

Essential Elements of a WIPO Development Agenda

What Could Constitute Success?

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PART I: POSSIBLE OUTCOMES ON ANNEX B PROPOSALS

The Fourth Session of the PCDA, building on the work done in the Third Session in February 2007, could adopt the following proposals based on an evaluation and synthesis of Annex B proposals. Explanatory notes explaining the rationale for the proposed outcomes follow in part II, which also outlines a possible map for actions after the June meeting.

Cluster A: Capacity Building

1. Bearing in mind the proposals on the orientation, transparency, design, delivery and evaluation of WIPO capacity building programmes, the Director General, in consultation with the Member States, to consider and propose to the WIPO Assemblies restructuring that would be needed to create a capacity building mechanism that:
 - Is accountable to Member States;
 - Is not tied to other aspects of WIPO negotiations;
 - More closely links and leverages the current work undertaken on legislative advice etc. with the work of the WIPO Academy; and
 - Enables closer harmonisation of the activities of Member States and other international organisations.
2. WIPO capacity building shall also focus on continued improvement of the national institutional capacity through further development of infrastructure and other resources with a view to making national as well as sub-regional and regional IP institutions more efficient and ensure that such institutions have capacity and expertise to create a fair balance between IP protection and the public interest.
3. Capacity building shall ensure that national IP regimes implementing international obligations are set-up in an administratively sustainable way so as not to overburden scarce resources in developing countries and LDCs.

Cluster B: Norm-setting, Flexibilities, Public Policy and Public Domain

4. To undertake broad discussions and consultations among Member States and other stakeholders on feasibility, objectives and scope of new treaties or other norms, for example through public forums, conferences, workshops etc., prior to initiating formal negotiations.

5. In elaborating treaties, to consider and pay special attention to issues related to (a) the objectives and principles, (b) anti-competitive practices and effects and abuse of exclusive rights (c) transfer of technology (d) exceptions and limitations (e) special and differential treatment for developing countries and LDCs.
6. To hold an Open Forum in 2008 to consider the feasibility, objectives and scope of a possible treaty on access to knowledge and technology and to discuss other models to support innovation other than those driven by traditional IP e.g., open collaborative projects, open source software development and others.
7. To continue and intensify efforts, in line with the General Assembly decisions, towards a possible international instrument on the protection of genetic resources, traditional knowledge and folklore.
8. To participate and contribute, as appropriate, to efforts by other international organisations such as OECD, the World Bank and UNCTAD on IP practices related to fostering creative industries and assessing the economic and social impact of counterfeiting.
9. To continue efforts to ensure that WIPO discussions are inclusive of all relevant stakeholders, including public interest groups, in a manageable fashion whilst retaining accountability of decision-making.

Cluster C: Technology Transfer, ICT and Access to Knowledge

10. To ensure that, where appropriate, WIPO committees include technology transfer aspects within their deliberations.
11. Jointly with the Open Forum envisaged in No. 6 above or separately, to hold discussions on the possible contribution of WIPO in ensuring wide dissemination of the results and benefits of publicly funded research, especially where such results are commercialised through IP protection.

Cluster D: Assessments, Evaluation and Impact Studies

12. In consultation with Member States and other international organisations such as UNDP, the World Bank, the European Commission, to develop terms of reference and to conduct a study on the feasibility, functions and possible structure of a quasi-independent research and evaluation office within WIPO.

13. To develop internal capacity and expertise, taking into account the experience of other organisations such as the European Commission, to undertake impact assessments of WIPO treaties and capacity building efforts, including impacts on developing countries.
14. To participate and contribute, as appropriate, to efforts by other international organisations such as OECD, the World Bank, UNCTAD and the UN regional economic commissions in undertaking national economic surveys and, in particular, the contribution of national creative and innovative industries to economic growth.

