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EXTERNAL INDEPENDENT EVALUATION REPORT OF THE PROJECT ON INTELLECTUAL PROPERTY AND THE PUBLIC DOMAIN

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1. The Annex to this document contains an External independent Evaluation Report of the project on Intellectual Property and the Public Domain (CDIP/4/3/REV) undertaken by Mr. Sisule F. Musungu, President, IQsensato, Geneva.

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

[Annex follows]

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EXECUTIVE SUMMARY

The purpose of the independent external evaluation of the Intellectual Property (IP) and the Public Domain Project, the results of which are reported in this document, is two-fold. It was intended, first, to provide an opportunity to the WIPO Member States, the Secretariat and other WIPO stakeholders to learn from experiences during project implementation in order to inform the design and execution of any future activities in this field. Second, the evaluation is aimed at providing evidence-based evaluative information to support decision-making in the Committee on Development and Intellectual Property (CDIP). In specific terms, the evaluation assessed the extent to which the project has been instrumental in:

1. Enhancing understanding of the definition of the public domain and the availability of tools for identifying subject matter that has fallen into the public domain;
2. The development of new tools or guidelines for identifying subject matter that has fallen into the public domain and for preserving knowledge that is already in the public domain; and
3. Providing opportunities for exchange of national and regional experiences.

The evaluation was carried out between February 1, 2012 and March 15, 2012.

Two main methods and tools were used to collect data for the evaluation exercise. These were the following:

- (a) Desk review of relevant project related documentation including the project framework (initial project document), progress reports, monitoring information and other relevant documents, including studies and surveys.
- (b) Stakeholder interviews and e-mail administered questionnaires focusing on the, project implementation team at the WIPO Secretariat, Member States (with a mix of capital-based officials and Geneva-based delegates), Observers (including intergovernmental organizations, civil society organizations and industry/private sector representatives).

A total of 25 Individuals/organizations were requested for interviews or asked to respond to the questionnaire. Seventeen (17) of them granted interviews or responded to the questionnaire representing a respectable 68% response rate. While the sample of respondents may be considered relatively small it did not have an adverse effect on the evaluation or its findings. The document review carried out for the evaluation, which included reviewing CDIP reports, allowed the evaluator to review feedback on the project and its outputs from a much broader group of Member States and observers.

Based on the findings (reported in Part 2 of the Report) a number of conclusions can be drawn with respect to the design and management of the project and its overall results so far. The conclusions are grouped into two categories. Those that relate to the project design on the one hand and those related to the project results on the other.

With respect to project design and management the evaluation concludes that:

1. The Project, including the structure and content of the original project document as well as the reporting and evaluation framework, was fairly well designed. The Project document was sufficient to provide guidance and a reasonable framework for discussions on progress in the CDIP as well as for evaluation.
2. The findings also demonstrate that the project implementation period needed to be longer (probably three years) and that the studies and survey could be more action-oriented to permit Member States to make concrete decisions.
3. The Project was quite well managed both in terms of activity planning and execution as well as resource utilisation and internal coordination within the Secretariat.

With respect to the project results the evaluation concluded that:

1. Enhanced understanding of IP and public domain issues and tools
The Project has been instrumental in enhancing the understanding of the meaning of the public domain and the availability of tools for identifying subject matter that has fallen into the public domain. There is evidence of a richer and higher-level debate and discussions on these issues in the CDIP and other WIPO committees. There was also a high level of satisfaction with the Conference on Copyright Documentation and Infrastructure. However, more work needs to be done in this area and a better understanding of how the studies and surveys generated by the Project are used will be needed.
2. Development of new tools and guidelines
There was no evidence that any new tools or guidelines were developed under the Project that could be used to increase access to subject matter that has fallen into the public domain or to preserve knowledge that has fallen into the public domain. This means that one key objective of the project was not achieved to any degree.
3. Opportunities for exchanging regional and national experiences
The level of participation and the presentations as well as the assessment of the Conference on Copyright Documentation and Infrastructure coupled with the sizeable number of Member States that responded to the Second Survey led to the conclusion that the Project provided effective opportunities for the exchange of national and regional experiences.
4. Momentum and increased interest on IP and public domain issues
The implementation of the Project has led to a new momentum and resulted in an increased interest among a cross-section of WIPO stakeholders on the issue of IP and the public domain. The evaluation also concluded that going forward there will be a growing need for further work on IP and public domain issues both at WIPO and within Member States, particularly developing countries and least-developed countries (LDCs).

In general, the Report does not make any recommendations with respect to direction or scope of future work or the decisions that the CDIP may make but rather it leaves it to the Committee and the relevant stakeholders to make such decisions. The only recommendations made relate to evaluation framework and the timing of evaluations based on the experience of the evaluator in undertaking this exercise. In this context, the report recommends that:

(a) The practice of establishing an evaluation framework as part of projects should be continued if any further projects in this area are developed or as a general rule for Development Agenda projects.

(b) The idea of self-evaluation with the option of an external independent evaluation should be maintained in the design of projects. However, to avoid the self-evaluation exercises being more or less the equivalent of progress reports, it is recommended that for projects of two years or less there only be one end of project self-evaluation. Once the Committee has reviewed the self-evaluation a decision can then be made on whether an independent external evaluation is needed. This approach is more realistic and will likely produce better results as well as ensure that any external independent evaluation avoids a situation where respondents are unable to fully assess results and even the quality of outputs.

