

## **ELEMENTS FOR A CODE OF ETHICS FOR PROVIDERS OF IP TECHNICAL COOPERATION**

In the past several years, there has been growing interest in the development of a Code of Ethics for individual “providers” of IP-related technical cooperation. At the 2004 WIPO General Assemblies, a proposal for such a code became an integral part of the Development Agenda advanced by Brazil, Argentina and the twelve other ‘Friends of Development’. The proposal calls for the adoption by WIPO of a Code of Ethics to be applied to individual providers of its technical assistance as part of a broader set of principles and guidelines for WIPO’s technical cooperation.<sup>1</sup>

This paper seeks to elaborate the rationale for adopting ethical standards for providers of IP technical cooperation and to prompt discussion of the possible content of such Codes. It seeks not only to make a timely contribution to the specific discussion of a Code of Ethics for WIPO, but also to make a broader case that ethical standards for providers of IP-related technical cooperation can and should:

- be adopted at the highest institutional level by
  - all international organizations engaged in providing funding or other resources related to IP technical cooperation (including, for example, WIPO, WTO, UNCTAD, and WHO, etc).
  - all bilateral and private organizations engaged in funding or delivering IP-related technical cooperation (including foundations, NGOs, universities, and industry actors) and applied to their staff and consultants.
- be an integral part of any contract signed between an individual provider of technical cooperation and the donor or providing institution.
- be used by recipient countries and organisations as a tool to help ensure that they acquire the kind of IP technical cooperation that best meets their needs and priorities.
- be employed as a set of practical and normative standard against which civil society organizations can monitor and assess the actions of providers.

Part I explores how ethical standards might work in practice. It argues for the adoption of ethical Codes by all institutions engaged in IP technical cooperation, proposing that institutions should take responsibility for ensuring that all staff and consultants engaged in the provision of technical assistance under their auspices comply with their Code. Part II sets out some of the core elements that could be considered by institutions in the development of their Code of Ethics, such as principles regarding professional conduct, confidentiality, corruption and conflict of interest. It highlights special elements for

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<sup>1</sup> See submission by Group of Friends of Development at the First Session of WIPO’s Inter-sessional Intergovernmental Meeting (IIM)—WIPO Document IIM/1/4.

inclusion in the Codes adopted by international organizations—given their particular obligation to ensure neutrality and independence of their activities. To provide a model of what a Code might look like in practice, Annex I provides a preliminary draft of a Code for WIPO as a basis for discussion and elaboration by the variety of relevant stakeholders.

**Box 1. Who is a “Provider” of IP-Technical Cooperation?**

The term “providers” refers to all staff, contractors (including outsourcing arrangements), subcontractors, or consultants (or their employees) working for international organisations, national governments, private companies, NGOs, or academic institutions engaged in the delivery of IP-related technical cooperation.

**I. Why a Code of Ethics?**

*What problems is a code of ethics designed to address?*

The idea of a code of ethics for providers of IP-related technical cooperation emerged as a way to address some of specific challenges and perceptions that have arisen with respect to the provision of IP technical cooperation. These include concerns about fraud and corruption, low quality technical assistance, the use of inappropriately qualified staff, conflicts of interest, and bias (or perceptions of bias), particularly in the area of policy and legal advice.

It is widely known that developing countries are subject to intense pressure to advance and exceed their implementation of multilateral IP commitments. In addition, as the economic stakes related to IP policy in developing countries rise, governments are also increasingly vulnerable to commercial pressures from industry lobbyists. In this context, there have been strong concerns that international organizations do not always properly exercise neutrality and objectivity in their provision of IP technical cooperation, and that their priorities and advice have been overly influenced by the priorities of particular Members States and private sector actors. One criticism is that some international organizations of experts known to advocate particular interests without efforts to advise countries of this bias or to balance their views with alternatives. Another criticism has been the tendency for some technical assistance programs to omit to properly advise countries as to the range of flexibilities and options available to them regarding their implementation of international IP commitments.

