



Ideas in Development
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WIPO Development Agenda Implementation

Commentary on the Initial Working Document for the Implementation of Agreed Proposals

1. Introduction

The WIPO Committee on Development and Intellectual Property (CDIP) meets for the first time between 3rd and 7th March 2008 to begin to implement the WIPO Development Agenda and consider other development-related issues. In this first meeting, aside from the procedural matters regarding rules of procedure etc., the Committee will focus on two main tasks, namely to:

- develop a work program for implementation of the adopted recommendations; and
- Discuss and establish mechanism, methodologies etc., to monitor, assess, discuss and report on the implementation of the recommendations.

In the context of the first task, it is expected that the CDIP will: (a) review and discuss the **“Preliminary Implementation Report in Respect of 19 proposals”** which the General Assembly decided to immediately implement (Annex A of WIPO Document A/43/16); and (b) consider the **“Initial Working Document for the Implementation of the Agreed Proposals”** (Annex B of WIPO Document A/43/16). Both documents have been prepared under the responsibility of the Chairman of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), Ambassador Trevor Clarke. The latter document focuses on the 26 other recommendations of the Development Agenda. The result of the review and consideration of the two documents should be the development of a comprehensive work programme for the implementation of the WIPO Development Agenda. In a separate document, we have already offered initial comments on the Preliminary Report. This document now offers some initial comments on the Initial Working Document.

With respect to the second task, no documentation has been prepared by the PCDA Chair or the Secretariat. It is nevertheless critical there that there is some discussion and focus on what the monitoring and assessment mechanism for the overall implementation of the Development Agenda should be. Obviously, a final monitoring, assessment and reporting framework cannot be finalised before a comprehensive implementation work programme is prepared and agreed.

2. Basic Parameters and Structure of Analysing the Initial Working Document

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 which make up the Agenda will result in **discernible qualitative reforms, changes and improvements in how business is conducted at WIPO**. 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 first addresses this question before providing initial comments on the proposed activities to implement the 26 agreed proposals.

The Commentary is presented in tabular form with four columns. The first and second columns reproduce the cluster, number and text of each of the 26 recommendations (agreed proposals) covered in the Initial Working Document. The third column contains, in bullet form, the key expected reforms/changes/improvements that should result out of the implementation of each recommendations. The fourth and final column then contains a brief commentary on whether the proposed activities can promote the intended reforms and whether there are important gaps or problems in the implementation approach and/or proposed activities.

3. Commentary on the Proposed Activities for the Implementation of the Development Agenda (26 Proposals)

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A2	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 finance activities in Africa through	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> • Efforts aimed at attracting and sourcing additional financial resources for IP-related activities for LDCs while continuing to 	The general approach suggested in the Initial Working Document, that is preparation of a paper to update existing information and elaborate proposals for the future, makes sense. Without the baseline information expected to be generated by this study, it would be difficult for the CDIP to constructively

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	budgetary and extra-budgetary resources, to promote, <i>inter alia</i> , the legal, commercial, cultural, and economic exploitation of intellectual property in these countries.	prioritise funding of IP-related activities in Africa.	tackle the implementation of this recommendation. There is however one issue that arises with the proposed activities. This is the proposed mechanism for consultation with donor agencies and putting in place provisions for reporting, monitoring and evaluation. While in general this approach is welcome, care must be taken to ensure that: <ul style="list-style-type: none"> • Donor agencies do not unduly interfere with a needs-based and demand-driven nature of technical assistance (TA) activities; and • The reporting, monitoring and evaluation system is subject to review and supervision by the CDIP.
A5	WIPO shall display general information on all technical assistance activities on its website, and shall provide, on request from Member States, details of specific activities, with the consent of the Member State(s) and other recipients concerned, for which the activity was implemented.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> • The level of information provided and the accessibility of general information regarding WIPO's TA activities. • Subject to recipient's consent, the provision and accessibility of specific detailed information on TA activities. 	The consolidated database approach appears to be the right way to proceed in implementing the recommendation. In developing the database, however, special attention will have to be paid the nature of the platform to ensure that the final website interface is easy to navigate for the Member States, the general public, researchers as well as monitoring entities. At this point, the only major question that needs to be answered when the database will be completed and the general information made available to the general information database.
A8	Request WIPO to develop agreements with research institutions and with private	This recommendation requires reforms/changes/improvements in:	The proposed approach, initiating a study, is a reasonable way to proceed in implementing this