1. INTRODUCTION

This Evaluation Report contains the results of an end of project external and independent evaluation of the World Intellectual Property Organization (WIPO) Development Agenda Project on Intellectual Property and the Public Domain (hereinafter “IP and Public Domain Project”). The approved Project is described in WIPO document CDIP/4/3 Rev.¹ The Project was tentatively approved by the Committee on Development and Intellectual Property (CDIP), at its Fourth Session in November 2009, based on WIPO document CDIP/4/3 before final endorsement at the fifth session. The Evaluation was carried out between February 1, 2012 and March 15, 2012. The process was based on the approach and steps laid out in the approved Inception Report dated February 1, 2012.

1.1 PURPOSE AND SCOPE OF THE EVALUATION

The purpose of this external evaluation of the IP and Public Domain Project is two-fold. First, it is intended to provide an opportunity to the WIPO Member States, the Secretariat and other WIPO stakeholders an opportunity to learn from experiences during project implementation, including learning from what worked well and what did not work well in order to inform the design and execution of any future activities in this field. Second, the evaluation is aimed at providing evidence-based evaluative information to support the CDIP’s decision-making process.

The evaluation covers the whole Project period, which was two years (January 2010 – December 2011). In terms of scope and focus, the objective is to evaluate the Project as a whole and its contribution to analysing the implications of a rich and accessible public domain and exploring various tools available for identifying and accessing subject matter that has fallen into the public domain, including the project’s evolution over time, its performance including project design, project management, coordination, coherence, implementation and results achieved rather than on assessing the success or quality of individual activities.

In particular, the evaluation assessed the extent to which the project has been instrumental in:

- (a) Enhancing understanding of the definition of the public domain and the availability of tools for identifying subject matter that has fallen into the public domain;
- (b) The development of new tools or guidelines for identifying subject matter that has fallen into the public domain; and
- (c) Providing opportunities for exchange of national and regional experiences.

¹Available in all WIPO official languages at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=131421.

1.2 EVALUATION METHODOLOGY

To be able to allow for learning and to provide evidence-based information for decision-making, the evaluation, by design, needed to be participative providing for the involvement of those with a stake in the project, including Member States, the Secretariat, beneficiaries, partners and any other interested parties, including observers at WIPO. The evaluation approach taken in conducting the evaluation was therefore a participatory and outcomes-oriented approach with a view to identifying the results/outcomes of the project activities, as opposed to evaluating activities and outputs *per se*.

In discussing the evaluation methodology, it is important to remember that the Project, from the on-set, was designed to include an evaluation component. In this regard, in addition to the possibility of an external evaluation, the project was developed with an in-built self-evaluation framework. Two self-evaluation exercises were therefore undertaken during the project period. The results of the first self-evaluation exercise were reported in WIPO document CDIP/6/2 (dated October 1, 2010)² and the second in document CDIP/8/2 (dated 4 October 2011)³. Both the self-evaluation reports were discussed by the CDIP. The methodology and actual evaluation process in this independent evaluation therefore took into account the results of these self-evaluation exercises and the ensuing discussions in the CDIP. However, the findings and conclusions of this Report were not directly linked to or constrained by the self-evaluations.

Two main methods and tools were used to collect data for the evaluation exercise. These included the following:

1. Desk review of relevant project related documentation including the project framework (initial project document), progress reports, monitoring information and other relevant documents, including studies and surveys. A list of key documents consulted for this evaluation is provided in Appendix III to this report.
2. Stakeholder interviews and e-mail administered questionnaires focusing on the project implementation team at the WIPO Secretariat, Member States (with a mix of capital-based officials and Geneva-based delegates), Observers (including intergovernmental organizations, civil society organizations and industry/private sector representatives). A copy of the interview guide/questionnaire is attached to this Report as Appendix IV.

Due to the limited time available for the evaluation and the size of the project, a broad-based public online survey or other data collection methods such as focus group discussions were not considered viable for this evaluation.

In terms of respondents/informants (those interviewed or responding to questionnaires) a relatively small but representative sample was chosen. A total of 25 Individuals/organizations/Member States were requested for interviews or asked to respond to the questionnaire. Out of these a total of 17 granted interviews or responded to the questionnaire representing 68% response rate. This is a fairly good response rate. Overall, an effort was made to ensure that the respondents and feedback received represented developing countries and developed countries views, the Secretariat views, the views of civil society and industry/private sector views.

²Available at http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_6/cdip_6_2.pdf.

³Available at http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_8/cdip_8_2.pdf.

The relatively small sample of respondents did not, however, have an adverse effect on the evaluation or its findings. This is mainly because of the rich discussions (recorded in CDIP reports) during the presentation of the results of the self-evaluation exercises and the various project outputs. The document review carried out for the evaluation, which included reviewing CDIP reports, therefore allowed the evaluator to review feedback on the Project and its outputs from a much broader group of Member States and observers.

1.3 KEY EVALUATION QUESTIONS

A set of key evaluation questions guided the evaluation exercise, including the design of the interview guide/questionnaire. The questions covered project design and management, effectiveness and sustainability. These key questions were the following:

1.3.1 Project design and management:

- (a) How appropriate was the initial project document as a guide for project implementation and assessment of results achieved?
- (b) Were the project monitoring, self-evaluation and reporting tools useful and adequate to provide the project team and key stakeholders with relevant information for decision-making purposes?
- (c) To what extent did other entities within the Secretariat contribute and enable an effective and efficient project implementation?
- (d) To what extent were the risks identified in the initial project document materialise and, if they did, how were they mitigated?
- (e) Was the project able to respond to emerging trends and external forces?

