

ICTSD Programme on IPRs and Sustainable Development



# Technical Assistance for the Formulation and Implementation of Intellectual Property Policy in Developing Countries and Transition Economies



By Tom Pengelly  
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International Centre for Trade  
and Sustainable Development

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## LIST OF ACRONYMS AND ABBREVIATIONS

APEC	Asia Pacific Economic Co-operation
ARIPO	African Regional Industrial Property Organisation
AusAID	Australian Agency for International Development
CAFTA	Central America Free Trade Agreement
CIPR	Commission on Intellectual Property Rights
DAC	Development Assistance Committee
DFID	Department for International Development
EC	European Commission
EPC	European Patent Convention
EPO	European Patent Office
EU	European Union
FTAA	Free Trade Area of the Americas
ICTSD	International Centre for Trade & Sustainable Development
IDRC	International Development Research Centre
IP	Intellectual Property
IPR	Intellectual Property Rights
LDC	Least Developed Country
NFAP	Nationally Focused Action Plan
OAPI	Organisation Africaine de la Propriété Intellectuelle
OECD	Organisation for Economic Co-operation & Development
QUONO	Quakers United Nations Office
TA	Technical Assistance
TRIPS	Trade-related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade & Development
UNDP	United Nations Development Programme
UPOV	International Union for the Protection of New Varieties of Plants
USID	United States Agency for International Development
USPTO	United States Patent and Trademark Office
USTR	United States Trade Representative
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

## FOREWORD

This paper on technical assistance is a contribution of the ICTSD Programme on Intellectual Property Rights and Sustainable Development to the ongoing debate on the impact and relevance of intellectual property to development.

As developing countries continue to implement intellectual property-related treaties, such as the TRIPS Agreement, and participate in new negotiations at the multilateral, regional and bilateral levels, appropriate and effective technical assistance and capacity-building will be crucial if these countries are to use intellectual property (IP) tools effectively in the pursuit of their human and economic sustainable development goals. With a view to ensuring that the limited resources allocated to IP technical assistance effectively respond to the expectations of all members of society in developing countries, this study highlights the strengths and weaknesses of current programmes and explores ways to improve them from a sustainable development perspective. Surprisingly enough, very limited independent analytical work has been undertaken in this area and the literature is scarce. The overall objective of this paper is to contribute to a constructive, informed and evidence-based debate on the policies and procedures used by some of the main donor institutions and providers in the design, financing, delivery and evaluation of IP-related technical assistance to developing countries and transition economies.

Intellectual property rights (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, and 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 all areas of human development.

Empirical evidence on the role of IP protection in promoting innovation and growth in general remains limited and inconclusive. Conflicting views also persist on the impacts of IPRs on development. Some point out that, in a modern economy, the minimum standards laid down in TRIPS will bring benefits to developing countries by creating incentives for knowledge generation and diffusion, technology transfer and private investment flows. Others stress that intellectual property and more particularly some of its elements, such as the patent 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 students; legitimising the piracy of traditional knowledge; and undermining the self-reliance of resource-poor farmers.

It is urgent, therefore, to examine how developing countries could use IP tools to advance their development strategies. What are the key IPR issues of concern to them? What specific difficulties do 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 – and particularly the least-developed among them – have the capacity to formulate their negotiating positions and become well-informed negotiating partners? These are essential questions that policy-makers need to address in order to design IPR laws and policies that best meet the needs of their people and to negotiate future agreements effectively.

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 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 IP and sustainable development and particularly on the design, delivery and evaluation of IP-related technical assistance to developing countries and transition economies.

A handwritten signature in black ink, appearing to read 'R. Ortiz', with a horizontal line underneath.

Ricardo Meléndez-Ortiz  
Executive Director, ICTSD

## EXECUTIVE SUMMARY

There have been some considerable achievements in recent years in terms of modernising the intellectual property (IP) infrastructure and developing the associated human resources in the developing world. Perhaps the regions where the impact of IP technical assistance has been the greatest are Latin America and Eastern Europe. But there has also been significant development of institutional capacities in other developing countries like China, Morocco, Vietnam, Trinidad, and India, as well as in regional IP organisations such as the Organisation Africaine de la Propriété Intellectuelle (OAPI) and the African Regional Industrial Property Organisation (ARIPO).

At the same time, many low-income countries, and particularly least-developed countries (LDCs), still face considerable challenges in participating in international IP rule-making and developing their IP infrastructure and national IP legal and policy frameworks in ways compatible with their development needs. And this is made all the more important given the on-going developments in international IP standard-setting at the multilateral, regional and bilateral levels. These challenges present a number of strategic issues for the financing, design and delivery of IP technical co-operation and capacity-building that need be addressed by all donor organisations and providers.

### Needs of Developing Countries and Types of Assistance on Offer

Developing countries' requirements for IP technical assistance and capacity-building are many and various, relating *inter alia* to IP policy-making and legal reforms; participation in the negotiation of international IP agreements and multilateral standard-setting; re-organisation and automation of IPR administration; strengthening of capacity for regulation and enforcement of IPRs; and promotion of national innovation and creativity.

Currently, a number of different types of IP technical assistance are provided to developing countries and transition economies by donor organisations, such as general and specialised training; assistance with preparing draft IP laws; support for modernising IPR administration offices; and international patent co-operation and information services. As most of IP technical assistance providers do not have offices and specialist staff in the field, short-term advisory missions and consultants are normally deployed to assess needs and plan, deliver and monitor programme activities.

### Donors and Providers

The principal international institutions involved in IP technical assistance are WIPO, the EPO, the WTO, UNCTAD and the WHO. UPOV operates within the WIPO system and provides targeted technical assistance in the area of plant variety protection systems. UNDP and the World Bank have devoted mainly financial resources, either directly to developing countries or via contributions to WIPO trust funds.

Bilateral governmental donors vary considerably in the scale and geographical coverage of their IP technical assistance programmes. Amongst the largest bilateral donor organisations are USAID and the EC, which are able to leverage substantial financial resources to support

multi-year capacity-building programmes in selected countries. Key policy objectives for bilateral donors are supporting greater compliance by developing countries and transition economies with multilateral, regional and bilateral IP treaties and strengthening enforcement of IPRs.

Although less well recognised than bilateral governmental agencies and international institutions, ‘non-traditional providers’, such as civil society institutions and non-governmental organisations, are now playing a significant role in the delivery of IP technical assistance to developing countries – often filling important ‘gaps’ in the spectrum of assistance available. In many cases, these organisations are project-funded by bilateral governments and ‘cluster’ their technical assistance programmes around specific, high-profile issues, such as access to medicines by developing countries and the provision of the TRIPS Agreement.

## Strategic Issues for the Future

### *Tailoring IP Technical Assistance to Development Needs*

The development of IP systems in developing countries cannot be considered in isolation of the general development context and needs of the country concerned. Developing countries should take the lead in preparing assessments of their needs, based on a broad and medium-term perspective, and a wider range of stakeholders should be involved – not just national IP offices but stakeholders from other government agencies, the business sector and civil society as well. Delivery of IP technical assistance to developing countries should be explicitly tailored around these needs assessments and should usually be through multi-year, broad-based programmes and not just one-off events. Financial sustainability of national IP institutions should be a key objective from the outset.

### *Scaling up IP Assistance to Low-income Countries and LDCs*

Low-income developing countries and LDCs have special needs in developing the IP regime and wider innovation and technology infrastructure they require. Many LDCs are struggling to implement their obligations under the TRIPS Agreement by January 2006. Yet the bulk of donor resources often goes to middle-income developing countries, and little is allocated to national programmes in LDCs and low-income countries. Donors should therefore examine the case for a significant expansion in commitments for IP technical assistance and capacity-building programmes. For their part, developing countries could insist on binding undertakings by developed countries to provide greater assistance as part of new international trade negotiations and agreements covering IP issues at the multilateral, regional and bilateral levels.

### *Promoting Pro-competitive Enforcement and Regulation of IPRs*

Developed countries have introduced stricter IP protection in the context of strong competition regimes and other regulatory tools designed to ensure that IPRs do not harm the public interest. Seen from the institutional perspective, however, such effective regulation of IPRs is likely to present significant challenges for policy-makers, administrators and enforcement agencies in developing countries. To balance the increasing focus on strengthening enforcement, higher priority should be given in future IP technical assistance

programmes to building capacity for the regulation of IPRs, particularly in matters of special public interest and controlling anti-competitive business practices.

#### *Ensuring Balanced Advice for Legislative Reform*

In recent years, a number of different sources have expressed concerns regarding the proper role of donors in providing advice and technical assistance to developing countries for reform of IP legislation. It is beyond the scope of this paper to investigate such concerns in detail. But even if they turn out to be less justified than some fear, they demonstrate the potential sensitivity and importance of this area of domestic regulatory policy-making. As many low-income developing countries and LDCs will continue to depend on technical assistance in this area for some time to come, particularly as they proceed with implementation of the TRIPS Agreement, IP technical assistance providers need to be constantly mindful of the need to respond positively to these concerns.

#### *Improving Co-ordination of IP Technical Assistance*

At times, technical assistance activities have not been well co-ordinated by the multiple donors involved or by the national authorities in the recipient countries. The results can include duplication of efforts, conflicting advice and ‘crowding’ by several donors in one particular country, which is perceived as being of particular importance at that time at the expense of other needy countries. More positively, there is much *ad hoc* co-operation between donors and some good instances of more formalised collaboration (i.e. the WIPO-WTO co-operation agreement and the WIPO-IP Australia co-operation agreement). Donors should build on these successes.

#### *Supporting Knowledge-sharing and Better Ways of Working*

Donors, providers and developing countries need to find new ways of working together in programming and delivering IP technical assistance programmes. Much better use could be made by IP technical assistance donors of existing institutional mechanisms at the national, regional and international levels for sharing information and improving delivery of development co-operation assistance generally – such as the UN Development Assistance Frameworks, the World Bank Consultative Group meetings and project- or programme-specific websites for individual developing countries or sub-regions.

#### *Improving Impact Monitoring and Evaluation*

There seems to be a complete lack of literature concerning external evaluation of IP technical assistance programmes, drawing out key lessons learned and elaborating best practice guidance for donors and developing countries to follow. This is in marked contrast to many other sectors of development co-operation such as education, health, transport, private sector development, energy or building capacity for trade. It is important for ensuring effectiveness and value for money that donors undertake evaluation exercises – individually and collectively – as a routine activity within the programme management cycle. IP technical assistance donors could strengthen their present systems for monitoring and evaluation of IP technical assistance programmes.



## 1. INTRODUCTION

As developing countries continue to implement intellectual property-related treaties, such as the WTO's Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), and participate in new negotiations at the bilateral, regional and multilateral levels, appropriate and effective technical assistance and capacity-building will be crucial if these countries are to use intellectual property (IP) tools effectively in the pursuit of their human and economic sustainable development goals.

Ensuring that the limited resources allocated to IP-related technical assistance effectively respond to the expectations of all members of society in developing countries requires a constructive multi-stakeholder debate highlighting the strengths and weaknesses of current programmes and exploring ways to improve them from a sustainable development perspective. Limited independent analytical work has been undertaken in this area and the literature is scarce.

The overall objective of this paper is to contribute to a constructive, informed and evidence-based debate on the policies and procedures used by some of the main donor institutions and providers in the design, financing, delivery and evaluation of IP-related technical assistance to developing countries and transition economies.

Data for this study was collected through a variety of methods. First, a literature review and website survey was conducted. Questionnaires were then sent to each

of the donor organisations that are the subject of the five case studies in this paper. The extent of information received through the questionnaire process (e.g. on financing of IP-related technical assistance programmes) varied considerably. Finally, several interviews were conducted with developing country representatives at the meeting of the World Intellectual Property Organisation (WIPO) Assemblies in Geneva in September 2003.

This paper is comprised of four chapters:

**Chapter 2** identifies the common needs of developing countries and transition economies for IP-related technical assistance and capacity-building.

The main sources of IP-related technical assistance programmes and the types of services and activities provided are presented and analysed in **Chapter 3**.

**Chapter 4** considers how IP-related technical assistance is guided by donor policy objectives and is designed, implemented, financed and monitored in five different donor organisations via case studies on WIPO, the European Patent Office (EPO), the European Commission (EC), the United States and IP Australia.

Finally, **Chapter 5** presents some strategic issues for future IP-related technical assistance programmes with developing countries and transition economies.

## 2. NEED FOR IP TECHNICAL ASSISTANCE IN DEVELOPING COUNTRIES

Developing countries have many and varied requirements for IP technical assistance and capacity-building relating, *inter alia*, to IP policy-making and legal reforms; participation in the negotiation of international IP agreements and multilateral standard-setting; re-organisation and automation of the administration of intellectual property rights (IPRs);

strengthening of capacity for regulation and enforcement of IPRs; and promotion of national innovation and creativity (Leesti & Pengelly, 2002).

A brief discussion of the technical assistance and capacity-building needs of developing countries in each of these areas is provided in the sections below.

### 2.1 Policy-making, Legislation Development & Dialogue

Policy-makers in most developing countries have a formidable agenda in the area of intellectual property reform, often driven by developments in IP and trade negotiations at the bilateral, regional and multilateral levels. The agenda is also affected in important ways by changes in the business models for major industries and technological progress (for example, the new challenges for copyright protection of creative works in the digital environment).

Developing country policy-makers also face choices concerning adopting other IP reforms, such as protection of traditional knowledge and regulation of access to national biological resources. Complementary reforms in related areas of the domestic regulatory environment may also be required, including science and technology policies and anti-trust legislation. These reforms present considerable challenges to IP policy co-ordination across government, as well as outside of government, through involving stakeholders from the private sector and civil society.

In many developing countries, inter-ministerial committees have been established to improve the co-ordination of IP policy advice, with key participants being the ministries of industry, commerce, science, environment and education or culture. However, as such committees often have been formed only relatively recently, they may not include broad representation from the private sector or civil society and are often not fully effective – particularly with respect to the integration of intellectual property issues into other areas of economic, industry and technology policy.

To address these challenges effectively, developing countries require sophisticated technical and analytical capabilities; a co-ordinated approach to policy-making across government; and a process that facilitates participation by different stakeholder groups in the private sector, academia and civil society. In many cases, technical assistance from different donor organisations is a central part of building these capabilities over time.