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	enterprises with a view to facilitating the national offices of developing countries, especially LDCs, as well as their regional and sub-regional IP organizations to access specialized databases for the purposes of patent searches.	<ul style="list-style-type: none"> The accessibility, for national IP offices, especially in developing countries, of information held in special databases held by research institutions or private companies in order to improve patent examination. 	<p>recommendation. The baseline information generated through the study will be critical in determine what can and should be done and how, including options for access agreements or access costs.</p> <p>However, there is one activity proposed under this recommendation which raises important concerns and is clearly an overreach. In this regard, it is not clear what the connection is between the recommendation sought to be implemented and the activity proposed under bullet 2 regarding information centres.</p>
A9	Request WIPO to create, in coordination with Member States, a database to match specific IP-related development needs with available resources, thereby expanding the scope of its technical assistance programs, aimed at bridging the digital divide.	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> The availability, provision and accessibility to information regarding IP-related development needs and resources aimed at bridging the digital divide. 	<p>In general, the proposed approach appears reasonable. However, in the proposed activities there is no mention of creating a database which is the basic output anticipated under this recommendation.</p>
A10	To assist Member States to develop and improve national IP institutional capacity through further development of infrastructure and other facilities with a view to making national IP institutions more efficient and promote fair balance between IP protection and the public interest. This technical assistance should	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> The institutional capacity of national IP offices to undertake their functions efficiently. The institutional capacity of national IP offices to understand and promote a fair balance 	<p>The approach to the implementation of this recommendation is quite problematic and may need important revisions and improvements. The focus of the proposed activities is essentially related to improving the efficiency of IP offices to provide service etc., to right holders. There are no useful activities which are aimed at re-orienting the IP offices to better understand the public interest and</p>

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	also be extended to sub-regional and regional organizations dealing with IP.	between IP protection and the public interest, for example, the capacity to analyse and disseminate information on flexibilities in national laws and international including on limitations and exceptions, abuse of IP rights etc.	<p>promote such public interest in their activities. Overall, the notion of fair balance between the interests of right holders and the public interest appears to have received only lip-service. In addition, in some cases, instead of promoting balance there are explicit plans to respond to IP right holders to demands “for efficiency and promotion of IP”.</p> <p>Further, in one particular case there is potential overreach. This is the case where it is proposed to strengthen institutional frameworks and coordination mechanism for “enforcement of IP rights with a view to capitalize on investment made...” The implications of this approach for recommendation 45 on enforcement should be carefully reviewed.</p> <p>In the final analysis, activities more specifically focused on the public interest and access issues need to be added here and those already proposed revised accordingly.</p>
B20	To promote norm-setting activities related to IP that support a robust public domain in WIPO’s Member States, including the possibility of preparing guidelines which could assist interested Member States in identifying subject matters that have fallen into the public domain within their respective jurisdictions	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> • The efforts directed at specific norm-setting activities intended to support a robust public domain in WIPO Member States e.g., norm-setting activities related to limitations and exceptions. 	In general, the proposed activities are useful and will go some way in implementing the recommendation. However, considering that the operative phrase here is “ <u>promote norm-setting activities... that support a robust public domain</u> ” more norm-setting activities should be considered beyond the guidelines on subject matter in the public domain and issues around traditional

