



WIPO Development Agenda Implementation

Commentary on the Preliminary Implementation Report in Respect of 19 Proposals

1. Introduction

The WIPO General Assembly, on adopting the WIPO Development Agenda in September 2007, decided to immediately implement a set of 19 recommendations (Annex A of WIPO Document A/43/16). This approach was taken on the understanding that all the Development Agenda recommendations would be implemented in the context of the mandate of the Committee on Development and Intellectual Property (CDIP). In this regard, the fast-track implementation of the 19 recommendations is still subject to the CDIP's mandate to:

- develop a work program for implementation; and
- Monitor, assess, discuss and report on the implementation.

This means that although it was considered not necessary to wait for the development of a detailed work programme before implementing these 19 recommendations, the final detailed work programme of the CDIP should nevertheless include a programme for continuing the implementation of the 19. It also means that the monitoring and assessment framework for the implementation of the Development Agenda will have to include mechanisms and indicators to monitor and assess the implementation of these recommendations.

The WIPO Secretariat has now prepared a Preliminary Report on the implementation of the 19 recommendations. A more detailed report is expected to be presented at the Jul 2008 CDIP session. Broadly speaking, the Preliminary Report is simply information on activities that have been undertaken or are planned. It is not a qualitative analysis of the implementation of the recommendations. This is an important shortcoming. With a listing of activities, it is difficult to connect the purpose of the recommendation and the activities undertaken. Even more difficult is to tell whether, in fact, reform has taken place or is underway because of the activities that are being implemented in the name of the Development Agenda. Of course, it may be too early to undertake a

qualitative review of implementation but it is important to remember that the Development Agenda is about reforming the way business is done in WIPO. It is with this in mind that we provide below a preliminary review of the Secretariat's Report.

2. Basic Parameters and Structure of Analysing the Preliminary Implementation Report

The Development Agenda is an agenda for the reform of WIPO to ensure that the organisation, in all its programmes and activities including norm-setting, supports the development goals of its developing country Members States and the public interest generally in all its Members. It is therefore expected that the implementation of each of the 45 Recommendations that make up the Agenda will result in **discernible qualitative reforms**. In other words, the implementation of each recommendation should take us one step closer to a WIPO that has development and the public interest as an integral part of its strategic vision, programmes and activities. The first step in understanding whether change is taking place is therefore to understand the reforms/changes/improvements that are expected in WIPO as a result of implementing a particular recommendation. That is, what is expected to be reformed, changed and or improved through the implementation of the recommendation? The analysis that follows is structured based on this idea.

The Commentary is presented in tabular form with four columns. The first and second columns reproduce the cluster, number and text of the relevant recommendation following the same order as the Secretariat's Report. The third column contains, in bullet form, the key expected reforms/changes/improvements out of the implementation of each recommendation. The fourth and final column then contains a brief commentary on whether the reported activities can promote the intended reforms and whether there are important gaps or problems in the implementation approach.

3. Commentary on the Preliminary Implementation Report in Respect of 19 Proposals

Cluster and Recommendation No.	Text of Recommendation	The Key Expected Reforms/Changes/Improvements with the Implementation of the Recommendation	Comment on Link between Reported Activities and Intended Reforms
A1	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 and activities should include time frames for	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> The substantive content of technical assistance (TA). The content should include advice, strategies and ideas regarding how IP or other rules and policies should support development by 	Overall, while in theory the listed activities may assist in achieving the objectives of the recommendations, the approach by the Secretariat raises a number of important issues and problems. Additional information on the activities, for example, the substantive content of programmes of seminars, names and background of speakers and consultants, meeting evaluations etc would help

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	completion. In this regard, design, delivery mechanisms and evaluation processes of technical assistance programs should be country specific.	<p>encouraging relevant innovation and access.</p> <ul style="list-style-type: none"> The processes of design and delivery of TA [Demand-driven and transparent processes]. Demand-driven means that the recipient countries should be in the driving seat in terms of defining needs and priorities and the implementation programme. On the other hand, transparency requires that programmes should be transparent with respect to identification of recipient countries, subject coverage, timeframes, outcomes etc. 	<p>understand the impact of the activities.</p> <p>With respect to the approach to implementation some of the key issues/questions/problems include:</p> <ul style="list-style-type: none"> There appears to be either an erroneous understanding of what a development orientation means or there is intentional “bastardisation” of key terminologies and concepts. A troubling example is where the report talks (in activity 5) about “taking into account their level of development of IP”. The level of a country’s development is quite different, conceptually and in practice, from level of development of IP. It is indicated that there is careful assessment of needs but concretely how this is done is unclear. Does WIPO have a diagnostic tool or methodology for needs assessment? How is effective needs-assessment such as that referred to in activity 11 undertaken? In some cases there is no indication of where activities will take place e.g., activity No. 2 and 12 or who will undertake proposed activities, for example, the preparation of the document on legislative assistance under activity 10 or studies for the Ghana meeting in activity 16.
A3	Increase human and financial allocation	This recommendation requires	There are significant problems with the

