

DRAFT

**INTELLECTUAL PROPERTY AND ECONOMIC
DEVELOPMENT:
What Technical Assistance to Redress the Balance
in Favour of Developing Nations?**

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LIST OF ACRONYMS AND ABBREVIATIONS

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

EXECUTIVE SUMMARY

This paper has threefold objectives: (i) to provide an overview of the existing information and (conflicting) ideas on technical assistance services related to intellectual property (TASIP), (ii) to identify strong points and weaknesses in the TASIP activities and (iii) to suggest improvements in the current practices.

The empirical part of the study is based on in-depth interviews with a group of experts and beneficiaries, questionnaires administered over the Internet and comments made on the subject in an expert meeting.

It is shown that TASIP is one of the most strategic - but also the most controversial - areas of technical assistance. It is suggested that more emphasis should be put on the win-win form of assistance (attracting developing country companies to IP) rather than aiming at making the infringement of intellectual property rights (IPRs) not pay (a win-lose solution).

The paper concludes with a series of guidelines for donors, providers and beneficiaries to improve the quality of the technical assistance services concerned.

1. Introduction

Every area of international economic relations has a preference for a particular laboratory in which to test the power of its theories. Students of protectionism look at trade in agricultural products in which policies are influenced by political markets rather than economic rationality. Fans of strategic trade policy like to study Airbus and Boeing, because the competition between these rival producers of airliners provides a particularly good example to test their basic proposals. Proponents of an imperialist vision of North-South economic relations cherish intellectual property: since - they believe – it offers plenty of appealing cases where solutions are imposed on developing nations. Technical assistance services related to intellectual property (TASIP) are often perceived as a tool for implementing such strategies.

What is TASIP?

Technical assistance is a service. It builds human capacity through training, improved research skills, impact studies of various policy options and business strategies, and the provision of support to local organisations. In the area of intellectual property, technical assistance has several characteristics that are briefly described in Table 1.

Table 1
The Distinctive Features of TASIP and Critical Problem Areas

Characteristics of TASIP	Implications
Service	Value created through an offer of intangibles and interaction. <ul style="list-style-type: none"> - Beneficiaries are insecure in their choice. - The notion of “quality” may vary. - Performance is difficult to evaluate - Shared responsibility for the program's results
Public service	Beneficiary does not pay for the service and the service is a public good: <ul style="list-style-type: none"> - There are numerous publics of the service provider. - Local ownership is not easy to implement. - Frequent inefficiencies resulting from bureaucratisation are likely. - The problem of “<i>privilegia et beneficia</i>” often occurs in the program implementation. - Donors might impose their concept of the service.
IP-related service	Assistance dealing with IP regime and its use: <ul style="list-style-type: none"> - Conflicting views on what is an optimal level of IP protection - Vested interest groups tend to be active

	- Technical contents: corporatism may be an issue
International service	Diversity of policy objectives and inter-cultural context: <ul style="list-style-type: none"> - Political priorities (foreign policy and foreign aide concerns) should be taken into account. - Cultural and systemic differences may require that TASIP concept and the recruitment of consultants are adapted to the circumstances.
Multi-stakeholder service	There are numerous publics of TASIP (donors, providers, IP owners, producers, users, consumers) <ul style="list-style-type: none"> - There are likely to be conflicting objectives and expectations - Framework for decision-making should be designed to reduce externalities - Legitimacy may be an issue

Source: Partly based on Kostecki (2001)

TASIP is a service, i.e. it is a form of foreign aid that offers intangibles through inter-action between donors, providers and beneficiaries. Intangibility means that the offer is difficult to evaluate; this results in a good dose of insecurity as to its value. Quality assessment may use various criteria ranging from beneficiary satisfaction,, performance according to rules and procedures, zero default, functional quality or technical quality of the TA service. Moreover, interaction signifies that relationships are important for the program's success and should be therefore included in the evaluation under the heading of relationship quality (e.g. being concerned).

The public service dimension of TASIP means that the beneficiary does not pay for the service (which raises the issue of ownership, motivation and accountability) and that the provided service is an international public good. The fact that TASIP is an international service means that there is a risk related to conflicts of national interests and inter-cultural issues. Finally, the multi-stakeholder dimension of TASIP signifies that decision-making may be complex and that legitimacy is likely to be a major concern.

TASIP deals with a great variety of issues and approaches (Table 2). Most attention is usually attached to legal aspects (WIPO conventions or WTO agreements) and lawyers figure prominently among the TASIP specialists. Some attention is also paid to economic aspects of intellectual property, but the latter issues do not figure prominently in TASIP programs.