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			knowledge. For example, the role of limitations and exceptions and whether new norms are required in this area to support a robust public domain could be usefully examined in the context of implementing this recommendation.
B22	<p>WIPO's norm-setting activities should be supportive of the development goals agreed within the UN system, including those contained in the Millennium Declaration.</p> <p>The WIPO Secretariat, without prejudice to the outcome of Member States considerations, should address in its working documents for norm-setting activities, as appropriate and as directed by Member States, issues such as: a) safeguarding national implementation of intellectual property rules b) links between IP and competition c) IP-related transfer of technology d) potential flexibilities, exceptions and limitations for Member States and e) the possibility of additional special provisions for developing countries and LDCs.</p>	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> • The level of alignment between the objectives of IP instruments and development goals especially of developing countries and LDCs. • Subject to the direction of Member States, the substantive content and focus of working documents relating to norm-setting so as to reflect a range of public interest and development considerations specified in the recommendation. 	<p>Overall the burden for implementing this recommendation lies mainly with the Member States as they are required to give directions. However, the proposed studies on competition are a useful task for the Secretariat provided that this work builds on existing literature and utilises existing and recognised expertise on the subject.</p> <p>At a broader level, some consideration could be made to developing a report on the contribution of WIPO to the achievement of the Millennium Development Goals. A few years ago WIPO, among other UN agencies and international organizations, had prepared a report of this nature. At the time, however, there was limited development-orientation or direction from Members States on what a development-orientation to IP meant. UK's DFID has also been undertaking reviews of how various international organisations are contributing to the implementation of MDGs which could also be extended to cover WIPO or aspects of its methodology could be borrowed.</p>
B23	To consider how to better promote pro-competitive IP licensing practices, particularly with a view to fostering	This recommendation requires reforms/changes/improvements in:	Some important and useful work has been done and is proposed with respect to copyright and related rights. More, however, needs to be done with

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	creativity, innovation and the transfer and dissemination of technology to interested countries, in particular developing countries and LDCs.	<ul style="list-style-type: none"> The level of activities and staff time dedicated to issues related to pro-competitive licensing practices. Capacity of the WIPO Secretariat to tackle these issues and provide appropriate TA. 	respect to patents and other IP rights.
C24	To request WIPO, within its mandate, to expand the scope of its activities aimed at bridging the digital divide, in accordance with the outcomes of the World Summit on the Information Society (WSIS) also taking into account the significance of the Digital Solidarity Fund (DSF).	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> The level and resources dedicated to activities aimed at bridging the digital divide in line with the outcomes of WSIS. 	The approach suggested here is generally satisfactory. There is some language which, however, raises concern. In particular, it is not clear what is meant by the phrase <u>“digital divide that exists with regard to access to IP education”</u> . Some clarity here would be useful.
C25	To explore IP-related policies and initiatives necessary to promote the transfer and dissemination of technology, to the benefit of developing countries and to take appropriate measures to enable developing countries to fully understand and benefit from different provisions, pertaining to flexibilities provided for in international agreements, as appropriate.	<p>This recommendation requires reforms/changes/improvements in:</p> <ul style="list-style-type: none"> The level of work and activities related to the promotion of technology transfer and dissemination generally both by Member States and the WIPO Secretariat. The attention paid to work and activities relating to the use of flexibilities in IP instruments to promote transfer of technology e.g., the research exemption in patent laws. 	At this point, the general approach proposed is reasonable except that the focus of the proposed work is not clear. There already exists significant literature on this subject and it is not clear how WIPO will take advantage of, and build on, this literature and existing expertise.
C26	To encourage Member States, especially	This recommendation requires	The proposed measures are generally reasonable.

