

ICTSD Programme on IPRs and Sustainable Development



Intellectual Property and Economic Development: What Technical Assistance to Redress the Balance in Favour of Developing Nations?



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INTELLECTUAL PROPERTY AND ECONOMIC DEVELOPMENT:

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ACRONYMS & ABBREVIATIONS

APEC	Asia Pacific Economic Co-operation
ASEAN	Association of South-East Asian Nations
CIPR	(UK) Commission on Intellectual Property Rights
DAC	Development Assistance Committee (of the OECD)
DFID	(UK) Department for International Development
ECA	Economic Commission for Asia
EU	European Union
FTAA	Free Trade Area of the Americas
ICTSD	International Centre for Trade and Sustainable Development
ILO	International Labour Organization
IP	Intellectual Property
IPRs	Intellectual Property Rights
ITC	International Trade Centre
LDC	Least Developed Country
NAFTA	North American Free Trade Area
OECD	Organization for Economic Co-operation and Development
OAPI	Organization Africaine de la Propriété Intellectuelle
TA	Technical Assistance
TASIP	Technical Assistance Services Related to Intellectual Property
TRIPS	Trade-related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
WHO	World Health Organization
USAID	United States Agency for International Development
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

FOREWORD

The present study addresses the issue of technical assistance in intellectual property for promoting economic development. It is a further contribution of the ICTSD Programme on Intellectual Property Rights and Sustainable Development to a better understanding of the proper role of intellectual property in a knowledge-based economy.

In modern societies, identifying, registering and protecting intellectual property rights (IPRs) has become one of the key drivers of business competitiveness in international trade. Intellectual property is today's competitive instrument in global markets but exploiting and protecting it has become complex and difficult. As developing countries continue implementing intellectual property-related treaties at the multilateral, regional and bilateral level, appropriate capacity building will be crucial if these countries are to effectively use intellectual property tools in pursuit of their sustainable development goals.

While some, particularly in developing country intellectual property offices, highly value the technical co-operation provided by institutions such as the WTO, WIPO or bilateral donors, a number of experts and organizations have raised concerns about whether this assistance has always been appropriately tailored to the circumstances of the developing countries concerned. In particular, it has been argued that the advice provided does not always fully take into account all the possible options and flexibilities to accommodate public policy objectives. These criticisms relate primarily to the fact that the main providers of technical assistance focus mainly on the promotion of the interest of intellectual property holders, and do not integrate broader development concerns.

This second ICTSD study on technical assistance in intellectual property demonstrates from a managerial perspective that this issue is one of the most strategic - but also the most controversial - aspects for achieving a pro-sustainable development intellectual property system. It suggests that more emphasis should be put on 'win-win' forms of assistance -- helping developing country firms to effectively benefit from intellectual property protection -- rather than simply aiming to prevent infringement of intellectual property rights (IPRs) (a 'win-lose' solution). It concludes with a series of suggestions for donors, providers and beneficiaries of technical assistance to improve the quality and nature of their respective services in the field of intellectual property.

The premise of ICTSD's work in this field, as that of its joint project with UNCTAD, is that IPRs have never been more economically and politically important or controversial than they are today. Patents, copyrights, trademarks, industrial designs, integrated circuits and geographical indications are frequently mentioned in discussions and debates on such diverse topics as public health, food security, education, trade, industrial policy, traditional knowledge, biodiversity, biotechnology, the Internet, the entertainment and media industries. In a knowledge-based economy, there is no doubt that a better understanding of IPRs is indispensable to informed policy making in virtually all areas of human development.

Empirical evidence on the role of intellectual property protection in promoting innovation and growth in general remains limited and inconclusive. Conflicting views also persist on the impacts of IPRs on a country's development prospects. Some argue that in a modern economy, the minimum standards laid down in TRIPS will bring benefits to developing countries by creating the incentive structure necessary for knowledge generation and diffusion, technology transfer and private investment flows. Others counter that intellectual property, especially some of its elements, such as the patenting regime, will adversely affect the pursuit of

sustainable development strategies by raising the prices of essential drugs to levels that are too high for the poor to afford; limiting the availability of educational materials for developing country school and university students; legitimising the piracy of traditional knowledge; and undermining the self-reliance of resource-poor farmers.

It is urgent, therefore, to ask the question: how can developing countries use IP tools to advance their development strategy? What are the key concerns surrounding the issues of IPR for developing countries? What are the specific difficulties they face in intellectual property negotiations? Is intellectual property directly relevant to sustainable development and to the achievement of agreed international development goals? Do developing countries, especially the least developed among them, have the capacity to formulate their negotiating positions and become well-informed negotiating partners? It is to address some of these questions that the ICTSD Programme on Intellectual Property and Sustainable Development was launched in July 2000. One central objective has been to facilitate the emergence of a critical mass of well-informed stakeholders in developing countries - including decision makers, negotiators but also representatives from the private sector and civil society - who will be able to define their own sustainable human development objectives in the field of IPRs and effectively advance them at the national and international levels.

We hope you will find this study a useful contribution to the debate on IPRs and sustainable development, and particularly with regard to the conceptual framework for technical assistance to developing countries at varying levels of development and their correspondingly different needs in the field of intellectual property.



Ricardo Meléndez-Ortiz

Executive Director, ICTSD

EXECUTIVE SUMMARY

Even though the protection of intellectual property rights (IPRs) has become a key driver of business competitiveness in today's global economy, there is much uncertainty - particularly in developing countries - over how best to manage IP-related issues and respond to changes in the IP-regulatory environment. In response, technical assistance services related to intellectual property (TASIP) have become increasingly important as a way to:

- address the growing needs of various constituencies in developing countries that are increasingly concerned with IP issues;
- promote knowledge which is highly technical and rich in know-how and do-how; and
- further the strategic aspects of economic development in R&D-based economies to attract the attention of both business and governments.

This paper aims to: (i) provide an overview of the existing information and (conflicting) ideas on TASIP; (ii) identify strengths and weaknesses in TASIP activities; and (iii) suggest improvements in current practices. To this end, it draws on the findings of in-depth interviews with a group of TASIP experts and beneficiaries, internet-administered questionnaires and comments from a TASIP expert meeting held in Geneva in July 2005.

TASIP has a number of distinctive characteristics. It tends to be more influenced by groups with vested interests than many other areas of technical assistance and biased in favour of IP protection. National IP offices in the beneficiary countries frequently have a quasi-monopoly on TASIP and other stakeholders - both within and outside government - are rarely involved in project design, needs assessment or programme implementation.

The emphasis on TASIP activities tends to be on legal and policy issues rather than towards business-relevant and hands-on training that might show how a pro-IP strategy could be viable for developing country businesses. It is evident that some TASIP programmes are not tailored to developing country contexts with the result that intended beneficiaries show little ownership of their processes and outcomes. Technical assistance related to international IP negotiations also suffers from a North-South divide in that it is difficult to practice reciprocity in international negotiations given the asymmetries of interests and power involved.

TASIP is generally considered to be a particularly useful form of technical assistance due to the perceived importance of the role of IPRs in fostering economic development in the contemporary information society. Its content tends to be highly technical, both in legal and economic terms. Yet, this form of technical assistance is not free of ideological overtones: the major conflicts in thinking about IPRs are echoed in current debates over TASIP. While some commentators see TASIP as a purely technical form of assistance, others point to its inherent normative dimension which carries certain value judgements - for example, about whether a given level of IP protection or a particular technical aspect is development-friendly. The issue of what constitutes a development-friendly approach to IP and TASIP therefore remains highly controversial.

Some experts argue that the issue of optimal IPR protection for pro-development outcomes is a live one which should be reflected in TASIP thinking and activities. Other commentators take a more pragmatic approach on the grounds that developing countries have already entered into the international IP regime following the Uruguay Round of trade negotiations. The latter argue that the objective of TASIP should not be to question the rules but rather to make the best out of the situation by working within the current international IP regime

to the advantage of developing countries. It is how the debate between these two schools of thought plays out that will determine the shape and challenges of TASIP in the years to come.

The paper concludes with two sets of guidelines to improve current TASIP practices. The first set takes the form of an annotated checklist of questions for donors and providers to consider before undertaking TASIP activities. The second is a checklist for beneficiaries aimed at encouraging their more pro-active involvement in TASIP design and implementation.

1. INTRODUCTION

1.1 TASIP Characteristics

Technical assistance, in a general sense, refers to the transfer of knowledge to improve the implementation of some type of practice or procedure. Notions of technical assistance, however, vary from references to the transfer of specific technical knowledge to much broader conceptions of how people, systems and communities can be supported in implementing change. The variety of definitions of technical assistance reflects its complex nature, which is a blend of content - the knowledge or information

that is shared - and process - the way it is shared. Within the field of intellectual property (IP), technical assistance is perceived as a service. The specific characteristics of technical assistance services to intellectual property (TASIP) and their associated implications are outlined in Table 1.

The intangibility of TASIP means that it is difficult to evaluate and quality assessment efforts may use various criteria ranging from beneficiary satisfaction, performance according to rules and procedures, zero default, and functional or

Table 1.1 *TASIP Characteristics and Implications*

Characteristics of TASIP	Implications
Service	Value created through an offer of intangibles and interaction: <ul style="list-style-type: none"> - Beneficiaries are insecure in their choice. - The notion of "quality" may vary. - Performance is difficult to evaluate. - Shared responsibility of programme results.
Public service	Beneficiary does not pay for the service and the service is a public good: <ul style="list-style-type: none"> - There are numerous "publics" of the service provider. - Local ownership is not easy to foster. - Frequent inefficiencies resulting from bureaucratisation are likely. - Donors may impose their concept of the service.
IP-related service	Assistance dealing with IP regime and its use: <ul style="list-style-type: none"> - Conflicting views on what is an optimal level of IP protection. - Vested interest groups tend to be active. - Technical contents: corporatism may be an issue
International service	Diversity of policy objectives and inter-cultural context: <ul style="list-style-type: none"> - Political priorities (foreign policy and foreign aid concerns) should be taken into account. - Cultural and systemic differences may require that the TASIP concept and the recruitment of consultants are adapted to the circumstances.
Multi-stakeholder service	There are numerous TASIP stakeholders (donors, providers, IP owners, producers, users, consumers): <ul style="list-style-type: none"> - There are likely to be conflicting objectives and expectations. - Legitimacy may be an issue.

Source: Adapted from Kostecki (2001)

technical quality of the service. Moreover, the quality of stakeholder relationships should also be considered in any evaluation since TASIP rests on the interactions between donors, providers and beneficiaries.

TASIP's public service dimension means that the beneficiary does not pay for the service, but this in itself raises issues of ownership, motivation and accountability. As an international public good, TASIP also gives scope to the possibility of conflicts of national interests and inter-cultural issues. Finally, the multi-stakeholder nature of TASIP signifies that decision-making may be complex and legitimacy is likely to be of major concern.

1.2 TASIP Issue Focus

TASIP deals with a wide range of issues (see Table 1.2) but it is the legal aspects of TASIP (such as WIPO conventions or WTO agreements) that receives the greatest attention and the legal experts who figure most prominently among TASIP specialists. Although economic aspects of IP do gain some recognition in TASIP programmes, other issues - of a managerial, political or ethical nature - tend not to feature.

TASIP services might involve the following activities: (i) seminars, courses, workshops and technical missions; (ii) provision of training materials, data software and hardware; (iii) research and consulting; (iv) assistance to governments and business organizations to facilitate policy-making, negotiations or implementation strategies; (v) creation of goodwill concerning IP; (vi) support in management of IP-related projects or institutions; (vii) project administration; and (viii) evaluation of various IP policies or business strategies.