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	for technical assistance programs in WIPO for promoting a, <i>inter alia</i> , development-oriented IP culture, with an emphasis on introducing intellectual property at different academic levels and on generating greater public awareness on IP.	reforms/changes/improvements in: <ul style="list-style-type: none"> The amount of staff time and financial resources deployed towards promoting an understanding of the <i>development aspects of IP</i> (benefits, costs and impacts) and for introducing <i>development and public interest focused IP teaching</i> at different academic levels. In other words, there should be more resources going towards promoting a balanced and evidence-based understanding of IP. 	implementation of this recommendation as reported. In particular: <ul style="list-style-type: none"> The Secretariat simply reemphasises the critical need to increase human and financial resources but says nothing regarding whether in fact resources have increased or are budgeted to increase. In general, this recommendation appears to have been misinterpreted to mean an endorsement of WIPO's demystification of IP campaign that had been begun before the Development Agenda and which, in fact, was supposed to be re-oriented as a result of this recommendation. How exactly the development aspects of IP and public interest needs have received increased focus in teaching and training activities is unclear.
A4	Place particular emphasis on the needs of SMEs and institutions dealing with scientific research and cultural industries and assist Member States, at their request, in setting-up appropriate national strategies in the field of IP.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> The focus of TA in terms of recipients (SMEs, institutions dealing with scientific research and cultural industries) and substantive content (development of appropriate national strategies). 	Overall, without additional information such as the papers presented at the seminars, presenters etc, it is difficult to challenge the approach the Secretariat under this recommendation. <p>Key shortcoming however relates to the definition of SMEs needs as well as the needs of institutions dealing with scientific research and cultural industries. Appropriateness of national strategies is also a question. In particular:</p> <ul style="list-style-type: none"> It is not indicated how the needs of these stakeholders are identified. More

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			<p>importantly, needs appear to have been interpreted to mean activities related to <u>“generating and exploiting intellectual property assets”</u>. The recommendation requires that TA focus on the needs of stakeholders not only in terms of their possible use of IP but also in terms of their overcoming IP barriers to their businesses and activities.</p> <ul style="list-style-type: none"> • It is not clear that “appropriate national strategies” has been interpreted to mean strategies that ensure that development imperatives are integrated into IP policies and that measures for protection are coupled with measures to facilitate technology and knowledge acquisition.
A6	<p>WIPO’s technical assistance staff and consultants shall continue to be neutral and accountable, by paying particular attention to the existing Code of Ethics, and by avoiding potential conflicts of interest. WIPO shall draw up and make widely known to the Member States a roster of consultants for technical assistance available with WIPO.</p>	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> • The professionalism and professional accountability of TA by ensuring that WIPO staff and consultants: refrain from pushing for particular models of implementing international agreements; strictly observe conflict of interest rules; and are accountable for the advice they provide. 	<p>The UN standards for the International Civil Service and the WIPO Staff Regulations should, in theory, be sufficient to provide the necessary safeguards. In terms of the nature of consultants, it will only be possible to discuss once the roster has been prepared and distributed. A few questions that may arise with respect to the implementation of this recommendation include the following:</p> <ul style="list-style-type: none"> • The Secretariat indicates that further steps are being considered with respect to the UN Standards of Conduct and Staff Regulations, what are these steps and what improvements are they hoped to achieve?