TASIP activities may involve such services as (i) seminars, courses, workshops and technical missions, (ii) training materials, data, software and hardware, (ii) research and consulting, (iii) assistance to governments and business organisations to facilitate policy-making, negotiations or putting in place of appropriate strategies concerning implementation, (iv) creation of goodwill concerning IP, (v) support in management of IP-related projects or institutions, (vi) project administration (vii) evaluation of various IP policies or business strategies.

TASIP Actors

Technical assistance services may be delivered by governments or private agencies and destined for governments or non-governmental organizations (business, NGOs). Box 1 provides a list of major types of institutions that are involved in TASIP in donor countries, beneficiary countries and on an international level (multilateral, regional and bilateral).

Table 2
The TASIP Issue- Activity Matrix

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

Box 1 : **What Are the Main Actors of TASIP?**

Donor countries

National IP offices and other government departments dealing with Foreign Aid, Foreign Affairs, Trade, Health, etc.

Academia

Business associations

Professional organisations

Companies

Lawyers and other IP consultants

Civil society (NGOs)

Mass media

Beneficiary countries

National IP offices and other government departments dealing with, health, industry, education, etc.

Academia (universities, research institutes, think tanks)

Business associations

Professional organisations

Companies

Lawyers and other IP consultants

Civil society

Mass media

International actors

International governmental organisations:

WIPO, WTO, UNCTAD, WHO, ILO, World Bank, OECD,

Regional integration arrangements (EU, NAFTA, ASEAN)

Regional intergovernmental organisations (ECA, ECE)

International NGO s (OXFAM or Médecins sans Frontières, ICTSD, etc.)

The predominant share of TASIP activities is financed from public budgets and is delivered by government departments or inter-governmental institutions such as the World Intellectual Property Organization (WIPO), World Trade Organization (WTO), United Nations Conference on Trade and Development (UNCTAD), or World Health Organization (WHO). Significant TASIP activities are also carried out by regional groupings such as the European Union (EU), North American Free Trade Area (NAFTA) and Association of South - East Asian Nations (ASEAN) or are provided on a bilateral basis (e.g. by USAID and other traditional TA providers).

Among the non-governmental actors directly involved in TASIP one finds numerous development foundations, think tanks, associations - such as the Washington-based International Intellectual Property Institute - or academic institutions such as the World Trade Institute in Bern (Switzerland). Moreover, academic staff - both from the donor and beneficiary countries – are frequently involved as consultants in IP-related activities. Industry associations, professional organisations and companies also play an active role in many TASIP activities related to their areas of competence. Pharmaceutical firms - particularly those concerned by the on-going debate about access to medicine for poor segments of populations or compulsory licensing of drug production - increasingly get involved in TASIP activities as part of their public relations effort. Business associations also provide specific technical know-how to assist developing country business, to promote their IP interests and to gather information. There is a growing number of consulting firms that find direct commercial interest in TASIP and perceive their involvement in such activities as means of getting access to information, establishing business networks and improving their access to decision-makers.

With the growing pressure to fight counterfeiting and the increasing use of trade sanctions related to IPR violations, intellectual property issues are of major concern to the consulting industry and business operators world-wide. At the same time, there is growing criticism of the dominant role of national IP offices and certain intergovernmental organisations in TASIP activities. One problem with the government IP department is that objectivity and openness is often lacking in training and consulting. Is a TASIP consultant permitted to express

opinions contrary to the stand of its employer such as a national IP office, WIPO or WTO secretariat?

Table 3
Classifying TASIP Activities

Areas/ Beneficiaries	Policy Issues	Economic Studies	Legal Issues	Business Issues
Governments	WTO assistance in drafting TRIPs-compatible national legislation.	Cost-benefit analysis of the new IP legislation on textile industry.	Assistance in dispute settlement cases concerning TRIP s.	Workshops explaining TRIPs to the business community in developing countries.
Companies	ITC support to encourage IP protection for traditional design (e.g. Iranian carpets).	Impact studies of various licensing contracts on an automotive firm.	Consulting on how to optimize a franchisee contract in food processing.	Training for managers in the area of trade-mark strategies.
Other stakeholders	WHO program to support drug users' interests in LDCs .	Evaluation of the potential employment benefits of a new IP legislation.	Presentation of a model copyright contract for public schools.	Assistance to consumer organizations concerning IP issues.

What about local ownership when the providing agency has a clear objective to promote the highest levels of IP protection? How is it possible to accommodate the fact that a given consultant should support implementation of a particular international agreement (e.g. TRIPs) and still recognise – on development grounds - that the “one-for-all” approach to IP might be sub-optimal for certain cases? How to incorporate a multi-stakeholder model in TASIP when government IP officials are in the driver’s seat? Is the TASIP offer by government bureaucracies sufficiently professional and cost-effective? The above issues partly explain why there is growing pressure on donors to rely more extensively on non-governmental institutions in technical assistance and to call for improvements in the TASIP model.

