

4. IPR ADMINISTRATION REGIME

This section looks at the key issues and challenges related to the IPR administration regime in LDCs, before setting out a detailed checklist to guide an assessment, based on available evidence, about a country's capacity to administer IPRs effectively at the national level in line with its national development policy objectives as well as its current or future international obligations (e.g. WTO/TRIPS, regional and bilateral agreements, etc).

4.1 Key issues and challenges

There is a very wide variation in the volumes of IPR applications, grants and registrations processed by developing countries and developing countries. For example, WIPO annual statistics show that in 2002, trademark application filings ranged from 378,631 in China, to 106 in Tonga. This has important implication for the kinds of institutional arrangements for IPR administration that may be appropriate for individual LDCs.

IPR application rates in any given country are determined by various factors, including the nature of the national IPR laws and their enforcement in the country, whether the country is member of a regional organization (e.g. ARIPO, OAPI) or is a member of international treaties such as the Patent Cooperation Treaty, or the Madrid Agreement in respect of trademarks.

The administration of industrial property rights (patents, trademarks, industrial designs, utility models, integrated circuit topographies and plant varieties) involves the receiving of applications, examination to ensure that applications comply with formality and substantive requirements, the granting or refusal of rights, and the registration, publication and maintenance of public records of the rights accorded. Copyright subsists upon the creation of an eligible work and registration systems, where these exist, are voluntary. Private copyright collective management societies collect and distribute royalties to members for the performance of musical works in their inventories and, in effect, assist national authorities with enforcement of copyright.

In the following section, the term IPR "office" is intended to cover all variants, including a single, integrated, organization as well as multiple organizations (e.g. where patents, trademarks and copyright may actually be administered by separate institutions). In the majority of LDCs the administration of industrial property is carried out in a department within a ministry of industry and trade, or a ministry of justice.

In a growing number of countries an autonomous government agency is responsible for the administration of industrial property. Copyright is generally administered by a department in a ministry of culture, information or education. In some instances, there is no identifiable unit with responsibility for copyright administration.¹⁴ As noted in the earlier section on IPR policy and legal framework, effective IP policy development and implementation requires specialized technical and analytical skills. The same skills are needed to set up and effectively operate institutions that have been charged with the administration of those IPR policies and laws.

Often, LDCs may not have sufficient specialized knowledge and relevant expertise among their officials to enable them to define effectively their needs with regard to administration of the national IPR system. Donors and providers of IPRTA are therefore encouraged to adopt a transparent and comprehensive methodology for assessing a country's IPR administration needs, using the diagnostic assessment checklist below.

The methodology used should ensure that the recipient country itself is able to participate effectively in both the needs definition process and in the implementation and subsequent evaluation of the results of IPRTA activities, projects, and programmes.

4.2 Diagnostic assessment checklist

Time series data on IPR applications and grants

- What are the categories and volumes of IPRs that are applied for and granted or registered annually in the country? Reference should be made to the WIPO annual statistical reports at: <http://www.wipo.int/ipstats/en/publications/a/index.htm>
- What are the current and previous years' statistics for each form of IPR? (Note: Publication of WIPO Annual Statistics generally lags by about two years.)
- What significant trends may be observed from the data on IPR applications over time? What factors explain these trends? Are these trends likely to continue or change in the future?

Legal basis and mandate of IP institutions in public and private sector

- What are the laws and regulations that establish the legal mandate and basis for administration of industrial and intellectual property in the country? (A template for analysing national IPR legislation is presented at Annex C).
- Have these laws and regulations been recently adopted or been in force for some time?
- To what extent are the existing laws and regulations in compliance with the TRIPS Agreement? What are the main areas where amendments are required to bring about full compliance?

Existing IPR administration processes

- How is the responsibility for administering IPRs organized in the country?
- Are there separate offices and accountabilities for each of the various forms of IPR or are these administered from a single, integrated, IPR office?
- Are direct linkages between the stated "purposes" (if this exists) of the IPR legislative framework and the specific operational activities of the institutions responsible for administration of the legislation identifiable?
- How well does administration of the legislation appear to serve the policy goals and stated "purpose" of the IPR legal framework? What criteria are applied, and by whom, in reaching such conclusions?
- What is the quality of the IPR administration process overall? Are users satisfied with the levels of service provided by the national IPR office? If not,

what are the main priorities for improving service delivery? What measures are being taken or planned to address these issues?

Human resources

- What are the total numbers of staff involved in administering the various forms of national IPR legislation (e.g. patents, trade marks, copyright)?
- What is the allocation of IPR office staff by broad areas of functional responsibility, e.g. management, scientific and technical examination, legal, clerical?
- What are the educational and technical qualifications of IP office professional staff?
- What is the level of in-house staff training in IP law and administration (e.g. for examiners, hearing officers)?
- Are there private sector practitioners and attorneys available for each main form of IPR (patents, trademarks and copyright)? If yes, how many are there?
- Are agents and attorneys trained in IP law? By whom? Is the qualification of agents certified by the IP office? If yes, how? (e.g. by formal examination)

Automation and information management systems

- Does the national IPR office(s) have the technical resources, including project management capacity, to manage its own information management modernization program? Does the office have a strategic plan to guide future automation efforts or does it rely on ad hoc projects?
- Are the existing information management and automation systems effective and appropriate for the national IPR office(s)? Does the office have the financial and technical resources to maintain necessary computer systems?
- What automation projects have taken place (provide qualitative and quantitative descriptions of staff, equipment, software, age, origins of systems and future plans for each system)?
- Does the office have an internet web site?
- Does the Office actively use WIPOnet? If yes, for what purposes?

Physical infrastructure

- Where is the headquarters of the national IPR office located? In what part of the city (e.g. central business district, industrial park, government complex, etc.)?
- Does the IPR office have mechanisms to provide regional access to its services? What are these (e.g. supervisory ministry's regional infrastructure, agreements with other governmental agencies and organizations, agreements with academic institutions, multiple regional sites for the IPR office)?
- Are the IPR office accommodations designed to facilitate public access? Are IPR office accommodations adequate to meet projected needs for the next five years?

Financing and cost recovery from IPR service delivery

- What is the size of the annual operating budget of the national IPR office(s)? What trends may be observed in terms of changes in operating costs and

revenues for the national IPR office over time? What factors explain these? Are these trends likely to continue?

- What was level of fee revenues from IPR administration in the last three years and the current year to date?
- How are operations of the national IPR office(s) funded (e.g. annual government appropriations, self-financing through user fees, or a blend of revenues income and government subsidy)?
- What level of financial reserves, if any, does the national IPR office have? Are these considered adequate for prudential reasons?
- If funding is through annual government appropriations, is there a potential for the office to access its own fee revenues?
- If the office accesses IPR fee revenues, to what extent does income offset expenditures? How regularly are fee levels reviewed by senior management of the IPR office and on what criteria?
- How do fee levels compare with similar services provided by IPR offices in other LDCs and developing countries in the region?
- What, if any, is the legal mechanism under which the IPR office accesses fee revenues and for setting fee levels?

Modernisation plans and programmes

- Does the office have a strategic plan for modernization?
- If so, to what extent has the plan been implemented?
- Have specific needs for external technical and financial assistance already been identified?
- What donors are already providing IPRTA? Are the results of the assistance that is being provided sustainable?
- What requirements are there for human resources development, including training, and what possibilities are there to exploit distance learning?
- What requirements are there for automation (both hardware and software) and streamlining of IPR administration processes?