



International Centre for Trade
and Sustainable Development

ICTSD Dialogue on Technical Cooperation for Intellectual Property Policy in Developing Countries

International Environment House II
11-12 July 2005

CONCEPT NOTE

I. Background

As developing countries implement international IP commitments and participate in multilateral, regional and bilateral IP negotiations, there has been increasing political attention to the challenges and shortcomings of IP technical assistance and cooperation. Technical assistance, as such, is rarely purely technical—as the nature of the provided assistance will have a strong impact on the design and formulation of the respective national IP related policies.

In 2002, a joint conference by four non-governmental organisations, Médecins sans Frontières, Health Action International, Oxfam International and the Consumer Project on Technology, in Geneva was the first major international conference to raise the profile of concerns about IP-related technical cooperation. The policy and political implications IP technical assistance were subsequently discussed at the 2002 Bellagio Dialogues on Intellectual Property and Sustainable Development and short-listed as a critical item for more in-depth examination. With the support of the Rockefeller Foundation, ICTSD began efforts to address the limited range of independent analytical work on these issues, commissioning Mr. Tom Pengelly of Saana Consulting to prepare a survey of IP technical assistance activities, services and financing¹.

By 2004, the question of how to ensure a more development-friendly approach to IP technical cooperation had moved to the centre of debates on IP policy. Calls for reform have provoked internal thinking among several donor countries. In 2004, for example, the UK government's Department for International Development sponsored a workshop engaging a cross-section of donors, providers and developing country partners to reflect on IP technical assistance. At the multilateral level, the 2004 WIPO Development Agenda has been a catalyst of intensified attention to technical cooperation—though

¹ 'Technical Assistance for the Formulation and Implementation of Intellectual Property Policy in Developing Countries and Transition Economies', ICTSD Issue Paper no.11, available at www.iprsonline.org/unctadictsd/projectoutputs.htm

proponents of the Development Agenda emphasise that their agenda for reform is far broader than that of technical cooperation.

In 2005, Development Agenda-related discussions at WIPO's Inter-sessional Intergovernmental Meeting (IIM) and the Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD) highlighted that the calls for reform of the conceptualization, quality, delivery and effectiveness of IP technical cooperation extend beyond WIPO to other multilateral, bilateral and private programs. Some of the reform proposals are WIPO-specific—calling for efforts to ensure good use of WIPO's limited technical assistance and analysis of options for separating WIPO's technical assistance function from its norm-setting function. In addition, however, the Development Agenda discussions have also taken up more broadly applicable themes such as the need for attention to the different levels of development of various countries and to build the capacity of countries to take advantage of the flexibilities in international agreements to advance national pro-development policies.

While the focus of this ICTSD Dialogue will not be exclusively on WIPO, the discussions on technical cooperation that have taken place in the context of the Development Agenda provide a useful starting point for discussion.

A review of the most recent international discussions on IP technical cooperation reveals several areas of apparent consensus on necessary reforms and areas for further research. Our dialogue hopes to help build forward momentum in such areas, while also addressing important areas of contention.

II. Objectives of the Dialogue

This dialogue will bring together around forty developed and developing country delegates, academics, and NGOs to:

- evaluate the current state of play in debates on intellectual property (IP)-related technical cooperation and capacity building at the multilateral, regional and bilateral levels,
- take stock of existing suggestions and proposals for ensuring that technical cooperation better enhances the capacities of developing countries to adopt appropriate, coherent and effective positions and policies at all levels,
- explore strategic policy actions and concrete next steps for advancing discussions on improving the design and implementation of IP technical assistance,
- consider further work, independent research and new initiatives related to technical cooperation.

The focus of the meeting will be to build on prior work and discussions; as such, we will devote attention to those areas and reform proposal that most require collaborative analytical and strategic thinking.

III. Areas of Apparent Consensus

Analysis of technical cooperation over the past few years has helped to generate a common language and conceptual clarity for international discussions. There is, for example, broad agreement on the usefulness of differentiating various types of technical cooperation according to its function:

- Policymaking and legislation development
- Participation in international standard-setting
- IP administration, enforcement and regulation
- Promoting national innovation and creativity

Importantly, there appears to be wide acceptance that assistance in each of these areas matters—though the priorities of donors may vary and there may be clear differences on how best to do provide assistance in each area. In general, there is less debate about technical cooperation for administrative and infrastructure purposes than for legislative reform, policy development, implementation and enforcement. Actors concerned about bias in technical cooperation in the policymaking and legislative area may simultaneously be quite satisfied with the technical cooperation offered in the area of IP administration.

On a more pragmatic note, a review of presentations, ideas and papers which have circulated at recent international discussions reveals a broad consensus about a set of priorities that might now be ripe for concerted action and next steps, namely:

- capacity building among a broader cross-section of stakeholders,
- improved indicators and benchmarks for the evaluation of IP technical cooperation and stronger commitment to conducting evaluations,
- more coordination among donors and a less ad-hoc, more long-term approach,
- shifting toward a more demand-driven approach to IP technical cooperation,
- greater support for independent actors in provision of the provision of technical cooperation and assistance,
- greater transparency, information-sharing and monitoring of technical assistance and capacity-building, and
- increasing the scale of resources available for IP technical cooperation.