1.3 TASIP Actors

TASIP may be delivered by governments or private agencies and destined for governments or non-governmental organizations (NGOs). Table 1.3 provides a list of the key institutions that are involved in TASIP grouped under the headings "donor countries", "beneficiary countries" and "international actors".

TASIP activities are financed mainly from public budgets and delivered by government departments or inter-governmental institutions such as the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), the United Nations

Table 1.2 The TASIP Issue-Activity Matrix

Issue	Example of Activities Covered by TASIP
Legal	Drafting of WTO compatible legislation. Implementation: court action against pirated product producers. Government policing of counterfeit good producers.
Economic	Macro impact studies. Cost-benefit analysis of corporate decisions to opt for licensing contracts.
Managerial	Hands-on training in trademark management. Business strategy for IP partnership. Gaining access to newly-patented technology.
Political	Activating IP-friendly pressure groups. Negotiations on IP issues at the WTO. Business advocacy and IP.
Ethical	Providing generic drugs to the poorest populations living with HIV/AIDS. Ethical training in duties and rights associated with copyrights offered to university students.

Table 1.3 Main TASIP Actors

<p>Donor countries</p> <ul style="list-style-type: none"> • National IP offices and other government departments dealing with donor assistance, foreign affairs, trade, health, etc. • Academia (universities, research institutes, think tanks) • Business associations • Professional organizations • Companies • Lawyers and other IP consultants • Civil society (NGOs) • Mass media
<p>Beneficiary countries</p> <ul style="list-style-type: none"> • National IP offices and other government departments dealing with health, industry, education, etc. • Academia (universities, research institutes, think tanks) • Business associations • Professional organizations • Companies • Lawyers and other IP consultants • Civil society • Mass media
<p>International actors</p> <ul style="list-style-type: none"> • International governmental organizations: WIPO, WTO, UNCTAD, WHO, ILO, World Bank, OECD. • Regional integration arrangements (e.g. EU, NAFTA, ASEAN) • Regional inter-governmental organizations (ECA, ECE) • International NGOs (Oxfam, Médecins sans Frontières, ICTSD, etc.)

Conference on Trade and Development (UNCTAD), or the World Health Organization (WHO). Significant TASIP activities are also conducted by regional groupings such as the European Union (EU), North American Free Trade Area (NAFTA) and Association of South-East Asian Nations (ASEAN) or provided on a bilateral basis by donors such as USAID, DFID, etc.

Among the non-governmental actors directly involved in TASIP are numerous development foundations, think tanks and associations (e.g. the Washington-based International Intellectual

Property Institute) and academic institutions such as the World Trade Institute in Bern, Switzerland. Moreover, academics from both donor and beneficiary countries are frequently engaged as consultants in IP-related activities. Industry associations, professional organizations and companies also play an active role in many TASIP activities in relation to their fields of expertise.

With growing pressure to fight counterfeiting and the increasing use of trade sanctions related to IPR violations, IP issues are of major international concern. At the same time, there

is growing criticism of the dominant role of national IP offices and some inter-governmental organizations that are undertaking TASIP activities. These issues raise a number of important questions:

- How should local ownership be dealt with when a TASIP-providing agency has an objective to promote the highest levels of IP protection?
- How can TASIP reconcile support for the implementation of a particular international agreement (e.g. TRIPs) with

the recognition that the “*one-size-fits-all*” approach to IP might be sub-optimal on development grounds in certain cases?

- How can TASIP become a multi-stakeholder process when government IP officials are so often in the driving seat?
- To what extent are the TASIP services offered by government bureaucracies regarded as professional and cost-effective?

This study explores these questions and suggests ways in which current TASIP practices might be improved.

2 THE HISTORY OF IP PROTECTION AND TASIP

2.1 Introduction

IP protection has a long history, and TASIP has been around, at least in its rudimentary form, for more than a century. The key events that have shaped the historical context of the TASIP debate are presented in Table 2.1.

Among the developed countries that today support the highest standards of IP protection are those that were once regarded as major infringers of IPRs. Thus a country's approach to IPRs is likely to evolve over time according to its developmental context. Nations that are net IP importers tend to be less enthusiastic about protection of IPRs (e.g. China today, Japan in the 1960s, and the US at the beginning of Twentieth Century). Conversely, countries that become net IP exporters tend to take a tougher stance on IP protection.

2.2 North-South Controversy over IP

TASIP is frequently seen as one of the most controversial areas of donor assistance to developing countries. There are a number of reasons for this:

- Developed countries, as major innovators and net IP exporters, are more interested in the protection of IPRs than net IP-importing developing countries - a divergence of interests that is reflected in TASIP activities.
- The very process of economic development is largely based on imitation and coping; this implies that the optimal level of IP protection may differ between formal and informal (emerging) sectors, a reality that is neglected in most TASIP programmes.
- The international IP regime - as implemented

Table 2.1 Chronology of IP-related Events and TASIP

- 1893: The Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle (BIRPI) - the predecessor to WIPO - is set up to manage the Bern Convention for Protection of Literary and Artistic Works. The US is not a member.
- 1967: WIPO is formally created by the Convention Establishing the World Intellectual Property Organization.
- 1974: The Geneva-based WIPO becomes a specialised agency of the United Nations and is mandated to "promote the protection of intellectual property throughout the world". WIPO intensifies its TASIP activities.
- 1960s and 1970s: developing countries manage to block the expansion of certain IP agreements due to the fact that WIPO is a one-country, one-vote forum. The US, which becomes a WIPO member in the late 1970s, favours a "forum shift" from WIPO to the WTO that is expected to have "more teeth".
- 1970s onwards: UNCTAD is active in the area of TASIP. ITC provides business-oriented TASIP and the World Bank is active on IP policy issues.
- 1988: The Omnibus Trade and Competitiveness Act introduces a new procedure under Section 301 of US Trade Law (Super 301) that enables the identification of countries where protection of IPRs is deemed inadequate. Exports of the countries concerned may be restricted if the practices concerned are not eliminated.
- 1995: Creation of the WTO which comprises an Agreement on Trade-related Intellectual Property (TRIPs). TASIP activities are initiated to ensure progressive implementation of the TRIPs Agreement by developing countries.

though WIPO, the TRIPs Agreement and the like - puts emphasis on forms of IP which are of interest to multinational corporations rather those which are of concern to developing countries, such as protection of traditional knowledge, ethnic designs or denomination of origin of products exported by developing country firms (Finger, Schuler, 2004). Again, this mismatch is evident in many TASIP programmes.

- TASIP is typically provided by institutions and individuals that promote the high IP standards favoured by developed countries, rather than the flexible positions favoured

by developing nations. This is due to a variety of vested interests and intellectual bias.

The main points of the North-South IP over IP protection and TASIP are shown in Table 2.2.

Proponents of high IP protection standards in low-income countries argue that high standards encourage direct foreign investment (FDI), technology transfer and local knowledge industries. They also maintain that the existing regime - if properly used - may serve development interests, particularly among the most innovative developing country businesses.

Table 2.2 North-South Conflicts of Interest over TRIPs and TASIP

North	South
Promotion of high standards of IP protection through quasi-universal acceptance of international treaties defining such standards.	High standards of IP protection should not be encouraged and developing countries should resist, as far as possible, developed country attempts to promote international treaties that reinforce IP protection.
Copying of IP is immoral and should be permitted only in well-defined situations.	Many segments of economy in developing countries are at early stages of the learning curve. Developed countries should have a more flexible attitude towards firms emerging in the informal sectors of developing countries that engage in copying in order to gain experience and to progress.
The international IP regime should protect the interests of the modern knowledge-based economy.	Not enough attention is paid to developing country IP concerns such as protection of traditional knowledge, folkloric design, etc.
TASIP is provided by specialised institutions and consultants that are perceived to have the requisite IP experience.	IP experience is needed but more attention should be paid to the fact that it may result in a biased, pro-IP protection approach in TASIP.
Donors should have a say in TASIP objectives, content, choice of providers, evaluation of performance and feedback.	Developing countries should get greater freedom of choice concerning the use of TASIP funds, objectives, areas of application, selection of the agencies of provision, modes of delivery, etc.
TASIP experts/consultants should originate mainly from donor countries.	Preference should be given to the selection of TASIP experts/consultants from beneficiary countries or other developing countries whenever the quality of available human resources allows.

Based on the content analysis of the ICTSD Dialogue on "Technical Cooperation for Intellectual Property Policy in Developing Countries", 11-12 July 2005, Geneva.

Box 2.1 TASIP and the Doha Round

TASIP has a significant role to play in the Doha Round. It is important to ensure, however, that it contributes to resolve the current divergence of views on the TRIPs negotiations in a neutral manner. The controversial points in this regard comprise (a) the geographic indications issue (which should be restricted - in the opinion of one interviewee - to wine and food labelling) and (b) the issue of remedies required to authorise compulsory licenses for patented pharmaceuticals in countries without manufacturing capacity.

Moreover, an agreement to broaden access to affordable medicines needed in low-income countries is among negotiators' highest priorities (Balasubramaniam, 2003; Jourdain, 2003; Zaveri, 2003). However, the negotiations on a mechanism that would allow the poorest nations to use a compulsory license to import medicines that they are unable to manufacture domestically reached an impasse in 2002. This caused WTO negotiators to miss the deadline for an agreement on the special treatment of developing countries' access to essential drugs, and the conflicting views were often reflected in TASIP events such as the "*Business for Development Meetings*" organised by the ITC in South Africa and Senegal in 2004.

Pharmaceutical industry spokesmen at those meetings expressed their fear that exemptions to allow compulsory licensing for export would be extended beyond the "*infectious disease epidemics*" referenced in the Doha Declaration and that this would allow countries to override drug patents to treat a wide range of public health concerns, including asthma, cancer, diabetes, schizophrenia or even impotence. The key concern - in view of an interviewee from pharmaceutical industry - is that the proposed exemptions could be exploited for commercial purposes rather than to genuinely improve access to medicines for the neediest groups of people.

From this perspective, it is fully justified that TASIP should favour the implementation of higher standards of IP protection.

The first batch of studies on trade and IP issues published after the Uruguay Round of trade negotiations argued that the TRIPs Agreement would have a negative impact on development (for a brief summary of that literature see Hoekman & Kostecky, 1995 and 2001). Today, however, the empirical evidence on the value of IP protection standards for economic development appears more mixed. Despite inconclusive evidence at the general level as to the impact of higher standards of IP protection on development, TASIP has the potential to play an important role in fostering pro-development outcomes in IP, or at the very least in offsetting any negative consequences. In modern information societies, the identification, registration and protection

of IPRs has become one of the key drivers of business competitiveness in international trade. Even though IP is today's competitive weapon in global markets, exploiting and protecting it has become complex and difficult. There is much uncertainty among policy-makers, business leaders and civil society in developing countries as to how to manage IP-related issues and respond to changes in the IP-regulatory environment. This context means that TASIP has the potential to become one of the most important areas of technical assistance in that it can be used to:

- Address the growing needs of various constituencies in developing countries that are increasingly concerned with IP issues.
- Share knowledge which is highly technical and rich in know-how and do-how.
- Further the strategic aspects of economic

development in R&D-based economies and therefore attract the attention of both business and governments.

Nevertheless, the effectiveness of TASIP in generating pro-development outcomes depends on how it is conceived and executed. This begs the questions: What is and what should be the

nature of IP-related technical assistance? What can be done to ensure that assistance services will favour a development-friendly approach on a case-by-case basis? Answering these questions will be the major challenge of TASIP provision in the years to come. The remaining chapters of this study attempt to shed some light on these issues.