Cluster E: Institutional Matters including Mandate and Governance

15. To establish a mechanism, under the direction of the General Assembly, for continued discussion of the development-dimension of IP and, in particular, for monitoring the implementation of the WIPO Development Agenda.
16. To re-examine the role and membership of the Policy and Industry Advisory Commissions and the implications for the structural relationships within the organisation.
17. In the context of the work foreseen under No. 1 above, to consider the desirability and structure of a WIPO Partnership Office.
18. To ensure that WIPO's development mandate and objectives especially as contained in the Agreement between WIPO and the UN are transparently incorporated in the organisation's mainstream activities and outcomes reported.

PART II: EXPLANATORY NOTES

I. Background

This explanatory notes elaborate on the methodology used to evaluate and synthesise the WIPO Development Agenda proposals as contained in Annex B of the report of the thirty-third session of the WIPO General Assembly (WIPO document WO/GA/33/10). The said report of the GA and the Chairman of the General Assembly Working Document - PCDA/3/2- (herein after the Manalo paper) are taken as the base documents, though account is also taken of the outcome of the Delhi meeting of February 2007 as well as the outcomes of the February 2007 PCDA session.

The Manalo paper, in particular, is a useful starting point for several reasons. First, it has formal legal status within the PCDA having been mandated by the General Assembly. Second, it had inputs from all the regional groups as well as the Group of Friends and is therefore a product of significant consultations among member states. Third, the paper contains very useful work especially the cross-linkages of proposals not just within an Annex but also across both annexes. This cross-referencing is quite useful in synthesising and analysing the proposals. Fourth, the column on existing WIPO activities provides quite useful information which helps one see not only the arguments of the Secretariat but also where there are gaps in WIPO's work *vis-à-vis* the various proposals.

In evaluating, synthesising, concretising and prioritising Annex B proposals, several considerations should be taken into account. Although the following uses the proposals as a basis there is a good argument for moving on from the wording of specific proposals towards the substance of the issues those proposals are directed towards. Hopefully this will be possible following a successful outcome of the June 2007 meeting of the PCDA. The considerations include:

- (a) There are a significant number of proposals in Annex B which are the same as, or are closely related, to Annex A proposals which were adopted by the PCDA in February 2007 especially in cluster A. Such proposals in Annex B should be examined to see whether they can be eliminated or otherwise amalgamated with the adopted Annex A proposals thereby eliminating duplications but also avoiding contradictions and confusing language on the same subject matter. The bottom-line here is that this exercise should not reopen the Annex A proposals that were adopted in February or modify them in a manner that would dilute them. Rather the point is to move away from differences in wording towards grouping the substantive issues.

- (b) As already demonstrated by the Manalo paper, within Annex B itself, there are many proposals that are closely linked to each other which can therefore be merged or at least grouped together according to substantive issues.
- (c) While most of the proposals can be addressed either directly or by merging and reformulating them, there are clearly a number of proposals which do not fit well with the WIPO missions and which could be eliminated altogether.
- (d) There are also a number of proposals of a long-term nature whose realisation would be subject to intermediate steps or processes. So, for example, there are proposals for establishment of treaties. Before agreeing such proposals, even in principle, it would be better if they were subject to certain intermediate steps such as public forum discussions and members eventually agreeing to objectives etc.

II. Key Proposals, Issues and Priority Areas in the Short and Long-Term

A review of the various clusters in Annex B suggests that there are 17 key areas where most work and energy should focus to deliver concrete outcomes in the Fourth Session of the PCDA in June 2007. These 17 key areas reflect both areas of priority in terms of achieving real development outcomes but also reflect areas where most controversy and challenges are expected. These are:

Cluster A: Capacity Building

1. Whether and how WIPO's capacity building machinery should be restructured using proposal B9 on separating norm-setting functions of the WIPO Secretariat from those of technical assistance. The apparent intention of this proposal is that efficiency and better delivery could be assured if a distinct unit within the secretariat, drawing inspiration from the Advisory Centre on WTO Law etc, were established combining the current capacity building work in the Secretariat with that of the Academy. The proposal has potential but it also raises important challenges that need to be thought through. The proposal may have implications for the ability of the Secretariat to implement the various cluster A proposals that have already been adopted in Annex A and might be adopted in Cluster A in Annex B. The objective is to create a mechanism whereby capacity building is accountable to member states and not tied to other aspects of WIPO negotiations. Equally, capacity building activities need to be harmonised with similar activities by both individual member states and other international bodies.