IV. Some Areas of Contention

Alongside these areas of consensus, however, are a series of conceptual, programmatic and procedural areas of tension and debate.

Conceptually, debates about IP technical cooperation often reflect underlying tensions within the IP policymaking community regarding the relationship between IP and development. For those satisfied that stronger IP protection is the most development-friendly option for developing countries, the priorities are to improve the quantity, efficiency and effectiveness of existing technical cooperation services. For those calling for a more flexible and nuanced approach to IP policymaking in developing countries,

improvements in the effectiveness and quantity of ‘status quo’ technical cooperation could actually prove counter-productive.

Few critics of current approaches to IP technical cooperation dispute the importance of intellectual property policies or reject the need for external assistance. Instead, their focus is to ensure that available resources are harnessed in ways that maximise the capacities of countries to implement development-friendly approaches to IP policymaking free from any vested interests of donors. One approach has been to emphasise the importance of ensuring that technical cooperation is guided by the development needs of the country rather than, for example, an assumption that stronger IP is better. To this end, a series of proposals for technical cooperation principles and guidelines have been developed—namely that, technical cooperation should be development-focused, comprehensive and coherent; neutral, unbiased, and non-discriminatory; and tailor-made to respond to the expressed and distinct needs of a range of stakeholders. Similarly, there are proposals for a ‘code of ethics’ to assure the independence of technical assistance providers. The challenge is to devise, operationalise and implement such guidelines in practice.

Substantively, the lack of evaluation of existing IP technical cooperation makes it difficult to pinpoint exactly what kinds of problems exist, how pervasive they are, and what kinds of procedures could serve as an adequate response. Thus, we find that frequent disagreements emerge as to the need for fundamental reform—the most frequent response to critics being that they are under-informed about the full range of technical cooperation efforts underway. In addition, while there may be broad interest in improving evaluation of technical cooperation, the purposes for which evaluation is being conducted may differ significantly among players. Some donors will want to evaluate whether they got adequate ‘bang for buck’ in terms of stronger IP protection; others will be keen to investigate whether the assistance provided was adequately tailored to development needs.

Procedurally, a core challenge is how to promote greater independence of technical cooperation from donor interests so that it best serves the needs of its proposed beneficiaries. A related issue concerns the options for ensuring the neutrality of multilateral technical cooperation. In both instances, there is a need to develop common understandings of what key terms—such as ‘neutral’ and ‘independent’—mean in practice and what kinds of structures or procedures are most conducive to advancing such goals. In the case of WIPO, proposals for reform have drawn attention to the need carefully to evaluate both WIPO’s internal process for allocating budgetary resources for technical cooperation and the process of negotiation among countries and WIPO. More broadly, some countries have raised the idea that it is time to consider ways to insulate WIPO’s technical cooperation function from its norm-setting function. Other proposals include the consideration of whether an Integrated Framework type approach to technical cooperation might allow for better transparency and representation of developing country interests in the process of the design of technical cooperation. Finally, there have been preliminary discussions of institutional mechanisms that might allow countries to have greater flexibility as to the choice of technical assistance providers. That is, within a given budget, countries should be able freely to select from a range of possible technical

assistance sources (WIPO, NGOs, bilateral aid, private companies, universities, etc)—this would mean that the most responsive, effective, and targeted providers would earn the greatest respect and business from countries.

For the purposes of our dialogue, our focus will be on tackling the most politically sensitive and technically-difficult issues—those that require the most collaborative thinking. While some proposals on the table require political momentum to move them forward, others remain at an earlier stage of gestation and discussion. To be successful, the dialogue will need to examine opportunities both to advance progress in areas of apparent consensus and to develop strategies for more contentious proposals.

IV. Methodology

The Dialogue will be informal and off the record. Formal presentations will be kept to 10 minutes each, allowing for enough time for open and frank collaboration.

The focus of the meeting will be on discussing particular reform proposals. The objective would be to elaborate and refine very specific proposals and concrete next steps that could be taken up by ICTSD, partner organisations, governments, IGOs, academics or NGOs.

V. Agenda

See attached.

VI. Supporting Documentation

The Dialogue will draw on the outputs of the previous *Bellagio Dialogues*² and the ICTSD-UNCTAD Project on Intellectual Property and Sustainable Development.³ It also builds on discussion that took place at ICTSD's first roundtable on IP technical cooperation, held in September 2004.

To ensure a productive and focused meeting, ICTSD will be distributing several documents by email several days in advance:

- Overview Paper: Michel Kostecki, Strategic Issues and Debates in IP Technical Assistance, the Enterprise Institute of the University of Neuchatel (powerpoint slides).
- Three short, draft studies of selected national and regional experiences with IP-related technical cooperation.

² See <http://www.ictsd.org/iprsonline/unctadictsd/bellagioprocess.htm>

³ See <http://www.ictsd.org/iprsonline/unctadictsd/description.htm>

- Draft proposed guidelines and principles for IP technical cooperation, draft proposed code of ethics for providers of IP technical cooperation, and a note on WIPO's programme and budget process with respect to technical cooperation activities.