribution and exhibition. The proposed project will also seek to consolidate IP revenue streams and reward for creativity through enhanced skills and infrastructure to support effective exercise of rights, professional markets developments and increased legal certainty in the sector.

### 2.2. Objectives

The proposed Project would have two objectives :

1. To contribute to enhanced use of the intellectual property system for the financing, production and distribution of audiovisual works; and
2. To advance the development of an effective and balanced framework and infrastructure for the exercise and management of IP rights-based transactions in the audiovisual sector.

### 2.3. Delivery Strategy

The Project takes a pilot approach and targets professionals involved in the production, distribution and financing of the audiovisual sectors in Africa. Apart from Burkina Faso, the Project will involve two additional African countries that will be selected after the adoption of the Project on the basis of expression of interests made to the WIPO Secretariat.

The main group beneficiaries of the Project will be :

- (a) Rightholders such as film producers, film directors, screen writers, composers, audiovisual performers;
- (b) Production and distribution companies;
- (c) Financial institutions and banks;
- (d) Specialized lawyers;
- (e) Exhibitors; and
- (f) Collective management organizations.

The delivery of the Project will be based on a public-private partnership involving the national authorities of the beneficiary countries, relevant private sector bodies, international organizations, external African and international consultants with renowned professional experience, specialized organizations involved in the audiovisual sector and other stakeholders. One focal point will be designated by each recipient country to cooperate at local level with the WIPO Project manager in the implementation of the Project.

The scope of this Project has identified the following activities for priority funding, where there is reliance upon intellectual property and where additional skills and institution-building are critical for the audiovisual sector's development.

#### Project activity 1: Scoping Papers and Studies

It is proposed to undertake one scoping paper and one study in the following areas :

- A. An evaluation of the current role played by IP in the financing, production and distribution of audiovisual works in the three Project recipient countries. The paper will provide an assessment of IPR based transactions related to the film-making process; assess challenges and propose solutions for the further effective use of intellectual property in this field; and
- B. A study on collective negotiation of rights and collective management of rights in the audiovisual sector in a selected number of countries with significant experience in different parts of the world. It will provide an assessment of existing infrastructure, analyze existing approaches in the AV sector, analyze best practices and explore avenues to improve audiovisual rights management and profitability of copyright and related rights based transactions.

#### **Project activity 2: Training and Professional Development: Investing in People**

The training and professional development component will consist of a business, results-orientated training program composed of workshops and on site training to improve understanding of the use of intellectual property rights as they relate to the creation, financing, production and distribution of audiovisual content. The training module will contribute to the strengthening and development of the audiovisual sector. The workshops will mainly target producers, distributors and financial institutions and will strengthen the audiovisual sectors of beneficiary countries by providing a better understanding of the linkage between creativity and the economics of the industry, and develop a working knowledge of intellectual property rights and transactions to secure

more effective and productive engagement of economic and cultural operators in the industry. The launch of the Project will take place in the ambit of an international conference which will be organized around the Pan African Film and Television Festival (FESPACO) in February 2013. FESPACO is the largest bi-annual African festival and rights market held biannually in Ouagadougou. This event will provide an opportunity to bring the Project to the attention of a gathering of prominent international experts and government officials from a wide range of African countries.

The second part of the activity will be modular and consist of three workshops which will provide professional education and working knowledge in relation to audiovisual financing, distribution, management and licensing to sustain local audiovisual development.

The training programme will provide the basis for the development of a distance learning programme and will cover notably the following issues:

- (i) Global audiovisual sector and the digital landscape;
- (ii) National and international regulatory framework;
- (iii) Economy of rights transactions and revenue flows;
- (iv) Rights-based transactions: How to use intellectual property rights for financing and distribution: Sale and pre-sale agreements;
- (v) Value of different rights – the film value chain: establishing a chain of titles chain for rights transactions;
- (vi) Role of television in the value chain: using pre-sales of broadcasting rights to finance production;
- (vii) Acquisition process, global sales and distribution opportunities;
- (viii) Home, TV online, ancillary markets and new revenue windows;
- (ix) Rights licensing, distribution agreements and contracts; rights negotiations with broadcasters and new media online platforms; consideration of the contractual guidelines for the audiovisual industry;
- (x) Foreign distribution rights and co production agreements; and
- (xi) Dispute Settlement for the Film Industry: making better use of arbitration and mediation.

Each of the three workshops will be conducted over three or four days, and will involve some 25 to 30 professionals to be selected following an application and selection process conducted based upon a procedure to be decided in agreement between WIPO and the recipient Member States. The training will target professionals from a range of backgrounds, focusing on those involved with financing, production and distribution of audiovisual works. Participants will be selected on the basis of career background, motivation and references.

During the workshops, participants will receive a variety of programme materials and pedagogical packs using the latest available communication tools that will serve to develop reference tools and methodologies, and a distance-learning program through the WIPO Academy. This will be the first WIPO specialized training course on the subject

and will allow the continuous and continual dissemination of knowledge in a cost-effective and efficient manner to other potential interested Member States. The workshops will be run by senior practitioners drawn from across the African region and other parts of the world, selected for their expertise in the sector.