1.3.2 Effectiveness:

- (a) How effective were the studies and surveys as educational and awareness tools?
- (b) How useful were the studies and surveys for Member States and is there actual use of the studies?
- (c) How useful was the Conference on Copyright Documentation and Infrastructure?

1.3.3 Sustainability of project results:

- (a) What is the likelihood for continued work on IP and Public Domain by WIPO and Member States?
- (b) Has sufficient momentum been built for further work in this area?

1.4 PERFORMANCE CRITERIA

There were three main aims (objectives) of the Project on IP and Public Domain (Document CDIP/4/3 REV.). These were to:

- (c) Analyse the implications of a rich and accessible public domain;
- (d) Explore the various tools available for identifying and accessing subject matter that has fallen into the public domain; and
- (e) Wherever possible, suggest or work towards the development of new tools or guidelines for identifying and accessing subject matter that has fallen into the public domain, in order to enhance access to the public domain and preserve knowledge that is already in the public domain.

These objectives are derived from and, linked to Recommendations 16 and 20 of the Development Agenda respectively.⁴

The project evaluation criteria set out in the project document contained both output and outcome indicators. The self-evaluations undertaken in 2010 and 2011, however, mainly focused on the output indicators. Because this external evaluation is outcomes-oriented with a focus on the results/outcomes of the project activities, as opposed to evaluating activities and outputs *per se*, the performance criteria used focused primarily on the project outcome indicators as set out in the project document with the necessary modifications to enrich the evaluation.

In effect, the evaluation exercise sought, based on the answers to the key evaluation questions above, to evaluate whether:

- (a) The analysis on a rich and accessible public domain was informative and of good quality;
- (b) The various tools available for identifying and accessing subject matter that has fallen into the public domain were explored and understood;
- (c) Work towards the development of new tools or guidelines to enhance access to the public domain and preserve knowledge that is already in the public domain was undertaken and to what end; and
- (d) Sufficient momentum and interest was built on IP and public domain matters for continued activities in this area.

The evaluation matrix in Appendix II sets out the key issues (objectives) with the relevant performance indicators, the data collection tools in each case and the key informants.

⁴The 45 Development Agenda Recommendations are available on the WIPO website at <http://www.wipo.int/ip-development/en/agenda/recommendations.html>.

1.5 ORGANIZATION OF THE REPORT

This Evaluation Report is organised into five (5) main parts. In addition to the executive summary and this introductory part, there are three substantive parts containing the findings (Part 2), the conclusions and lessons-learnt (Part 3) and the recommendations (Part 4). There are four (4) appendixes to the report providing additional information regarding the evaluation process and the results, including a summary of the evaluation results (Appendix I), the evaluation matrix (Appendix II), the list of key documents consulted during the evaluation (Appendix III), and a copy of the interview guide/questionnaire used to collect data from key informants (Appendix IV).

2. KEY EVIDENCE-BASED FINDINGS

The following findings were arrived at following the document review and the collation and analysis of the feedback from the interview/questionnaire respondents. The findings relate to four main issues, namely project design and management, effectiveness, evidence of results, sustainability of project results, including the need for further work in the area of IP and the public domain.

A few caveats are important to highlight before reporting on the findings.

First, since the project was implemented through various activities it was understood from the onset that respondents may not have participated or may not be aware of all the Project activities and outputs. For this reason during the interviews or in responding to the questionnaire respondents were allowed to indicate if they could not assess a particular aspect of the Project or respond to any question. This was done either by specifically indicating that the respondent could not assess a specific aspect or leaving the question blank. In the findings presented below “Can’t Assess” or blank answers were not included in the percentage calculations.

Second, as noted in the methodology section above, the evaluation is based not only on the interviews/questionnaires administered during the evaluation period but also on document review, including the feedback provided by Member States and observers and reported in the CDIP reports. This is the case except in the case of the evaluation of the project design and management that is solely based on the interview/questionnaire responses.

Finally, while this was supposed to be an end of project external evaluation, not all the components of the project had been completed and presented to the CDIP by the time of the evaluation. For example, the study on trademarks will only be presented to the ninth session of the CDIP in May 2012. This means that the assessment of results cannot be complete or comprehensive. Indeed, a number of those who responded to the questionnaire raised this concern noting that they could not fully assess the project since some outputs were pending and in some ways the project was “still on-going”.

2.1 PROJECT DESIGN AND MANAGEMENT

The project document was initially generated by the Secretariat. However, the final project document (document CDIP/4/3/REV.) resulted from extensive discussions and consultations with and among the WIPO Member States and it was subject to consensus approval by the CDIP. This means that the project design was a collaborative effort between the Member States and the Secretariat and the project document is fully owned by the membership. Because of the process in which the document was developed, it is important, for purpose of evaluation, that we separate the evaluation of the project design (as contained in the Project document CDIP/4/3/REV.) and the actual project management, which was primarily the responsibility of the Secretariat during the two-year period.