In addition, there are ongoing concerns that recipient countries are sometimes subject to advice from bilateral government and private sources that is biased to advance their specific interests rather than those of the country. In particular, there are fears that recipient governments are not always aware of the particular perspectives that providers bring to the table. Such governments may therefore not realize that they may not be

getting a full and objective picture of the options before them, far less assistance that is tailored to their particular needs.

A further set of challenges relate to the quality of technical assistance providers, the process for their recruitment, and questions about the ability of some providers properly to address the needs of countries. Some critics draw attention to inadequate controls, transparency and oversight of the recruitment of IP technical cooperation providers (resulting in the appointment of unqualified or underqualified staff and consultants) and to revolving door issues (whereby, for example, providers of technical assistance are perceived to be securing jobs or financial rewards in business, IGOs or governments on the basis of the kinds of technical cooperation provided when in public service).

As the needs for IP technical cooperation expand, there is increasing emphasis, particularly among donor countries, on the challenge of ensuring assistance is provided in the most accountable, efficient and cost-effective manner. In the context of international organizations, this focus is closely linked to broader efforts to ensure that organizations have strong financial management practices and procedures to prevent corruption. Of particular concern to some actors are allegations of the inappropriate use of cash, travel or other financial rewards (e.g., per diems and consultancies) in the process of technical cooperation (to, for example, encourage providers of IP technical cooperation and/or officials in recipient countries to advocate particular domestic policies or international negotiating positions favourable to the donor organization or country).

### ***How could a Code of Ethics address these challenges?***

A Code of Ethics is a tool that organizations can use to increase transparency and to institutionalise internal norms, practices and procedures that would help to: prevent and reduce fraud and corruption; respond to concerns about conflicts of interest and bias; and promote high-quality, cost-effective, professional technical cooperation.

For international organizations (charged with neutrality and independence), a Code of Ethics would not only help to make instances of bias and/or conflicts of interest transparent, but would create an institutional mechanism for preventing and removing them. While it is possible (and some would argue desirable) for all organizations involved in the funding and delivery of IP-related technical cooperation to enforce standards for their providers with respect to neutrality, independence, and accountability, it is more likely that some private, non-profit and bilateral donors have discrete interests and perspectives they may wish to advance in providing technical cooperation. In this instance, it may be unrealistic (and sometimes undesirable) to require objectivity and neutrality from such stakeholders. Instead, the focus would be on ensuring that commercial affiliations, loyalties, perspectives, bias and and/or interests that a particular provider might have are as transparent as possible to recipients and employers.

### ***Why is the adoption of codes of ethics by IP donor and provider institutions important?***

An institutional code of ethics is important for several reasons, particularly for public institutions (whether at the multilateral or bilateral level) and non-profit institutions that are charged with a public interest mandate and which must command public trust. Importantly, the public expects the highest standards of conduct for all holders of public office and all employees of the public service. Citizens trust public institutions—national or international—when they are confident that public offices are used for the public good. The people’s perception of the ethical working of institutions and of the conduct of public officials is almost as important as the reality.

Many international and national public institutions already have Codes of Ethics for various aspects of their work. Public officials in most countries are expected to abide by individual codes of ethics, enforced by their institutions. Similarly, international civil servants are bound by staff codes of conduct. Increasingly, most public institutions at the national and international level also have guidelines with respect to their procurement practices. In particular, the importance of transparency in government procurement is widely recognized as a tool for preventing and reducing instances of corruption and fraud, such as might emerge in decision-making about contracted services and the hiring of consultants.

Codes of ethics have also been adopted by many private corporations, particularly as part of moves towards greater corporate social responsibility. The work and activities of many NGOs are also often guided by statements of principles and codes of ethics. And, in many sectors, individual professionals are bound by the Codes of Ethics of the professional associations to which they must belong in order to practice in their field (e.g., law, accountancy, medicine, etc).

A code of ethics can serve important institutional purposes, particularly for public organizations. It can help to:

- Mitigate risk: The adoption of a Code of Ethics on IP-related technical cooperation can serve as a practical and effective tool in risk management. It can help prevent cases of misunderstanding, misconduct, corruption and bias (and the perception of bias) from arising—thus helping to protect the reputation of the institution.
- Ensure accountability: Among the benefits of the adoption and implementation by an institution of a code of ethics are that the institution must first have collectively discussed the issues it faces and determined what ethical principles are needed to guide its operations and protect its integrity. The legitimacy and effectiveness of public and nonprofit institutions are directly related to the public’s perception of their integrity. A formally stated institutional code of ethics with respect to the providers of technical cooperation provides evidence to the public of a critical internal process and a commitment to meeting public expectations.