### Project activity 3: Institution and Skills Building

African creators have to date received relatively little remuneration and reward for their creativity in film-making. The audiovisual market is fragmented and has generated insufficient mechanisms to trace and administer the payments due to authors for the exploitation and use of their works. One of the major challenges has been the inability to profitably manage copyright assets on multiple platforms. It is therefore proposed to take steps which will seek to increase the flow of intellectual property rights related to the effective exploitation of audiovisual rights to the benefit of creators, as well as users and the public. Intellectual property transactions are critical for the audiovisual industry and form the basis of a variety of different licensing practices that co-exist to support different business models and modes of exploitation. Collective licensing practices can facilitate negotiations with audiovisual media services to remunerate authors in relation to specific uses that require collective consent and licensing. In addition, in many African countries, the collective management organization is the backbone of the copyright-based industries structure and often constitutes the only available infrastructure to foster and support their development.

In the audiovisual industry, a number of rights are in practice under the control of film producers in order to facilitate the financing and exploitation of audiovisual content. However other rights such as cable-retransmission rights, home copying remuneration schemes, music users and remuneration rights for secondary uses are managed through collective management organizations. These are specific rights whose exercise requires collective consent and licensing rather than individual transactions and which can generate significant revenue streams for the financing of the audiovisual sector. Those are important parameters to be taken into consideration.

Training activities will showcase available tools and guidelines for licensing and collective bargaining including voluntary model contract clauses. Where collective licensing practices can play a useful role to foster confidence and develop intellectual property-based revenue streams, the Project will advance the development of a specific infrastructure and data management tools for documentation, collection and distribution of audiovisual rights. In countries already equipped with an infrastructure such as Burkina Faso, the Project will seek to support the consolidation of skills and further development of practices in accordance with international processes and practices such as the use of presale agreement. Training activities will also address how to successfully negotiate and license rights with broadcasting organizations as a tool to fight audiovisual piracy.

The objective of this activity is to ensure more effective use and legitimate exploitation of audiovisual intellectual property-based rights. These initiatives will seek to consolidate revenue streams in the audiovisual sector by facilitating and increasing intellectual property-based transactions and providing legal certainty for rights to be licensed. They will also contribute to strengthening the regional networking turnover between the *Bureau burkinabé du droit d'auteur* (BBDA) and other societies managing audiovisual rights.

3. REVIEW AND EVALUATION	
3.1. <u>Project Review Schedule</u>	
A mid-term progress report (after 12 months) and a final project review report (upon project completion) will be prepared. The project outputs will be submitted to the CDIP for further consideration.	
3.2. <u>Project Self-Evaluation</u>	
<i>Project Outputs</i>	<i>Indicators of Successful Completion (Output Indicators)</i>
Scoping Paper and Study	Research report published on WIPO website
Expert workshops	Workshops conducted with positive evaluation by participants
On-site training on collective licensing and collective management	Activities conducted with positive evaluation by participants
Development of infrastructure, skills and applications for management of AV rights	Systems and tools developed are accepted and put into operation
Development of methodologies and distance learning program	

<i>Project Objective(s)</i>	<i>Indicator(s) of Success in Achieving Project Objective (Outcome Indicators)</i>
To contribute to enhanced use of the intellectual property system for the financing, production and distribution of audiovisual works.	<p>Participants make greater use of the acquired skills for financing, producing and distributing audiovisual works (to be ascertained via evaluation questionnaire to participants approx. six months after the completion of training)</p> <p>Increase in the number of intellectual property related transactions in the audiovisual sector in relation to production and distribution. (Baseline to be determined through the scoping paper)</p> <p>Increased legitimate channels for the sale of African film rights (Baseline to be determined through the scoping paper)</p>



<p>To advance the development of an effective infrastructure for intellectual property rights-based transactions and licensing and related skills to enhance financial returns to audiovisual creators and the industry.</p>	<p>Increase in the number of intellectual property-based transactions for the licensing of audiovisual rights through collective negotiations and collective licensing practices and implementation of guidelines. (Baseline to be determined through the study).</p> <p>Increase and development of the infrastructure for the licensing of audiovisual rights compatible with international standards notably through collective management organizations. (Baseline to be determined through the study).</p> <p>Progressive implementation of appropriate tools and business rules for the management of audiovisual works compatible with international standards. (Baseline to be determined by the scoping paper).</p>
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CDIP Project Output

BUDGET (non-personnel resources)

Table 1 – Project Budget by Cost Category and Year

Cost Category	Budget (Swiss francs)			
	Year 2013	Year 2014	Year N	Total
<i>Travel and Fellowships</i>				
Staff Missions	25,000	25,000		50,000
Third-party Travel	65,000	30,000		95,000
Fellowships	63,000	120,000		183,000
<i>Contractual Services</i>				
Conferences	2,000			2,000
Experts' Honoraria	0	10,000		10,000
Publishing	6,000			6,000
SSA <sup>1</sup>	40,000	25,000		65,000
Commercial Services				
<i>Equipment and Supplies</i>				
Equipment				
Supplies and Materials		25,000		25,000
<b>TOTAL</b>	<b>201,000</b>	<b>235,000</b>		<b>436,000</b>

BUDGET (personnel resources)

Table 2 – Project Budget by Cost Category and Year

Cost Category	Budget (Swiss francs)			
	Year 2013	Year 2014	Year N	Total
ST (G-4 equivalent) 50%	53,350	53,350		106,700
<b>TOTAL</b>	<b>53,350</b>	<b>53,350</b>		<b>106,700</b>

[End of Annex and of document]

<sup>1</sup> 10,000 Swiss francs are earmarked for the independent evaluation at the end of the Project.