With respect to the project design the evaluation assessed two main aspects of the project document. First, it assessed the project document as a guide for the project implementation and assessment of results. Second, it assessed the suitability of the project monitoring, self-evaluation and reporting framework for providing information for decision-making particularly by the CDIP. With respect to the first issue, the majority (75%) of the interview/questionnaire respondents ranked the design of the project document as a guide for implementation and assessment as either excellent or good. The remainder ranked the project document as fairly well designed (18.8%) and as poorly designed (less than 1%). The positive review was explained by reasons such as *“the project was designed with a balanced scope”*; and *“bearing in mind that the public domain issue in relation to trademarks is not well established... the initial project document had to break somewhat new ground”*. The negative ratings were justified for example by the argument that the project’s scope was narrower than the real objective of Recommendations 16 and 20 and that the project document focused only on the tools available within the IP system and nothing else.

Regarding the suitability of the project document as a monitoring, self-evaluation and reporting framework the results from interviews and responses to the questionnaire were as follows: 75% ranked the document as good; 8.3% as fair; and 16.7% as a poor framework.

Turning to project management, three main aspects were looked at. The first was the level of coordination within the WIPO Secretariat, the second risk management and mitigation strategies and the third, the project’s ability to respond to emerging trends and external forces. With respect to coordination 80% of the respondents rated the coordination as either excellent or good. The rest, 20%, rated the level of coordination as fair. It was reported that notwithstanding that four different programs/divisions of WIPO were involved in the Project there was a high level of coordination and collaboration to ensure effective and efficient implementation. In the case of risk management and mitigation strategies 66.7% rated the performance as good; 11.1% as fair; and 22.2% as poor. Finally, with respect to the project’s ability to respond to new trends and external forces there was a 50-50 split between those respondents who rated this aspect as excellent or good and those who rated it as fair or poor. Specifically, 28.6% of the respondents rated the ability of the project to respond to emerging trends and external forces as poor.

When asked what could have been done better with respect to project design and management, respondents made a number of pertinent suggestions. They urged that if further projects are to be developed in this area it is important to ensure that:

- (a) The project should have a more focused scope and clear terms of reference.
- (b) The studies should be made more action-oriented to assist Member States to decide on concrete actions for the future.
- (c) It may be more practicable that the different components of the project (patents, copyright and trademarks) are separated and managed independently by the relevant Sector in the Secretariat as the issues in these areas are different. This could improve effectiveness and the depth of analysis.
- (d) The self-evaluation exercises are qualitative and go beyond simply indicating the status of project implementation.

In terms of timing, it was suggested that a project of this nature needed more time to finalise as evidenced by the fact that some outputs had not been completed by the official end date. It was also suggested that in terms of beneficiaries or participation there was need to involve a wider set of stakeholders beyond just the Member States (governments) and WIPO observers. For example, it was stated that the copyright component could have involved greater participation from the creative industries that need both adequate access to the public domain and at the same time effective protection. Greater involvement of capital-based stakeholders was also called for.

2.2 PROJECT EFFECTIVENESS

The evaluation with respect to the project's effectiveness sought to gauge the level of satisfaction among stakeholders with the quality of the project's work and outputs as well as the effectiveness of the communication about the project and its activities. Here the evaluation found that:

- (a) 86% of the interview/questionnaire respondents were either very satisfied or satisfied with the quality of the analysis particularly the analysis in the studies. The level of satisfaction or appreciation for the quality of the studies was also high during the various discussions on the project outputs in the CDIP. The Scoping Study on Copyright and Related Rights in the Public Domain by Prof. Dussolier was particularly well received and got a very positive review across the board. Regarding the studies and surveys, respondents and participants in CDIP meetings also noted that these were well written and, overall, presented the issues in a balanced and rigorous way. The negative comments regarding the studies and the analysis mainly related to the patent part with a respondent, for example, noting that the study on patents *"appears to focus too much on how the patent system results in works falling into the public domain as a result (or by-product) of the patent system itself. What seems to be missing is greater analysis of the tensions between the patent system and the public domain..."* Another respondent commented that the analysis could have gone deeper.
- (b) On the exploration of the various tools for identifying and accessing subject matter that has fallen into the public domain 71.4% were either very satisfied or satisfied with the work undertaken under the project. The rest, 28.6% were unsatisfied.

(c) The majority of the interview/questionnaire respondents (60%) were unsatisfied with the quality and outputs relating to the development of new tools and guidelines to enhance access to the public domain and preserve knowledge that is already in the public domain. Only 40% of the respondents were either very satisfied (20%) or satisfied (20%) with the work under this component of the project. The main reason for this overall negative feedback was that respondents were not aware of any work done to develop new tools or guidelines to enhance access to the public domain and preserve the knowledge that is already in the public domain. Another explanation is that the timing was wrong since the scoping and survey work needed to be done first, discussed and understood before any work on development of tools could commence. Expecting to start work on tools and guidelines at the same time as basic analysis of public domain issues was erroneous.

(d) 77.8% of the interview/questionnaire respondents reported being satisfied with the Conference on Copyright Documentation and Infrastructure that was the only event under the Project. There was also some positive feedback regarding the conference in the CDIP. 11.1% of the respondents were, however, unsatisfied with a similar percentage reporting being very unsatisfied. It is notable that during the CDIP discussions, some concerns were also raised with the content of the conference. Those unsatisfied or unhappy with the Conference raised particular concern with what they considered the failure to address new trends or scholarship in this area and the narrow focus of the conference.