3 TECHNICAL ASSISTANCE AND INTELLECTUAL PROPERTY: A FRAMEWORK FOR INQUIRY

3.1 Introduction

This study examines the strengths and weaknesses in TASIP activities with a view to providing recommendations for improvements in current practices. Based on our preliminary interviews and literature review, a number of key questions were identified:

- (i) What is the impact of TASIP on the effective level of IP protection in various countries and sectors?
- (ii) Are the development-relevant issues of IP properly dealt with by TASIP?
- (iii) Does TASIP adequately address the needs of developing countries in relation to international negotiations, policy-making, implementation and the training of business leaders and innovators?
- (iv) Is donor-funded TASIP used effectively?
- (v) In what areas can TASIP performance be improved?
- (vi) What changes in the modus operandi of TASIP could improve performance?

(vii) What guidelines would facilitate such changes?

These key questions were generated in conjunction with a "path model" of the leading factors that determine TASIP performance as shown in Figure 3.1.

3.2 TASIP Hypotheses

The key questions and the path model of "Leading Determinants of TASIP Performance" generated a number of working hypotheses. These are discussed below.

H1: TASIP has a strategic role to play in the process of economic development in the contemporary information economy.

Many TASIP activities are concerned with minimising IPR infringement and tend to focus on enforcement and implementation of IP law. The issue may be explained with help of the simple graph presented in Figure 3.2.

Figure 3.1 Leading Determinants of TASIP Performance

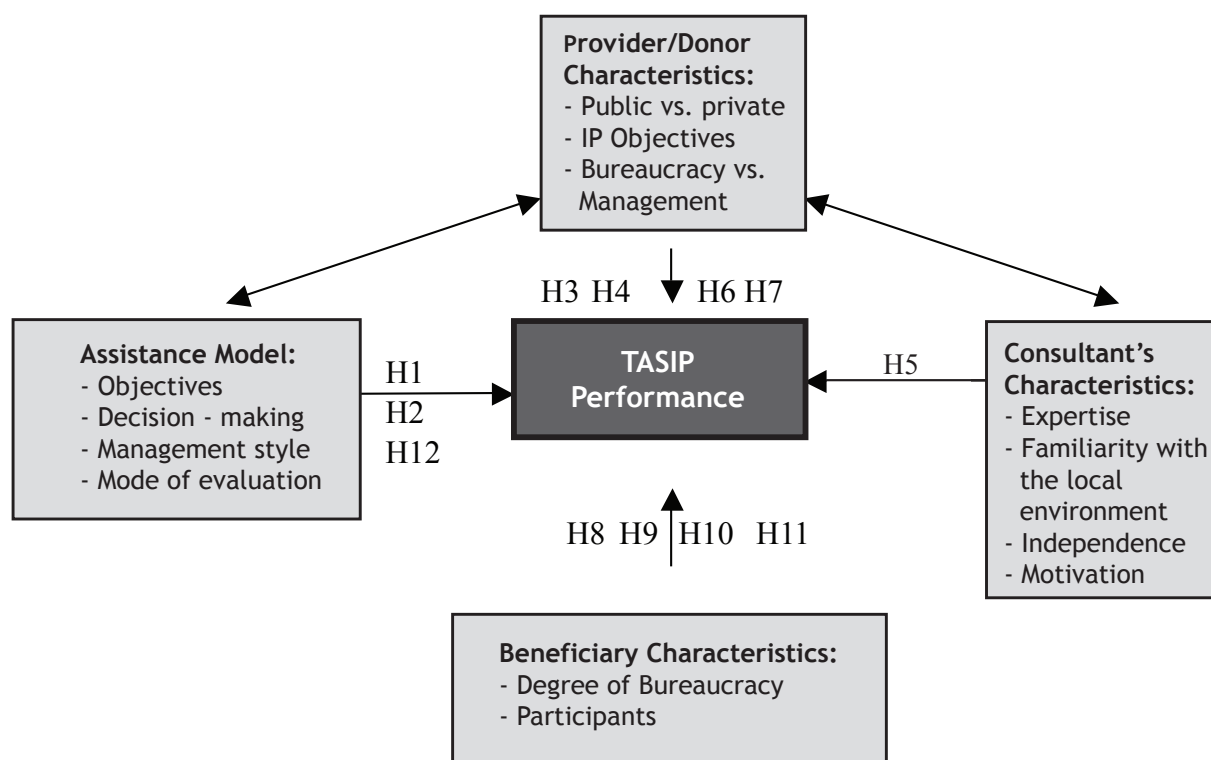
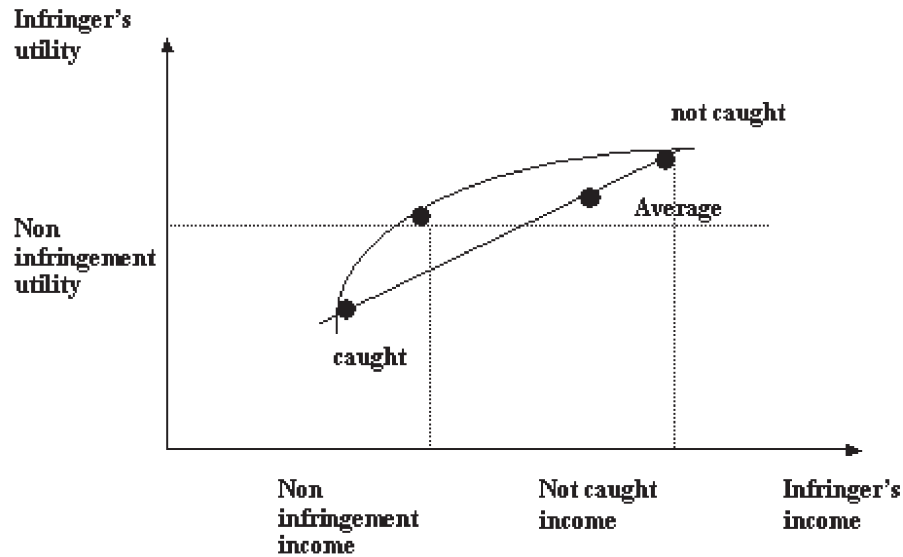


Figure 3.2 Ensuring that IPR Infringement Does Not Pay



The utilities of both a firm that respects IPRs (a “non-infringer”) and a firm that does not (an “infringer”) are represented on the vertical axis. The latter’s utility depends on whether the firm is caught or not. If the infringer has a better average performance than the non-infringer, there is an incentive for firms to ignore IPRs. In such a situation, IP-owning firms see infringers as free-riding on their efforts to create and maintain intellectual property.

In order to protect IP, the average utility of the infringer needs to be below that of the non-infringer. In such context, TASIP - if supportive of IP interests - may contribute to this outcome either by (1) increasing the utility of non-infringement behaviour, or by (2) discouraging free-riding.

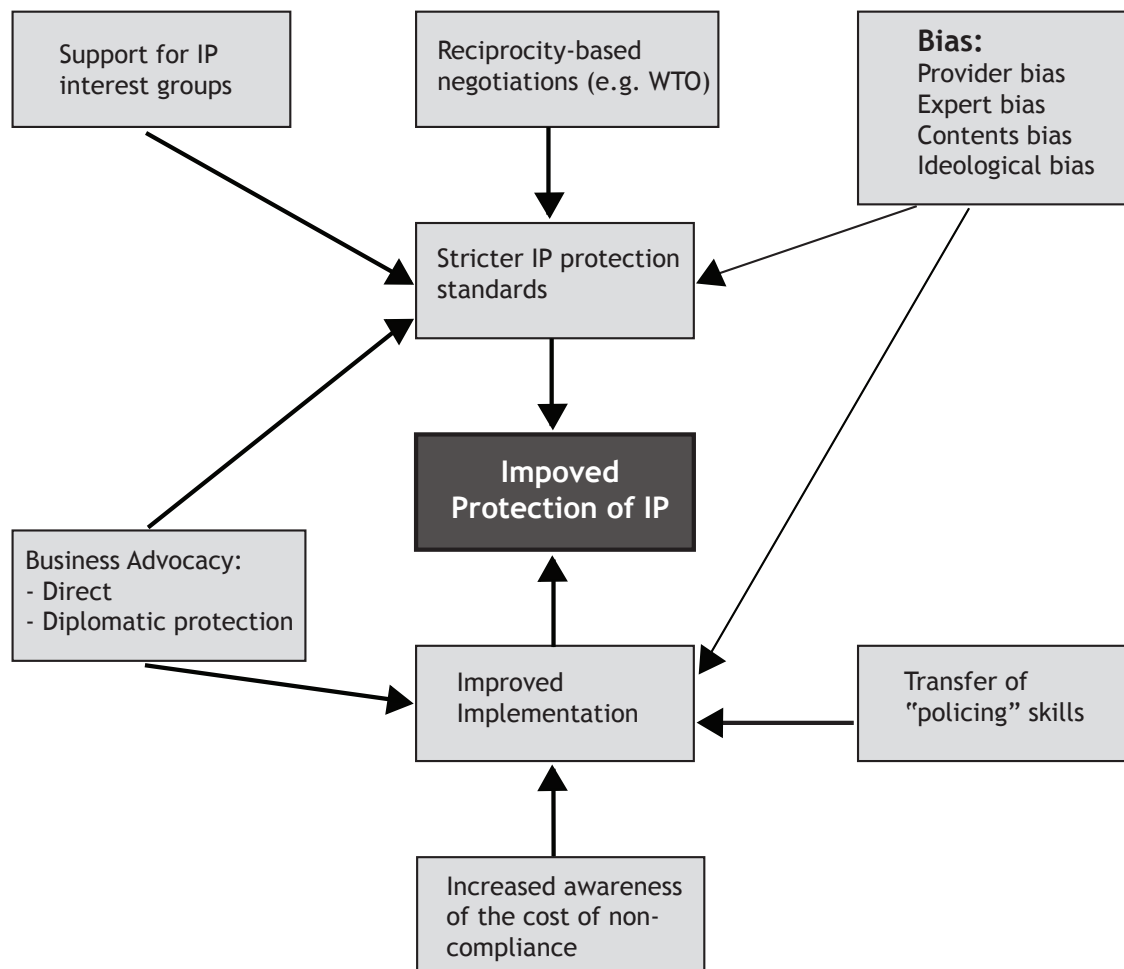
TASIP has a role to play in increasing the attractiveness of legal IP use through awareness-seminars, IP management training, coaching in IP-related projects, partner searches, etc. The model points to the critical importance of IP business training and consulting in reducing the attractiveness of IP infringement. Note that this type of TASIP (policy type 1) is “Pareto optimal”, i.e. it increases the utility of IP owners and IP users that abstain from free-riding, while making infringers no worse off.

TASIP may also be used to discourage free-riding by ensuring better implementation of IP standards, thus making infringement a more costly strategy (policy type 2). However, it is a “Pareto-inferior” in that it increases the utility of IP owners while decreasing the utility of free-riders.

What specific TASIP initiatives can contribute to an increased level of IP protection? The various modes of TASIP activity - that may be implemented as part of policy type 1 or 2 - are schematically presented in Figure 3.3 and discussed below.

- Higher levels of IP protection may be encouraged through TASIP activities aimed at increasing the participation of developing countries in various international IP agreements. In particular, TASIP providers may offer to provide documentation centres, computer equipment or specialised libraries in exchange for acceptance of an IP agreement by a developing country government.
- TASIP activities can aim to bolster domestic support in favour of stricter IP standards in recipient countries. This can be accomplished by providing support to local R&D industries, specialised consultants and multinational companies. TASIP projects

Figure 3.3 TASIP and Making IPR Infringement Not Pay



that promote contact between such groups and local decision-makers may also boost the lobbying capacity of firms in favour of IPR enforcement.