The History of IP Protection and TASIP

History teaches us that numerous developed countries that currently support high standards of IP protection were counted among the leading infringers of IPRs some years ago. Several important events that provide historical context to the TASIP debate are presented in Box 2.

Box 2

Chronology of Marking IP-related Events and TASIP

- 1893 - The Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle (BIRPI) - the predecessor to the World Intellectual Property Organization (WIPO) is set up to manage The Bern Convention for Protection of Literary and Artistic Works. The United States is not a member.
- 1967 - WIPO is formally created by the Convention Establishing the World Intellectual Property Organization. The United States does not become a member until the late seventies.
- 1974 - The Geneva-based WIPO becomes a specialized agency of the United Nations and has the mandate to "promote the protection of intellectual property throughout the world." WIPO intensifies its TASIP activities.
- During the 1960s and 70s developing countries manage to block the expansion of certain intellectual property agreements due to the fact that WIPO is a one country, one vote forum. The United States, which became a WIPO member in the late seventies, is in favour of a "forum shift" from WIPO to WTO that is expected to have "more teeth".
- 1970s on - UNCTAD is active in the area of TASIP. ITC provides business-oriented TASIP and the World Bank is active on IP policy issues.
- 1988 – The Omnibus Trade and Competitiveness Act introduces a new procedure under Section 301 of US Trade Law (Super 301) that enables the identification of countries where protection of IPRs is deemed to be inadequate. Exports of the countries concerned may be restricted if the practices concerned are not eliminated.
- 1995 - Creation of WTO which comprises an Agreement on Trade-related Intellectual Property (TRIPs). TASIP activities are initiated to ensure progressive implementation of TRIPs Agreement by developing countries.

IP protection has a long history and TASIP has already been around, at least in its rudimentary form, for more than a century. One lesson of this history is that a country's attitude towards intellectual property is likely to evolve with the changing structure of national IP interests. To put it in simple terms: nations that are net importers of intellectual property tend to be less enthusiastic about protection of IPRs (e.g. to-day's China, Japan of the 1960s or the US at the beginning of twentieth century). Countries that become net exporters of IP, on the contrary, tend to opt for a more demanding stand on IP protection. Some governments go so far as to promote the view that IP protection is a moral requirement.

North-South Controversy over IP

TASIP is frequently seen as one of the most controversial areas of development aid and there is no limit to the crimes for which – in some quarters - its programs are held to account. Why? The reasons are not hard to find:

- Developed countries, being major creators and net exporters of intellectual property (IP), are more interested in the protection of IPRs than developing countries which are net importers. That divergence of views is reflected in the area of technical assistance services.
- The very process of economic development (like child development) is largely based on imitation and coping; this implies that the optimal level of IP protection may differ between formal and informal (emerging) sectors – a reality that is often neglected in most TASIP programs.
- The international IP regime – as implemented by WIPO, WTO (TRIPs Agreement) and the like – puts emphasis on those forms of IP which are of interest to leading world business firms rather than issues of concern to developing countries such as protection of traditional know-how, ethnic designs or denomination of origin of products exported by developing country firms (Finger, Schuler, 2004). This mismatch is evident in many TASIP programs.
- Finally, technical assistance is typically provided by institutions and individuals that promote the high IP standards favoured by developed countries, rather than the flexible positions favoured by developing nations. This is due to a variety of vested interests and intellectual bias.

The main points of North-South controversy over IP protection and TASIP are briefly presented in Table 4.

Table 4
The Main North-South Conflicts of Interest in Trade-related Intellectual Property Rights

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North	South
One should promote high standards of IP protection through quasi-universal acceptance of international treaties defining such standards.	High standards of IP protection should not be encouraged and one should resist – as far as possible - developed country attempts to promote international treaties that reinforce IP protection.
Copying of IP is immoral and should be permitted only in well defined situations.	Many segments of national economy in developing countries are at the early stages of the learning curve. Developed countries should have a more flexible attitude towards the emerging firms of the informal sector that engage in copying in order to gain experience and to progress.
The international IP regime should protect the interests of the modern knowledge-based economy.	Not enough attention is paid to developing country IP concerns such as protection of traditional knowledge, folkloric design, etc
TASIP is provided by specialised institutions and consultants that have the required IP experience.	IP experience is needed but more attention should be paid to the fact that it may result in a biased, pro-IP protection approach in TASIP.
Donor should have a say in TASIP objectives, content, choice of providers, evaluation of performance and feedback.	Developing countries should have a maximal freedom of choice concerning the use of TASIP funds, TA objectives, area of application, selection of the provider agency, modes of TA offer, etc.
Experts (consultants) originate mainly in the donor countries.	Experts should originate mainly in the beneficiary countries or other developing countries whenever human resources of sufficient quality are available.