Cluster B: Norm-setting, Flexibilities, Public Policy and Public Domain

1. Whether guidelines be drawn up for initiating and concluding new treaties in WIPO, including consultation processes, and addressing existing best practice, using proposal B26.
2. Whether an initial analysis should be made regarding the contents of future treaties including the impact on development/public interest content centring on proposals B29 and B30.
3. Whether and how WIPO should consider developing a treaty on access to Knowledge and technology centring on proposals B17, B19, B21 and B35.
4. Whether WIPO should address innovation support beyond the traditional IP driven models taking account of proposals B23, B24, B33 and B38.
5. Whether work needs to be done on best IP practices for economic growth related to fostering creative industries and on economic impact of counterfeiting centring on proposals B22.
6. How to ensure WIPO discussions are inclusive of all stakeholders in a manageable fashion whilst retaining the accountability of current decision making. This is based on the thinking behind proposal B20.

Cluster C: Technology Transfer, ICT and Access to Knowledge

1. Whether there is a case for WIPO addressing the mechanisms of IP and Technology Transfer centring on proposal B42 and B50 and whether it should address issues such as those in proposals B40, B43, B44, B45, B46 and B51.

Cluster D: Assessments, Evaluation and Impact Studies

1. Whether WIPO should have a quasi- independent research and evaluation office (such as WERO) and how such an office should be established centring on proposal B60.
2. Whether and how WIPO should, through WERO or otherwise, undertake impact assessment studies on the impact of WIPO norms and WIPO capacity building; see proposals such as B54, B59, B61, B62 and B63.
3. Whether and how WIPO should undertake baselines national economic surveys, measure contribution of national creative and innovative industries and collect data on global piracy centring on proposals B55, B56 and B57.

Cluster E: Institutional Matters including Mandate and Governance

1. How best to monitor and hold accountable WIPO activities in taking these proposals forward; see proposals centring on proposals B64 and B69.
2. Whether to establish and what form a WIPO Partnership Office should take centring on proposal B65.
3. Re-examine the role and membership of the Policy and Industry Advisory Commissions. See proposal B70.
4. To establish whether the WIPO convention covers all the activities agreed and if not, what changes are necessary? See proposal B66.

III. Addressing Other Proposals and Issues in Annex B

The above 17 key issue and priority areas cover 35 out of the 71 Annex B proposals leaving another 36 Annex B proposals to address. As already noted, a majority of the remaining 36 proposals raise issues that were already addressed at the Third Session of the PCDA in February 2007. In most cases such proposals can be directly eliminated without subtracting the substance of a WIPO Development Agenda. At most, in a few instances, the language in the already adopted Annex A proposals could be refined. There is another set of proposals in the remaining 36 Annex B proposals which raise important issues but which are either straight-forward or raise no significant controversy. These groups of proposal can also not be considered top priority in reaching concrete outcomes for the Development Agenda.

III.1 Other Proposals and Issues that Should be Considered by the June PCDA Meeting

As is clear from the issues listed in Part I, the PCDA should also consider the following issues and proposals under each cluster of Annex B in the June meeting as important issues and proposals for a positive outcome.

Cluster A: Capacity Building

1. How best to develop and improve national institutional capacities including infrastructure and other facilities to make national IP offices as well as sub-regional and regional offices more efficient and capable of balancing the needs for IP protection and the public interest in the context of proposal B1.
2. How capacity building can ensure that national IP regimes implementing international obligations are set-up in an administratively sustainable way and that they do not

overburden scarce national resources in developing countries and LDCs as suggested in proposal B13.