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		<ul style="list-style-type: none"> Transparency with respect to the consultants that WIPO hires for TA purposes by publishing a list containing relevant information on all consultants used or intended to be used in TA activities. 	<ul style="list-style-type: none"> Have there been any disciplinary measures against staff or consultants for failure to comply with the Standards of Conduct or Staff Regulations? Is there an established and publicised mechanism for TA recipients to report cases of malpractice by staff or consultants?
A7	Promote measures that will help countries deal with IP related anti-competitive practices, by providing technical cooperation to developing countries, especially LDCs, at their request, in order to better understand the interface between intellectual property rights and competition policies.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> The issue coverage and substantive content of TA programmes. In particular, TA activities should promote measures or provide options on how to deal with anti-competitive practices by IP right holders by helping developing countries and LDCs to better understand the interface between competition policy and IPRs. 	The report of the Secretariat simply indicates that on this issue business continues, and will continue, as usual. The Secretariat needs to indicate the reforms or changes or improvements made with respect to the approach and focus on competition policy. In addition, the improvements or changes or measures to be taken should be broader than legislative assistance. There should be information meetings, seminars etc.
A11	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.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> The balance between the time and resources dedicated to the implementation of international obligations related to the protection of foreign IP right holders and for providing options and advice on establishing 	The activities listed here generally seem to be linked to the purpose of the recommendation. However, there is one important shortcoming. <ul style="list-style-type: none"> To be able to effectively protect domestic creations, innovations and inventions the measures required go beyond the standard IP systems. There is a clear need to consider alternatives and new ways or business models. The Secretariat's approach in this

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		<p>capacity and frameworks for ensuring better protection (through IP or alternatives models) of domestic creations, innovations and inventions.</p> <ul style="list-style-type: none"> The attention paid, and the technical and financial resources aimed at, supporting the development of scientific and technological infrastructure 	<p>regard is too IP-centric in the traditional way.</p>
A12	<p>To further mainstream development considerations into WIPO's substantive and technical assistance activities and debates, in accordance with its mandate.</p>	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> The substantive content of the TA programmes and substantive activities including WIPO reports and studies, working papers, among others, by ensuring that the benefits, costs and impacts of IP on development are a central part in all these activities. 	<p>The activities reported here generally suggest that the Secretariat is making important efforts to meet the objective of the recommendation. One issue that is not clear is how the Secretariat has ensured this substantive re-orientation in its studies, reports and research. Most of what is reported mainly concerns meetings.</p>
A13	<p>WIPO's legislative assistance shall be, <i>inter alia</i>, development-oriented and demand-driven, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should</p>	<p>As with Recommendation A1, this recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> The substantive content of technical assistance (TA). The content should include advice, strategies and ideas regarding 	<p>For Commentary see the Comments under Recommendation A1 above.</p>

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	include time frames for completion.	<p>how IP or other rules and policies should support development by encouraging relevant innovation and access.</p> <ul style="list-style-type: none"> • The processes of design and delivery of TA [Demand-driven and transparent processes]. 	
A14	Within the framework of the agreement between WIPO and the WTO, WIPO shall make available advice to developing countries and LDCs, on the implementation and operation of the rights and obligations and the understanding and use of flexibilities contained in the TRIPS Agreement.	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> • The substantive orientation and content of the legislative and other advice given by WIPO with respect to the implementation of the TRIPS Agreement. In particular, TA should cover both the rights of Member States, in terms of policy space, as well as their obligations and explain the meaning, importance and strategies for practical use of TRIPS flexibilities to address various needs. 	<p>The fact that TRIPS flexibilities focused meetings are planned in 2008 should be welcome. The usefulness of these meetings will however depend on the substantive content of the programme, the papers prepared and the expert speakers. It is important that WIPO builds on the extensive work that has been undertaken on flexibilities by a wide range of organisations and experts including by other UN agencies.</p> <p>It is also important that TRIPS flexibilities go beyond the Doha Declaration on the TRIPS Agreement and public health or the issues currently under discussion in the WTO. For example, how is WIPO assisting LDCs take advantage of the extensions to the transitional period for the implementation of the TRIPS Agreement to build a sound and viable technological base?</p>
B15	<p>Norm-setting activities shall:</p> <ul style="list-style-type: none"> - be inclusive and member driven; - take into account different levels of development; 	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> • The processes of norm-setting to ensure that the views and interests 	As stated in the report, WIPO norm-setting bodies operate in a markedly different way than a few years ago. Except in a few cases, progress in norm-setting activities is now more dependent on