- TASIP can also contribute to the transfer of skills in policing IPR violations.
- TASIP may increase awareness of the cost of non-compliance with IP standards through promoting the message that weaker IP protection standards may result in retaliation from a major trading power (e.g. TRIPs or sections 301 or 337 of US Trade Law).
- TASIP's contribution to IP protection may reinforce numerous biases - provider bias, expert bias, contents bias and ideological bias. For example, TASIP has an effect on the perception of what is an optimal IP policy by emphasising the positive rather than negative aspects of higher levels of IP protection (intellectual bias).

Indeed, policy-makers, managers, and the public at large may be influenced by the argument that higher IP protection acts as an incentive for increased foreign direct investment (FDI) in the country concerned, thus encouraging development of R&D-intensive sectors, stimulating innovation and related training and education.

H2: The leading technical assistance programmes aim at making the infringement of intellectual property rights not pay - an approach that is sub-optimal in Pareto terms.

WTO activities relating to TRIPs aim to improve the implementation of the Agreement by developing countries that are either members of the WTO or are in the process of WTO accession. For example, TRIPs-related issues were one of the main stumbling blocks in the process of China's WTO accession negotiations

and are partly responsible for the delay in Russia's accession. These approaches are also reflected in the technical assistance provided by the WTO.

WIPO technical assistance activities aim at a wider acceptance of IP agreements managed by the organization and the fuller implementation of those IP treaties. This is mainly achieved through programme content which emphasises IP-friendly messages, reinforcement of pro IP-lobbies within beneficiary countries and support for activities that police IPR violations.

H3: The impact of TASIP is often reduced by the "inside the box thinking" of the provider institutions.

Many traits of TASIP are rooted in the organizational culture of the provider institutions. TASIP programmes are largely provided by government agencies or inter-governmental international organizations which can suffer from so-called "inside the box thinking". Indeed, most government departments and inter-governmental organizations are rigidly structured and those in charge of technical assistance are affected by the prescribed bureaucratic culture.

Staff members of international institutions are, as a rule, compelled by the organization's disciplines to dissociate themselves from their own values - a practice that stifles any real debate on IP. Moreover, the administrators in charge rarely have any professional training or consulting experience (Kostecki, 2001). The result is inappropriate and low quality TASIP training and consulting, slow reactions to the changing environment and the prioritisation of bureaucracy over value creation in service provision. Although interest here is in relation to TASIP only, it is recognised that this observation is true of many areas of technical assistance.

H4: The leading technical assistance programmes are perceived as promotional tools to encourage wider acceptance or better implementation of the IP treaties administered by

provider organizations (provider bias).

Preliminary research suggests that TASIP is perceived a particularly controversial area of technical assistance. This is primarily because many TASIP providers have clear interest in the area of intellectual property. For example, WIPO is a major provider of TASIP and also manages numerous international IP agreements. Similarly, the WTO is mainly interested in ensuring appropriate implementation of the TRIPs Agreement rather than opening up debate on its pros and cons from a development perspective. Moreover, in most cases the partner institution in the beneficiary country is a national IP office, and other ministries (consumer affairs, culture, education or industry) are under-represented or even excluded. This bias in TASIP provision reinforces pro-IP attitudes and supports the increased participation of beneficiary countries in IP agreements.

H5: TA consultants who are IP experts (from developed and developing countries alike) tend to favour stricter protection of IP rights (expert bias).

It is reasonable to assume that an IP expert will favour - either consciously or unconsciously - approaches and attitudes that reflect a pro-IP stance. This "expert bias" may also find its raison d'être in a simple observation that it is natural for a professional to side with an approach that favours their own business interests.

H6: TASIP know-how and do-how tend to be focused on developed-country experience and concerns (content bias).

Bias can also be found in the content of TASIP activities with too little attention to development-specific interests and concerns. Moreover, there is an over-reliance on a canon of IP literature that deals primarily with issues of concern to developed country industries. As a result, where the lessons from previous experience with IP are applied in TASIP activities, they tend to derive from developed country contexts. There is therefore a risk

Table 3.1 *Stages of Development and IPR Protection*

STAGE I	New production is initiated; the emphasis is on exact copying of the superior (foreign) industrial product. The use of foreign designs or trademarks is frequently observed, especially in the informal sector. The newcomers (most often inexperienced and naïve) copy IP to improve their competitive position in unsophisticated emerging markets.
STAGE II	The infringer turns to borderline areas of infringement such as doubtful advertising, simulation, representation, etc. It is already aware of the risk of the strategy and aims to minimise conflicts. TASIP has an important role to play at the company level.
STAGE III	The infringer chooses (or is forced) to seek legitimate license or other IP arrangements (due to economic reasons, government intervention or business pressures). Some R&D support may be needed. TASIP is essential to facilitate the process. It is at this stage and the previous stage II that the “win-win” type of TASIP (policy-type 1) is essential.
STAGE IV	The former infringer has developed its own products or trademarks and is now in need of IPR protection. Its products are of good quality, highly-competitive and often meet with protectionist barriers if exported.

that developed country practices are directly transposed to developing economies, and development-related aspects of IP management and policy are neglected.

H7: Most TASIP programmes ignore or underestimate the theory of IP development stages in the field of intellectual property (ideological bias).

Another related issue is the lack of sufficient business history and economic perspective in TASIP programmes. Despite the close inter-relationship between the stages of business development and the IPR protection (see Table 3.1), “dissident views” advocating anything other than the implementation of high standards of IP protection are likely to be discouraged or ignored in TASIP activities.

H8: Business IP training tends to be underestimated in TASIP programmes.

TASIP tends to be focused on regulatory and policy issues rather than IP entrepreneurship. Indeed, while numerous TASIP activities refer to IP protection and implementation, little attention is given to hands-on training that could of interest to developing country business communities - akin to having a car with powerful, well-performing brakes but

which lacks an engine. This situation is partly due to the excessive role of bureaucracy in needs assessment and TASIP design and implementation. That business IP training tends to be underestimated in TASIP programmes is an important omission because efforts to increase standards of IP protection should coincide with efforts to encourage IP creation in low-income countries.

H9: Most TASIP programmes overemphasise the message that lower standards of IP protection would limit rather than attract FDI (FDI bias).

The FDI bias means that TASIP programmes emphasise the message that high standards of IP protection stimulate FDI in particularly attractive (R&D-intensive) sectors. Although the suggestion has proved to be true in many case studies, counter-examples do exist - most notably China’s success in attracting FDI despite relatively weak IPR protection. TASIP programmes rarely explore such arguments in a balanced manner.

H10: TASIP tends to encourage pro-IP lobbies in beneficiary countries.

TASIP programmes tend to suffer from what can be referred to as “interest group bias” as most

have a tendency to encourage pro-IP lobbies in beneficiary countries. Indeed, numerous TASIP events address specialised government staff, academic institutions, lawyers, consultants and IP managers. In certain cases such pro-IP groups are not only offered training and consulting but also direct material support.

H11: The informal sector is a reality in developing countries, but its IP dimension tends to be perceived as distorting because it directly affects the interests of developed country industries.

Many TASIP initiatives seem to underestimate the fact that the informal economy is a reality in developing countries and that it often plays a crucial role in poverty reduction. It is crucial, therefore, that any negative impacts on the informal sector as a result of TASIP activities are offset by appropriate measures of material aid and technical support.

H12: The development dimension of TASIP is often restricted by a lack of neutrality and legitimacy in the TASIP decision-making process.

The literature dealing with TASIP frequently contains comments critical about the neutrality and legitimacy of the decision-making process affecting TASIP design and implementation (Pengelly 2005; Story 2004). In some cases, the authors quote the significant, albeit usually indirect, influence of industry lobbies such as pharmaceutical industry associations, entertainment industry pressure groups, luxury product companies, etc. (Kuanpoth, 2003).

In other cases, it is noted that those who benefit from lower standards of IP protection (consumers, informal sector producers and start-up small- and medium-sized enterprises (SMEs) tend not to be consulted on such matters, not even by their own governments (Kostecki 2005).

4 EMPIRICAL RESEARCH AND DATA ANALYSIS

4.1 Introduction

This research is based on a series of in-depth interviews, internet-administered questionnaires and records of a panel discussion with experts, providers, recipients and other stakeholders involved in TASIP activities. These included government officials, business leaders, consultants and NGO staff. Its objectives are to identify the main areas for possible improvement

in TASIP activities and report on expert views as to how these could be implemented.

To illustrate the general tone and perception of TASIP projects among respondents Box 4.1 presents a list of comments on the key issues of economic development needs assessment, design, implementation, evaluation and follow-up.

Box 4.1 Leading Comments on TASIP

Intellectual Property and Economic Development

"I feel that it is a taboo to talk about the fact that many developed countries went through a period of intensive IP theft."

"WIPO follows the "one-size-fits-all approach". They make no effort to search for development-friendly IP policies."

Needs assessment

"Most people in developing countries consider that there is too much technical assistance in IP of the type that favours interests of large business firms."

"Development countries want us to adopt model legislation on IP, that's it."

"We have many specific needs but TASIP experts are frequently not familiar with them because their experience concerns developed countries."

"Need assessment is bureaucracy-driven and the interests of business and users are neglected."

Design

"WIPO and national IP offices are mainly interested in the promotion of IP treaties that they administer. Their technical assistance is a big marketing operation."

"There are powerful IP industries and even though we get mainly government funds we are not totally free to do what is good for development."

Implementation

"Most WIPO programmes are of limited utility. Participants are, to a large extent, invited to participate as a reward for their support of WIPO policy."

"Numerous experts arrive in developing countries without having sufficient knowledge of the local IP issues and realistic IP options."

"Many programmes are too abstract and largely irrelevant given our needs."

Evaluation

“Mainly accountants are involved in project evaluation. No serious job is done in that respect. Most evaluation reports are of little utility. They are written by bureaucrats for bureaucrats.”

“It is important to improve the evaluation system because without appropriate feed-back there will be no quality improvement”

Follow-up

“Once the project is over, not much happens.”

“Follow-up is a real problem in many TA projects; TASIP is no exception to that rule.”

“Most issues discussed in our training were of no direct relevance to what was going on in our country even though they were intellectually stimulating. We were unable to use the training in our jobs.”

The following section discusses the empirical findings of the research study in relation to the list of hypotheses put forward in Chapter 3.

4.2 The Strategic Role of TASIP (H1)

Interviewee responses support that notion that

TASIP has the potential to play an important strategic role in economic development but emphasise the need for programmes to be properly conceived and relevant to the needs of developing countries. A selection of their comments is presented in Box 4.2 below.