(e) Regarding communications, 64.3% of the interview/questionnaire respondents were very satisfied or satisfied with the way in which communication about the project and its activities was handled. However, a significant percentage reported being unsatisfied (21.4%) or very unsatisfied (14.3%). One important concern was that communication about the project and its outputs was mainly confined to communication to the CDIP and not to the broader intellectual property (IP) community or the general public. It was also noted that there was no clear communications strategy outlined in the original project document. One respondent, for example, noted that the studies and surveys produced under the project need to be promoted further arguing that they (the studies) *“should not be buried after they have been presented to the CDIP. As I see it, the CDIP does commission a lot of study work that is then not really followed up...”*

2.3 EVIDENCE OF RESULTS

Here the evaluation exercise was aimed at identifying evidence of tangible results that could be significantly attributable to the work of the Project. In particular, the interest was in identifying evidence of informative and quality analysis on the implications of a rich public domain, evidence that tools for identifying subject matter that has fallen into the public domain were identified, explored and understood, evidence of development of new tools and guidelines as well as evidence that the project had created momentum and increased interest on IP and the public domain issues at WIPO. The findings on these various aspects were as follows:

(a) Of the interview/questionnaire respondents, 28.6% reported seeing substantial evidence of informative and good analysis while 35.7% could see some evidence. The rest, another 35.7%, said they saw little or no evidence of

informative and quality analysis. It was noted in some responses to the questionnaire that the positive outlook with respect to the quality of the analysis was backed by the discussions in the CDIP as reported in the minutes of the various meetings held during the project period. There was generally positive feedback from the Member States and observers in the CDIP, including some Member States asking for follow-up analysis.

(b) 54.5% saw substantial or some evidence that tools for identifying subject matter that has fallen into the public domain had been identified, explored and their understanding enhanced. The remaining 45.5% said they saw little evidence of this.

(c) With respect to the development of tools and guidelines, only 33.3% saw substantial or some evidence of such tools and/guidelines having been developed. The majority, 66.7% saw little or no evidence that tools and/or guidelines to enhance access to the public domain had been developed under the Project.

(d) An impressive 81.8% of the respondents saw evidence of the fact that the work under the project had created momentum and increased interest in IP and public domain matters among WIPO stakeholders, including at the national level in Member States. Only 18.2% reported seeing no evidence of increased momentum or interest in IP and public domain matters at WIPO. Here, it was noted that there was ample evidence of new momentum and increased interest, including evidence of greater recognition of the importance of the public domain not just in discussions at the CDIP but also in other WIPO committees such as the Standing Committee on the Law of Patents (SCP) and the Standing Committee on Copyright and Related Rights (SCCR). The African Group proposal in the SCP with respect to legal status information in the pharmaceutical field was cited as one example of interest on public domain matters in other WIPO committees.

2.4 SUSTAINABILITY OF PROJECT RESULTS AND THE NEED FOR FURTHER WORK IN THIS AREA

The criteria used to evaluate whether the results of the Project were sustainable had two main components. The first criterion was to gauge, among stakeholders, whether they considered that there was need for continued work on IP and public domain in WIPO. The second criterion was to determine what stakeholders considered as the likelihood of continued work in this area based on the momentum and interest that had been built during the project period.

With respect to continued need for work in this area 66.7% of the interview/questionnaire respondents saw a growing need, going forward, for continuing work on IP and the public domain at WIPO. Another, 26.7% thought that the need going forward will be the same as during the project period. In other words, there will be need for work in this area but that need will not be growing as compared to the needs during the project period. Only 6.6% of the respondents thought that there would be little or no need for further work in this area in the future.

Regarding the likelihood of continued work 64.3% of the respondents thought that it was very likely that work on IP and public domain will continue at WIPO in the future based on the effectiveness of the project work and the evidence of positive results.

35.7% thought that it was likely that work in this area would continue. Only 7% thought that it was unlikely that the work on IP and the public domain would continue at WIPO in the future. The optimism regarding the likelihood of continued work in this area can be explained by three main reasons cited by respondents and evidenced in the CDIP discussions. First, already follow-up work to the scoping study has been identified and agreed to by the CDIP. A sizeable number of respondents considered that the Project was only the first step in meeting the objectives of Recommendations 16 and 20 of the WIPO Development Agenda meaning they expected a second phase of the work. As one respondent noted *“much remains to be done for DA recommendations 16 and 20 to be fully implemented.”* Second, there was near consensus among the respondents that little work had been done to develop new tools or guidelines for identifying work that has fallen into the public domain and preserving the knowledge that is already in the public domain. Finally, the growing need for work in the area and the momentum built during the project showed that there would be increased demand for work in the area by key WIPO stakeholders.

3. CONCLUSIONS AND LESSONS-LEARNT

Based on the findings in Part 2 of this Report a number of conclusions can be drawn with respect to the design and management of the project and its overall results so far. As noted already, a few components of the project have not been completed and as such it may be a little early to have a final assessment of the overall results of the project as measured against its objectives set out in document CDIP/4/3 REV.

3.1 PROJECT DESIGN AND MANAGEMENT

Project design

In terms of project design, including the structure and content of the project document as well as the reporting and evaluation framework, the evaluation concluded that the Project was fairly well designed. The project document was sufficient to provide guidance both to the Secretariat in the project implementation work and to provide a reasonable framework for discussions on progress in the CDIP as well as for evaluation.