- Promote transparency: A code of ethics affirms that an institution is committed to transparency in its operations and that it understands the importance of transparency about the individuals it engages to advance its work. In turn, transparency places the organization under the spotlight of public scrutiny and can help ensure that decision-making process and activities meet public expectations, and are not swayed by private or specific interests.
- Ensure informed decision-making: Developing and implementing an institutional code of ethics leads to informed oversight and benefits the institution in several ways. It creates internal agreement about which actions are consistent with the institution's mission and encourages conduct that merits public confidence. It serves as a self-made reference point for institutional choices.

To promote the effectiveness of a Code of Ethics, institutions need to adopt internal mechanisms for implementation, monitoring and enforcement of the Code. Importantly, to be effective, a Code may require a change in internal organizational culture. Everyone from board member or elected representative to junior employee must know the standards of conduct expected, and those that will not be tolerated. This outcome is most probable if a Code is the outcome of internal discussion within an organization. This in turn will help to improve the extent to which senior management and/or members of an organization buy in to the Code and seriously consider changes to the framework and incentive systems under which staff operate. There also needs to be a process of independent scrutiny (to guarantee impartiality and objectivity) for monitoring and exploring alleged violations of this Code and a means for enforcement that reassures the public. These procedures could include both an early warning procedure as well as a fast-track procedure for investigations.

## **II. Possible Elements for a Code of Ethics for Providers of IP-related technical cooperation**

This section provides an overview of elements that should be considered for incorporation into the Code of Ethics applied by an institution to its providers of IP-related technical cooperation. It offers principles in seven areas.

A code should clearly state that it applies to all relevant staff, consultants, volunteers and experts engaged by the organization. It should be a single document, not a compilation or list of references to other documents. The code should be discussed internally, approved by the governing authority of the institution and backed by internal procedures to ensure implementation, monitoring and compliance.

### *Independence, neutrality and objectivity*

This first principle is primarily one for incorporation into the Codes adopted by international organisations, given their special duty to ensure the independence, objectivity and neutrality of their activities. Other donor/provider institutions may,

however, also wish to adopt these standards for their staff and consultants if they similarly wish to ensure the independence and neutrality of their work.

Providers of IP-related technical cooperation should:

- refrain from providing technical assistance in circumstances in which s/he finds her/himself working in conditions which may impair his/her independence, neutrality or judgment.
- exercise vigilance and caution with respect to relationships or activities which may impair independence.
- neither seek nor accept instructions from any government or from any other sources external to the recipient to which s/he has been requested to provide assistance.
- retain the ability to withdraw from an assignment in which s/he loses her/his independence during the course of the engagement.
- only represent opinions as independent if they are free from subordinated judgment and there is no undisclosed interest in the outcome of the recipient's decision.
- report instances of harassment or other efforts by interested parties to exercise undue influence, or otherwise undermine the neutrality, independence and objectivity of the technical cooperation.

In particular, a Code of Ethics for international organisations engaged in IP-related technical cooperation should explicitly note all other relevant organizational Codes of Conduct, norms and ethical guidelines.<sup>2</sup> For example, a Code adopted by any UN organisation should remind those involved in the provision of technical cooperation of their duty to abide by the principles of integrity defined by the UN for its staff. That is, they should:

- demonstrate the values of the United Nations in daily activities and behaviour;
- act without consideration of personal consideration or gain;
- resist undue political pressure in decision-making;
- not abuse power or authority;
- stand by decisions that are in the Organisation's interests, even if they are unpopular;
- take prompt action in cases of unprofessional or unethical behaviour.