### 2.2 Participation in International Standard-setting

International rule-making and standard-setting on a broad range of intellectual property subjects takes place predominantly in WIPO and the WTO. Given the lack of financial resources and constraints on technical capacity with respect to understanding the issues and analysing national interests, some developing countries, including many of the poorest countries, are currently little more than spectators in these negotiations.

Even in some larger developing countries, national IP institutions may lack personnel with the broad range of technical, analytical and diplomacy skills needed to

effectively represent their national interests in international fora. For example, delegations may be comprised of experts with knowledge of IPR administration as compared to a broader understanding of using IP as a tool of regulatory and economic policy. Moreover, the least-developed countries (LDCs) generally have poor or no representation by IP specialists from capitals at WIPO and the WTO (Drahos, 2001).

Improving the capacity of developing countries to participate more effectively in international IP

standard-setting and negotiations – particularly at WIPO and the WTO – through provision of training, upgraded information technology (IT) infrastructure, manuals and handbooks for negotiators, and resources for policy

analysis and stakeholder dialogue in capitals has become an important aspect of IP technical assistance programmes for a number of donor organisations.

## 2.3 IPR Administration, Enforcement & Regulation

### *Administration of IPRs*

Administration of IPRs covers a number of different dimensions of institutional capacity, such as organisational and management arrangements; staffing and human resource issues; and operating procedures and automation models. Administration of patents, trademarks, copyrights and other forms of IPRs may also require different types of institutional capacity and present different challenges for developing countries, depending upon the national IPR regime in place.

By far the most challenging aspect is the substantive examination of patent applications. Some patent applications can contain thousands of pages of technical data in a wide array of technological fields. Substantive examination involves both professional/technical competence and access to sophisticated international patent information databases. Such institutional capacity requirements are beyond the reach of most IPR administration agencies in the world – even in the more industrialised countries – and many developing countries instead opt for a patent registration regime and rely on international co-operation.

In LDCs and smaller, low-income developing countries, the availability of managerial, technical (scientific and engineering) and legal expertise tends to be in short supply due to the structural weaknesses and funding constraints within national education systems. In the more advanced or larger developing countries, there is generally a greater availability of legal expertise in intellectual property, particularly in the trademark field.

Automated information systems are a key requirement for the efficient administration of IPRs. Yet, a significant number of developing countries still have manual, paper-based systems. Lack of automation not only hinders efficient processing of IPR applications, it also complicates the collection of important statistical, financial and management information and limits the use of the IP system as a means of promoting innovation (for example, through access to patent information databases).

### *Enforcement*

Many developing countries are facing demands from their trading partners to upgrade IP enforcement and compliance with the enforcement provisions of the TRIPS Agreement. Particularly for LDCs, this presents considerable institutional challenges for the policing and judicial institutions, civil and criminal justice systems and customs authorities. For example, judicial systems in many LDCs currently do not function well in any area of the law, much less for IP.

The lack of adequately qualified, local legal professionals in many developing countries also acts as an important constraint on the ability of rights-holders to bring cases of IPR infringement through the civil courts and to obtain remedies through the administrative system.

*Regulation of IPRs in the public interest & to promote competition*

In many developing countries, particularly LDCs, mechanisms aimed at controlling restrictive business practices resulting from the misuse of IPRs are weak or non-existent. Similarly, developing countries are generally unprepared or unable to neutralise the impact that price increases resulting from the establishment or enforcement of IPRs may have on access to protected products, particularly at the low income level (Correa, 1999).

Finally, the skills and judgements required in administration of compulsory licenses, such as deciding questions of ‘reasonable commercial terms’ and ‘reasonable time period’ are quite sophisticated and are likely to go beyond the existing capacity of the relevant national institutions in many developing countries, particularly in LDCs. Appropriate technical assistance and training is required.

## 2.4 Promoting National Innovation & Creativity

Most developing countries have few resources to devote to innovation and generate low levels of (industrial) intellectual property that could be protected by the formal system of patents and trademarks. For example, almost 90 percent of the patents that were granted in 2000 in the United States originated in the US, Europe and Japan (Leesti & Pengelly, 2002).

To address this situation, developing countries require a wider institutional framework in order to support the development of their national innovation and creativity

capabilities. This can be achieved through strengthening research and education institutions and by maximising access to technologies and knowledge assets protected by IPRs through subsidised patent information services and support to upgrade technology transfer capabilities in universities.

The evidence suggests that these imperatives are not always well reflected in developing countries’ present institutional infrastructure in or in most technical assistance programmes supported by donor organisations.

### 3. MAIN TYPES OF IP TECHNICAL ASSISTANCE ACTIVITIES & SERVICES

#### 3.1 Introduction

The types of IP-related technical assistance that are currently provided to developing countries and transition economies by donor organisations fall into the following broad categories (Lehman, 2000b):

- General and specialised training for human resource development;
- Advice on IP policy/legal reforms and assistance in preparing draft laws;
- Support for modernising IPR administration (including automation) and collective management systems; and
- International patent co-operation and information services (including search and examination) to facilitate IPR administration and promote local innovation and creativity.

As most of the implementing agencies of IP-related technical assistance (i.e. WIPO, the EPO and developed country patent offices) do not have offices and specialist IP professional staff in the field, short-term advisory missions and consultants are usually deployed in developing countries and transition economies to assess needs and plan, deliver and monitor programme activities.

#### 3.2 Training & Human Resource Development

Training and human resource development, of various kinds, has been a major focus in IP-related technical assistance programmes undertaken by most donor organisations and providers around the world – although there is a difference in the content and approach, particularly in the case of some non-traditional IP technical assistance donors and providers. Most training programmes typically have emphasised the development of professional capacities in IPR administration (e.g. training of national IP office staff and local IP attorneys in patent and trademark examination) and enforcement (e.g. training of judges and officials from customs and police agencies).

Training programmes usually take the form of short-term training courses, seminars and workshops (e.g. rarely more than one to two weeks, and sometimes only one or two days) on either generalised or specific subjects (e.g. copyrights in the digital era or patent examination in new fields of technology, such as biotechnology). These courses may be run in individual developing countries, at regional locations or in the

home country of the IP technical assistance donor – for example, the training event can be a study tour hosted by the national IP offices of Japan, the United States, Australia or the United Kingdom. WIPO, in particular, has funded a limited number of longer-term scholarships for developing country IP officials to attend post-graduate courses in IP subjects, typically at universities in Europe and North America.

It is also important to note that both WIPO and the EPO have established dedicated ‘academies’, as separate units within the respective organisations, which deliver services related to training and human resource development to developing countries and transition economies. WIPO’s Worldwide Academy has its own premises outside Geneva and recently has become more active in offering distance-learning programmes and in strengthening institutional linkages with universities in developing countries, which are seeking to establish or improve training programmes offered in the area of IP (e.g. through training of trainers and transfer of materials for curriculum development).

### 3.3 Advice on Legal & Policy Reform

As developing countries continue to implement IP-related treaties, such as the TRIPS Agreement, and prepare for new negotiations at the bilateral, regional and multilateral levels, appropriate and effective technical assistance in the area of legal and policy reform has become a major focus for many donor organisations. This has commonly taken the form of:

- Funding and publishing issue-based research and guidance (e.g. on protection of geographical indications);
- Sponsoring workshops and seminars on technical topics and negotiating skills (either at the national, regional or inter-regional levels);
- Producing handbooks for IP policy-makers and negotiators (e.g. on the TRIPS Agreement), such as that produced by UNCTAD/ICSTD and available at [www.iprsonline.org](http://www.iprsonline.org); and
- Developing country specific policy analysis and legal advice (e.g. on how to incorporate

the provisions of the TRIPS Agreement into national laws).

In the vast majority of developing countries, there is considerable dependence on externally-funded technical assistance in the form of draft laws, legal advice and expert commentary on new draft legislation provided by donors, principally WIPO (which has around 14 full-time professional staff working on legal assistance in its Development Co-operation Division). Since 1996, implementation of the TRIPS Agreement into domestic laws and regulations has been a major driver for IP technical assistance for most donors, including WIPO, the United States Agency for International Development (USAID) and the European Commission.

Technical assistance in this area can also include translation of IP treaties, laws and regulations. For example, between 1999 and 2001, WIPO provided assistance to translate IP-related documents in over 150 countries from, or into, Arabic, English, French, German, Portuguese and Spanish, as required (WIPO, 2001a).

### 3.4 Institutional Development & Automation

Within larger IP technical assistance programmes (i.e. those that can leverage greater financial resources), mainly undertaken by WIPO, the EPO, the EC and USAID, a key area of activity has been the development of national IP institutional infrastructure. Assistance has been offered for institutional development, organisational reform, introduction of modern management systems and the automation of IP administration.

Recipients have included national and regional IP institutions involved in patent and copyright administration, as well as agencies involved in IPR enforcement. In particular, the African Regional Industrial Property Organisation (ARIPO) and the Organisation Africaine de la Propriété Intellectuelle (OAPI) have been major recipients of technical and financial assistance for institutional development and automation from WIPO and the EPO over a number of years.

A key driver in the last five years has been the fact that, for many national IP institutions in developing countries,

self-financing has become an urgent issue as government subsidies have been phased out. Therefore, more technical assistance has been provided to national IP institutions in many countries in the areas of investment and operating cost planning; identification of possible revenue streams from IP administration services; and the establishment of modern financial management planning systems appropriate to financially autonomous agencies.

Technical and financial assistance for the automation of IPR administration in developing countries and regional IP organisations have also become a highly significant area for those donor organisations that can leverage greater resources (e.g. WIPO, the EPO, USAID and the EC). A prime example is the WIPO Net programme, which provides on-line services, such as secure electronic mail, secure exchange of intellectual property data, hosting of national IPR agency websites and Internet connectivity to 154 intellectual property offices around the world for an estimated cost of over 97 million Swiss francs between 2000 and 2005 (WIPO, 2001b).

### 3.5 Patent Information Co-operation

Given the exponential growth in both the volume and complexity of industrial property right applications worldwide, regional and international co-operation in IPR administration is often seen by developing countries as essential to ensure the high validity of rights, to reduce costs and to increase efficiency in national IPR administration. For patents, in particular, most developing countries rely – to a greater or lesser extent – on the work of the EPO and the patent offices of the United States and Japan, which together undertake the substantive examination of around 95 percent of applications worldwide (the EPO has over 4,000 professional patent examiners specialising in different technological fields).

Under the WIPO-administered Patent Co-operation Treaty (PCT) system, technical search and examination of patent applications from developing country IP offices are performed by a small number of designated

international search and examination authorities (the EPO and the national patent offices of the United States, Japan, Australia, Austria, Spain, Sweden, the Republic of Korea, China and the Russian Federation). A second option is to delegate or contract-out patent examination to another national or international patent office. For example, the EPO offers an extension system for patents for a number of smaller countries in Eastern Europe.

As well as these formalised co-operation systems, developing countries also can seek assistance from WIPO's Patent Information Services (WPIS) for search and examination of individual patent applications. WPIS provides a conduit for channelling search requests from a wide range of users in developing countries to the IP offices of those countries that have agreed to assist in providing searches.

## 4. DONORS, PROGRAMMING POLICIES & FINANCING

### 4.1 Overview

This chapter reviews the policies, financing and programming modalities of IP technical assistance donor organisations and providers. Case studies are presented for five donor organisations, namely (1) WIPO; (2) the EPO; (3) the EC; (4) the United States; and (5) IP Australia. As set out in Table 1, IP technical assistance donors can be divided into three principal categories:

- **International institutions** (e.g. multilateral agencies and inter-governmental and regional organisations, which may have either specific or non-specific mandates in the area of IP technical assistance);
- **Bilateral donor agencies** (e.g. national governments and the respective agencies dealing with development co-operation and IP administration and co-operation); and
- **‘Non-traditional donors and providers’** (e.g. civil society institutions and non-governmental organisations, the majority of which have become active in the field of IP technical assistance comparatively recently and which, in many cases, are dependent on funding from bilateral donor agencies and international institutions).

*Table 1: Principal categories of IP technical assistance donors & providers*

International institutions	Bilateral donor agencies	Non-traditional donors & providers
<ul style="list-style-type: none"> <li>• WIPO/UPOV</li> <li>• WTO</li> <li>• UNCTAD</li> <li>• UNDP/UNIDO</li> <li>• World Bank</li> <li>• FAO</li> <li>• WHO</li> <li>• Commonwealth Secretariat</li> <li>• Asian Development Bank</li> <li>• Organisation of American States</li> <li>• European Patent Office</li> </ul>	<ul style="list-style-type: none"> <li>• United States</li> <li>• Japan</li> <li>• Australia</li> <li>• Canada</li> <li>• EU member states</li> <li>• Switzerland</li> <li>• Norway</li> <li>• New Zealand</li> <li>• European Commission</li> </ul>	<ul style="list-style-type: none"> <li>• ICTSD</li> <li>• South Centre</li> <li>• Quaker United Nations Office</li> <li>• IDRC</li> <li>• OXFAM</li> <li>• Medicines Sans Frontiers</li> </ul>

Table 2 presents an analysis of the three principal categories of donor organisations by the types of technical assistance services and activities they provided or support.

*Table 2: Main types of IP technical assistance services, by donor organisation*

Donors	Main types of IP technical assistance services					
	Training & human resource development	Advice on IP legislation & policy reform	Organisation development & automation	Promotion of domestic innovation and creativity	Patent information co-operation	Research & dialogue on IP issues
<b>International institutions &amp; regional organisations</b>						
WIPO/UPOV	✓	✓	✓	✓	✓	✓
WTO	✓	✓				
WHO	✓	✓				✓
UNCTAD	✓	✓				✓
World Bank	✓	✓	✓	✓		✓
European Patent Office	✓	✓	✓	✓	✓	✓
<b>Bilateral governmental donor agencies</b>						
United States	✓	✓	✓	✓	✓	
European Commission	✓	✓	✓	✓	✓	
Japan	✓	✓	✓	✓	✓	
Australia	✓	✓	✓	✓	✓	
<b>Non-traditional donors and providers</b>						
ICTSD		✓				✓
South Centre		✓				✓
Quaker UN Office						✓
IDRC		✓				✓
Medicines Sans Frontiers		✓				✓
OXFAM		✓				✓

Providing an accurate overview of the scope and financing for IP technical assistance globally is complex as information is difficult to obtain (particularly for bilateral donor agencies) and many donor organisations are involved.