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	<ul style="list-style-type: none"> - take into consideration a balance between costs and benefits; - be a participatory process, which takes into consideration the interests and priorities of all WIPO Member States and the viewpoints of other stakeholders, including accredited inter-governmental organizations and non-governmental organizations; and - be in line with the principle of neutrality of the WIPO Secretariat. 	<p>of developing countries and other stakeholders, particularly public interests groups, are taken into account.</p> <ul style="list-style-type: none"> • The substantive content of norms and standards by reflecting better cost and benefit analyses. • The nature of instruments by, for example, including differential treatment for developing countries and LDCs. 	<p>consensus and the views of developing countries and other stakeholders are better affecting the direction and content of various processes. There is also less activism by the Secretariat in disputes between Members in norm-setting processes. To ensure systemic changes however may require further work including:</p> <ul style="list-style-type: none"> • Incorporating the norm-setting principles into the WIPO General Rules of Procedure as well as the rules of procedure of the various committees and the rules related to Diplomatic Conferences. • Determining how these principles apply to soft law making processes in WIPO. As indicated, for example, with respect to copyright, soft law norms are becoming popular and hence this recommendation may not bring the change required if the focus is only on treaty-making (hard law) processes.
B16	<p>Consider the preservation of the public domain within WIPO's normative processes and deepen the analysis of the implications and benefits of a rich and accessible public domain.</p>	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> • The substantive content of WIPO norms and standards. To preserve the public domain may require special rules in treaties or soft law rules including a more explicit elaboration of limitations and exceptions to IP rights. 	<p>In general, the report reveals important improvements. The work undertaken so far has clear links to the purposes of the recommendation. There is however an important problem with the general approach of the Secretariat to the implementation of this recommendation.</p> <ul style="list-style-type: none"> • The Secretariat has introduced a caveat which Member States did not consider or agree to. Work will only be done on request

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		<ul style="list-style-type: none"> The analytical capacity and outputs of WIPO with respect to the importance of the public domain. 	<p>of Member States. However, unlike other recommendations, work under this recommendation, particularly the analytical work, was not made subject to only that requested by members through WIPO Committees. This caveat therefore has important implications. It will have the effect of requiring that any work under this recommendation be undertaken based on the consensus of all Member States of specific committees</p>
B17	<p>In its activities, including norm-setting, WIPO should take into account the flexibilities in international IP agreements, especially those which are of interest to developing countries and LDCs.</p>	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> The attention given to existing flexibilities or required flexibilities in new IP instruments, particularly where those flexibilities are of interest to developing countries and LDCs. 	<p>The report reveals important work in the area of copyright and related rights. What is not clear however is how the flexibilities particularly relevant to developing countries have been promoted.</p> <p>Little is said with respect to patents or other IP rights. Additionally, nothing is said regarding what will be done with respect to flexibilities in future treaties and norms.</p>
B18	<p>To urge the IGC to accelerate the process on the protection of genetic resources, traditional knowledge and folklore, without prejudice to any outcome, including the possible development of an international instrument or instruments.</p>	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> The pace of work in the IGC. 	<p>The report here is adequate. The July 2008 report should however contain information and update on the last session of the IGC in February 2008 and the extent to which progress has been made towards concluding the process.</p>
B19	<p>To initiate discussions on how, within WIPO's mandate, to further facilitate</p>	<p>This recommendation requires:</p> <ul style="list-style-type: none"> Commencement of dedicated 	<p>The main reform agenda, initiating dedicated discussions, is not reflected in the reported activities</p>

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	access to knowledge and technology for developing countries and LDCs to foster creativity and innovation and to strengthen such existing activities within WIPO.	<p>discussions between Member States, with the involvement of other stakeholders, on how to facilitate access to knowledge and technology for developing countries and LDCs.</p> <ul style="list-style-type: none"> • Identification of existing efforts and their strengthening. 	<p>and actions including planned activities. What is required here is to commence <u>new discussions on mechanisms, options, methodologies etc on access to knowledge including the possibility or desirability of treaty/treaties.</u></p> <p>The reported on-going work should be strengthened but this should not detract from the processes mandated by the recommendation.</p>
B21	WIPO shall conduct informal, open and balanced consultations, as appropriate, prior to any new norm-setting activities, through a member driven process, promoting the participation of experts from Member States, particularly developing countries and LDCs.	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> • The processes for norm-setting particularly with respect to how new activities should be initiated. • The level of stakeholder participation in norm-setting processes. 	<p>The report essentially points to activities that took place after arduous efforts by developing countries to overcome the opposition of developed countries and the Secretariat as evidence of implementation of the recommendation. It is therefore important to remember that this recommendation creates a new mandatory procedure on norm-setting [<i>WIPO shall, it says</i>]. To make an impact:</p> <ul style="list-style-type: none"> • The new process should be formalised. There is need therefore for entrenching these requirements into the rules of procedure of the General Assembly and the Committees. • There is need to ensure greater governmental and non-governmental stakeholder participation in debates regarding the need for and objectives of proposed treaties.
D35	To request WIPO to undertake, upon request of Member States, new studies to	This recommendation requires reforms/changes/improvements in:	It is encouraging that WIPO is finally starting to focus on empirical research including on the