A code should also call on UN staff to uphold the written declaration each staff member signs on appointment to the United Nations, as follows:

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<sup>2</sup> See, for example, "Status, basic rights and duties of United Nations staff members", ST/SGB/2002/13. See also the "Standards of conduct for the international civil service" that were adopted by the International Civil Service Commission in 2001 and welcomed by the General Assembly in its resolution 56/244 of 24 December 2001.

“I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or source external to the Organization”.<sup>3</sup>

Any code adopted by a UN agency should also remind temporary staff, individual contractors, consultants, and participants in advisory meetings or related activities organized by the United Nations of relevant UN regulations with respect to experts and consultants, particularly the UN’s contractual obligations for consultants as follows:

“Consultants shall have the duty to respect the impartiality and independence of the United Nations and shall neither seek nor accept instructions regarding the services to be performed for the United Nations from any Government or from any authority external to the United Nations. During their period of service for the United Nations, consultants shall refrain from any conduct that would adversely reflect on the United Nations and shall not engage in any activity that is incompatible with the discharge of their duties with the Organization. Consultants are required to exercise the utmost discretion in all matters of official business of the Organization.

Unless otherwise authorized by the appropriate official in the office concerned, consultants shall not communicate at any time to the media or to any institution, person, Government or other authority external to the United Nations any information that has not been made public and which has become known to them by reason of their association with the United Nations. The consultant may not use such information without the written authorization of the United Nations. Nor shall the consultant use such information for private advantage. These obligations do not lapse upon cessation of service with the United Nations.”<sup>4</sup>

Finally, any code adopted by an international organisation should recall that all international civil servants, including those contractors, consultants or employees of outsourcing firms should ensure any comments made are not misinterpreted as official comments on behalf of the organisations or clients. It should remind providers of IP-related technical cooperation of their duty to avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on the integrity, independence and impartiality required for the provision of technical cooperation.

### *Professionalism and competence*

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<sup>3</sup> Article 1.1 (b) of the Staff Regulations of the United Nations.

<sup>4</sup> See, for example, Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, ST/SGB/2002/9.

Providers of IP-related technical cooperation should:

- uphold the highest standards of efficiency, competence, professionalism, and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting her/his work and status.
- only accept work that s/he is fully qualified to perform.
- refrain from making misleading statements about their ability or qualifications under any circumstances and shall refuse work, or refer it to other more qualified consultants, when s/he is not fully conversant with the subject matter, and would be jeopardizing his/her integrity and duty to perform the work to the highest standards.
- ensure that to the best of their knowledge s/he can complete the project in a professional manner both in terms of skill and time.
- respect local law
- conduct themselves in a manner that is compatible with the honour and public standing of the organization by which they are employed
- provide credit for sources of their advice and refrain from receiving multiple consultancies to conduct identical work.
- ensure s/he is familiar with and follows best international practices for the design and implementation of development cooperation.

### *Conflict of interest*

A conflict of interest exists when a provider of technical cooperation could be influenced, or could be perceived to be influenced, by a personal, private or corporate interest which gives rise to a clash of principle in carrying out their duty, thus restricting, or having the appearance of restricting, the objectivity of decision making or the kind of advice given.

As noted above, different institutions—depending on their purposes and political agendas—might have different objectives with respect to conflicts of interest. The following principles are based on the assumption that, at minimum, conflicts of interests should be made transparent to donors and to recipient countries or organizations. Some recipients may choose to proceed with technical cooperation even with knowledge of a such a conflict; in such instances, the point of transparency is to ensure that recipients are aware of any potential bias that may result from those conflicts of interest. In the case of international organizations, charged as they are with neutrality and objectivity, public accountability and legitimacy calls on them not only to ensure transparency, but also to undertake measures to manage any conflicts of interest such that the providers of IP-related technical cooperation are fully independent of potential bias or undue influence. In some instances, the existence of conflicts of interest will require institutions not to engage a particular provider.