A further difficulty for analysis is that much IP technical assistance tends to be through a large number of discrete small-scale activities (e.g. training courses and workshops).

The best proxy for summary data available for a partial overview of support for IP technical assistance programmes is that provided by the *WTO/OECD Trade Capacity-building Database*.<sup>1</sup> This database is incomplete as mostly only bilateral donor agencies have provided information on their programmes and commitments – and even that information may be incomplete. Major IP technical assistance donors, such as WIPO and the EPO are not included. However, some data is available for 2001 and 2002 that illustrates the

type of IP technical assistance activity, funding amount and geographical location.

According to information in the *WTO/OECD Trade Capacity-building Database*, in 2001, donor commitments on IP technical assistance amounted to a total of US\$13.1 million, with 64 activities reported. The total expenditure by donors on IP technical

assistance fell to US\$9.3 million in 2002, although the number of activities reported increased to 196. For more information and a breakdown of expenditures by region, see Annex 2. While these figures underestimate the total expenditure by all donor organisations on IP technical assistance to developing countries and transition economies, they provide a useful rough figure for commitments by bilateral donor agencies.

### *International institutions & regional organisations*

The principal regional and intergovernmental international organisations involved in the provision of IP technical assistance to developing countries and transition economies are WIPO, the EPO, the WTO, the United Nations Conference on Trade and Development (UNCTAD) and the World Health Organisation (WHO).

**The International Union for the Protection of New Varieties of Plants (UPOV)** operates within the WIPO system and provides targeted technical assistance that includes assistance in legislative drafting, as well as training seminars and short courses in the area of plant variety protection systems.

**The United Nations Development Programme (UNDP)** and the World Bank, in contrast, have devoted mainly financial resources, either directly to developing countries or via contributions to WIPO trust funds. WIPO and the EPO are not discussed in detail in this overview section as they are the subject of detailed case studies later in this chapter.

The Secretariat of the **WTO** provides a limited amount of technical assistance, mainly to explain the rights and obligations under the TRIPS Agreement to developing country Members and observers and to provide information on the progress of ongoing negotiations in the WTO TRIPS Council on IP-related issues. Under the WTO-WIPO Co-operation Agreement, however, much of the WTO's role in the explanation of the TRIPS Agreement is delegated to WIPO. The WTO Secretariat participates in many WIPO-led training events and provides *ad hoc* advice to WTO Members and observers regarding specific technical questions about the TRIPS Agreement.

**UNCTAD** advises developing countries on the implementation of the TRIPS Agreement and undertakes broader research and training programmes on intellectual

property and development issues. UNCTAD, in collaboration with the International Centre for Trade and Sustainable Development (ICTSD), is currently implementing a project to provide developing countries with policy guidance on the implementation of the TRIPS Agreement and on the review of the TRIPS Agreement (particularly through the production of a detailed handbook on the TRIPS Agreement aimed at policy-makers and negotiators from developing countries). The project is financed by the UK Department for International Development (DFID).

The **World Bank** financed some substantial IP-related capacity-building programmes in the 1990s. In Brazil, US\$4 million was earmarked for IP-related capacity-building components within a World Bank loan of US\$160 million to the Ministry of Science and Technology. In Indonesia, the cost of the IPR component of the World Bank-financed Infrastructure Development Project was US\$14.7 million. In Mexico, the World Bank provided US\$32.1 million for a programme to improve IPR administration, automation and enforcement.<sup>2</sup>

Interestingly, in the countries that have received World Bank-funded assistance in this area (e.g. Brazil, Indonesia and Mexico), upgrading of the national IP systems has been approached as one component of broader programmes of policy reform and capacity-building aimed at stimulating research and development spending, as well as improving industrial productivity and competitiveness. Unfortunately, only a small number of such programmes have been undertaken and detailed evaluations are not available. Potentially, however, such programmes provide a different approach from those supported by most other IP technical assistance donors and may enable better integration of IP reforms and related capacity-building within the broader national development strategies of developing countries.

The **World Health Organisation (WHO)** has a focussed programme of technical assistance activities for developing countries linked to the topics related to implementation of the TRIPS Agreement and access to medicines.<sup>3</sup> The assistance includes awareness-raising, advice and training for developing country policy-makers in the design of IP legislation, public health policies and regulatory frameworks so as to utilise effectively the safeguards in the TRIPS Agreement designed to allow developing countries to protect public health objectives, whilst implementing higher standards

of patent protection for pharmaceutical products. The technical assistance programme also supports the *WHO Network for monitoring the impact of globalisation and TRIPS on access to medicines* (TRIPS Network). WHO technical assistance activities have covered developing countries in Asia, Latin America, Africa, and the Caribbean and Pacific regions. WHO technical assistance is often delivered in collaboration with other international institutions, such as the WTO, UNAIDS, UNDP and WIPO.

### *Bilateral governmental donor agencies*

Developed countries provide technical and financial assistance to developing countries either bilaterally (mainly through IP institutions, such as patent offices or Copyright Collective Management organisations,<sup>4</sup> and through national development co-operation agencies) or multilaterally (by contributing to United Nations agencies and other international organisations, as well as to the EC in the case of the 25 member states of the European Union).

erage (e.g. Australia IP technical assistance programmes are concentrated on South-East Asia and the Pacific Islands). USAID and the EC are amongst the largest bilateral donor organisations. These donor organisations are able to leverage substantial financial resources to support multi-year capacity-building programmes in selected developing countries and transition economies, as discussed in the case studies on the United States and the European Commission later in this chapter.

As WTO Members, developed countries have an obligation to provide technical assistance to developing countries under Article 67 of the TRIPS Agreement. As the annual submissions to the WTO TRIPS Council since 1995 reveal, most developed countries are providers of IP-related technical assistance to developing countries (e.g. the European Union and its member states, the United States, Japan, Australia, Canada, New Zealand, Norway and Switzerland).

More generally, however, despite variations in scale and geography, the main types of technical assistance services and activities supported by bilateral donor agencies are generic and cover essentially all of the activities described in Chapter 3 – although not all of these activities necessarily are provided for each partner country. A key policy objective across bilateral governmental donors of IP technical assistance is to support greater compliance by developing countries and transition economies with bilateral, regional and multilateral IP treaties, as well as trade agreements, that include provisions related to the protection of IPRs.

IP technical assistance programmes from bilateral donor agencies vary considerably in scale and geographical cov-

### *Non-traditional donors and providers*

In recent years, an increasing number of civil society institutions and non-governmental organisations have become active in undertaking policy research and dialogue, as well as providing technical assistance related to policy/legal reform to developing countries in the area of intellectual property. The majority of these organisations have become active in the field of IP technical assistance comparatively recently and, in many cases, are dependent on funding from bilateral donor agencies, charitable endowments (such as the

Rockefeller Foundation) and international institutions for their IP technical assistance programmes.

For example, the **South Centre**, the **International Centre for Trade and Sustainable Development (ICTSD)**, the **Quaker United Nations Office (QUNO)**, the **International Development Research Centre (IDRC)**, **Oxfam** and **Médicins sans Frontières** have active policy research and dialogue programmes related to IP and linkages to sustainable development issues.

Although less well recognised than governmental agencies and international institutions, non-traditional providers play a significant role in the delivery of IP technical assistance to developing countries – often filling important gaps in the spectrum of technical assistance available. As Table 2 shows, the main types of technical assistance activities supported by this category of donor organisations and providers are usually limited to (a) advice on policy and legal reform (although limited in terms of the intensity of support provided to individual countries, with the preferred approach typically being manuals and handbooks) and (b) policy research and dialogue (e.g. through workshops and seminars, either in Geneva or, to a lesser extent, at the regional level in developing countries). However, as illustrated in Table 2, these are precisely the kinds of activities that are often under-funded by international institutions and bilateral donor agencies.

Whilst outside the scope of this paper, examining the policies, programming modalities, monitoring and

evaluation systems and financing of non-traditional providers of IP technical assistance is an area which deserves further study. One interesting research question would be to examine the informal or semi-formal nature of technical assistance programmes supported by non-traditional providers (in terms of the relationships with recipients in developing countries) and how this may enable a different kind of policy dialogue and technical assistance experience.

Another research question to explore would be the current practice of many non-traditional donors and providers to focus or ‘cluster’ their technical assistance programmes around very specific issues (e.g. access to medicines by developing countries and the provision of the TRIPS Agreement regarding compulsory licensing of patents for pharmaceuticals in public health emergencies).

## 4.2 Case Study 1: WIPO

### *Policy objectives for IP technical assistance programmes*

As the UN agency responsible for IP, WIPO’s overall objective is the promotion of effective protection and use of IPRs throughout the world through co-operation with, and among, its member states and other stakeholders within the framework of the UN Millennium Development Goals. According to WIPO documentation, this objective is to be achieved by creating an enabling environment/ infrastructure conducive to an enhanced understanding of the contribution of IP to economic, social and cultural development, and, in particular, by assisting developing countries in building their capacity for greater access to, and use of, the IP system.

The policy objectives for WIPO’s technical assistance programmes are set out in the *Medium Term Plan for WIPO Program Activities – Vision and Strategic Direction of WIPO* (WIPO, 2003a, July 2003). The guiding principle is that every country should be encouraged

to develop an IP culture appropriate to its needs, including a national IP strategy, the most suitable national infrastructure, and the fostering of a nationwide perception of IP as a powerful tool for economic, social and cultural development. The IP system, including its legal, institutional and human resources aspects, should meet national policy objectives and should be effective, affordable and easily accessible to all stakeholders.

According to WIPO’s policy framework for technical assistance, national IP systems in developing countries and transition economies should maintain a balance between the interests of the holders of IPRs and those of the public at large. While being mindful of national policy objectives, national IP systems should also be consistent with international IP treaties and IP-related provisions in other international agreements.

### *Activities supported under IP technical assistance programmes*

WIPO technical and financial support is offered, in the first instance, to member state national IP authorities, such as patent and trademark offices, as well as

regional organisations involved in IP administration (e.g. OAPI and ARIPO). Assistance also is given to national and regional organisations and associations representing IP

lawyers, trade and industry groups, universities and other cultural bodies (e.g. writers and performers' associations) active in the IP field. More specifically, WIPO's technical assistance and capacity-building programmes involve:

- Providing consistent and customised legislative guidance, technical expertise and limited financial assistance for building up and organising national and regional IP institutions (e.g. provision of IT hardware and software);
- Training general and/or specialised personnel working with these authorities/ institutions in technical and managerial aspects of IPR administration;
- Providing technical support primarily in the form of advice on information and docu-

mentation and the provision of hardware, software and library stock;

- Promoting public awareness of IP and an IP culture to encourage creators, innovators and the public to obtain, use and license IPRs and assets; and
- Promoting international patent co-operation and the operation and development of global IP protection systems (such as the PCT and the Madrid system).

Based on documentation provided by WIPO (WIPO, 2001a), Table 3 provides more detail on the scope of WIPO activities from 1996 to 2001 within the four main areas of its technical assistance and capacity-building programmes related to implementation of the TRIPS Agreement in developing countries.

*Table 3: WIPO technical assistance activities by main programme area, 1996–2001*

Area of IP technical assistance	Activities during 1996-2001
<b>Legislative advice</b>	119 developing countries and regional organisations were assisted in the preparation of 214 draft IP laws between 1996 and 2000. In the same period, WIPO also prepared draft provisions to amend and modernise existing laws and made comments and suggestions on 235 draft laws received from 134 developing countries and regional organisations in developing countries. Additional assistance in the form of further comments or clarifications was provided in 170 cases to some 130 countries and regional organisations.
<b>Human resource development &amp; training</b>	Between 1996 and 2001, WIPO's human resource development and training programme included 122 regional meetings, 251 sub-regional and national meetings and 124 inter-regional meetings and seminars, involving more than 32,000 participants. In addition, some 217 study tours and attachments were arranged and on-the-job training was carried out in 67 developing countries.
<b>Institutional development &amp; automation</b>	To take forward its technical co-operation programmes with developing countries to build up the infrastructure of national and regional IP institutions, between 1996 and 2001, WIPO sent advisory missions to 102 developing countries and sponsored visits of over 360 officials from developing countries to IP offices in industrialised countries to study ongoing modernisation programmes. Regarding automation, 95 countries received IT equipment from WIPO and 40 developing countries were assisted by WIPO to develop software for automation of IP administration.
<b>Enforcement</b>	Improving enforcement of IPRs in developing countries was incorporated into WIPO technical co-operation programmes in 1996. From 1996-2001, WIPO organised 3 inter-regional, 10 regional and 60 national meetings/ workshops focused on the enforcement provisions of the TRIPS Agreement.

Source: Documentation provided by WIPO (WIPO, 2001a).

### *Financing, programme management and delivery modalities*

#### **Programming modalities**

WIPO's technical assistance programmes are led by the Co-operation for Development Division within WIPO's International Bureau. Within the Co-operation for Development Division, there are Regional Bureaux managing programmes with Africa, Asia, Latin America and the Caribbean, and the Arab region.<sup>5</sup> The Co-operation for Development Division also encompasses the WIPO Worldwide Academy, the LDC unit and departments dealing with IP law and international co-operation systems (e.g. PCT and Madrid).<sup>6</sup>

Plans and resource requirements for IP technical assistance programmes are prepared by the International Bureau and set out in detail in the WIPO Programme and Budget documentation for each biennium period. These are subject to discussion and approval by member states at the WIPO annual assemblies in Geneva. In addition, a Permanent Committee on Co-operation for Development related to Intellectual Property, comprised of member states, meets annually and serves as the main forum for identifying and reviewing ongoing priorities.

In each of its main areas of technical assistance (legislative advice; human resource development and training; institutional development and automation; and enforcement), WIPO develops specific priority-setting guidelines for use in programming assistance to individual countries or regions based on a number of operational principles, such as sustainability and cost-effectiveness. Programme priorities are established according to WIPO's policy objectives and the needs identified by member states, as well as taking account of WIPO's capacity in delivering such programme activities.

According to WIPO, each country or regional technical assistance programme is designed to ensure sufficient flexibility to respond to the evolving needs of member states (WIPO, 2003a). Programmes are individually tailored, wherever possible, in consultation with member states, so as to promote sustainability of the results. To the extent possible, WIPO encourages co-operation with other institutions (such as the EPO or the patent offices of industrialised countries) in order to achieve the greatest cost effectiveness.