Box 4.2 Illustrative Statements about TASIP’s Strategic Role

“Intellectual property issues tend to be complex in their legal, economic and policy dimension and, therefore, technical assistance is of great importance for developing countries that lack skills and experience in that area.”(Developing country trade diplomat)

“Assistance is particularly needed in the area of intellectual property in which most developing countries and the countries’ business community are poor performers.” (African civil servant)

“Intellectual property regimes in developing countries should be modernised in order to ensure that the countries develop indigenous innovation and goodwill. Technical assistance should support such reforms.” (Latin America academic)

“IP is essential for economic development in today’s economy. From access to medical treatment for poor segments of the population to technology transfer and access to computer software and cultural sources - everything is about IP. We need assistance in that area to defend our interests.” (Asian lawyer)

“TASIP may assume a strategic role in economic development if it is properly conceived and addresses subject areas of relevance for developing countries.” (IP Manager of a global company)

Certain TASIP observers note that technical assistance may be used as a strategic instrument by large corporations to reinforce their dominant position in developing countries. An international economist considers that IPRs *"clearly favour global corporations which sell their products in developing country markets."*

A Geneva-based consultant refers to still another aspect of the issue: *"I have often a feeling that what certain developing trading nations gain in terms of market access is taken away from them through management of IPR protection, and TASIP assumes an important role in that process. Take for example Asia: Japanese companies often assist developing country firms within the framework of TASIP programmes. Many of those management-oriented programmes enable developing country firms to be integrated into global supply chains of Japanese companies. However, at the same time, the increasingly strict IPR protection ensures that such firms will never be able to free themselves from those relationships because IPRs are skilfully used to keep them in a situation of dependence."*

4.3 Making IPR Infringement Not Pay (H2)

Most interviewees agree that many TASIP programmes attempt to impose higher standards of IP protection or to improve the implementation of those commitments. This discourages free-riding in the area of intellectual property and reduces the incidence of IPR infringement.

An interviewee particularly familiar with South-East Asia notes, however, that *"in many cases such efforts are not very realistic because developing country governments, or their provincial counterparts (e.g. in China), are not really willing to implement stricter rules of IP protection."*

It is apparent, that in spite of the TRIPs Agreement and years of WIPO pro-IP policy, there is a lot of resistance - even among developed country experts - to the idea of *"one-size-fits-all"* in IP protection. Several interviewees quoted a

series of recent studies that are critical of this approach (e.g. Boyle, 2004; Stiglitz, 2002) and noted them to be representative of their views. An interviewee - himself an IP expert - admits that he does *"not encourage a developing country to implement its TRIPs commitments if the latter are contrary to the country's development interests. I would suggest that they delay the TRIPs implementation as long as they can."*

However, there also are other voices. An experienced diplomat and civil servant notes that, *"there can be no quick solution to the problem because IP protection is part of every developed market economy and that developing countries have no choice but to accept the most widely recognised standards of IP protection."*

The interviews seem to confirm that most TASIP initiatives follow the Pareto-inferior approach to making free-riding not pay because they emphasise the implementation and policing aspects (a win-lose approach). This contrasts with the Pareto-optimal formula (win-win approach) which renders the IP-friendly option more attractive through business training, partner searches and the opening-up of new business opportunities for developing country firms.

4.4 Poor Performance of Provider Institutions (H3)

There is a great diversity of TASIP providers on multilateral and bilateral level. A leading academic in the field of IP makes the following comment about the performance of various international organizations:

"WIPO is fixated on introducing strong legislation and requiring significant enforcement activities, both of which are questionable development priorities. The WTO does virtually nothing, but then I don't think it should be in the business of TASIP. The World Bank could do a useful job if it had the expertise and wished to allocate resources for it. That's because they would, I presume, focus their efforts on pro-development projects and training. UNCTAD has performed a useful role in publicising the development role of IPRs but they haven't been effective in training and assistance."

The remaining comments concerning the perceived weaknesses of provider institutions refer to TASIP design and implementation, excessive bureaucracy and lack of co-ordination between various TASIP institutions.

Several observers voice strong criticism of the TASIP activities provided by inter-governmental organizations. A former international civil servant notes that the training performance of WIPO is poor. He suggests that many participants who come to various seminars and workshops *“are invited as a reward for their loyal support of WIPO policy objectives in their respective countries.”* He also thinks that the seminar evaluations are rarely reliable because *“many participants are happy to travel, to benefit from their per diem (frequently significant proportion of their income) and to have a break from their routine office duties.”* However, he agrees that, in many instances, TASIP events *“may be important for networking.”*

Another former WIPO staff member, currently an IP manager for a global company, observes that, *“WIPO does not worry about economic development through IP policy. It organises many meetings - usually in very nice places such as Delhi, Phuket, Bali, etc. People who attend such meetings are offered business class tickets and nice per diems. I often feel that it is a way of saying thank you to them for their support for their countries joining various IP conventions. People who attend such TASIP meetings tend to be the same. They often come and disappear after several hours since they go shopping or visit places. It is a nice holiday. At the end they tend to write very nice evaluation about the TASIP programme. WIPO may say to the UNDP “give us more money - you see we have done very well”. Such programmes are a spectacular waste of time and money.”*

A prominent international civil servant and academic argues for the improvement in TASIP provision by international organizations because *“it is cost-ineffective, poorly managed and rarely properly evaluated.”* He also asserts that many evaluations are written by accountants and therefore have a strong emphasis on financial reporting and tend to be

“by bureaucrats for bureaucrats.” In his view, *“much of TASIP should be moved out of WIPO and the WTO to improve quality and increase value-added.”* He does concede, however, that many TASIP activities - both by WIPO and the WTO - have been conducted by competent experts and that *“good share of such programmes could be qualified as relatively successful.”*

One interviewee lists *“public visibility, prestige attributed to international projects and the opportunity to establish contacts with government officials in the region who would otherwise be rarely met”* as important outputs of TASIP conducted by WIPO and WTO. Another expert argues that *“the same message may have a different impact depending on the person that presents it to the audience”* and suggests that *“in Africa people won’t listen to an African, they want an expert from far away.”*

A long time observer of technical assistance agrees that *“there is a need for co-ordination among those who provide TASIP as well as internal co-ordination by the recipient country in terms of processing and identifying needs, co-ordinating the implementation of TASIP activities as well as evaluation.”*

Several comments referred to the issue of competition versus co-ordination between various donors and provider institutions. A TASIP provider can co-operate, co-ordinate or differentiate their activities to avoid unnecessary duplication. The providers may also compete with each other and provide a better service - the term *“co-ordination”* features strongly in technical assistance jargon. Obviously, WIPO plays a central role in the field of IPRs with the WTO assuming a supplementary role in trade-related matters.

It should be noted that most of the critical comments listed here are not TASIP-specific but observations typical of many areas of technical assistance. They tend to be linked to problems that are deeply rooted in modus operandi of the UN system, which although worthy of further investigation lie beyond the scope of this study.

4.5 Provider Bias (H4)

There is a general perception that TASIP takes place to justify the stance of developed countries on IPRs. Several interviewees consider

that technical assistance continues to play a major role in promoting stricter standards of IP protection, their better implementation and the fight against infringement (see Box 4.3).

Box 4.3 Provider Bias in TASIP: Interviewee Comments

“Technical assistance activities are most frequently aimed at promoting more demanding rules and stricter application of IP regimes rather than encouraging flexibility which could be beneficial for developing country industries and consumers.” (Latin American academic)

“It is natural that an international organization that manages numerous IP treaties uses its technical assistance activities to favour larger participation of developing countries in such IP agreements.” (EU lawyer specialising in IP)

“The WTO is mainly interested in making sure that TRIPs commitments are fully implemented. In numerous cases the flexibility provisions are not fully used. This may be seen, for example, in the case of accession negotiations. It might be advisable to have a neutral body providing technical assistance in the area to ensure more objective approach.” (African diplomat)

In particular, there seems to be a general agreement that WIPO and the national IP offices - the main WIPO partner institutions - pursue promotion of the various IP agreements through TASIP activities. As notes a former WIPO staff member, *“WIPO works to improve protection of IP and to convince countries to adopt IP model laws. They want as many countries as possible to join the treaties that they manage.”* In the words of another commentator, *“numerous WIPO staff members are promoted because they manage to increase substantially a number of signatories of an IP treaty.”*

Three commentators complained that within recipient countries the national IP officers have a quasi-monopoly on IP-related technical assistance and do not consult other government agencies and interest groups.

A participant of the WIPO on-line course perceives the programme as *“a clever marketing effort”* but recognises that *“it is a useful training programme and that the diploma delivered by WIPO may have some weight in the local labour market.”*

An international consultant suggests that *“TASIP is a specialist area of technical assistance and*

for the most part, recipients and mainstream donors have been happy to leave it like this. Now the shortcomings of this approach have been acknowledged by many people - but reforms to the practice of TASIP are slow in taking place”.

An expert from a developing country also agrees that *“the needs of individual recipient countries are very different. For example, in the more advanced developing countries and transition economies, the legal frameworks are basically in place, whilst in many LDCs laws have changed little for decades or even longer.”*

Another commentator confirms that *“the needs of individual countries vary greatly as they have different strengths, weaknesses and priorities”* and that *“one-size-fits-all”* is not an appropriate approach.

Stronger criticism of the provider bias in TASIP came from one interviewee who argues that it is illegitimate to use TASIP to push developing countries towards stricter IP regimes as the regime embodied in the TRIPs Agreement of the WTO may not be considered legitimate. Supporting this argument, another

interviewee recalled that the *“development of the US economy has been largely encouraged by massive copying in the beginning of the twentieth century and that Japan’s business followed the same path until the sixties”* (see Table 3.1). He considers that such equivalent opportunities should be granted to current developing countries.

A developing country government official considers that *“it is difficult to reduce controversy over TASIP issues when controversy exists on the subject matter of IP itself. An important measure is therefore to address the broader issues and controversies and to target TASIP activities to support the measures to address the larger questions.”*

A manager of a multinational firm, with previous government experience, agrees that the organization *“actively promotes developing country accession to numerous treaties administered by it,”* although he considers that such objective *“is fully understandable from the WIPO perspective and the organization’s mandate.”* In his view, *“the problem is not so much WIPO itself, as the lack of a parallel approach that would supplement the WIPO TASIP activities and provide counterweight to the organization’s pro-IP vision.”*

An academic says that *“it is fully legitimate and fair on the part of WIPO and the WTO secretariat to provide TASIP that fits into their organizations’ objectives. The only thing that can be done is to ensure that a dissident view is also presented in addition to what WIPO or the WTO wish to claim.”*

Still another observer remarks *“There should be no controversy...we have already entered into the IP protection world since the Uruguay Round, and it’s inevitable. We have to face it but we need more preparation...”*

While all commentators seem to agree that provider bias exists, they draw different conclusions concerning the legitimacy of TASIP and suggest different remedies for dealing with the issue. One group considers provider bias as illegitimate and wants it eliminated; the other maintains that it is legitimate because the provider organizations concerned have pro-IP objectives and that neutrality may be maintained by making sure that a dissident view is also presented in TASIP (say, by an NGO).

4.6 Expert Bias (H5)

The interviewees agreed that IP experts have a natural tendency to be supportive of high standards of IP protection (see Box 4.4).

Several experts agree that corporatist reactions might have played a role but they also underline that many experts may suffer from conflict of interests since some of them act both as TASIP experts and consultants to companies with vested interest in particular IP issues (pharmaceutical products, the entertainment industry, etc).

Another observer stresses that both the provider bias and expert bias *“gives rise to the issue of neutrality.”* This gave rise to a number of comments concerning the nature of *“neutrality”*:

Box 4.4 Expert Bias in Technical Assistance: Interviewee Comments

“Consultants engaged in technical assistance relating to intellectual property are often involved in other consulting activities in R&D business or companies practising product differentiation through trademarks, denomination of origin or industrial design.”

“Most IP experts tend to be lawyers who deeply believe in the virtue of IP protection. Technical assistance in the area of intellectual property is not sufficiently focused on development concerns and priorities.”