In terms of lessons-learnt, the findings demonstrate that the project implementation period needed to be longer (probably three years) and that the studies and survey could be more action-oriented to permit Member States to make concrete decisions.

Project management

The findings of the evaluation show that the Project was quite well managed both in terms of activity planning and execution and with respect to reporting to the CDIP and resource utilisation as well as coordination within the Secretariat. One lesson-learnt with respect to management is that for effectiveness and in-depth analysis as well as to ensure clearly focused scope the different components of the project (copyright and related rights, patents and trademarks) could be treated separately and separately managed within the Secretariat.

3.2 PROJECT RESULTS

The following conclusions were reached with respect to the project results as measured against the project objectives. The details of the scoring against the performance indicators are contained in Appendix I.

Enhanced understanding of IP and public domain issues and tools

It can be concluded, based on the findings of the evaluation, that the Project on IP and Public Domain has been instrumental in enhancing the understanding of the meaning of the public domain and the availability of tools for identifying subject matter that has fallen into the public domain. There is evidence of a richer and higher-level debate and discussions on these issues in the CDIP and other WIPO committees. There was also a high level of satisfaction with the Conference on copyright documentation. However, more work needs to be done in this area and a better understanding of how the studies and surveys generated by the project are used will be needed.

Development of new tools and guidelines

Here, the evaluation concluded that there were no actual new tools or guidelines that were developed under the project to increase access to subject matter that has fallen into the public domain or to preserve knowledge that has fallen into the public domain. This means that one key objective of the project was not achieved to any degree. Poor sequencing and lack of time appear to be the key reasons for this outcome.

Opportunities for exchanging regional and national experiences

Only one event was held under the Project (the Conference on Copyright Documentation and Infrastructure). Here the level of participation and the presentations as well as the assessment of the conference coupled with the sizeable number of Member States that responded to the Second Survey lead to the conclusion that the Project provided effective opportunities for the exchange of national and regional experiences.

Momentum and increased interest on IP and public domain issues

Overall, the implementation of the Project on IP and Public Domain has no doubt led to a new momentum on tackling the relevant issues at WIPO and resulted in an increased interest among a cross-section of WIPO stakeholders on the issue. It can also be concluded that going forward there will be a growing need for further work on IP and public domain issues both at WIPO and within Member States, particularly developing countries and LDCs.

4. RECOMMENDATIONS

The purpose of this independent external evaluation was to provide an opportunity for learning about what worked well and what didn't work during the project implementation in order to inform the design and execution of any future activities in this area. It was also aimed at providing evidence-based evaluative information to facilitate decision-making especially in the CDIP. Considering these objectives, it is considered that it is not the place of the evaluator to make any recommendations

regarding the direction or scope of future work or the decisions that the CDIP may make. Rather, it is best to leave it to the CDIP and the relevant stakeholders to make such decisions based on the findings and conclusions in Part 2 and 3 of this Report respectively.

Nevertheless, because this evaluation is one of the first evaluations of the Development Agenda projects, the evaluator considers it appropriate to make some recommendations regarding the evaluation framework and process for such future projects based on the experience gained in the current evaluation process. In this regard, the recommendations focus on the evaluation framework, scope and timing.

Recommendation on evaluation framework and timing of evaluations

The right decision was made to include, from the outset, an evaluation framework as part of the design of the project. It is recommended that this practice be continued if any further projects in this area are developed or as a general rule for Development Agenda projects. It is also recommended that the idea of self-evaluation with the option of an external independent evaluation be maintained. However, to avoid the self-evaluation exercises being more or less the equivalent of progress reports on the project, I would recommend that for projects of two years or less that there only be one end of project self-evaluation. Once the CDIP has reviewed the self-evaluation a decision can then be made on whether an independent external evaluation is needed.

This approach is not only more realistic but will produce better results and, most importantly, it will ensure that any external independent evaluation is undertaken some time after all the project outputs have been completed and some data is collected on issues such as usage of studies. The Secretariat would also have had enough time to prepare an end of project report and to internally reflect on the results of the self-evaluation. This will avoid a situation, such as in the current case, where respondents are unable to fully assess results and even the quality of outputs.

[Appendix I follows]

Appendix I: Evaluation Results based on Evaluation Matrix

<i>Project Objective</i>	<i>Performance/Outcome Indicator</i>	<i>Evaluation Results</i>
Enhancing understanding of the definition of the public domain and the availability of tools for identifying subject matter that has fallen into the public domain	Level of debate in CDIP on IP and public domain issues.	The issue of IP and public domain has attracted increasing attention in the CDIP and beyond and there is increasingly a rich and high-level discussion on the pertinent issues in the Committee.
	Number of policy-makers participating in project events and in CDIP discussions on IP and public domain.	(a) At least 148 individuals from Member States, intergovernmental organizations, civil society, industry and academia attended the Copyright Documentation conference. (b) A sizeable number of Member States have been participating in the CDIP discussions on the issue.
	Level of use of studies and surveys produced under the project.	Not assessed as data not available.
	% rate satisfaction with meeting on copyright documentation and infrastructure (usefulness, new knowledge gained)	77.8% of interview/questionnaire respondents were satisfied with the Conference.
The development of new tools or guidelines on the basis of findings of studies	Number of guidelines or recommendations developed at the international, regional and national level.	None were identified.
Effective opportunities for exchange of national and regional experiences in IP and the public domain	Number of participants in the copyright documentation and infrastructure meeting.	148 individuals from Member States, intergovernmental organizations, civil society, industry and academia attended the Copyright Documentation conference.
	Level of response to surveys.	80 Member States (i.e. 43.2%) responded to the Second Survey on Voluntary Registration and Deposit Systems.