Two recent important trends stand out in terms of the programming of WIPO technical assistance. First,

according to WIPO, development co-operation activities have become more comprehensive and needs-oriented by extensive application of the Nationally Focused Action Plans (NFAPs), which cover an agreed set of technical assistance activities to be supported by WIPO over a two year period.<sup>7</sup>

Second, enforcement is likely to take increasing importance as a focus area within WIPO technical co-operation programmes. This will be driven by the fact that more developing countries are completing the necessary legal reforms required to implement the TRIPS Agreement and other international IP treaties and bilateral and regional agreements. A greater focus on enforcement is also strongly supported by major IPR holders and interest groups (such as the Business Software Alliance and the International Intellectual Property Alliance).

#### **Financing for IP technical assistance programmes**

Amongst the IP technical assistance donors reviewed in this study, WIPO appears to have the greatest financial resources available to support programmes with developing countries and transition economies. Approximately 85 percent of WIPO's financial resources are generated by income from the user fees it charges for its international IP system services, such as the PCT. Member states' subscriptions and trust funds also contribute financial resources to a small extent.

According to WIPO's bi-annual budget, between 1996 and 2003, budgeted expenditures on development co-operation amounted to 274 million Swiss francs.<sup>8</sup> However, it is not clear from the budget statements whether these figures indicate only WIPO's regular budget expenditures, or also include contributions to trust funds. For the 2002-2003 biennium, however, WIPO's expenditure on development co-operation was clearly budgeted at approximately 100 million Swiss francs, with around 20 percent in trust fund contributions from bilateral and multilateral donor agencies (Japan alone pledged about 5 million Swiss francs).

Table 4 provides a breakdown of WIPO financing for IP technical assistance programmes for each biennium between 1996 and 2003. It shows that WIPO's overall resource envelope for supporting IP technical assistance programmes has more than doubled in size from 45 million Swiss francs in the 1996-1997 biennium to 100 million Swiss francs in the 2002-2003 biennium.

Table 4: WIPO financing for IP technical assistance programmes, 1996–2003

1996-1997	1998-1999	2000-2001	2002-2003	Total
SFr 45,000,000	SFr 58,000,000	SFr 71,000,000	SFr 100,000,000	SFr 274,000,000

Source: WIPO programme and budget documents. Leesti & Pengelly, 2002.

A significant proportion of these expenditures (around 40 percent for 2002-2003) consists of staff-related expenses rather than programme costs, though WIPO staff is directly engaged in delivering and managing some technical co-operation activities. WIPO has around 70 full-time professional staff working in its Co-operation for Development and Co-operation with Certain Countries in Europe and Asia Divisions (including the WIPO Worldwide Academy). These budget figures for development co-operation do not include expenditure on WIPO Net, however, which is expected to cost a total of 97 million Swiss francs between 2000 and 2005.

Analysing the geographical distribution of WIPO's IP technical assistance expenditures amongst developing countries is not possible with the data WIPO provides publicly. However, a recent study has found that WIPO's trust fund resources (usually country- or region-specific) are currently concentrated in Latin America and the Asia-Pacific region (Leesti & Pengelly, 2002). The same study also sets out that, in the 2000-2001 biennium, WIPO's development co-operation budget allocation for African countries was around 7 million Swiss francs, with budget allocations for NFAPs with African nations typically in the range of 80,000-120,000 Swiss francs over two years.<sup>9</sup>

#### Monitoring and evaluation

WIPO has evolved a well-developed system of results-based budgeting for its IP technical assistance programmes, as well as a set of detailed performance indicators. These are set out in detail in the *Program and Budget* documentation WIPO prepares for each biennium period for discussion and approval by member states at the WIPO annual assemblies in Geneva. The results-based system for development co-operation includes objectives, expected results and performance indicators for the main sub-programmes covering different thematic areas (e.g. automation and modernisation of IP institutions). Reporting on the results actually achieved in a given year is published by

WIPO in a Programme Performance Report to the WIPO annual assemblies in the following year.

A more impact-oriented set of performance indicators has been included in WIPO's draft *Program and Budget* for the 2004-2005 biennium. These performance indicators are to be used for all programme activities to evaluate the success of WIPO's IP technical assistance programmes. They concern the impact of the activity on:

- IP policy of member states;
- Integration of IP policy into the cultural-socio-economic policies of member states;
- Enhancement and development, in quantity and quality, of IPRs and assets obtained by nationals in member states;
- Number of accessions or ratifications; geographical coverage; and effective use of treaties administered by WIPO;
- Number and range of users of WIPO's global protection systems;
- Status and functions of IP-related institutions (effective IP offices and copyright collective management societies, competent courts and customs offices for IP enforcement, etc); and
- Number of people who benefited under WIPO programmes, including government officials, innovators, researchers and IP practitioners.

As far as the research undertaken for this study was able to determine, WIPO is the only IP technical assistance donor organisation to have developed such an elaborate set of performance indicators and evaluation criteria specifically for its technical assistance programmes. That is not to say, however, that WIPO's results-based management and reporting system could not be improved or enhanced, through improved target-setting and more impact-oriented performance measures.

Regarding more in-depth evaluations, WIPO has recently established an Office of Internal Oversight, which has undertaken some small pilot evaluation exercises of its IP technical assistance activities. For example, in 2002, WIPO undertook a *Participants Evaluation Survey* of some of its technical assistance programmes (WIPO, 2003b). The results reported in the survey were that some of the meetings and seminars organised by the Co-operation for Development Division were rated as highly effective by participants.

A different, but more extensive, internal performance monitoring report on its IP technical assistance programmes related to implementation of the TRIPS

Agreement in developing countries between 1996 and 2001 was published by WIPO in 2001 (WIPO, 2001a). The scope of this report provides aggregated, quantitative data relating to the type and number of technical assistance activities (for example, training seminars and overseas missions) delivered by WIPO (see the summary in Table 3).

The report does not attempt to measure or assess the impact of these activities in terms of increasing the human and institutional capacity of the participating organisations in developing countries and does not provide information on activities delivered in particular countries.

### 4.3 Case Study 2: the United States

#### *Policy objectives for IP technical assistance programmes*

According to a recent publication by USAID, the main policy objective of the IP technical assistance offered by US governmental agencies – such as USAID, the US Patent and Trademark Office (USPTO) and the Department of Commerce, drawing on the resources and expertise of the private sector and international organisations – is to help developing countries implement the TRIPS Agreement (USAID, 2003).

The United States also provides training and technical assistance to strengthen the compliance of developing

countries with regional and bilateral trade agreements signed with the US and encourages the adoption of laws and practices that strengthen the protection of intellectual property. In US policy terms, such protection encourages innovation, promotes foreign direct investment (FDI) and private sector growth, and creates a framework in which developing countries can participate in the economic activities of the developed world.

#### *Activities supported under IP technical assistance programmes*

Depending on the partner country's needs, IP technical assistance programmes supported by US government agencies can focus on one or more of the following activities:

- Legislative advice in the form of draft legislation and commentaries on bills concerning the general provisions and fundamental principles of the TRIPS Agreement and other bilateral and international IP agreements;
- Advice on how to organise the administrative apparatus, e.g. patent offices and collective management societies;

- Training for staff in the administration of IPR protection and management methods;
- Specialised training for judges, customs officials and police officers who enforce rights; and
- Activities to promote awareness in the private sector and civil society about IPRs.

A significant feature of US-funded IP technical assistance programmes is the interaction of a number of different US agencies and business associations in the design and delivery of activities. For example, several US agencies have collaborated to fund a series of semi-

nars on IP enforcement in the Philippines. Table 5 provides information on examples of US-funded IP technical assistance programmes in developing countries and transition economies.

*Table 5: Examples of US IP technical assistance projects, 2002*

Project	Country or Region	Funding and source	Description
<b>More Open Trade and Investment Policies</b>	Central America	\$1,307,972 USAID	Aims at increasing public support for open trade and investment policies; enhancing Central American compliance with the second FTAA business facilitation measures and with WTO recommendations on customs valuation; strengthening national IPR institutions and raising public awareness of IPR issues through effective dissemination of information.
<b>Trade Capacity-building Project</b>	Algeria	\$129,450 USAID	Trained judges in the civil administrative and criminal courts, as well as rights-holders, in IP cases. Training was also provided to Ministry of Justice officials and the Algerian Judicial Training Centre. An <i>IP Judges Bench Reference Manual</i> was drafted. Consultations were held with officials, rights-holders and universities on technology transfer and licensing issues. Consultations were also held with Algerian judges on the TRIPS Agreement. A workshop on 'Protecting & Enforcing IPRs for Authors, Artists and Composers' was held.
<b>Intellectual Property Crimes Training</b>	The Philippines	\$60,000 US Department of State	A training programme in the Philippines to build effective IPR crime enforcement.
<b>Technical Assistance for Intellectual Property Rights Enforcement</b>	Costa Rica	\$40,952 US Department of State	Customs training programme for Costa Rican law enforcement and trade communities to encourage compliance and policy formulation for IPR enforcement.
<b>Intellectual Property Rights</b>	South Africa	\$187,500 USAID	Works with the South African Department of Trade & Industry to review policy and implementation of IPRs in South Africa. Also works with the Southern African Research and Innovation Managers Association to improve research and innovation in South African universities, technikons and think-tanks, as well as facilitating greater commercialisation of research through the IPR system.
<b>Ukraine WTO</b>	Ukraine	\$50,000 USAID	Assistance to enable the Ukraine to adopt an IPR Omnibus Law to bring IP laws and regulations into compliance with the TRIPS Agreement.
<b>Technical Assistance on Communication, Arbitration &amp; IPRs</b>	Dominican Republic	\$15,000 USAID	Provides support for commercial arbitration and IPR management to bring local laws into compliance with the TRIPS Agreement.

Source: USAID Trade Capacity-building Database. Goans, 2003.

### *Financing, programme management and delivery modalities*

#### **Programming modalities**

IP technical assistance programmes are implemented by US government agencies, private contractors and US-based business associations (e.g. the Business Software

Alliance). The bulk of assistance is channelled primarily through in-country USAID offices and central departments, although there are also a number of regional and global programmes.

However, other US government agencies, such as the Office of the US Trade Representative (USTR), USPTO, the Commerce Department and the State Department, also have input into programme design through well-developed interagency consultation mechanisms in Washington.

Separate US-funded technical assistance programmes on IPRs exist only in a few countries. Other IP assistance projects are integrated into larger programmes and are managed as part of USAID general development assistance and trade capacity-building programmes.

#### Financing for IP technical assistance programmes

No consolidated data on the financing of IP technical assistance programmes was provided by the relevant United States government agencies in response to the survey undertaken in preparation for this study. However, it is possible to give a partial picture of the scale and geographical distribution of US financing for IP

technical assistance programmes by looking at data from the USAID on-line *Trade Capacity-building Database*.<sup>10</sup>

This database provides some of the most comprehensive data on IP technical assistance programmes of any of the IP donor organisations studied in researching this paper. USAID deserves due recognition for its investment in this information resource, which is a powerful tool for promoting knowledge sharing and donor co-ordination in the area of IP technical assistance programmes.

As Table 6 shows, for the period 1999 to 2003, USAID expenditures on IP technical assistance programmes implemented in developing countries and transition economies totalled US\$20.59 million. Of particular interest is the fact that USAID's annual expenditures increased nearly tenfold from US\$770,632 in 1999 to US\$7,027,824 in 2003.

*Table 6: USAID expenditures on TA related to the TRIPS Agreement, 1999–2003*

1999	2000	2001	2002	2003	Total
\$770,632	\$3,020,831	\$3,558,952	\$6,215,359	\$7,027,824	\$20,593,598

Source: USAID Trade Capacity-building Database.

Annex 3 provides the available data on the USAID *Trade Capacity-building Database* concerning the agency's IP country- and/or region-specific technical assistance programmes, including annual expenditures for each project for the period 1999–2003. This data reveals significant information about the geographical distribution of USAID IP technical assistance programmes.

For example, over US\$3.27 million (almost 16 percent) was committed by USAID to programmes in Eastern and Central Europe, including transition economies, such as Bulgaria, Bosnia, Croatia and Moldova over the five year period between 1999 and 2003. On the other hand, only US\$1.51 million (approximately seven percent) was committed by USAID to programmes in Sub-Saharan Africa in the same period. Of this amount, US\$1.32 million (almost 90 percent) went to national IP technical

assistance programmes in Nigeria and South Africa alone.

Annex 3 also reveals significant findings on the variation in the scale of USAID IP technical assistance programmes with developing countries and transition economies. For example, USAID spent a total of US\$6.32 million on one three-year 'mega-programme' in Egypt (this project represents over 30 percent of USAID total expenditure on IP technical assistance between 1999 and 2003). Multi-year programmes were also supported by USAID in Sri Lanka, Kyrgyzstan and the Philippines. At the other end of the spectrum, one-off projects of less than US\$20,000 were funded in countries such as Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Hungary, Nicaragua and Zambia.

### Monitoring and evaluation

As far as it was possible to determine during research for this study, none of the US agencies involved has undertaken or published any major external impact evaluations of any of its IP technical assistance programmes with developing countries and transition economies. Consultations with USAID revealed that there were no specific arrangements in place for the monitoring or evaluation of IP technical assistance programmes – other than the general systems used for US development co-operation programmes.

Research for this study also revealed that USAID has no plans to undertake any horizontal or project-specific external impact evaluations of its IP technical assistance programmes with developing countries and transition economies. Nor does USAID have any plans to re-organise its structure for programming and managing IP technical assistance programmes, based on lessons learned from experience so far.

In 2003, however, USAID did commission a US consultant to produce a project planning guide entitled *Intellectual Property and Developing Countries* (Goans, 2003). This has been distributed to USAID staff and is available on the website of the USAID-financed Trade Capacity-building project.<sup>11</sup>

The paper explores how technical assistance programmes can be successful in increasing IPR protection in developing countries through linking IP with local needs and interests, building effective communication with government officials and local industry, strengthening local institutions and planning for sustainability. The paper also provides an overview of resources for USAID missions and developing country governments seeking to improve IP systems and participate in international systems of protection.