Box 4.5 *Contents Bias in TASIP: Interviewee Comments*

"Numerous programmes rely too heavily on seminars and lectures, whereas what is needed is a more hands-on training and coaching". (Developing country businessman)

"TASIP omits many issues of direct interest to developing countries". (Asian government official)

"For us, beneficiary ownership is a weak point of many technical assistance services concerning IP because the programme design and the consultants tend to be imposed on us rather than selected through a process of joint decision-making". (Developing country NGO worker)

- *"Neutrality means taking no position concerning IP rights."*
- *"Neutrality means that we analyse without making any value judgement."*
- *"Neutral consultants should not decide for the beneficiary neither should they impose their views."*

The diversity of comments proves our initial impression that "neutrality" is an "elastic" concept that can be interpreted and approached from different perspectives. Neutrality may signify: (i) avoiding controversy through self-censorship; (ii) presenting both sides of the argument resulting in a "balanced controversy"; (iii) suggesting alternative solutions and conducting cost-benefit analysis for each; or (iv) recommending a single decision outcome based on an independent and honest evaluation. The preferred approach to neutrality will depend on the beneficiary.

4.7 **Contents Bias (H6)**

Several interviewees suggest that there exists what has been referred to as content bias in TASIP programmes (see Box 4.5).

Four experts explicitly note that too little attention is paid to development-specific interests and concerns. An experienced developing country IP lawyer stresses that most IP training programmes "refer to classic (legal) literature that deals with issues of direct concerns to the developed country industries rather than developing country companies and that most

lessons of experience concerning IP refer to developed country cases. What is evidently lacking is the emphasis on development-related IP issues and reference to policies that are not direct transpositions of developed country practices into the developing world."

An observer notes that, in certain cases "provider institutions prefer to offer products that they already have at their disposal rather than to develop new products or to adjust the existing products to specific requirements of the beneficiary country."

Finally, content bias is also reflected in the fact that "many providers are better equipped and have clear preference for seminars and workshops rather than hands-on training and coaching which is time-consuming and labour-intensive but effective."

4.8 **Ideological Bias (H7)**

A prolific writer on IP trade-related issues comments on the lack of sufficient economic perspective in TASIP programmes. In particular, he notes that "various theories, well represented in economic literature and pointing to the weaknesses or limitations of arguments supporting IP protection in the context of economic development are not sufficiently integrated in the TASIP debates. During discussions dealing with such cases dissident views often occur and are not necessarily appreciated by national IP offices or multilateral organizations supporting stricter IP standards."

A developing country expert notes, *“Developing countries are less interested or capable of implementing an unbalanced system of IPR protection. A system that they feel does not take into account their development needs and circumstances and ignores historical evidence of how developed countries addressed IP rights when they were developing and even ignores current mechanisms that developed countries are using to balance the system.”*

Another commentator notes that *“There is too little emphasis in the WTO training programme on flexibility for least developed countries in application of the TRIPs provisions.”* In his view *“most people have clearly accepted the idea that the ‘one-size-fits-all’ approach should be taken for granted.”*

A developed country lawyer suggests that *“there is no other choice for developing countries but to implement and respect the internationally recognised IP commitments. He considers that “it is in the best interest of the countries concerned because such an approach encourages innovation-based development and limits risks of retaliation.”*

4.9 Neglect of Technical Assistance for IP Business (H8)

Three commentators support the view that not enough technical assistance is offered to developing country business associations and companies as the intended end users of IP policies.

As one academic points out *“this is due to the fact that many providers of TASIP have a policy focus rather than business orientation...In the case of least developed countries such a focus makes little sense because the policies in place have limited scope for application since IP property hardly exists in such countries.”*

An international expert on technical assistance notes that *“many funds are available for implementation of internationally-negotiated IP commitments but that there is much less concern for business aspects of IP in developing*

countries.” He suggests that *“this results from the fact that IP-promotion lobbies and implementation concerns dominate within the government agencies of the donor countries.”*

Another comment concerns that fact that the neglect of the business-related technical assistance is a consequence of the bureaucracy-driven service: *“Bureaucracy tends to be more concerned by policy issues rather than business applications.”*

A long time provider of technical assistance notes that *“business in developing countries knows very little about how to translate the IP agreements into business practice. The reason is that in-house expertise is not available, the network of local consultants is underdeveloped and international specialists are too expensive. As a result, many developing country exporters do not register trade marks, trade names, etc. and are not in a position to catch the attention of consumers. A good example is Vietnam. It has increased its seafood export to the US drastically, but exporters complain that their good quality products suffer due to the difficulties to register trade marks. As result, their price is lower than it would be justified otherwise. Related marketing skills are also in short supply. (...) Another example was when Vietnam had a fight about calling Vietnamese “catfish” a catfish. US producers said that the Vietnamese catfish was different from the American. (The US position was not based on any scientific evidence). At the end Vietnam lost the battle, it was forced by an amendment to the US law to rename its catfish (basa fish). The lack of knowledge in developing countries is leading to business losses. TA should address this aspect too.”*

Finally, one commentator notes that the perceived neglect in business-related technical assistance may be due to the fact that a lot of IP-related training and consulting is integrated into various SME and industry-specific projects that don’t appear as stand-alone IP initiatives.

4.10 Over-emphasis on Attracting FDI (H9)

There is a general agreement among the TASIP observers that many intellectual arguments presented during the TASIP events tend to be structured around the basic idea that IP protection is good for development because it brings important benefits to the countries concerned. The case of FDI is one of the arguments frequently used in the IP literature and TASIP training (and consulting) to support such pro-IP strategies.

4.11 Reinforcing the IP Lobbies (H10)

Several examples are quoted to illustrate the impact of TASIP on pro-IP interest groups. First of all, it is clear that TASIP reinforces the positions of national IP offices which often obtain additional equipment, documentation material and prestige thanks to TASIP projects. In some cases computer equipment and software support is offered to IP institutions in countries that agree to accede to certain international IP treaties. In other cases IP government officials benefit from scholarships or invitations to various IP-related events. There is also little doubt that numerous TASIP programmes encourage interest in IP issues in academia and research institutes. According to a former university student, *"In many cases students are happy to participate in WIPO-sponsored training because they have impression to learn a lot and hope that the course diploma will help them to find an interesting job."*

There are numerous business associations and professional groups that benefit from TASIP. A Professor of Law comments that *"the protection of copy rights is encouraged by pen clubs and film producer associations thanks to technical assistance support...Also lawyers are able to improve their competence thanks to training programmes financed under bilateral and multilateral aid funds."*

Judges are being trained and policing techniques improved due to the assistance provided by developed country institutions (mainly bilateral technical assistance). Several commentators regret that TASIP rarely involves other organizations than national IP offices and pro-IP lobbies in preparation of its programmes.

An observer notes that TASIP also *"plays a role in reinforcing the pro-development lobby in the area of IP policy. For example, it increases pressure on big multinationals to revise their pricing policies in function of the revenue situation in a give country. The treatment of AIDS with high-tech but low-price drugs is an interesting example."*

4.12 Neglect of the Informal Sector (H11)

The informal sector in developing countries is often accused of violating IPRs. Several comments confirm this hypothesis. An interviewee considers that, *"in the case of least developed countries and the poorest segments of population, one should adopt a flexible and pragmatic approach, based on progressive improvements in IPRs protection... In many countries informal sector activities are the only option of employment and income generation for the poorest among the poor."*

As another commentator puts it *"the infringement activities in informal sector rarely represent major danger to the legitimate IPRs owners, because the counterfeit products tend to be of poor quality."*

There are no specific proposals on how the informal sector's voice could influence the IP policy formulation and TASIP. It is suggested that the defence of the sector's interest should be undertaken by departments of social affairs and NGOs that deal with poverty reduction.

5. IMPROVING TASIP

5.1 Introduction

The research findings of this study highlight a number of areas in which TASIP could be improved. Table 5.1 identifies the gap between current TASIP activities position and what is needed.

5.2 The Vision

In numerous cases TASIP activities lack a convincing vision as to what should be done and accomplished with respect to the IP issues of particular developing countries. Many programmes do not have an appropriate needs analysis or strategic framework to enable

Table 5.1 *TASIP – What Exists and What is Needed?*

What exists	What is needed
Need assessment tends to be neglected by the provider or based on information given by national IP offices with a clear pro-IP agenda.	Need assessment prepared with participation of all stakeholders concerned, including other ministries, IP users, professional associations, consumers, etc.
The “one-size-fits-all” approach is taken for granted in most TASIP activities.	Issues relating to different attitudes towards IPRs, even if controversial, should be more openly considered by TASIP.
IP industries advocate more emphasis in TASIP on implementation of IP protection.	The influence of IP industries on TASIP should be countered by influence of other interest groups such as government agencies dealing with education, culture and social issues, NGOs and consumers.
Emphasis tends to be programmes that follow models used in developed country contexts (“follow our example” approach).	Greater emphasis on issues of main interest to developing country businesses and populations.
TASIP is subjected to limited public scrutiny and its decision-making lacks transparency.	A multi-stakeholder model of decision-making should be favoured and a more active role should be granted to various NGOs in evaluating TASIP activities.
WIPO and the WTO approach to promoting TASIP is increasingly criticised but little is done to change the situation.	More independent TASIP on WIPO- and WTO-related issues is needed. Some aspects of TASIP could be shifted to an independent, neutral provider.
Little concern for follow-up and programme sustainability	Greater emphasis on the sustainability of TASIP projects and programmes.
Substantial loss of funds and efforts resulting from over-bureaucratic management styles.	Improved efficiency through professional training, consulting and hands-on coaching by private sector specialists and experienced policy-makers. Increased role of training specialist and consulting managers in TASIP.
Formalistic programme evaluation, little feed-back and very slow improvement.	Reliable evaluation mechanisms. Quality improvement is built into the programme.

successful management by objectives. Moreover, many TASIP providers lack appropriate strategic audit and global evaluation processes in relation to their programmes.

Several vision proposals were suggested during the IP expert interviews conducted for this study concerning the funding of TASIP activities, abuses of IPRs undertaken by large companies in developing countries, and technology transfer options in which TASIP could be particularly instrumental. These are outlined below.

An internationally recognised IP academic suggests that *"it is necessary to come up with a new and sustainable funding method for TASIP...There should be an additional fee imposed on PCT applications and Madrid Protocol trademark applications (for example on international patents and trademarks), with revenues dedicated to improving enforcement and administration in developing economies. This way the beneficiaries of stronger protection (international registrants) would share in the cost of administration, which should be in their interest anyway. In fact, I would advocate that such special fees be imposed on applications at the US, Japanese and European patent and trademark offices (and in other developed countries) for those applicants who indicate an intention to seek international protection."*

Another proposal - perhaps more controversial, but nevertheless important - refers to *"expanding the scope of competition policy enforcement on behalf of authorities in developed countries, who would be charged with monitoring and publicising potential abuses of IPRs undertaken by international firms operating in developing countries. This would do much to allay the concerns of governments in poor countries about potential abuses."*

Finally, it was suggested that one could improve prospects for technology transfer to poor countries along the lines of the detailed proposals included in a recently published paper by Hoekman et. al (2004).

5.3 New Modalities

TASIP is a service but its management suffers from a lack of professionalism. The latter is particularly prevalent because of (i) the absence of quality improvement system (strategies and practices of recruitment, training, motivation, evaluation and feedback are often rudimentary); and (ii) poor needs assessment. TASIP also tends to be bureaucracy-driven with many stakeholders excluded from the consultation process and no platform for dissident voices to air their views.

Many TASIP donors and providers fail to let beneficiaries have sufficient input into consultant recruitment, choice of providers, area and mode of assistance and programme design. TASIP initiatives tend to be poorly integrated with the beneficiary country innovation policies, SME promotion strategies, public health projects, etc. because national IP offices usually have quasi-monopoly as local partners.