A code of ethics for providers of IP-related technical cooperation might, for example, call for providers to:



- make a full, signed disclosure of any interest or conflict of interest—whether real, potential or apparent—which may reasonably be seen to impair his/her professional judgment, advice or activities or compromise the integrity or the quality of services rendered prior to accepting the contract or as soon as possible after the conflict is discovered. This should include all relevant personal, financial or other business interests, known to the provider, which may materially affect the recipient. The declaration must include but not be limited to:
  - any directorship or controlling interest in any business in competition with the interests of the recipient of the technical cooperation
  - any personal or financial relationship with the recipient, its employees or a supplier
  - any financial interest in goods or services recommended or supplied to the recipient either directly or by the consultant's employer
  - any personal investment in the recipient organization or in its parent or subsidiary organizations
  - any recent or current engagements in sensitive areas of work with a particular firm or national government which is known to have interests clearly different to those of the recipient
  - any current work or work completed in the past previous 18 months for a third party in which the advice provided was of a contradictory nature to that requested by the recipient (the call for details in this area should be weighed against the possibility that the provider is bound by confidentiality agreements not to disclose the details of prior work).
  - any interest or arrangement with suppliers of any goods or services, other than consulting services, that may be requested by the recipient
- avoid acting simultaneously for two or more recipients in a potentially conflicting situation without informing all parties in advance and securing their agreement to the arrangement in writing.
- inform a recipient of parallel public or private activities for other governments, international agencies or private companies.

#### *Discretion*

Providers of IP-related technical cooperation should:

- keep the recipient informed of any matters relating to the technical cooperation even if the information is unfavorable, or may jeopardize the contract.
- exercise probity and discretion with regard to all matters of technical cooperation.
- ensure that the advice and recommendations the provider presents are based upon his/her findings, analysis and experience in IP-related technical cooperation, and are realistic, practical and presented to the recipient in a clear manner.

#### *Protecting confidential information*

Providers of IP-related technical cooperation should:

- not disclose or use, without appropriate written authorisation, any information or documents acquired in the course of technical cooperation that could in any way result in benefit for the person, their immediate family members, other business interests, or another government if the information is not in the public domain or if it is confidential by law. Persons receiving commercially or politically sensitive information have a particular responsibility to ensure that they maintain confidentiality and that they exclude themselves immediately from any subsequent commercial opportunities related to the information and do not share information with other government actors (including donors).

#### *Gifts and other forms of payment*

Providers of IP-related technical cooperation should:

- not take advantage of proprietary or politically-sensitive obtained from the recipient.
- not use their position or knowledge gained from their functions for private financial or political gain, or for the private or political gain of any third party, including a government, private company, family, friends and those they favour, even after the termination of the relevant contract.
- not accept directly or indirectly (via another person) any honour, decoration, favour, gift, benefit or remuneration that is intended to, or likely to, cause them to act in a partial manner in the course of the provision of technical cooperation whether during or outside their working hours or period of contract.<sup>5</sup>

#### *Fraud and corruption*

A provider of IP-related technical cooperation should:

- report to the appropriate authorities any situation which they believe involves or may involve fraud or mismanagement.

### **III. Advice to donors and others engaging providers of technical cooperation hiring staff and consultants regarding the implementation of this Code.**

Donors and other organisations charged with oversight of technical cooperation activities have specific roles to play in ensuring the implementation of this Code, including the adoption of internal mechanisms for monitoring and enforcement of the Code. Following are suggestions of measures that can be taken at an institutional level:

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<sup>5</sup> Gifts, gratuities or hospitality commonly take the form of monies, credits, discounts, seasonal or special occasion presents, edibles (breakfasts, lunches, dinners), drinks, appliances or furnishings, clothing, loans of goods or money, tickets to events or theatres, dinners, parties, transportation, vacation travel or hotel expenses and any other form of entertainment. This is a guide only, and is not in any way an exhaustive listing.

### *Competitive Recruitment Practices*

Staff and consultants engaged to provide IP-related technical assistance should be selected based on the merit principle from among highly qualified candidates in their specific field of expertise. Before undertaking recruitment, declarations regarding conflicts of interest should be obtained. Prior to the issuance of a contract, recipients and/or donors should verify the academic and professional credentials of the candidate recommended for the provision of technical cooperation.

All agencies engaged in hiring staff for the provision of IP technical cooperation should ensure that recruitment decisions are well-reasoned and the process fully documented. Note that it is now standard practice for UN agencies, the World Bank and the WTO to have institutional rules with regard to competitive selection and transparency of the selection of external consultants.