## 4.4 Case Study 3: the European Commission

### *Policy objectives for IP technical assistance programmes*

One of the core objectives of the European Union's (EU) relations with developing countries is to strengthen mutual trade and investment flows. With this in mind, the EC, the executive arm of the EU, has launched a series of economic co-operation programmes with developing countries and transition economies, which cover, *inter alia*, intellectual property protection and related IP technical assistance.

Within these economic co-operation initiatives, the EU sees the development of a modern IPR protection system as of central importance for the establishment of favourable conditions for trade and investment between the EU and its partners in the long term.

In a 2003 document entitled *Guidelines for European Commission Trade Related Assistance*, the EC outlines the following specific policy objectives for its IP technical assistance with developing countries:

- To help with the adoption of laws and regulations that are compliant with the TRIPS Agreement (unless specific bilateral provisions provide that this country should reach a level

of IPR protection similar to that of the EU) and supportive of national economic development, social and health objectives;

- To provide expertise on how administrative offices and collecting societies can be organised or modernised;
- To provide training for administrative and judicial staff; and
- To increase awareness amongst potential rights-holders.

A key cross-cutting policy goal for the EC development programmes in all sectors – not just IP technical assistance – is to offer developing countries and transition economies access to European expertise. In most development co-operation projects, therefore, the EC usually includes a requirement that at least some of the professional experts participating in the activities must be nationals of the European Union, and have expertise in European institutions.

*Activities supported under IP technical assistance programmes*

According to the EC's Guidelines, depending on the partner country's needs, IP technical assistance programmes can focus on one or more of the following activities:

- Legislative advice in the form of commentaries on bills concerning the general provisions and fundamental principles of the TRIPS Agreement, as well as all other areas of IPRs, control of anti-competitive practices in contractual licenses or ways of enforcing such rights;
- Advice and clarification concerning the scope of the TRIPS Agreement, notably with regard to access to medicines, traditional knowledge, genetic resources and geographical indications. According to the Guidelines, the EU is ready to help partner countries to implement the Doha Declaration on TRIPS and Public Health and to provide advice on how to reconcile the need to encourage innovation with the need to protect consumers and competition;
- Advice on how to organise administrative structures, e.g. patent offices and collective management societies;
- Training for staff in the administration of intellectual property protection and management methods;
- Specialised training for judges, and customs and police officers who enforce rights; and
- Activities to promote awareness in the private sector and civil society about IPRs.

To illustrate the type of activities supported by the EC, Box 1 provides information on the EC-ASEAN Intellectual Property Rights Co-operation Project (ECAP). Further information can be obtained from the EU's substantial annual submissions to the WTO TRIPS Council on its IP technical assistance programmes. These submissions include information on programmes supported by the EC and its member states.

*Box 1: The EC-ASEAN Intellectual Property Rights Co-operation Project (ECAP)*

From September 1993 to June 1997, ECAP Phase I assisted ASEAN countries in promoting their systems for the protection of IPRs. ECAP I was implemented with the six original ASEAN member states, namely Brunei, Indonesia, Malaysia, Thailand, the Philippines and Singapore. After joining ASEAN in June 1995, Vietnam participated in all regional ECAP I activities and implemented a specific national EC-financed IP co-operation project by December 2000.

With regard to **regional co-operation** in the field of industrial property rights between ASEAN member states, ECAP I organised regional seminars and high-level meetings, which gave ASEAN officials an opportunity to exchange information, adopt new approaches and take advantage of the European experience in identifying suitable models. Various study visits and training courses were organised in order to promote the harmonisation of procedures, to learn from 'best-practice' work methods and to initiate common standards regarding IP administration, as well as search and examination.

At the **national level**, ECAP I provided assistance in the field of 'streamlined' or 'modified' patent examination procedures in four of the national ASEAN offices. Positive results were also achieved in the fields of automation (installation of Common Software at the Malaysian IP Office), awareness raising and enforcement of IPRs.

Further to the successful implementation of ECAP I, the EC launched a second phase in July 2000. ECAP II runs for five years, has a budget of €5 million and is implemented by the EPO. While ECAP I focused on industrial property rights, ECAP II expands the scope of activities to all fields of IPRs: patents and industrial designs, trade marks, copyrights, geographical indications, layout-designs of integrated circuits and trade secrets. It also covers enforcement-related activities. It comprises a regional component covering Brunei, Indonesia, the Philippines, Singapore, Thailand and Vietnam, and national components covering the same countries except Vietnam.

### *Financing, programme management and delivery modalities*

#### **Programming modalities**

Development assistance programmes of the EC are implemented by DG Europe Aid Co-operation Office (Europe Aid), primarily through in-country EC delegations. However, the Directorates-General in charge of trade ('DG Trade'), development issues (DG Development) and external relations (DG Relex) also have input into country strategy development and programme design through inter-service consultation.

Separate EC technical assistance programmes on IPRs exist in only a few countries. The EPO is in fact a major implementing agency for EU-financed IP technical assistance programmes (for example, a major EC-funded IP technical assistance programme being implemented by the EPO is the EC-ASEAN Intellectual Property Rights Co-operation Project, see Box 1). Other IP assistance projects are integrated into larger trade capacity-building programmes and are managed as part of the EC's general development assistance programmes. This makes maintaining and recording separate data on the EC's support for IP technical assistance and its impact much more difficult – although there may indeed be many programmatic advantages that result from the integration of IP-related activities within wider efforts aimed at building capacity for trade, investment and economic development.

The EC does not have a cadre of staff dedicated to working on IP technical assistance programmes, as do WIPO and the EPO for instance. In fact, as far as one instance can be representative, the EC seemed to face considerable challenges in co-ordinating a response to the survey questionnaire prepared for this study within the Commission (DG Trade, Europe Aid, DG Development and DG Relex).

Indeed, the EC's fairly brief response to the survey took several months to be compiled and transmitted – and this did not include any financial management information on expenditures or commitments to the EC IP technical assistance programmes. This situation contrasts with the substantive amount of information

publicly available on IP technical assistance supported by WIPO and the EPO, for example, and is a reflection of the greater human resources employed in the latter two organisations solely to manage such programmes.

#### **Financing for IP technical assistance programmes**

As noted above, the EC provided no consolidated data on the financing of IP technical assistance programmes in response to the survey conducted in the preparation for this study. Although there may be good reasons to explain this situation, it is a source of concern that one of the major donors for IP technical assistance to developing countries should not be able to provide this kind of information – particularly so if the reason is that this data is not readily available even to EC officials.

However, it is possible to give a partial picture of the scale and geographical distribution of EC financing for IP technical assistance programmes by looking at data from the EPO on EC-funded programmes being implemented by the EPO. This data was provided by the EPO to the UK Commission on Intellectual Property Rights in 2002 (Karachalios, 2002).

As Table 7 illustrates, for the period 1990 to 2005, the EC has committed approximately €30.44 million in programmes being implemented by the EPO in developing countries and transition economies. Of this total financing sum, however, there was a heavy concentration of expenditure within specific countries and regions.

For example, €12.80 million (42 percent) was allocated to Phases I and II of the ECAP programme with ASEAN countries (see Box 1 above). A further €9.50 million (31 percent) was allocated to countries in Eastern Europe under the Regional Industrial Property Programme (RIPP). Programmes in China alone account for €4.57 million (15 percent). As Table 7 shows, during the 15 year period from 1990 to 2005, no EC-financed IP technical assistance programmes were implemented by the EPO in Africa, Latin America, the Pacific, the Caribbean or the Middle East.

Table 7: EC financing for IP technical assistance implemented by EPO, 1990–2005

Country/region	Period	Total budget
China	1998-2001 2002-2003	€ 3,280,000 € 1,295,000
Vietnam	1996-2000	€ 900,000
ASEAN	1993-1997 2001-2005	€ 6,400,000 € 6,400,000
India	2001-2003	€ 1,000,000
Eastern Europe (RIPP)	1990-2001	€ 9,500,000
CIS countries		
Regional	1996-1998	€ 1,000,000
Ukraine	1994-1996	€ 270,000
Uzbekistan	1995-1997	€ 400,000
Total	1990-2005	€30,445,000

Source: Karachalios, 2002.

#### Monitoring and evaluation

As far as it was possible to determine during research for this study, the EC has not undertaken or published any major external impact evaluations of any of its IP technical assistance programmes with developing countries and transition economies. Consultations with EC officials revealed that there were no specific arrangements in place for the monitoring or evaluation of IP technical assistance programmes – other than the

general systems used for EC development co-operation programmes.

Research for this study also revealed that the EC has no plans to undertake any horizontal or project-specific external impact evaluations of its IP technical assistance programmes. Nor does the EC have any plans to re-organise its structure for programming and managing IP technical assistance programmes, based on lessons learned from experience so far.

## 4.5 Case Study 4: the European Patent Office

The EPO, with headquarters in Munich, is the executive arm of the European Patent Organisation, an intergovernmental body established by the European Patent Convention (EPC) in 1973. While the EPO's activities – centred on patent administration, but also including technical co-operation with EPO members, as well as developing countries and transition economies – are supervised by the Administrative Council, composed of delegates from the 28 contracting states of the EPC.

Like WIPO, the EPO is essentially in the 'first division' of IP technical assistance donors and providers, in terms of the scale and scope of its programmes, their worldwide coverage, the dedicated organisational structures employed for managing these programmes and the internal technical expertise in IP subjects that the EPO can provide in-house through its staff of more than 6,000 professionals. Like WIPO, therefore, the EPO should be considered a key player in the provision of IP technical assistance to developing countries.

#### *Policy objectives for IP technical assistance programmes*

The overall aim of the EPO's technical assistance programmes is to make the EPO's expertise and technology available to IP agencies around the world. As a regional patent office, EPO technical expertise is centred on patent examination, administration and information systems. However, the EPO does undertake

the implementation of full-scale technical assistance programmes in all areas of IP, often with the assistance of co-operating partner organisations.

More specifically, the EPO's technical assistance programmes have the following main policy objectives:

- Establishing appropriate national infrastructure for the administration of IP protection and harmonising and simplifying administrative procedures;
- Building up national IPR enforcement systems;
- Using patent information to promote innovation and technology transfer;
- Developing and implementing standards for information and data exchange;
- Harmonising the legal systems of different countries within given regions; and
- Promoting public awareness of IP as a powerful motor for the economy, society and culture.

In a document entitled *Worldwide Cco-operation: The European Patent Office and its programme for international co-operation* (EPO, 2003), the EPO emphasises that it favours a collaborative approach to its technical assistance programmes, working in partnerships with EPO member states (who often have special interests in particular regions, such as Latin America for Spain, Portuguese-speaking countries for Portugal and African countries for France and the United Kingdom); WIPO; the EC and other organisations.

As noted in case study 3, the EC regularly sub-contracts with the EPO to implement EU-financed IP technical co-operation programmes. Indeed, the ability of the EPO to run major projects and bring together many national IP offices and technical specialists in different fields is one of its most significant characteristics.

#### *Activities supported under IP technical assistance programmes*

EPO support is offered, in the first instance, to national IP authorities, such as patent and trademark offices in countries and regions involved in co-operation programmes. Assistance is given to national and regional organisations and associations, governmental departments dealing with IP, lawyers, representatives of industry, trade and culture, universities and other bodies active in the IP field. These programmes involve the following kinds of activities:

- Guidance on building up and organising IP authorities and institutions;
- Training general/ specialist personnel working with these authorities and institutions;
- Technical support primarily in the form of advice on information and documentation, and the provision of hardware, software and library stock;
- Promoting public awareness of IP; and
- Supporting policy research and dialogue on IP and development-related topics for developing country IP policy-makers and administrators (such as the bi-annual *EPO Regional Forum on IP* held in Morocco in 2001 and in South Africa in 2003).

*Table 8: Examples of EPO IP technical assistance programme activities*

Region	Description
Central and Eastern Europe	Most Central and Eastern European states are now members of the EPO. Assistance programmes to these countries involve building up national IP office infrastructure, developing IT systems and training. Training on IP issues is aimed not just at staff in national IP offices, but also the research community, SMEs, patent attorneys and the judiciary. In Turkey, the EPO is implementing an EU-financed project to support the Turkish Ministry of Justice in setting up special IP courts.
CIS countries and Mongolia	The main aspects of the EPO's technical assistance programmes with national IP offices in this region and the Eurasian Patent Office are building national IP systems; training staff in patent administration and data processing, including training of trainers; developing patent information systems and promoting awareness of IPRs within the research and legal communities.
Asia	The EPO has trained large numbers of staff from the State IP office in China, both in the region and in Europe. In addition to training activities, the EPO has provided the State IP office in China with patent databases and administration software, permitting on-line searches for state of the art in different fields of technology.  In addition to the programme with China, the EPO is also engaged in providing technical assistance to Thailand, the Philippines, Malaysia, Indonesia, Vietnam, Singapore, Brunei, Cambodia, Laos, India and South Korea. EPO financed technical assistance with these countries is focused on training for patent examiners, providing technical support for patent examination and encouraging regional co-operation in IP administration.
Latin America	The primary recipients of EPO IP technical assistance in Latin America are Argentina, Brazil, Chile and Mexico. Activities with countries in Central America and the Andean Community commenced only recently in collaboration with WIPO.  EPO technical assistance in this region is focused on training, automation and public relations related to patent systems. Training activities include seminars at the EPO International Academy and in the region by EPO experts, sometimes held in conjunction with national patent offices. Support for automation involves assistance in the areas of electronic publishing, database development and software for patent administration.
Africa and the Middle East	The EPO's most active IP technical assistance programmes in Sub-Saharan Africa are with South Africa, OAPI and ARIPO. In the Middle East, framework agreements with the EPO are in place with Morocco, Egypt, Tunisia, Algeria and the patent office of the Gulf Co-operation Council. Links have also been established with Jordan, Syria and Lebanon.  IP technical assistance programmes in this region centre on developing and implementing integrated plans for building up small and medium-sized IP authorities; promoting knowledge transfer from the EPO to partners and within the sub-regions; developing patent information systems to promote access to technologies of importance to Africa and the Middle East; and adapting EPO training programmes, as required, through setting up local training centres.

Source: EPO, 2003.