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	developed countries, to urge their research and scientific institutions to enhance cooperation and exchange with research and development institutions in developing countries, especially LDCs.	reforms/changes/improvements in: <ul style="list-style-type: none"> The number and impact of proactive measures and initiatives undertaken by developed countries to provide incentives, financing etc., to enhance cooperation and exchange between research institutions in their territories and research and development institutions in developing countries, especially developing countries. 	
C27	Facilitating IP-related aspects of ICT for growth and development: Provide for, in an appropriate WIPO body, discussions focused on the importance of IP-related aspects of ICT, and its role in economic and cultural development, with specific attention focused on assisting Member States to identify practical IP-related strategies to use ICT for economic, social and cultural development.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> Initiative and maintaining specific discussions in WIPO on IP-related aspects of ICTs. 	While a number of interesting activities are proposed, the core part of the recommendation, <u>initiating and maintaining discussions in a specified WIPO body,</u> is ignored. The question is: Which is the appropriate body or bodies and what is proposed to be done in that body or bodies
C28	To explore supportive IP-related policies and measures Member States, especially developed countries, could adopt for promoting transfer and dissemination of technology to developing countries.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> The number and impact of proactive measures and initiatives taken by developed countries to provide incentives, financing etc., to enhance transfer and 	The comments at 25 and 26 as indicated in the Initial Working Document, apply here as well. But additional work is needed. One possibility is undertaking/commissioning a study on the implementation of article 66.2 of TRIPS with a view to understanding better why this mechanism has not been very successful. Such a

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		dissemination of technology to developing countries.	study could provide a basis for additional normative measures in WIPO to improve the situation for LDCs and establish better approaches with regard to developing countries in general.
C29	To include discussions on IP-related technology transfer issues within the mandate of an appropriate WIPO body.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> To initiate dedicated discussions on IP-related transfer of technology issues in WIPO bodies. 	The bodies identified in the Initial Working Document make sense as the starting point. However, the Secretariat could be asked to indicate what other relevant bodies could discuss transfer of technology issues.
C30	WIPO should cooperate with other intergovernmental organizations to provide to developing countries, including LDCs, upon request, advice on how to gain access to and make use of IP-related information on technology, particularly in areas of special interest to the requesting parties.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> Build or improve capacity to respond to request related to accessing and making use of IP-related information on technology. The level of cooperation with other intergovernmental organisations for this purpose. 	The proposed activities are headed in the right direction but further clarity is required. In particular, clarity is required regarding whether capacity is going to be built or improved within WIPO to respond to requests on this issue or whether there is sufficient capacity.
C31	To undertake initiatives agreed by Member States, which contribute to transfer of technology to developing countries, such as requesting WIPO to facilitate better access to publicly available patent information.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> To initiative new activities or enhance existing ones, subject to Member States' agreement, to support transfer of technology. 	The proposed activities are useful but all of them are focused on technical assistance. No consideration has been given to possible norm-setting activities in this area.
C32	To have within WIPO opportunity for exchange of national and regional experiences and information on the links	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> The level of work and attention 	The recommendation is linked to recommendations 22 and 23 and the comments on those recommendations, above, apply here as well.

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	between IP rights and competition policies.	paid by Member States and the Secretariat in norm-setting or other process to issues related the relationship between IP and competition.	
D33	To request WIPO to develop an effective yearly review and evaluation mechanism for the assessment of all its development-oriented activities, including those related to technical assistance, establishing for that purpose specific indicators and benchmarks, where appropriate.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> • Capacity to identify, review and evaluate WIPO's development-oriented activities. • The development of an annual review mechanism including indicators and benchmarks. 	The proposed approach makes sense except with respect to the scope of the review and evaluation. The recommendation does not just require reviewing and evaluating the development agenda activities, that is activities related to the 45 recommendations as the Initial Working Document implies. Rather it requires evaluation and reviewing all WIPO development-related activities whether they are undertaken as an implementation a development agenda recommendations or not.
D34	With a view to assisting Member States in creating substantial national programs, to request WIPO to conduct a study on constraints to intellectual property protection in the informal economy, including the tangible costs and benefits of IP protection in particular in relation to generation of employment.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> • In the level of understanding and information regarding the benefits and cost of IP in the informal sector with a particular focus on the generation of employment. 	In terms of the proposed approach it will be important that the study explicitly addresses the question of costs and benefits and that it is undertaken through an interdisciplinary process. More importantly, there is a clear danger of overreach here. In particular, there is a proposal to test WIPO methodology on piracy here! This is clearly dangerous and it is not clear where this is headed. Is the idea to use this recommendation as a pretext to carry out so called piracy studies in the informal sector? In fact, the so-called piracy campaigns can easily destroy employment opportunities in the informal