A developing country expert suggests that TASIP providers and donors should use new tools that are being developed such as the DFID-commissioned Diagnostic Tool for Capacity Building. In a similar vein, a US professor calls for impact studies (surveys of managers and public agencies) to be made a top priority.

Several observers point to the need for better co-ordination both at the donor-provider level and at the beneficiary country level. An international civil servant notes that with respect to co-ordination among providers some interesting proposals are currently being discussed at WIPO in the context of the WIPO development Agenda (for example, see the proposal by the Group of Friends of Development, WIPO document IIM/1/4 and the US WIPO document IIM/1/2 - both available on the WIPO website at <http://www.wipo.org>).

Another commentator suggests that the UNDP representations in developing countries should be asked to maintain a public website on technical assistance. Providers should be obliged by donors to place project documents on the website and sign a co-operation agreement with those engaged in similar activities.

5.4 Organizational Culture of Providers

Many characteristics of TASIP activities are rooted in the organizational culture of the institutions that act as promoters of specific IP agreements. In beneficiary countries TASIP activities often promote pro-IP policies and legislation.

An international consultant suggests that one of the donors should develop guidelines to guide the conduct of TASIP donors and providers (as per the OECD DAC guidelines on trade capacity building which deal explicitly with the issue of donor bias).

Bureaucracy is the cause of much inefficiency and ‘inside-the-box’ thinking inherent in many TASIP initiatives. Although the expertise of TASIP consultants tends to be sufficient, some specialised advisors to IP industries may experience conflicts of interest.

A long time observer of TASIP considers that more transparency through greater information sharing and public external impact evaluation among donors (commonplace in other fields and in line with OECD-DAC guidelines) would be helpful in relation to TASIP activities.

5.5 Improving Content

Too many TASIP projects focus on the win-lose aspect of IP arrangements which emphasises stricter IP policy and legislation rather than a pursuing win-win approach which promotes the optimal use and management of IP options by businesses in developing countries.

A TASIP consultant suggest that “more thinking should go into better integration and focus on innovation, creativity and technology transfer as the reason for TASIP activities as opposed to the current approach which rarely does this.”

Another expert supports the usefulness of “more information sharing and talking together amongst donors and recipients (such as the September 2004 DFID-sponsored “Reflection on IPR-TA Workshop”).

A leading IP academic suggests that *“there is scope for better integration and co-ordination and that the first task should be to convene a meeting of major provider agencies and NGOs, the essential purpose of which would be to convince WIPO that there are serious development questions to be addressed. While academics and advocates could be useful here, a better set of participants would be on-the-ground IPRs managers as well as managers working in companies dealing with pharmaceutical, agricultural and educational products. Both private business and public agencies should be represented.”*

There is also too little emphasis on hands-on training and coaching (do-how), which is clearly needed in many developing countries more so than teaching and pure training. The latter functions could be taken over by local universities and/or various professional training institutions.

A TASIP expert suggests that “TASIP recipient countries should become more proactive and form national working groups to assess their own needs and develop good quality national strategic plans for development of the IPR regime over the medium-term - for which modest consultancy support may be required. Donors could then provide funding for the implementation of a single set of prioritised strategic interventions, co-ordinated by national authorities and shareholders.”

Finally, the contents of TASIP programmes are often insufficiently focused on development-specific aspects such as traditional know-how and design, protection of local music, denomination of origin and brand management for emerging firms.

5.6 A Checklist for TASIP Providers

To assist the reformer’s thinking about how TASIP could be improved, this study has produced a checklist of useful questions (with accompanying guidance) for providers. These are presented below.

1. *Do you have a vision of TASIP activities?*

Put in place an appropriate strategy that should be developed based on context analysis and strength/weaknesses evaluation of TASIP providers. Strategy development is considerably improved if people outside the usual TASIP staff are also involved. Undertake a systematic needs assessment and ensure it is conducted within the broader context of the recipient country's innovation policy, SME development and social objectives. Introduce a regular strategic audit of the technical assistance programmes.

2. *Is the TASIP programme designed in a way that ensures neutrality and legitimacy?*

A multi-stakeholder model of decision-making should ensure that dissident views are not eliminated and there is no conflict of interest involving the organization concerned or its consultants. In order to encourage development-friendly approaches in TASIP activities, transparency and open participation of various interest groups should be key elements of the programme design. Web pages and internet discussion fora could also be used more extensively to support greater co-ordination between institutions. TASIP should also pay particular attention to the losers of the international IP regime such as users of IPRs, the informal sector and consumers in developing countries.

3. *Is it feasible to increase the beneficiary's freedom of choice?*

Reduction or stagnation of the available budget (a frequent occurrence concerning foreign aid budgets in developed countries today) could be partly compensated by offering the beneficiaries greater freedom of choice in how the money for TASIP activities is spent - especially in terms of expert recruitment, provider institutions and areas of technical assistance.

4. *Is your TASIP proposal sustainable and quality oriented?*

Evaluation, critical follow-up and feedback

mechanisms should be incorporated into TASIP programme design and implementation to promote quality improvement.

5. *Do you have a clear idea of what good governance means in the case of TASIP?*

Formulate a code of good conduct and a code of ethics in IP-related technical assistance services. Make sure that the codes are clear, brief and IP-specific. Long documents have limited impact because few people read them.

6. *How should you modify your recruitment criteria to gain a competitive edge?*

Change management requires new human resource policies. Search for TASIP management that is familiar with professional training, consulting and services management.

7. *How to encourage entrepreneurial spirit in TASIP?*

Something should be done to discourage the bureaucratic culture of many international organizations and government departments involved in TASIP. "New public management" might offer a useful inspiration (for example, see Osborne and Gaebler, 1992). Whenever feasible, TASIP should be freed from excessive bureaucratic restrictions by revising the standard operation procedures (modern companies revise such procedures every 2-3 years) and fostering competition among provider institutions and the greater involvement of non-governmental actors. What is often missing in TASIP is joined-up thinking among government, NGOs and companies: a strategic partnership approach to problem-solving. Good TASIP is unachievable without the help of business and NGOs, but how can their involvement be reconciled with a balanced approach and legitimacy? Companies can offer valuable inputs in the areas of expertise, past experience, expert comment and financial support. However, a balanced solution requires other players - development lobbies, consumer groups and trade unions, for example - to be involved as well. To take steps in the right direction one needs creativity and

an open mind. Increasing the role of academia in the TASIP process is one such step. In particular, departments of law and business schools should be more actively involved.

5.7 A Checklist for TASIP Beneficiaries

It is one of the main themes of this study that TASIP beneficiaries should be more pro-active in the design and implementation of programmes. Some guidelines on how this could be achieved are presented below.

- Be absolutely clear about expectations of the programme. Consult other major stakeholders in your country to ensure programme legitimacy. Decide among the partners concerned what questions the programme will be designed to answer and the criteria on which its success will be evaluated.
- Draw up a short list of alternative providers of the needed type of TASIP programme. Invite proposals from some three providers, analyse them and then schedule a consultation process for the TASIP providers to learn about their approaches, credentials and team profiles. The keep/drop decision should also take into consideration the beneficiary's overall perceived value of the services being offered. The trend in technical assistance towards larger choice of service provider and towards building relationships with beneficiaries continues to grow, and providing agencies are becoming increasingly interested in retaining beneficiaries over the long run.
- Do not blindly approve the team members that are suggested for the programme. Review CVs in detail and interview the main providers of the TASIP service (over phone or e-mail) to test their knowledge and experience. In particular, make sure that the administrative staff of the delivering agency do not have undue involvement in project implementation.
- Keep the focus on value and how it should be created. Specify how success and failure of the TASIP programme will be evaluated. This will encourage the service providers to define a yardstick against which they will be able to judge their performance.
- Manage the performance of your TASIP project. Build in several reviews and give the providers the opportunity to take remedial action mid-project if necessary.

6 CONCLUSION

TASIP has a number of distinctive characteristics. It tends to be more influenced by groups with vested interests than many other areas of technical assistance and biased in favour of IP protection. National IP offices in the beneficiary countries frequently have a quasi-monopoly on TASIP and other stakeholders - both within and outside government - are rarely involved in project design, needs assessment or programme implementation.

The emphasis on TASIP activities tends to be on legal and policy issues rather than towards business-relevant and hands-on training that might show how a pro-IP strategy could be viable for developing country businesses. It is evident that some TASIP programmes are not tailored to developing country contexts with the result that intended beneficiaries show little ownership of their processes and outcomes. Technical assistance related to international IP negotiations also suffers from a North-South divide in that it is difficult to practice reciprocity in international negotiations given the asymmetries of interests and power involved.

TASIP is generally considered to be a particularly useful form of technical assistance due to the perceived importance of the role of IPRs in fostering economic development in the contemporary information society. Its content

tends to be highly technical, both in legal and economic terms. Yet, this form of technical assistance is not free of ideological overtones: the major conflicts in thinking about IPRs are echoed in current debates over TASIP. While some commentators see TASIP as a purely technical form of assistance, others point to its inherent normative dimension which carries certain value judgements - for example, about whether a given level of IP protection or a particular technical aspect is development-friendly. The issue of what constitutes a development-friendly approach to IP and TASIP therefore remains highly controversial.

Some experts argue that the issue of optimal IPR protection for pro-development outcomes is a live one which should be reflected in TASIP thinking and activities. Other commentators take a more pragmatic approach on the grounds that developing countries have already entered into the international IP regime following the Uruguay Round of trade negotiations. The latter argue that the objective of TASIP should not be to question the rules but rather to make the best out of the present situation by working within the current international IP regime to the advantage of developing countries. It is how the debate between these two schools of thought plays out that will determine the shape and challenges of TASIP in the years to come.

ANNEX

Annex 1 A Note on Research Methodology

In-depth interviews and questionnaires administered over the internet proved to be a useful methods for testing our research design. Our initial model was based on the findings of a literature review that covered technical assistance, training and consulting in general terms.

Through in-depth interviews the study attempted to emphasise lateral thinking and insights rather than the mechanical sorting of ideas. To ensure objectivity, the procedures suggested by Chrzanowska (2002), Yin (1989) and Eisenhardt (1989) were followed and multiple investigators were involved. Interviewees we were selected from among a sample of 40 experts/TASIP participants/observers identified by the ICTSD and the author. They included managers, government officials and NGO leaders and were chosen to cover the major schools of thought about intellectual property issues and technical assistance as well as different roles in the TASIP process (donors, providers, beneficiaries, participants and observers from NGOs and academia). The respondents and interviewees were guaranteed confidentiality to encourage open and objective comment.

We have always tried to interview our experts with a progressively more and more defined focus. The initial formulation of the research question was considered as tentative and the question shifted considerably as our qualitative research progressed. The final version of the interview questionnaire covered the following points:

1. Do you consider that the existing technical assistance programmes in the area of intellectual property are sufficient in number and scope to satisfy the developing country governments, business community and civil society? In which areas, in your view, more programmes might be needed, if any?
2. What are the strong and the weak points of IP-related programmes with which you are most familiar? Please comment on the programmes' design and implementation, follow-up, sustainability and degree of the beneficiary's ownership. Are the programmes sufficiently "hands-on"? Is their quality satisfactory?
3. Do you consider that the IP-related assistance helps developing countries to adopt optimal IP policies?
4. What do you think about the criticism that many technical assistance programmes push for stricter IP protection with little regard for development concerns and priorities of low-income countries?
5. What type of the IP-related assistance is most needed to help the developing country companies to take full advantage of the current international IP regime?
6. Do you consider that there is a balanced offer of IP-related technical assistance by various international organizations (WIPO, WTO, UNCTAD, World Bank, etc), regional organizations, individual government agencies and NGOs ?
7. What should be done to ensure that IP-related technical assistance is neutral, i.e. freed of pressures by international IP lobbies?