### *Financing, programme management and delivery modalities*

The EPO provides technical assistance in essentially three ways: bilaterally (funded by its own budget), as an implementing agency for EU-financed programmes, and through contributing to the activities of other organisations (mainly its member states and WIPO). Almost since its inception, the EPO has been providing technical assistance to developing countries. With time,

a matrix structure has emerged in the EPO's International Co-operation Directorate, which consists of 'vertical' and 'horizontal' units with complementary tasks and responsibilities.

The vertical units are called 'regional projects'. The managers of these projects are responsible for the co-

ordination of all activities related to a given region and for the allocation of the budget. Currently, EPO IP technical assistance projects exist for the following regions:

- Africa and the Middle East (Arab countries);
- China;
- South-East Asia (ASEAN countries and India);
- Eastern Europe;
- CIS countries and Mongolia; and
- Latin America.

As well as these vertical units, three horizontal units exist for accomplishing tasks and services common to several projects:

- The IT unit is responsible for developing and implementing IT tools, such as patent administration; documentation and publication tools (data capturing, scanning and indexing of documents, producing CD-ROMs and local databases); making patent information available in practice (CD-ROMs, off-line databases, Internet) and on-line links to EPO databases.
- The EPO International Academy is responsible for human resources development in the IP field, including the organisation of training seminars (involving about 500 persons per year as trainees), topical conferences and fora inside and outside Europe, and the development of tutorial material.
- The Financial and Management Control Unit assists all other units in administering the

financial and administrative aspects of activities and programmes.

- The EPO has about 40 staff in its Directorate for International Co-operation dealing with technical assistance programmes.<sup>12</sup> This places the EPO in a league with WIPO as one of the most significant donor organisations in terms of human resources deployed in the management of intellectual property-related technical co-operation activities. Through its cadre of professional staff, the EPO is also a major provider of expertise to developing countries through its IP technical assistance programmes: in 2004 alone, for example, the EPO expected to send approximately 130 experts to 45 countries for a total of 642 person days (EPO, 2003).

#### Financing for IP technical assistance programmes

Since beginning its IP technical assistance programmes in 1982, the EPO has implemented projects in approximately 80 countries and has spent almost €54 million. Half of this funding has come from the EPO, with the rest from other sources, chiefly the EC. As noted earlier, the EPO is a major implementing agency for EC-financed IP technical assistance programmes.

As shown in Table 9, between 1996 and 2001, the EPO committed almost €19 million to its own IP technical assistance programmes. Annual commitments by the EPO increased from €2.6 million in 1996 to €3.65 million in 2001 – an increase of approximately 40 percent over the period. As in the case of WIPO, the bulk of these resources were generated by income from user fees charged by the EPO for its patent administration services.

Table 9: EPO budgetary resources for IP technical assistance, 1996–2001

1996	1997	1998	1999	2000	2001	Total
€2,600,000	€2,875,000	€3,050,000	€3,050,000	€3,575,000	€3,650,000	€18,800,000

Source: Karachalios, 2002.

Unlike the financial data presented in case study 1 on WIPO, these figures exclude the cost of EPO staff

participation in IP technical assistance activities, other than travel expenses. With around 40 staff dedicated to

the management of IP technical assistance programmes – and further EPO experts participating in training seminars and other activities – these staff costs are a significant additional element of the EPO's financing commitment.

In this sense, the EPO's stated budgetary resources available for IP technical assistance programmes are considerably under-stated compared to the figure in the data provided by WIPO. It is important to bear this point in mind when considering the relative scale and contribution of both WIPO and the EPO to IP technical assistance for developing countries.

In a submission to the UK Commission on Intellectual Property Rights by the EPO, the EPO provided a breakdown of the budgetary resources committed to IP technical assistance programmes between 1996 and 2001, by geographical region (Karachalios, 2002). While Eastern Europe received the largest single budgetary allocation, it is noticeable from Table 10 that there is a relatively even distribution of EPO resources for IP technical assistance across the six regions and the specialist IT unit.

*Table 10: EPO budgetary resources for IP technical assistance by region, 1996–2001*

Region	Total budget for 1996-2001
Africa and the Middle East	€3,100,000
China	€2,650,000
CIS countries & Mongolia	€2,600,000
Eastern Europe	€3,700,000
Latin America	€2,200,000
South-East Asia	€2,050,000
IT unit (automation projects)	€2,500,000
<b>Total</b>	<b>€18,800,000</b>

Source: Karachalios, 2002.

### Monitoring and evaluation

As far as it was possible to determine during research for this study, the EPO has not undertaken or published any major external impact evaluations of its IP technical assistance programmes with developing countries and transition economies. Consultations with EPO revealed that there were no specific arrangements in place for systematic evaluation of its IP technical assistance programmes, although regular monitoring of project activities is undertaken by regional project managers.

As with WIPO, the EC and USAID, research for this study also revealed that the EPO had no plans to undertake any horizontal or project-specific external impact evaluations of its IP technical assistance programmes with developing countries and transition economies. However, the EPO does have plans to re-organise its

structures for programming and managing IP technical assistance programmes, based on lessons learned from experience so far. The Directorate for International Cooperation is to be significantly expanded and re-structured, with several of its own directorates and departments.<sup>13</sup> The EPO is also considering allocating additional human and financial resources for IP technical assistance and is conducting intensive internal discussions on how to respond to the strategic challenges facing developing countries related to capacity-building for IP policy-making, administration and promotion of national innovation and creativity.

As mentioned earlier, in 2002, the EPO submitted an analytical paper to the UK Commission on Intellectual Property Rights, entitled *Current Situation of Regional Organisations in the IPR Field and Future Challenges*, on the institutional capacities of regional IP organisations

in developing countries with which the EPO has been working for a number of years (Karachalios, 2002). The paper includes some initial analysis of the scope, coverage and future challenges for the EPO's technical

assistance programmes, covering a period of more than ten years. This document is a welcome and useful

contribution to the literature and reflects a new interest by the EPO's International Directorate in some of the strategic future issues for IP technical assistance for developing countries and transition economies.

## 4.6 Case Study 5: IP Australia

IP Australia's corporate mission is "to create an effective, efficient and accessible global IP system that promotes innovation, investment and international competitiveness for the benefit of all Australians." While the principal focus of technical assistance activities is related to patents, trade marks and design examination systems, assistance is also provided on IP public awareness and education, IT systems and allied topics, such as geographical indications. In areas where IP Australia does not have the necessary expertise, it may consider funding external consultants or organisations to deliver the relevant technical assistance.

### *Policy objectives for IP technical assistance programmes*

The technical assistance that IP Australia provides is governed by a wide range of factors, such as:

- Availability of resources within IP Australia (both financial and administrative) and competence to deliver the assistance;
- Availability of funding from external organisations, such as WIPO, the Asia Pacific Economic Co-operation Organisation (APEC) and the Australian Agency for International Development (AusAID);
- Broader Australian government objectives; and
- Bilateral and multilateral agreements, which include clauses on IP co-operation or the provision of technical assistance (for example, the TRIPS Agreement, the WIPO-Australia Joint Statement on Co-operation for IP Technical Assistance in Asia and the Pacific Region,<sup>14</sup> the APEC Intellectual Property Rights Expert Group (IPEG)<sup>15</sup> and free trade agreements).

IP Australia is an agency of the Department of Industry, Tourism and Resources in the Australian government. While IP Australia is an agency of a larger department, it is autonomous in most of its activities. However, large scale projects may require consultation with other government agencies and may need to gain clearance from ministers. IP Australia operates on a full cost recovery basis, which means that it must derive all its expenditures from revenue earned from service fees (mainly from applications for IPRs and their registration and renewal).

The main policy objective for IP Australia in relation to IP technical assistance is to co-operate with countries in the Asia-Pacific region to implement effective intellectual property services and develop new business opportunities. Under this broad objective, IP Australia's priorities within the 2003-2004 financial year were:

- To successfully develop and deliver a Regionally Focused Action Plan (RFAP) for the Pacific Island Countries in conjunction with WIPO and the Pacific Islands Forum Secretariat. The RFAP is a three year plan concluding in October 2004;
- To deliver a programme of IP public education and awareness, particularly communicating the benefits for individuals and business advantages for companies of an effective IP system. These activities are being developed for Indonesia, the Philippines and Vietnam. This programme is being funded by APEC under its Trade and Investment Liberalisation and Facilitation programme; and

- To work with WIPO in considering requests for technical assistance from countries in the Asia-Pacific region.

IP Australia's objectives in relation to technical assistance are determined on the basis of domestic and international obligations and the aim of seeking harmonisation of IP systems to reduce duplication and increase their effectiveness. The views of stakeholders and available resources are taken into account when developing annual priorities.

### *Activities supported under IP technical assistance programmes*

The principal focus of IP Australia's technical assistance is related to IP administration and management. Activities supported by IP Australia include:

- Training in patent and trademark examination work and in administrative and electronic systems to support the operations of IP offices. This may involve training in the recipient country or in Australia, as well as regional seminars and workshops;

While IP Australia's broad objectives in relation to IP technical assistance have not varied greatly over time, the focus of activities has varied from year to year. More emphasis is given to ensuring that assistance is effective and efficient. The majority of assistance relates to areas in which IP Australia has strengths, for example, IP examination systems and associated administration functions, legislation development and IP public education and awareness raising activities.

- Providing commentaries on legislative developments;
- Funding of speakers to symposia and conferences; and
- Developing IP public education and awareness.

### *Financing, programme management and delivery modalities*

#### **Programming modalities**

The majority of IP technical assistance activities for IP Australia originate from requests for assistance received by WIPO from countries in the Asia-Pacific region. WIPO decides for which requests to seek IP Australia's assistance based on factors such as previous assistance, areas of competence and knowledge about resources.

The initial assessment of needs under these arrangements is undertaken by WIPO. Where IP Australia agrees to provide assistance, IP Australia would contact the recipient country to review the issues and resources required. Many of these requests for assistance are on an *ad hoc* basis.

For large projects, there is an initial and ongoing assessment of the needs of a country. For example, an APEC project on IP public education and awareness being delivered to Indonesia, the Philippines and Vietnam over two years involved identifying the project at a conceptual level; bringing on board recipient countries; assessing country needs and developing country-specific

programmes. During these phases, reports to the APEC Secretariat were prepared and discussed to ensure timely delivery. The assessments of country needs were undertaken by experts from IP Australia and the recipient countries through visits to the relevant countries.

In many of IP Australia's technical assistance programmes, the major donor is WIPO. This co-operative arrangement is managed via direct contact between the relevant officials of both organisations. In cases where IP Australia is aware of other donors providing assistance to the recipient country on similar or related projects, it seeks information from the recipient country on that previous assistance. It is, however, not always possible to identify what earlier or concurrent assistance is being provided to developing countries.

#### **Financing for IP technical assistance programmes**

IP technical assistance provided by IP Australia is financed either via internal budget allocations or

through external sources. External sources of funding include WIPO, APEC and AusAID.<sup>16</sup>

Financing for Australia's IP technical assistance programmes is determined on an annual basis according to the priority of the assistance as measured against other operational needs of the organisation. Some technical assistance projects receive multi-year approval subject to the annual financial constraints of the organisation.

IP Australia's technical assistance funding covers administrative expenses of the following nature: travel, accommodation, travel allowance, equipment and workshop/seminar expenses. Expenditures by IP Australia on administrative and staff related costs between 2000 and 2003 is shown in Table 11.

*Table 11: IP Australia budgetary resources for IP technical assistance, 2000–2003*

2000-2001	2001-2002	2002-2003	Total
AUS\$836,000	AUS\$705,000	AUS\$671,000	AUS\$2,212,000

Source: Communication from IP Australia, December 2003.

#### Monitoring and evaluation

Follow-up monitoring of WIPO-sponsored projects is usually done by WIPO. However, IP Australia informally monitors projects through personal contact with recipient country officials to learn how the assistance is being used (though this is not the case where the assistance was delivered principally through seminars). This informal contact enables IP Australia to identify whether follow-up or next step assistance is needed.

Technical assistance programmes sponsored by external agencies, for example, WIPO, APEC or AusAID, are sub-

ject to the monitoring and assessment protocols of those organisations. In programmes sponsored by IP Australia, feedback from the recipient countries is used to review the effectiveness of programmes.

This is used to evaluate whether the programme was effective in meeting the recipient country needs, what alterations are required for future assistance or whether to continue with providing similar assistance. Evaluation materials produced by IP Australia are not published.

## 5. STRATEGIC ISSUES FOR THE FUTURE

### 5.1 Taking Stock

There have been some considerable achievements in the last five to ten years in terms of modernising IP infrastructure and developing the associated human resources in developing countries. Large numbers of people, from a variety of professional backgrounds, have received general and specialised training in IP subjects. Many developing countries have over-hauled their IP legislation – although there has been criticism from some quarters about the content and process of these reforms - and have taken advantage of international co-operation and assistance for automation to make important efficiency gains and provide improved service levels.

The regions where there has been the biggest impact from IP technical assistance are Latin America and Eastern Europe. There has also been significant development of institutional capacities in other developing countries, such as China, Morocco, Vietnam, Trinidad and India, as well as in the regional IP organisations, such as OAPI and ARIPO (Leesti & Pengelly, 2002).

At the same time, many LDCs and low-income countries still face considerable challenges in participating in international IP rule-making and developing their IP infrastructure and national legal and policy frameworks in ways compatible with their development needs. This is made all the more important given the ongoing developments in international IP standard-setting at the bilateral, regional and multilateral levels involving these countries. These challenges present a number of strategic issues for the financing, design and delivery of technical co-operation to LDCs and low-income developing countries that need to be addressed by all donor organisations and providers.

In this context, the final Chapter of this study presents some of the strategic issues for the future of technical assistance on formulation and implementation of IP policy in developing countries and transition economies, such as:

- Tailoring IP technical assistance to development needs;
- Scaling up IP assistance to LDCs and low-income countries;
- Promoting pro-competitive enforcement and regulation of IPRs;
- Ensuring balanced advice for legislative reform;
- Improving co-ordination of IP technical assistance;
- Supporting knowledge sharing and better ways of working; and
- Improving impact monitoring and evaluation.

This is not intended to be a comprehensive listing, but rather a contribution to the debate. Some of the issues are raised because IP technical assistance donors, providers and their developing country partners need to reflect further on these areas in moving forward. For other issues, some specific recommendations are set out where appropriate and justified by the existing situation and the findings of this study.