<i>Project Objective</i>	<i>Performance/Outcome Indicator</i>	<i>Evaluation Results</i>
Momentum and increased interest for continued work on IP and the public domain issues at WIPO and in Member States	Increase in demand for analysis or technical assistance on IP and public domain as evidence by stakeholder views.	66.7% of interview/questionnaire respondents saw a growing need, going forward, for work on IP and the public domain.
	Rate of use of project studies (e.g., downloads from WIPO website, requests for copies).	Not rated as data not available.

[Appendix II follows]

Appendix II: Evaluation Matrix

<i>Key Issue</i>	<i>Performance/Outcome Indicator</i>	<i>Data Collection Tools</i>	<i>Key Informants</i>
Enhancing understanding of the definition of the public domain and the availability of tools for identifying subject matter that has fallen into the public domain	<ol style="list-style-type: none"> 1. Level of debate in CDIP on IP and public domain issues. 2. Number of policy-makers participating in project events. 3. Level of use of studies and surveys produced under the project. 4. % rate satisfaction with meeting on copyright documentation and infrastructure (usefulness, new knowledge gained) 	Document analysis/review; and interviews/e-mail administered questionnaire with participants in events and the project team.	<ol style="list-style-type: none"> (a) Member States (IP offices, Geneva –based negotiators). (b) WIPO project team. (c) Observers (civil society, industry and intergovernmental organizations - IGOs).
The development of new tools or guidelines on the basis of findings of studies	<ul style="list-style-type: none"> • Number of guidelines or recommendations developed at the international, regional and national level. 	Document analysis/review; interviews/e-mail administered questionnaire with project team; and Member states.	<ol style="list-style-type: none"> (a) Member States. (b) WIPO project team.

<i>Key Issue</i>	<i>Performance/Outcome Indicator</i>	<i>Data Collection Tools</i>	<i>Key Informants</i>
Effective opportunities for exchange of national and regional experiences in IP and the public domain	<ol style="list-style-type: none"> 1. Number of participants in the copyright documentation and infrastructure meeting. 2. Level of response to surveys. 	Document analysis/review; interviews/e-mail administered questionnaires with participants in the conference and with the project team.	<ol style="list-style-type: none"> (a) Member States (IP offices, Geneva –based negotiators). (b) WIPO project team. (c) Observers (civil society, industry and IGOs).
Momentum and increased interest for continued work on IP and the public domain issues at WIPO and in Member States	<ol style="list-style-type: none"> 1. Increase in demand for analysis or technical assistance on IP and public domain as evidence by stakeholder views. 2. Rate of use of project studies (e.g., downloads from WIPO website, requests for copies). 	Document analysis/review; Interviews/e-mail administered questionnaires with project team and with a cross-section of WIPO stakeholders (Members States, including IP offices and observers,).	<ol style="list-style-type: none"> (a) Member States (IP offices, Geneva –based negotiators). (b) WIPO project team. (c) Observers (civil society, industry and IGOs).

Appendix III: List of Key Documents Reviewed

1. Project Document titled “Project on Intellectual Property and the Public Domain”; document CDIP/4/3 Rev dated December 1, 2009.
2. Progress Reports on Development Agenda Projects, document CDIP/6/2 dated October 1, 2010.
3. Progress Reports on Development Agenda Projects, document CDIP/8/2 dated October 4, 2011.
4. Scoping Study on Copyright and the Public Domain, document CDIP/7/INF/1 dated March 4, 2011.
5. Second Survey on Voluntary Registration and Deposit System, available at: http://www.wipo.int/copyright/en/registration/registration_and_deposit_system_03_10.html.
6. Survey on Private Copyright Documentation Systems and Practices (Private Registries and Collective Management Organization’s Databases) accessible at: http://www.wipo.int/copyright/en/activities/copyright_registration/.
7. Study on “Patents and the Public Domain” document CDIP/4/3 REV. STUDY/INF/2 dated April 27, 2011.
8. Feasibility Study on Creation of a National Patent Register Database and Linkage to PATENTSCOPE, document CDIP/4/3 REV. STUDY/INF/3 dated April 28, 2011.
9. Meeting Report, including list of participants and meeting evaluation forms, for the Conference on Copyright Documentation and Infrastructure.
10. Proceedings/Minutes of the 6th, 7th and 8th Sessions of the CDIP.

[Appendix IV follows]

Appendix IV: Interview Guide/Questionnaire

Project Evaluation:

Development Agenda Project on Intellectual Property and the Public Domain

Interview Guide/Questionnaire

1. Background

In December 2009 the World Intellectual Property Organization (WIPO) Committee on Development and Intellectual Property (CDIP) approved the Project on Intellectual Property and the Public Domain to implement Recommendations 16 and 20 of the WIPO Development Agenda. The project was to be implemented over a period of two years (January 2010 to December 2011). Its main objectives were to:

- Analyse the implications of a rich and accessible public domain;
- Explore the various tools available for identifying and accessing subject matter that has fallen into the public domain; and
- Wherever possible, suggest or work towards the development of new tools or guidelines to enhance access to the public domain and preserve knowledge that is already in the public domain.