Cluster B: Norm-setting, Flexibilities, Public Policy and Public Domain

1. Whether any additional activities are required in WIPO with respect to a possible instrument on genetic resources, traditional knowledge and folklore beyond current activities in the IGC in light of proposal B18.

Cluster C: Technology Transfer, ICT and Access to Knowledge

1. Whether WIPO should address issues relating to measures to ensure wide dissemination of the results of public funded research that may be IP-encumbered in the context of proposal B53.

III.2 Proposals and Issues that were Already Addressed at the Third Session of the PCDA (February 2007) or which should Otherwise be Eliminated

The following proposals, which fall within the category of proposals that raise issues that were addressed in the Third Session of the PCDA in February 2007 or which otherwise, add no real value for development outcomes should be eliminated.

Cluster A: Capacity Building

The following proposals in cluster A of Annex B should be eliminated as they raise issues that were already addressed at the Third Session of the PCDA in February 2007. They are therefore duplicative and could even cause confusion with the already adopted proposals. Proposals B2 – B8, B10 – B12, B14-B16.

Cluster B: Norm-setting, Flexibilities, Public Policy and Public Domain

The following proposals in cluster B of Annex B should be eliminated as they largely raise issues that were already addressed at the Third Session of the PCDA in February 2007. A few proposals such B36 are difficult to operationalise in WIPO while in a couple of cases, the proposals' elements will be addressed under the priority areas in section II above. These proposals are B25, B27 & B28, B31 & B32, B34, B36 & B37 and B39.

Cluster C: Technology Transfer, ICT and Access to Knowledge

The following proposals in cluster C of Annex B should be eliminated as they largely raise issues that were already addressed at the Third

Session of the PCDA in February 2007 or important elements in them are addressed in the priority areas above. For some proposals it may be impractical to operationalise in the WIPO framework. These proposals are B41, B47 – B50 and B52.

Cluster D: Assessments, Evaluation and Impact Studies

The following proposal in cluster D of Annex B should be eliminated as it relates to issues that will be addressed in the priority areas above: Proposal B58.

Cluster E: Institutional Matters including Mandate and Governance

The following proposals in cluster E of Annex B should be eliminated either because the General Assembly has already addressed the issue e.g., the ACE mandate question or raise difficult practical issues such as venue of meetings: Proposals B67 and B68.

Cluster F: Other Issues

The following proposal in cluster F of Annex B should be eliminated largely because it has been overtaken by events, particularly in light of the various General Assembly decisions on a WIPO Development Agenda as well as the outcomes of the Third Session of the PCDA: Proposal B71.

III.3 A possible map for actions following the June meeting

Following the discussion and agreements based on the proposals listed above, the issues can be brought together in families of actions which create a comprehensive reassessment of the organisation and its activities.

- in relation to capacity building the Secretariat could be asked to draw up proposals for a "Capacity Building and Training Unit", including the mechanisms for identifying and agreeing programmes, mechanisms for ensuring that programmes are managed according to accepted programme management techniques, and mechanisms for ensuring each programme is accountable to recipients and member states.
- In relation to norm-setting the Secretariat could be asked to draw up best practice notes for consultation and acquire the skills needed to conduct and report impact assessments. Member states have existing schemes for supporting and encouraging innovation. Perhaps the WIPO

forum would provide a forum for exchanging best practice.

- In relation to technology transfer etc. again WIPO could act as a clearing house to enable member states to exchange and build up best practice on the role of IP in technology transfer and commercialising of public research, including comparing ownership regimes. In this respect, more could be done to ensure that PCT is a vehicle which can be used to bring developing countries into the world innovation community.
- Impact assessments could become a normal part of any new initiative, alongside a post implementation assessment as a way of developing cost effective and efficient delivery of programmes and treaties.
- A major step would be for member states to agree that governance issues are not simply political but that WIPO has fallen behind in this area. The secretariat, the audit committee, and the programme and budget committee could be tasked with reviewing existing mechanisms and making proposals which enables states to engage in programme development and delivery, hold the organisation to account, and partake in all aspects of its operations.