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	<p>assess the economic, social and cultural impact of the use of intellectual property systems in these States.</p>	<ul style="list-style-type: none"> • The human and technical capacity of WIPO as well as financing for undertaking interdisciplinary studies on economic, social and cultural impact of IP. • The responsiveness of WIPO to requests for such studies. 	<p>economics of IP. However, the report reveals important shortcomings in the approach taken by the Secretariat regarding the implementation of this recommendation. In particular:</p> <ul style="list-style-type: none"> • The recommendation calls for studies on the economic, social and cultural impacts of IP. The report however shows that WIPO is essentially seeking to focus only on the economic impact. While this is important, for developing countries and LDCs, the social and cultural impacts are critical. • It is indicated that WIPO will produce publications on the economics of IP. While this is welcome, it is not clear whether WIPO will be seeking to add value to the already extensive literature on economics of IP or whether these will be publications attempting to re-invent the wheel. There is also an important question as to who the economics experts are, whether internal or external. • There is no indication as to how WIPO has enhanced its capacity for multidisciplinary research on the economic and socio-cultural impacts of IP in developing countries.
D37	<p>Upon request and as directed by Member States, WIPO may conduct studies on the protection of intellectual property, to</p>	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> • The human and technical capacity 	<p>As with recommendation D35, there is an erroneous over-emphasis on economic research and it is not clear how WIPO's capacity for interdisciplinary</p>

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	identify the possible links and impacts between IP and development.	<p>of WIPO as well as financing for undertaking interdisciplinary studies on the links and impacts of IP on socio-economic, cultural as well as technological development of developing countries and LDCs.</p> <ul style="list-style-type: none"> • The responsiveness of WIPO to requests for such studies. 	<p>research has been enhanced.</p> <p>How WIPO will build on the existing literature and studies is also not indicated.</p>
E42	To enhance measures that ensure wide participation of civil society at large in WIPO activities in accordance with its criteria regarding NGO acceptance and accreditation, keeping the issue under review.	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> • The level of participation of civil society organisations in WIPO processes both in terms of norm-setting and TA activities. • The processes for admitting civil society observers. • Dedicated information for these types of organisation on WIPO activities and programmes. 	<p>In General, WIPO has a reasonable observer admission process and is a much more open organisation compared to many other international organisations including other UN agencies such as WHO. There is however room for improvement particularly with respect to participation of civil society organisation in WIPO meetings and seminars especially those held outside of Geneva.</p> <p>One particular improvement in WIPO's relation with civil society could be on its website. While WIPO provides dedicated resources and information for delegates, journalists, businesses, innovators and students, there are no resources or dedicated information for civil society organisations. See WIPO website at http://www.wipo.int/portal/index.html.en left hand bar under "Resources For".</p>
E44	In accordance with WIPO's member driven nature as a United Nations	This recommendation requires reforms/changes/improvements in:	The report simply says this recommendation has been noted by the Secretariat. The recommendation,

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	<p>Specialized Agency, formal and informal meetings or consultations relating to norm-setting activities in WIPO, organized by the International Bureau, upon request of the Member States, should be held primarily in Geneva, in a manner open and transparent to all Members. Where such meetings are to take place outside of Geneva, Member States shall be informed through official channels, well in advance, and consulted on the draft agenda and program.</p>	<ul style="list-style-type: none"> • The location of meetings organised by the WIPO Secretariat. • The processes for organising meetings. 	<p>however, requires specific actions and changes. Simply noting the recommendation is therefore not sufficient. In particular, the report contains a large number of meetings that have been held or are planned by WIPO in the coming year. The Secretariat needs to report on how it has implemented this recommendation with respect to the location and organisation of these many meetings.</p>