The project was implemented through a range of activities including studies and surveys of laws and practices as well as holding one event. Evaluation was an integral part of the project design. This was to be done at two levels, self-evaluation and independent evaluation. During the project period, two self-evaluation exercises were carried out and reported to the CDIP. Following the end of the project, the WIPO Secretariat has now commissioned an external independent evaluation of the Project. The Evaluation is being carried out by one independent evaluator (Sisule F. Musungu).

There are two main objectives for the evaluation. These are to:

- a) Assess and report on the results of the project by learning from experiences during the project implementation period, including understanding what worked well and what did not work well and assessing the design framework as well as management and monitoring tools;
- b) Provide evidence-based evaluative information to support the decision-making process in the CDIP, including determining the reasons for success or failures.

In terms of scope, the evaluation is intended to assess the extent to which the project has been instrumental in:

- Enhancing understanding of the definition of the public domain and the availability of tools for identifying subject matter that has fallen into the public domain;
- The development of new tools or guidelines on the basis of findings of studies; and
- Providing opportunities for exchange of national and regional experiences.

The exercise is to be a participative evaluation providing for active involvement of various stakeholders (partners, beneficiaries and other interested parties) in the process. Consequently, interviews and administering questionnaires among the stakeholders is a key part of the methodology chosen for the evaluation.

This interview guide/questionnaire has been developed to solicit input from stakeholders. However, your individual input will remain confidential to the independent evaluation team. The overall results of the evaluation will be presented to the CDIP.

2. Evaluation Input

We request you to provide as much information as possible for each question. We appreciate, however, that you may not have participated or may not be aware of all the project activities and outputs. If you cannot assess a particular activity or respond to any question feel free to indicate so or leave it blank.

2.1 Details of Respondent

Name:

Title:

Contact details:

2.2 Involvement in the Project

How were you involved in the project? You can check more than one category if applicable.

- Representative of a Member State in the CDIP/WIPO.
- Project team member
- Representative of a beneficiary agency (IP office/library)
- Representative of an observer organization at CDIP/WIPO
- Study author
- Respondent to the project surveys
- Participant in the Conference on Copyright Documentation and Infrastructure
- WIPO website/publications user
- Other (please specify) _____

2.3 Project design and management

How would you rate the design and overall implementation of the project on IP and the Public Domain?

Project design/management aspect	Excellent	Good	Fair	Poor	Cannot assess
Initial project document as a guide for project implementation and assessment of results					

Project monitoring, self-evaluation and reporting tools as a basis for providing information for decision-making					
Coordination of project implementation within the Secretariat ensuring effective and efficient project execution					
Risk management and mitigation strategies					
Project's ability to respond to emerging trends and other external forces					

Comments (briefly explain your rating above):

2.4 Project effectiveness

How satisfied are you with the quality of the project's work and outputs and its effectiveness as measured against the original project objectives and the requirements of Recommendations 16 and 20 of the Development Agenda?

Aspects of effectiveness	Very satisfied	Satisfied	Unsatisfied	Very unsatisfied	Cannot assess
Analysis on the implications of a rich and accessible public domain (studies and surveys)					
Exploration of the various tools for identifying and accessing subject matter that has fallen into the public domain (surveys and studies)					
Work on the development of new tools or guidelines to enhance access to the public domain and preserve knowledge that is already in the public domain					
Conference on Copyright Documentation and Infrastructure					
Communication about the project, its activities and results					

Comments (briefly explain your rating above):

2.5 Evidence of results:

Have you seen evidence of tangible results that could be significantly attributed to the work undertaken under the Development Agenda Project on IP and the Public Domain?

Possible types of results	Substantial evidence	Some evidence	Little evidence	No evidence	Cannot assess
Informative and good quality analysis on the implications of a rich and accessible public domain					
Identification, exploration and enhanced understanding of the tools available for identifying subject matter that has fallen in the public domain					
Development or identification of new tools and guidelines to enhance access to the public domain					
Momentum and increased interest on IP and public domain issues at WIPO and in Member States					

Comments (briefly explain your rating above. As far as possible please specify the specific evidence you have seen and why it is attributable to the project):

2.6 Sustainability of project results

Based on your assessment of the effectiveness of the project and the evidence of results do you consider the project results sustainable?

Sustainability criteria	Growing need/Very likely	Constant need as during the project/ Likely	Little or no need/Unlikely	Cannot assess
Continued need for work on IP and the public domain among stakeholders				
Likelihood of continued work on IP and the public domain by WIPO and in Member States				

Comments (briefly explain your response above):

2.7 Suggestions for the future

Overall, the project's self-evaluation indicated positive results from the project. If further work were to be undertaken on IP and the public domain at WIPO what improvements would you suggest for future projects/initiatives?

Project aspect	Suggested improvements
Project design and management	
Project results and evaluation	
Project outputs and activities	
Activity timings	
Beneficiaries/ participants	

2.8 Additional feedback on the project

Do you have any other feedback on the project that is not captured in the answers to the questions in sections 2.3 to 2.7? If yes, please provide this feedback here.

Thank you for your support and input.

[End of Appendix IV and of document]