The questionnaires administered over the internet contained the following questions:

1. TASIP deals with various aspects of intellectual property (IP) such as (i) preparation of legislation and (ii) impact studies, (iii) negotiation of international agreements, (iv) implementation of

IP commitments or (iv) improvement of know-how and do-how of managers or consultants related to IP business applications. What TASIP activities should be reinforced or reduced? What approaches would you suggest to do things better?

2. There are several international organizations (WIPO, WTO, World Bank, UNCTAD), donor country agencies or NGO s that provide TASIP. Are the various projects sufficiently co-ordinated? What could be done to create more synergy between the various programmes?
3. TASIP is often seen as one of the controversial areas of aid because developing countries - who are net importers of intellectual property (IP) - are less interested in the protection of IP rights than developed nations. What is the most appropriate way of coping with this issue? What could be done to reduce that controversy in the future TASIP activities?

We had at our disposal 22 interview transcripts and completed internet questionnaires as well as records of the oral interventions made by some 50 leading TASIP practitioners gathered at the ICTSD Dialogue on Technical Co-operation for Intellectual property Policy in Developing Countries (11-12 July, 2005). The data was then analysed to reveal broader patterns. The patterns were allowed to emerge from the data rather than by imposing a priori theory. The data enabled us to develop a systematic classification of major TASIP concerns, and an Ishikawa framework was used to gain insights into the problems raised and to evaluate the relative importance of the various concerns.

Annex 2 Illustrative List of Technical Assistance Services in Intellectual Property Activities¹

Level	Donor	Project	Description	Host/Beneficiary
WIPO - Government	WIPO	WIPO-ASEAN Sub-Regional Colloquium for Judges on the Enforcement of Intellectual Property Rights	Capacity building for IP law enforcement	Various ASEAN countries
Intergovernmental	Denmark	Danish Patent Office IPR Training Course	Training course given as part of WIPO's World Wide Academy	Jamaica, Malaysia, Georgia
Intergovernmental	JITAP	Module II: Strengthening Reference Centers and National Enquiry Points	Capacity-building for policy transparency, including TRIPS obligations.	Various African countries
Intergovernmental	APEC	IPEG Public Education and Awareness of IP	Program of education and awareness-raising on benefits of effective IP system	Indonesia, Thailand, Philippines
UN - Civil Society	WHO	Regional Meeting of the TRIPS Network, Thailand	Strengthen research network for monitoring the impact of TRIPS on access to medicines	Asian health researchers
UN - Government	WHO	Technical briefing to ANDEAN Ministers of Health	Provide information on impact of IP provisions in trade agreements on public health	ANDEAN governments
Treaty Secretariat - Government	UPOV	National Seminar on the Protection of New Varieties of Plants under the UPOV Convention, Lao PDR	Capacity-building for understanding of UPOV Convention	Government officials and researchers
IGO - Private Sector	ITC	Publication of 'Marketing Crafts and Visual Arts: The Role of Intellectual Property: A Practical Guide'	Provide information on using IP to market crafts and arts	Entrepreneurs in developing countries
Government - private sector	EC	European Patent Office Workshop for domestic SMEs	Training in IP management for export sales	Philippines private sector
Private sector consultancy	MindVault	IP Audits and Training Services	Business Consultancy offering IP Audits and Training in Malaysia	Malaysian private sector
Private sector advocacy	GBLAAC	Global Congress on Combating Counterfeiting	sponsor of World Customs Organisation-organised Congress	World Customs Organisation

¹ Source: WTO/OECD Doha Development Agenda Trade Capacity Building Database, <http://tcdb.wto.org>
Prepared by Andrew Stevenson, International Centre for Trade and Sustainable Development, Geneva.

BIBLIOGRAPHY

- Balasubramaniam, K., (2003) Access to Medicines and Public Policy Safeguards under TRIPs, in Bellmann, C. Dutfield, G. and Meléndez - Ortiz, R. (eds.) *Trading in Knowledge Development: Perspective on TRIPs, Trade and Sustainability*, London, Earthscan (for ICTSD), pp. 45- 56.
- Barton, John H., (2004) *Nutrition and Technology Transfer Policies*, Geneva, ICTSD and UNCTAD, Issue Paper No. 6, p. 29.
- Bellmann, C., G. Dutfield, R. Meléndez-Ortiz, [eds.] (2003) *Trading in Knowledge: Development Perspective on TRIPs, Trade and Sustainability*, London, Earthscan, (for ICTSD), p. 358.
- Boyle, James (2004) *A Manifesto on WIPO and the Future of Intellectual Property*, *Duke Law and Technology Review*, 9 September, 2004.
- Boyle, James (2003) *The Second Enclosure Movement and the Construction of the Public Domain*, 66 *Law & Contemporary Problems*. 33 (2003), available at: [http://www.law.duke.edu/shell/cite.pl?66+Law+&+Contemp.+Probs.+33+\(WinterSpring+2003\)](http://www.law.duke.edu/shell/cite.pl?66+Law+&+Contemp.+Probs.+33+(WinterSpring+2003)).
- Charzanowska, Joanna (2002) *Interviewing Groups and Individuals in Qualitative Market Research*, Thousand Oaks, Sage Publications.
- CIPR (2002) *UK Commission on Intellectual Property Rights CIPR final report: integrating intellectual property rights and development policy*.
- Dutfield, Graham (2003) *Intellectual Property, Trade and Sustainable Development: Mounting Controversy*, in Bellmann, Ch. Dutfield, G. and Meléndez - Ortiz, R. (eds.) *Trading in Knowledge: Development Perspective on TRIPs, Trade and Sustainability*, London, Earthscan (for ICTSD), pp. 1-20.
- Eisenhardt, Kathleen (1989) *Building Theories from Case Study Research*, *Academy of Management Review*, 14 (4), pp. 532 -50.
- Finger, Michael and Schuler, Philip (2004)(eds.) *Promoting Intellectual Property in Developing Countries*, Oxford, oxford University Press, p. 260.
- Hoekman, B. Kostecki, M (2001) *The Political Economy of the World Trading System: WTO and Beyond*, Second Edition, Oxford, Oxford University Press.
- Hoekman, Bernard Mascus, Keith E. and Saggi, Kamal (2004) *Transfer of Technology to Developing Countries: Unilateral and Multilateral Policy Options*, World Bank Working Papers (WPS# 3332), June 2004.
- Jourdain, Rosine (2003) *Intellectual Property Rights and Public Health in the Revised Bangui Agreement*, in Bellmann, Ch. Dutfield, G. and Meléndez - Ortiz, R. (eds.) *Trading in Knowledge: Development Perspective on TRIPs, Trade and Sustainability*, London, Earthscan (for ICTSD), pp. 143-148.
- Kim, Linsu (2003) *Technological Transfer & Intellectual Property Rights*, Geneva, ICTSD and UNCTAD, Issue Paper 2.
- Kostecki, Michel (2005) *Business Advocacy in the Global Trading System: How Business Organizations May Shape Trade Policy?*, New York and Geneva, United Nations, ITC, 2005.
- Kostecki, Michel (2001) *Technical Assistance Services in Trade Policy*, International Centre for Trade and Sustainable Development (ICTSD), Geneva.
- Kostecki, Michel (1991) *Sharing Intellectual property Between the Rich and the Poor*, *The European Intellectual Property Review*, Vol. 13 No. 8, Oxford, Sweet and Maxwell, pp. 1-25.
- Kuanpoth; Jakkrit (2003) *The Political Economy of the TRIPs Agreement: Lessons from Asian Countries*, in Bellmann, Ch. Dutfield, G. and Meléndez-Ortiz, R. (eds.) *Trading in Knowledge: Development Perspective on TRIPs, Trade and Sustainability*, London, Earthscan (for ICTSD), pp. 45-56.
- Leesti, Marti and Pengelly, Tom (2002) *Capacity Building for Management of Intellectual Property Rights*, *Cooperative South Journal*, United Nations Development Programme, pp. 40-65.
- May, Christopher (2003) *Learning to love patents: Capacity building, intellectual property, and the (re)production of governance norms in the 'developing world'*, work in progress, University of Manchester.

- Musungu, Sisule and Dutfield, Graham (2003) *Multilateral Agreements and a TRIPS-plus World: The World Intellectual Property Organization (WIPO)*, available at [http://www.geneva.quno.info/pdf/WIPO\(A4\)final0304.pdf](http://www.geneva.quno.info/pdf/WIPO(A4)final0304.pdf).
- Musungu, Sisule (2003) *Designing Development-Oriented Intellectual Property Technical Assistance Programmes*, UNCTAD-ICTSD.
- Okediji, Ruth (2004) *Development in the Information Age*, Geneva, ICTSD and UNCTAD, Issue Paper No. 9, p. 58.
- Osborne, David and Gaebler, Ted (1992) *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*, New York, A Plume Book.
- Pengelly, T. (2004) *Reflecting on IPR Technical Assistance for Developing Countries and Transition Economies*, SAANA Consulting, Burnham Beeches Workshop.
- Pengelly, Tom (2005) *Technical Assistance for the Formulation and Implementation of Intellectual Property Policy in Developing Countries and Transition Economies*. ICTSD, Issue Paper No 11.
- Pengelly, Tom (2003) *Technical Assistance on IPRS for Developing Countries: Some Strategic Policy Issues and Recommendations for Future Priorities for Donors and Developing Countries*.
- Pengelly, T. and Leesti, M. (2002) *Institutional Issues for Developing Countries in Intellectual Property Policymaking, Administration & Enforcement (supporting documents)*, Study Paper 9, UK Commission on Intellectual Property Rights (CIPR).
- Rangnekar, Dwijen (2003) *Geographical Indications*, Geneva, ICTSD and UNCTAD, Issue Paper No. 4, p. 46.
- Reichman, J. (2003) *Non-voluntary Licensing of Patented Inventions*, Geneva, ICTSD and UNCTAD, Issue Paper No. 5.
- Reichman, J. and K. Maskus (2004) *The Globalization of Private Knowledge Goods and the Privatization of Global Public Goods*, *Journal of International Economic Law*, Vol. 7, pp. 275-278.
- Shenkar, O. (2005) *The Chinese Century*, Wharton Publishing.
- Stiglitz, J. (2002) *Globalization and Its Discontents*, New York, W.W. Norton.
- Story, Alan (2004) *Intellectual Property and Computer Software*, Geneva, ICTSD and UNCTAD, Issue Paper No. 10.
- UK Government (2003) *The UK Government Response to The Report of the Commission on Intellectual Property Rights, Integrating Intellectual Property Rights and Development Policy*.
- UNCTAD-ICTSD (2005) *Resource Book on TRIPs and Development*, Cambridge, Cambridge University Press.
- Vivas-Eugui, D. and C. Bellman (2004) *Towards Development Oriented Technical Assistance in Intellectual Property Policy-making (draft)*, ICTSD, Geneva.
- Yin, Robert (1989) *Case Study Research*, New Bury Park: Sage Publications.
- Zaveri, Narendra (2003) *The TRIPS Agreement and Generic production of HIV/AIDS Drugs*, in C. Bellmann, G. Dutfield, G. and R. Meléndez-Ortiz [eds.] *Trading in Knowledge: Development Perspective on TRIPS, Trade and Sustainability*, London, Earthscan (for ICTSD), pp. 149-155.