### *Publication of public rosters of consultants*

The community of agencies involved in financial support for technical cooperation should make available a joint public roster of candidates for consultancies which includes information on the skills of all candidates, prior and current engagements, type of work performed, fees and evaluation of past work. In the case of the WTO, the Member States called on the Organization to publish a database of outside consultants. The United Nations Secretariat has similarly called for its Office of Human Resources to develop a central roster of candidates to bring greater competitiveness and quality control to the selection process for consultants.<sup>6</sup> Individual organizations and agencies involved in the provision of assistance could also independently publish their roster of consultants.

### *Confidentiality*

Donor agencies and recipient countries should ensure that conditions relating to the confidentiality of sensitive information are contained within the contracts used for consultants and contractors.

### *Evaluation*

All work conducted by IP providers (whether staff, consultants or volunteers) should be subject to joint evaluation by recipients and donors, bearing in mind any needs for client (recipient country) confidentiality. The evaluation should measure the quality of the work performed and take into account the goal established in the terms of reference, as well as compliance with contracted delivery date. If goals have not been met satisfactorily, no further contracts should be granted to the consultant.

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<sup>6</sup> See "Administrative Instruction", ST/AI/1999/7. 25 August 1999.

*Investigation of complaints*

Establish a process of independent scrutiny (to guarantee impartiality and objectivity) for monitoring and exploring alleged violations of this Code and a means for enforcement. These procedures could include both an early warning procedure as well as a fast-track procedure for investigations.

## Annex 1.

### **WIPO Code of Ethics for Providers of IP Technical Cooperation**

#### **Preliminary Ideas**

All staff, consultants and volunteers engaged in the provision of WIPO or WIPO-related technical cooperation activities shall abide by the principles contained in the following Code of Ethics.

To certify their understanding of this Code of Ethics, and their commitment to complying with it, all individuals involved in the delivery of WIPO's technical cooperation shall sign a copy of this Code as a condition of their participation in any WIPO or WIPO-related activities.

The Code of Ethics has two parts: (i) the Code and (ii) institutional commitments regarding the implementation of the Code.

All WIPO staff, consultants, interns and volunteers engaged in the provision of IP-related technical cooperation should also abide by and implement any-related WIPO principles and guidelines for the provision of its technical cooperation.

#### **I. The Code of Ethics**

##### *Independence, neutrality and objectivity*

Providers of WIPO's technical cooperation should:

- refrain from providing technical assistance in circumstances in which s/he finds her/himself working in conditions which may impair his/her independence, neutrality or judgment.
- exercise vigilance and caution with respect to relationships or activities which may impair independence.
- neither seek nor accept instructions from any government or from any other sources external to the recipient to which s/he has been requested to provide assistance.
- retain the ability to withdraw from an assignment in which s/he loses her/his independence during the course of the engagement.
- only represent opinions as independent if they are free from subordinated judgment and there is no undisclosed interest in the outcome of the recipient's decision.
- report instances of harassment or other efforts by interested parties to exercise undue influence, or otherwise undermine the neutrality, independence and objectivity of the technical cooperation.

- ensure s/he is familiar with and follows best international practices for the design and implementation of development cooperation.
- advise countries of the full range of options before them. Where advising a recipient to take a particular course of action, the provider should also make the client aware of the alternatives and the paths not taken.

### *Professionalism and competence*

Providers of WIPO's technical cooperation should:

- uphold the highest standards of efficiency, competence, and professionalism.
- refrain from making misleading statements about their ability or qualifications under any circumstances and shall refuse work, or refer it to other more qualified staff/consultants, when s/he is not fully conversant with the subject matter, and would be jeopardizing his/her integrity and duty to perform the work to the highest standards.
- respect local laws, norms and customs in the course of their work.
- conduct themselves in a manner that is compatible with the honour and public standing of the United Nations and abide by the principle of integrity defined by the UN for its staff. That is, they should:
  - demonstrate the values of the United Nations in daily activities and behaviour;
  - act without consideration of personal consideration or gain;
  - resist undue political pressure in decision-making;
  - not abuse power or authority;
  - stand by decisions that are in the Organisation's interests, even if they are unpopular;
  - take prompt action in cases of unprofessional or unethical behaviour.