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			sector when driven by overzealous enforcement of IP or through the abuse of enforcement mechanism.
D36	To exchange experiences on open collaborative projects such as the Human Genome Project as well as on IP models.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> To create a forum and/or space to exchange experiences and learn about open collaborative models of innovation. 	The proposal for a two day meeting and the issues suggested to be covered in the meeting is very good. The only addition that could be considered is having at that meeting the Human Genome Project (HGP) experience be presented as a case study by someone like Sir John Sulston since HGP is specifically mentioned by Members States in the recommendation.
D38	To strengthen WIPO's capacity to perform objective assessments of the impact of the organization's activities on development	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> Capacity of WIPO to undertake objective development impact assessments. The level of understanding of the impact of WIPO's activities on development. 	There is an important flaw in the approach taken by the Initial Working Document here. The evaluation system that is contemplated should be aimed at evaluating all activities that impact development and not the development agenda activities as such. This is critical to clarify. Otherwise alot of WIPO activities that significantly impact development will be missed out as they are not undertaken as part of the development agenda. <p>In order to be able to develop a serious objective evaluation system the best approach would probably be to:</p> <ul style="list-style-type: none"> Undertake a study, learning from the experience of other organisations on independent evaluations, and provide options for a WIPO system that would be objective (independent). The study would be discussed by the CDIP on the basis of

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			which a system would be agreed.
E39	To request WIPO, within its core competence and mission, to assist developing countries, especially African countries, in cooperation with relevant international organizations, by conducting studies on brain drain and make recommendations accordingly.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> The level or work and activities focused on the question of brain drain particularly in Africa. 	This is a difficult recommendation to implement and the proposed approach appears reasonable.
E40	To request WIPO to intensify its cooperation on IP related issues with UN agencies, according to Member States' orientation, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially WTO in order to strengthen the coordination for maximum efficiency in undertaking development programs.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> The level and nature of cooperation between WIPO and other international organisations especially in the UN system. 	Generally, the Initial Working Document provides a good start. The report in July should provide more detailed information.
E41	To conduct a review of current WIPO technical assistance activities in the area of cooperation and development.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> The evaluation and review processes for WIPO TA activities. 	The proposed approach appears reasonable. The comments made regarding the proposed activities under recommendations 33 and 38 should however also be taken into account.
E43	To consider how to improve WIPO's role in finding partners to fund and execute projects for IP-related assistance in a transparent and member-driven process and without prejudice to ongoing WIPO activities.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> Capacity to identify and negotiate with donors and other partners with respect to TA projects. The involvement of Members States with respect to funding and execution of TA projects. 	This recommendation is linked to recommendation 2 as well as the other recommendations on TA. An important difference however with recommendation 2 relates to the requirement here for: (a) transparency; and (b) member-driven processes. There is need to seek for information regarding how these two components of the recommendation that do not appear in recommendation 2 will be

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			addressed. Consequently, beyond the activities contemplated under recommendation 2 additional work needs to be done to address the need for transparency and Member State driven processes.
E45	To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that “the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations”, in accordance with Article 7 of the TRIPS Agreement.	This recommendation requires reforms/changes/improvements in: <ul style="list-style-type: none"> • The approach to IP-enforcement in WIPO moving from a right holders’-centric model to a model that considers the needs of consumers, competitors, the general public etc. • The substantive focus of the work of the ACE. 	While some sensitivity is shown here with respect to the need for a balanced approach to IP enforcement, the thrust of proposal of how to proceed under this recommendation ignores the intended purpose. The basic idea refocus the work of the ACE and other enforcement activities from simply promoting the interests of right holders towards issues related to abusive of enforcement mechanisms; rights of defendants in enforcement cases, flexibilities in the enforcement regime under TRIPS and other IP agreements etc.