### 5.2 Tailoring IP Technical Assistance to Development Needs<sup>17</sup>

Donors of IP technical assistance must be constantly aware that the development of IP systems in developing countries cannot be considered in isolation from the general development context and needs of the country concerned. For example, the sustainable provision of equipment for an IP office may require consideration of

local skills to service the equipment, reliable power supply and telecommunications infrastructure or associated equipment, such as air conditioners. In a small or low-income country, other factors, such as the level of IP activity (e.g. low numbers of patenting and trademark applications), may mean that it is not

technically feasible, nor economically viable for such a country to establish and sustain an IP system comparable to developed countries in terms of capacity for administration, enforcement and regulation of IPRs.

It follows from this that the assessment of IP technical assistance requirements of a developing country should be based on what a developing country needs, rather than on what a donor country wants, or is able to provide. Developing countries should take the lead in preparing such assessments, based on a broad and medium-term perspective, and a wider range of stakeholders should be involved – not just national IP offices, but stakeholders from other government agencies, the business sector and civil society. For example, developing countries are themselves best placed to identify local industries where there may be demand for stronger IP protection, such as copyright protection for the music industry in West Africa, or protection of geographical indications for certain products from developing countries, which may have a high international commercial value.

Donors do have an important role to play in this process by assisting developing countries in understanding the international IP systems and their developments, as well as sharing the lessons of their own experience. For example, IP offices of donor countries, as well as other

traditional and non-traditional IP technical assistance donor agencies, may be able to share experiences with the use of specific legal models and administrative practices for IP protection that could be appropriate to address the needs of stakeholders in developing countries (e.g. utility models, certain kinds of *sui generis* protection systems, or protocols for ensuring equitable access to, and benefit-sharing of, biological material). In this way, donors can provide developing countries with sufficient information to make informed decisions about how their national systems should develop and what can be realistically achieved and delivered in the short and long term.

These medium-term strategic plans for building up an appropriate legal and policy framework and national IP infrastructure should then be shared with all interested parties and IP donors to facilitate better co-ordination of efforts, reduce duplication and facilitate strategic planning, and promote well-sequenced investments in human resource development and modernisation of national institutions. Delivery of IP technical assistance to developing countries should be tailored explicitly around these strategic plans and should generally be delivered through multi-year, broad-based programmes and not just one-off events. Financial sustainability of national IP institutions should be a key objective from the outset.

### 5.3 Scaling-Up IP Technical Assistance to LDCs

In order to meet the special needs of LDCs and low-income developing countries for putting in place the IP regime and wider innovation and technology infrastructure they require, a priority issue for all donors should be to examine the case for a significant expansion of commitments for IP technical assistance and capacity-building programmes to such countries over the next five to ten years.

While some assistance is currently being offered, the case studies in this paper show that the bulk of donor resources often go to middle-income developing countries (e.g. China, Egypt, the Philippines or South Africa). Even for a donor with the financial strength of WIPO and its level of commitment to IP technical assistance globally, the resources that are allocated to national programmes in LDCs and low-income countries seem insufficient even for the narrower task of supporting better participation in IP rule-making and

modernising IP administration – let alone the much bigger job of broadening the scope of IP technical assistance programmes to encompass a package of policy reforms and capacity-building aimed at stimulating more local innovation through R&D to improve productivity and competitiveness, as well as greater use of the IP system by small and medium-sized enterprises.

In 2001, the World Bank estimated that a comprehensive upgrade of the IPR regime in poor countries, including training, could require capital expenditures of US\$1.5 to 2 million (World Bank, 2002). Based on the indications from the case studies in this paper, more financial resources for capacity-building and technical assistance to upgrade IPR regimes in LDCs and low-income developing countries would clearly seem to be required over the next five to ten years, particularly as the LDC Members of the WTO struggle to

implement their obligations under the TRIPS Agreement by January 2006 through legal and institutional reforms compatible with their development needs.

LDCs and low-income developing countries arguably could also do more to help make the case to donors for scaling up IP-related technical assistance and capacity-building programmes. First, they could ask donors to provide more transparent financial information on their commitments to IP technical assistance programmes in LDCs and low-income developing countries.

A second option would be to give these issues a higher profile within the diagnostic studies and needs assessments carried out by the World Bank under the multi-donor Integrated Framework for Trade-Related Technical Assistance to LDCs.<sup>18</sup> A brief review, during the research for this paper, of existing diagnostic studies completed under the Integrated Framework so far revealed very little reference or importance given to IP-related policy reform and capacity-building issues – despite the fact that consideration of the IP regime is clearly within the scope of the diagnostic studies. This was confirmed by interviews with officials working on the Integrated Framework at the World Bank, the WTO and UNCTAD in September 2003.

Finally, LDCs and low-income developing countries could insist on binding undertakings by developed countries to provide greater capacity-building assistance as part of new international trade negotiations and agreements covering IP issues at the bilateral, regional and multilateral levels. TRIPS Article 67 is one example

of such an undertaking by developed countries. A more recent – though by no means perfect – example of this kind of approach is provided by Chapter 15 (Intellectual Property Rights) of the US-Central America Free Trade Agreement (CAFTA) signed in May 2004.

Article 15.1.16 (General Provisions) of Chapter 15 contains the following provisions explicitly related to IP technical assistance and capacity-building:

“Recognising the Parties’ commitment to trade capacity-building as reflected in the establishment of the Committee on Trade Capacity-building under Article 19.4 (Committee on Trade Capacity-building) and the importance of trade capacity-building activities, the Parties shall cooperate through that Committee in the following initial capacity-building priority activities, on mutually agreed terms and conditions, and subject to the availability of appropriated funds:

- educational and dissemination projects on the use of intellectual property as a research and innovation tool, as well as on the enforcement of intellectual property rights;
- appropriate co-ordination, training, specialisation courses, and exchange of information between the intellectual property offices and other institutions of the Parties; and
- enhancing the knowledge, development, and implementation of the electronic systems used for the management of intellectual property.”

## 5.4 Promoting Pro-Competitive Enforcement and Regulation

For all of the IP technical assistance donors reviewed in the case studies above, a key policy objective in moving forward is ensuring that enforcement systems in developing countries address serious IPR infringements more effectively. This is seen as critically important to protect the incentives that the system offers to IP rights-holders. However, as the UK Commission on Intellectual Property Rights noted (CIPR, 2002, Chapter 7), it is also important that developing countries be assisted in the development of institutions capable of achieving this in a balanced, pro-competitive way.

As the CIPR report observed, developed countries have introduced stronger IP protection in the context of

competition regimes and other regulatory regimes designed to ensure that IPRs do not harm the public interest. Seen from an institutional perspective, however, such regulation is likely to present significant challenges for policy-makers, administrators and enforcement agencies in developing countries.

This suggests that, as well as enforcement, building capacity for the regulation of IPRs, particularly in relation to matters of special public interest (such as compulsory licensing) or in relation to controlling anti-competitive practice by rights-holders, should be given a higher priority in IP technical assistance programmes for developing countries and transition economies.

As well as the development of appropriate regulatory frameworks, *per se*, an important part of effective regulation is the undertaking of regular, periodic reviews of all aspects of the national IP regime, to

ensure that they are relevant and appropriate. Donors could also do more to assist developing countries in this task, through providing appropriate technical assistance, as well as formal and on-the-job training.

## 5.5 Ensuring Balanced Advice for Legislative Reform

In recent years, a number of different sources have expressed concerns regarding the role of donors in providing advice and technical assistance to developing countries for reform of IP legislation. While developing country IP offices typically value the technical assistance provided by institutions such as WIPO or bilateral donors, a number of experts and organisations have raised substantial concerns about whether this assistance has always been appropriately tailored to the circumstances of the developing country concerned.

In particular, it has been argued that the advice provided by certain IP technical assistance donors does not always fully take into account all the possible options and flexibilities to accommodate public policy objectives under the TRIPS Agreement. These criticisms relate, among others, to the fact that for many IP technical assistance donors – as the case studies in this paper explain – a key policy objective is the promotion of stronger protection of IPRs in developing countries, through higher standards and improved enforcement.

For instance, at the conference on *Implementation of the Doha Declaration of the TRIPS Agreement and Public Health: Technical Assistance – How to Get it Right?*, organised by Médecins sans Frontières and

Oxfam International in Geneva in March 2002, some participants voiced concern that the policy objectives of IP technical assistance donors may not be consistent with the need for more flexible systems of IP protection that take into account varying stages of economic development and local conditions in developing countries, especially in light of the crisis in access to essential medicines. In a subsequent paper, Médecins sans Frontières documented these concerns regarding specific examples of IP technical assistance provided by WIPO in Cambodia and by USAID in Uganda and Nigeria (Medicines Sans Frontiers, 2003).

It is beyond the scope of this paper to investigate such apprehensions about IP technical assistance related to legal reform in developing countries. However, even if these concerns turn out to be not as justified as some commentators fear, they demonstrate the potential sensitivity and importance of this area of domestic regulatory policy-making in developing countries. As many LDCs and low-income developing countries will continue to depend on technical assistance in this area for some time to come, particularly as they proceed with the implementation of the TRIPS Agreement, IP technical assistance should be mindful of the need to respond positively to these concerns.

## 5.6 Improving Co-Ordination of IP Technical Assistance

At times, technical assistance activities have not been well co-ordinated by the multiple donors involved or by the national authorities in the recipient countries concerned. In Vietnam, for example, eight different donor agencies provided IP technical assistance in the country between 1996 and 2001 (Leesti & Pengelly, 2002).

The result of poor co-ordination of IP technical assistance is a duplication of efforts or, at worst, a waste of resources and may result in conflicting advice on important policy and investment decisions related

to, for example, the most appropriate kind of software for patent administration or the right form of IP protection related to plant variety technologies. Moreover, given finite resources, the needs of other developing countries for technical assistance and capacity-building are more likely to be left unattended as a consequence of ‘crowding’ by several donors in one particular country, which is perceived as being of particular importance at a given time.

More positively, as the case studies in this paper have shown, there is a significant amount of *ad hoc* co-

operation between donors and some examples of more formalised collaboration (e.g. the WIPO-WTO Co-operation Agreement and the WIPO-IP Australia Co-operation Agreement). Donors should build on these successes.

One option for improving donor co-ordination and delivering more comprehensive technical assistance

programmes, integrated within national development strategies, would be to incorporate IP technical assistance more fully under the Integrated Framework for Trade-Related Technical Assistance for LDCs than is presently the case (see Section 5.3).

## 5.7 Supporting Knowledge-Sharing & Better Ways of Working

Donors/providers and developing countries need to find new ways of improving collaboration in programming and delivering IP technical assistance programmes. As the research for this paper demonstrates, there are problems in obtaining good data from donor organisations about IP technical assistance programmes. What information is available tends to lack important details (such as country- or programme-specific financial information). This makes a meaningful analysis very difficult.

Crucially, there seems to be a complete lack of literature concerning external evaluation of IP technical assistance programmes, drawing out key lessons learned and elaborating best-practice guidance for donors and developing countries to follow. It should be emphasised that this situation is in marked contrast to many other sectors of development co-operation, such as education, health, transport, private sector development, energy or trade capacity-building.

In particular, IP technical assistance donors could make much better use of existing institutional mechanisms at the national, regional and international levels for sharing information and improving delivery of development co-operation assistance generally – such as national development planning documents, UN Development Assistance Frameworks, World Bank

Consultative Group meetings and project- or programme-specific websites for individual developing countries or sub-regions.

For example, the project website developed for the EC-financed ECAP programme (see Box 1 in Section 4.4) could be replicated by other donors for similar programmes; WIPO, in particular, could consider developing country-specific web-pages providing information on activities and achievements for each of its NFAPs. Alternatively, WIPO and other IP technical assistance donors could assist developing countries to establish and maintain these web-based information platforms.

To take these efforts forward in a more effective manner, a work programme on better donor co-ordination and best-practice for IP technical assistance could be established. The work programme could be undertaken by a group of experts from donors and developing countries and could be based on a series of detailed case studies on different developing countries and regions. The main outputs of the work programme would be improved mechanisms for information-sharing and a set of detailed guidelines for improving the delivery of IP technical assistance. This process in itself would be useful in improving dialogue and information-sharing amongst donors and developing countries.

## 5.8 Improving Impact Monitoring & Evaluation

As indicated in Section 5.5, an important constraint in discussing IP technical assistance for developing countries is the lack of formal evaluation literature and meaningful information on key aspects of specific technical assistance programmes (such as financial information) in the public domain. Likewise, there

appear to be no sector-wide reviews of this area of technical assistance, even for specific regions of the developing world. Given the lack of evaluation literature in particular, it is difficult to comment authoritatively on the impact and effectiveness of IP technical assistance programmes undertaken by the

various donor organisations in specific countries or regions.

It is important for ensuring effectiveness and value for money that donors undertake evaluation exercises – individually and collectively – as a routine activity within the programme management cycle. IP technical assistance donors could strengthen their present systems for monitoring and evaluation of IP technical assistance programmes.

A rolling programme of external impact evaluations could be undertaken and published by IP technical assistance donors, including international institutions, bilateral agencies and non-traditional providers. In fact, such a proposal has already been suggested as a key recommendation by the Commission on Intellectual Property Rights in its Final Report of 2002. A more concerted effort on the part of IP technical assistance donors and their developing country partners is now required to take this recommendation forward.