All WIPO staff engaged in IP technical cooperation should:

- adhere to written declaration each signed on appointment to the United Nations as follows:

“I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or source external to the Organization”.<sup>7</sup>

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<sup>7</sup> Article 1.1 (b) of the Staff Regulations of the United Nations.

- abide by UN staff regulations (such as the “Status, basic rights and duties of United Nations staff members”, ST/SGB/2002/13, and the “Standards of conduct for the international civil service”.<sup>8</sup>

Temporary staff, individual contractors, consultants, and participants in advisory meetings or related activities organized by WIPO should abide by related UN regulations related to officials other than Secretariat officials, experts and consultants.<sup>9</sup> Providers working as consultants to WIPO, they should also note the UN’s contractual obligations for consultants as follows:

“Consultants shall have the duty to respect the impartiality and independence of the United Nations and shall neither seek nor accept instructions regarding the services to be performed for the United Nations from any Government or from any authority external to the United Nations. During their period of service for the United Nations, consultants shall refrain from any conduct that would adversely reflect on the United Nations and shall not engage in any activity that is incompatible with the discharge of their duties with the Organization. Consultants are required to exercise the utmost discretion in all matters of official business of the Organization.

Unless otherwise authorized by the appropriate official in the office concerned, consultants shall not communicate at any time to the media or to any institution, person. Government or other authority external to the United Nations any information that has not been made public and which has become known to them by reason of their association with the United Nations. The consultant may not use such information without the written authorization of the United Nations. Nor shall the consultant use such information for private advantage. These obligations do not lapse upon cessation of service with the United Nations.”

### *Conflict of interest*

Providers of WIPO’s technical cooperation should:

- undertake measures to ensure that their delivery of IP-related technical cooperation could be influenced, or could be perceived to be influenced, by a personal, private or corporate interest which gives rise to a clash of principle in carrying out their duty, thus restricting, or having the appearance of restricting, the independence and objectivity of technical advice and cooperation given.
- avoid acting simultaneously for two or more recipients in a potentially conflicting situation without informing all parties in advance and securing their agreement to the arrangement in writing.

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<sup>8</sup> See, for example, “Status, basic rights and duties of United Nations staff members”, ST/SGB/2002/13. See also the “Standards of conduct for the international civil service” that were adopted by the International Civil Service Commission in 2001 and welcomed by the General Assembly in its resolution 56/244 of 24 December 2001.

<sup>9</sup> See, for example, Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, ST/SGB/2002/9.

- inform a recipient of parallel public or private activities for other governments, international agencies or private companies.
- declare and provide full disclosure of any interest or conflict of interest—whether real, potential or apparent—which may reasonably be seen to impair his/her professional judgment, advice or activities or compromise the integrity or the quality of services rendered prior to accepting the contract or as soon as possible after the conflict is discovered. This should include all relevant personal, financial or other business interests, known to the provider, which may materially affect the recipient. The signed declaration must include but not be limited to:
  - any directorship or controlling interest in any business in competition with the interests of the recipient of the technical cooperation
  - any personal or financial relationship with the recipient, its employees or a supplier
  - any financial interest in goods or services recommended or supplied to the recipient either directly or by the consultant's employer
  - any personal investment in the recipient organization or in its parent or subsidiary organizations
  - any recent or current engagements in sensitive areas of work with a particular firm or national government which is known to have interests clearly different to those of the recipient
  - any current work or work completed in the past previous 18 months for a third party in which the advice provided was of a contradictory nature to that requested by the recipient.
  - any interest or arrangement with suppliers of any goods or services, other than consulting services, that may be requested by the recipient
  - a detailed CV detailing all prior work experience, professional relationships and qualifications

#### *Discretion*

Providers of WIPO's technical cooperation should:

- ensure that the advice and recommendations the provider presents are based upon his/her findings, analysis and experience in IP-related technical cooperation, and are realistic, practical and presented to the recipient in a clear manner.
- keep the recipient informed of any matters relating to the technical cooperation even if the information is unfavorable, or may jeopardize the contract.
- exercise probity and discretion with regard to all matters of technical cooperation.
- ensure any comments made are not misinterpreted as official comments on behalf of the organisations or clients. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on the integrity, independence and impartiality required for the provision of technical cooperation.

#### *Protecting confidential information*



Providers of WIPO's technical cooperation should:

- not disclose or use, without appropriate written authorisation, any information or documents acquired in the course of technical cooperation that could in any way result in benefit for the person, their immediate family members, other business interests, or another government if the information is not in the public domain or if it is confidential by law. Persons receiving commercially or politically-sensitive information have a particular responsibility to ensure that they maintain confidentiality and that they exclude themselves immediately from any subsequent commercial opportunities related to the information and do not share information with other government actors (including donors).

#### *Gifts and other forms of payment*

Providers of WIPO's technical cooperation should:

- not take advantage of proprietary or politically-sensitive obtained from the recipient.
- not use their position or knowledge gained from their functions for private financial or political gain, or for the private or political gain of any third party, including a government, private company, family, friends and those they favour, even after the termination of the relevant contract.
- not accept directly or indirectly (via another person) any honour, decoration, favour, gift, benefit or remuneration that is intended to, or likely to, cause them to act in a partial manner in the course of the provision of technical cooperation whether during or outside their working hours or period of contract.<sup>10</sup>

#### *Fraud and corruption*

Providers of WIPO's technical cooperation should:

- report any situation which they believe involves or may involve fraud or mismanagement to the neutral auditor/ombudsman (see below).

## **II. Institutional Commitments Related to the Implementation of this Code**

The International Bureau of WIPO shall undertake the following actions to ensure the implementation of this Code:

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<sup>10</sup> Gifts, gratuities or hospitality commonly take the form of monies, credits, discounts, seasonal or special occasion presents, edibles (breakfasts, lunches, dinners), drinks, appliances or furnishings, clothing, loans of goods or money, tickets to events or theatres, dinners, parties, transportation, vacation travel or hotel expenses and any other form of entertainment. This is a guide only, and is not in any way an exhaustive listing.

### *Fraud and Corruption*

WIPO shall take measures in the recruitment of providers of technical cooperation to avoid fraud and corruption, namely:

- before undertaking recruitment, obtain statements regarding conflict of interest from potential providers (staff or consultants).
- follow UN procedures regarding the competitive recruitment of staff and consultants engaged in IP technical cooperation.
- make recruitment decisions based on the merit principle from among highly qualified candidates in their specific field of expertise. Prior to the issuance of a contract, WIPO will verify the academic and professional credentials of the candidate or organisation recommended for selection for the provision of technical cooperation.
- join with other agencies involved in financial support for technical cooperation by establishing a public roster of qualified candidates for consultancies. The roster will include information on the skills of all candidates, prior and current engagements, type of work performed, fees and, where available, evaluations of past work.
- ensure that recruitment decisions are well-reasoned and the process fully documented.
- carry out checks to ensure that these procedures are followed.

### *Confidentiality*

WIPO will ensure that conditions relating to the confidentiality of sensitive information are contained within the contracts used for consultants and contractors.

Where complaints emerge regarding fraud, corruption, and other forms of non-compliance by individual providers with this Code, an independent investigation will be undertaken by a neutral auditor/ombudsman. Complainants may be from the recipient country, the donor country or third parties (such as interested members of the public or private organizations). Complaints may be submitted anonymously. All complaints must be accompanied by a detailed report of the specific issues of concern.

Any staff person, consultant or volunteer found to be in violation of this Code of Ethics will be barred henceforth from participation in any WIPO-related technical cooperation programs.

### *Evaluation*

All work conducted by providers employed by WIPO shall be subject to joint evaluation by recipients and donors, bearing in mind any need for client (recipient country) confidentiality. Evaluations will measure the quality of the work performed and take into account the goal established in the terms of reference, as well as compliance with

contracted delivery date. If goals have not been met satisfactorily, the consultant will be barred from any further contracts related to the implementation of WIPO-sponsored technical cooperation activities.