## ENDNOTES

- <sup>1</sup> The Doha Development Agenda Trade Capacity-building Database is available at <http://tcbdb.wto.org/index.asp>.
- <sup>2</sup> Financial data for the IP-related components of these World Bank-funded programmes undertaken in the 1990s is provided in the Bank's submission to the WTO TRIPS Council in 1999.
- <sup>3</sup> WHO, 'Technical Co-operation Programmes carried out by the World Health Organisation relevant to implementation of the TRIPS Agreement and access to medicines,' and a personal communication from the WHO Secretariat, September 2004.
- <sup>4</sup> In the area of collective copyright management, Kopinor, the Norwegian Reproduction Rights Organisation, provides assistance to collection societies in Africa with funding from the Norwegian government.
- <sup>5</sup> A separate Division for Co-operation with Certain Countries in Europe and Asia within the International Bureau manages WIPO's IP technical assistance programmes to the Central European and Baltic States (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, the former Yugoslav Republic of Macedonia, Serbia and Montenegro); Caucasian, Central Asian and Eastern European Countries (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan); as well as selected other countries (Cyprus, Israel, Malta and Turkey).
- <sup>6</sup> This is an interesting and unique feature, as in this way WIPO's International Bureau is responsible for WIPO's work on international IP standard-setting as well as its technical assistance programmes – a point which has raised concerns from some commentators as to the compatibility of these two functions (e.g. Dutfield & Musungu, 2003).
- <sup>7</sup> As WIPO does not make NFAPs publicly available, it was not possible to verify this change in programming of WIPO's IP technical assistance.
- <sup>8</sup> These figures represent the revised budget amounts taken from WIPO documents and cover the following programmes only: Co-operation with Developing Countries; Co-operation with Certain Countries in Europe and Asia; and the WIPO Worldwide Academy.
- <sup>9</sup> This is a significant point and, as the case studies on the EC and the United States show, presents a paradox for WIPO in that, whilst it may enjoy amongst the largest global resource envelope for IP technical assistance to developing countries, it does not have the capacity to leverage multi-million dollar resources for individual national programmes in the way that USAID and the EC can for example (e.g. USAID committed US\$6.32 million to a single IP technical assistance project in Egypt).
- <sup>10</sup> Available at <http://qesdb.cdie.org/tcb/index.html>.
- <sup>11</sup> See <http://www.tcb-project.com/tcb/level1.php>.
- <sup>12</sup> Communication from the EPO, January 2004.
- <sup>13</sup> Personal communication from the EPO Directorate for International Co-operation, October 2004.
- <sup>14</sup> WIPO-Australia Joint Statement on Co-operation for IP Technical Assistance in the Asia and Pacific Region, March 2000. See <http://www.wipo.int/aspac/en/cooperation>.
- <sup>15</sup> Information on the APEC Intellectual Property Rights Expert Group can be found at <http://www.apecipeg.org>.
- <sup>16</sup> For further information on funding see <http://www.usaid.gov.au>.
- <sup>17</sup> I am grateful to Atul Kaushik for his practical, specific suggestions and comments on this section.
- <sup>18</sup> Information on the multi-donor Integrated Framework for Trade-Related Technical Assistance to LDCs is available at <http://www.integratedframework.org>.

## REFERENCES

- Commission on Intellectual Property Rights. “Integrating Intellectual Property Rights and Development Policy”. Final Report, UK Commission on Intellectual Property Rights: London, 2002.
- Correa, C.M. *“Intellectual Property Rights, the WTO and Developing Countries: the TRIPS Agreement and Policy Options”*. Zed Books: New York and Third World Network: Malaysia, 2000.
- Drahos, P. *“Developing Countries and International Intellectual Property Standard-Setting”*. Study Paper 8, UK Commission on Intellectual Property Rights: London, 2001.
- Dutfield, G. & Musungu, S.F. *“Multilateral agreements and a TRIPS-plus world: The World Intellectual Property Organisation”*. Quaker UN Office: Geneva, 2003.
- European Commission. *“Guidelines for European Commission Trade Related Assistance”*. EC: Brussels, 2003.
- European Patent Office. *“Worldwide co-operation: The European Patent Office and its programme for international co-operation”*. EPO: Munich, 2003.
- Goans, J.W. *“Intellectual Property and Developing Countries: An Overview”*. Briefing Paper, Nathan Associates Inc: Washington, 2003.
- Institute for Economic Research. *“Study on the Financial and Other Implications of the Implementation of the TRIPS Agreement for Developing Countries”*. WIPO: Geneva, 1996
- Karachalios, K. *“Current situation of regional organisations in the IPR field and future challenges”*. paper submitted to the UK Commission on Intellectual Property Rights on behalf of the European Patent Office: Munich, 2002.
- Leesti, M. & Pengelly, T. *“Institutional Issues for Developing Countries in Intellectual Property Policymaking, Administration & Enforcement”*. Study Paper 9, Commission on Intellectual Property Rights: London, 2002.
- Lehman, B.A. *“Modernizing Jamaica’s Intellectual Property System”*. International Intellectual Property Institute: Washington DC, 2000a.
- Lehman, B.A. *“World Intellectual Property Organisation: Dawn of a New Century”*. International Intellectual Property Institute: Washington, 2000b.
- Medicines Sans Frontiers. *“Doha Derailed: A Progress Report on TRIPS and Access to Medicines”*. Briefing for the 5<sup>th</sup> WTO Ministerial Conference. Cancun 2003, available at [www.msf.org](http://www.msf.org).
- Musungu, S. *“Designing Development-oriented Intellectual Property Technical Assistance Programmes”*. paper prepared at the Second Bellagio Series of Dialogues. Bellagio, 18-21 September 2003.
- Oman, R. *“Copyright: engine of development”*. UNESCO: Paris, 2001.
- Sherwood, R.M. *“Study on the Financial and Other Implications of the Implementation of the TRIPS Agreement for Developing Countries”*. WIPO: Geneva, 1996.
- UNCTAD. *“The TRIPS Agreement and the Developing Countries”*. UNCTAD: Geneva, 1996.
- USAID. *“US Contributions to Trade Capacity Building: Improving Lives through Trade and Aid”*. USAID: Washington DC, 2003.
- WIPO. *“Revised Draft Program and Budget 1998-1999”*. WIPO: Geneva, 1997.
- WIPO. *“Revised Draft Program and Budget 2000-2001”*. WIPO: Geneva, 1999.

WIPO. “*WIPO’s Legal and Technical Assistance to Developing Countries For the Implementation of the TRIPS Agreement From January 1, 1996, To December 31 2000*”. WIPO: Geneva, 2001a.

WIPO. “*Revised Draft Program and Budget 2002-2003*”. WIPO: Geneva, 2001b.

WIPO. “*Medium Term Plan for WIPO Program Activities - Vision and Strategic Direction of WIPO*”. WIPO: Geneva, 2003b

WIPO. “*Programme Performance Report For 2002*”, WIPO: Geneva, 2003b.

World Bank. “*Intellectual Property: Balancing Incentives with Competitive Access*”. In *GLOBAL ECONOMIC PROSPECTS AND THE DEVELOPING COUNTRIES 2002*, World Bank: Washington, 2002.

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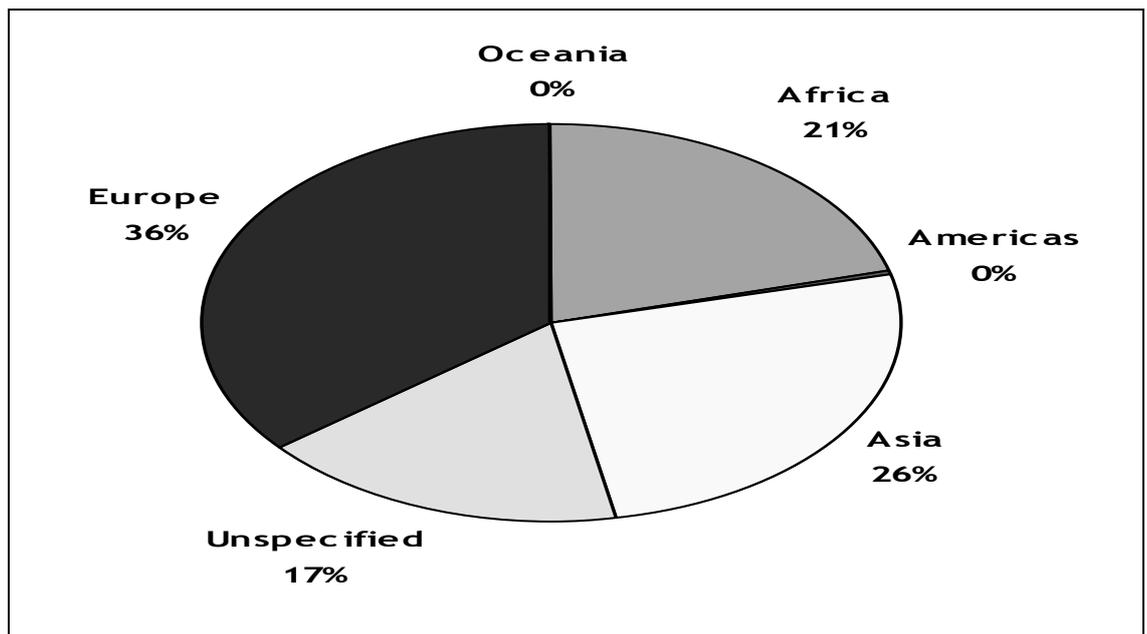
## ANNEX 1 OECD–DAC DATA ON IP–TECHNICAL ASSISTANCE FINANCING

*WTO–OECD Trade Capacity Building Database data on IPR–TA expenditure commitments & activities by region, 2001 & 2002*

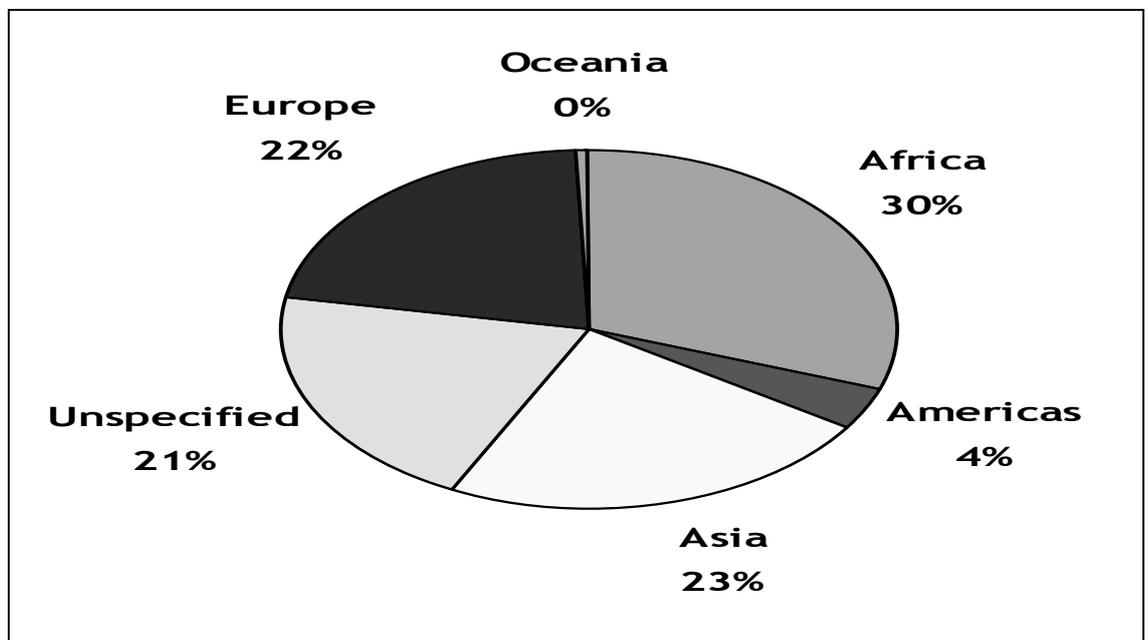
Region	2001		2002	
	Commitment (\$)	Activities	Commitment (\$)	Activities
Africa	2,718,000	10	2,846,000	59
Americas	41,000	8	343,000	19
Asia	3,396,000	28	2,138,000	77
Europe	4,679,000	7	2,012,000	16
Oceania	7,000	2	45,000	6
Unspecified	2,264,000	9	1,921,000	19
<i>Total</i>	<i>13,105,000</i>	<i>64</i>	<i>9,305,000</i>	<i>196</i>

Source: WTO-OECD Trade Capacity Building Database. The database only contains the information provided by certain donors, mainly bilateral donors but also WTO.

*WTO-OECD Trade Capacity Building Database data on IPR-TA expenditure commitments by region, 2001*



*WTO-OECD Trade Capacity Building Database data on IPR-TA expenditure commitments by region, 2002*





## ANNEX 2 USAID EXPENDITURE ON IP TECHNICAL ASSISTANCE 1999–2003

Countries	1999	2000	2001	2002	2003
Albania			\$14,200		\$450,000
Algeria					\$129,450
Bolivia				56,000	\$150,000
Bosnia & Herzegovina					\$450,000
Brazil				120,000	
Bulgaria					\$562,500
China (P.R.C.)				62,723	
Costa Rica				6,560	\$40,952
Croatia					\$562,500
Dominican Republic				\$7,850	\$15,000
Egypt		\$2,373,000	\$2,496,000	\$1,450,000	
El Salvador				\$6,560	
Guatemala				\$9,515	
Honduras				\$6,560	
Hungary				\$3,083	
Indonesia	\$9,982	\$9,991		\$37,750	
Jamaica				75,000	
Jordan			\$95,946	354,602	\$115,000
Korea, Rep.				\$350	
Kyrgyzstan	\$614,100	\$30,000	\$74,300		
Lebanon				\$486,000	
Macedonia				\$37,500	\$617,750
Malaysia				\$43,000	
Moldova				\$105,000	
Nicaragua				\$6,560	

Nigeria				\$312,500	\$190,000
Peru					\$190,000
Philippines	\$74,000	\$80,000	\$415,720	\$438,668	\$70,400
Poland				\$3,509	
Romania				\$3,683	\$450,000
Russia				\$135,000	\$60,000
Senegal					\$77,000
Serbia and Montenegro (FRY)			276,000	\$242,000	\$157,750
South Africa			\$61,400	\$565,891	\$195,500
Sri Lanka	\$32,800	\$339,840	\$49,200	\$40,000	
Tunisia					\$12,000
Turkmenistan	\$39,750				
Ukraine				123,959	50,000
Vietnam				\$25,000	
Zambia			\$3,840	\$4,000	\$5,130
<b>Other Groups**</b>					
Asia ns		\$28,000		\$49,000	
Central & Eastern Europe ns				\$729,502	
Central America ns				\$4,580	\$1,307,972
Global ns		\$35,000	\$36,000	\$585,454	\$500,000
Latin America & Caribbean ns		\$111,000			
SADC Secretariat					\$137,920
Sub-Saharan Africa ns		\$14,000		\$78,000	
Western Africa ns			\$36,346		\$531,000
<b>Total</b>	<b>\$770,632</b>	<b>\$3,020,831</b>	<b>\$3,558,952</b>	<b>\$6,215,359</b>	<b>\$7,027,824</b>
** These are activities not targeted to a specific country. ns = not specified					