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

Proponents of high IP protection standards in low-income countries argue high standards encourage direct foreign investments, transfer of technology and promote local knowledge industry. They also maintain that the existing regime – if properly used – may serve development interests, particularly those of the most inventive companies in the Third World business community. In their view, it is fully justified that TASIP should promote higher

protection standards for IPRs and favor their implementation.

Box 2

Is the IP Regime Development Friendly?

The question of whether an IP regime is development-friendly or not is an empirical one. The first batch of studies dealing with trade and IP issue published after the Uruguay Round argued that the TRIPs agreement was probably a bad idea from a development perspective (for a brief summary of that literature see: Hoekman, Kostecki, 1995 and 2001). Obviously, not everybody agreed and - as one might expect - the conclusions of empirical analysis of the value of IP protection standards for economic development are today rather mixed. Whatever the general outcome, technical assistance has a role to play in that context, because it may shift the balance in one or another direction depending on how it is conceived and executed.

What is and what should be the nature of IP-related technical assistance? What can be done to ensure that assistance services will favour a development-friendly approach on a case by case basis? The answer to those questions might be the major challenge of TASIP over the years to come.

This research is based on a series of in-depth interviews, Internet questionnaires and a panel discussion with experts, providers, recipients and other stakeholders in the field of IP TASIP. These included government officials, business leaders, consultants and NGO staff. Its objective is to identify the main areas of possible improvements of the current IP-related technical assistance activities and report expert views on how it could be done. The field research follows a usual management science methodology that is presented in annex 1 below.

2. Technical Assistance And Intellectual Property: A Framework For Inquiry

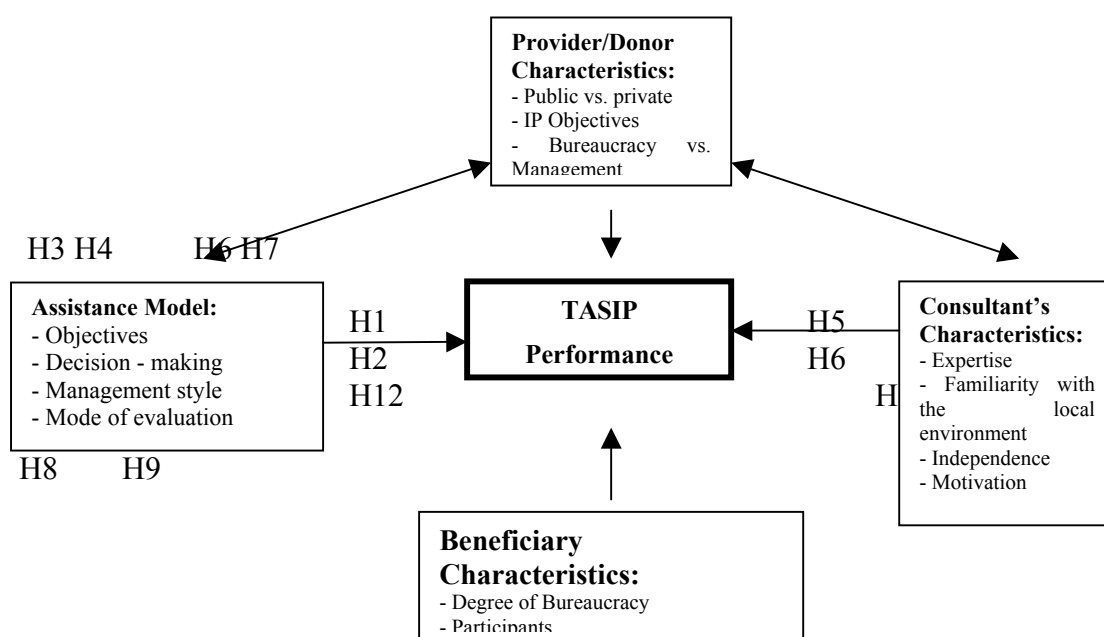
In modern information societies, identifying, registering and protecting IPRs has become one of the key drivers of business competitiveness in international trade. Intellectual property is today's competitive weapon in global markets but exploiting and protecting it has become complex and difficult.

There is a good dose of uncertainty among policy-makers, business leaders and civil society in developing countries as to how to manage IP-related issues and how to respond to the changing regulatory environment in this area. TASIP has a major role to play, but what should that role be? How could it be conceptualised? Based on our preliminary, non-directive interviews and academic literature, the following central issues falling within the scope of this subject area can be identified:

- (i) What is the impact of TASIP on the effective level of protection of

- intellectual property (IP) in various countries and sectors?
- (ii) Are the development-relevant issues of IP properly dealt with by TASIP?
 - (iii) Is TASIP adequately addressing the needs of developing countries in the areas of international negotiations, policy-making, implementation, training of business leaders and IPR-creators?
 - (iv) Are the donor funds effectively used ?
 - (v) In what areas should the current TASIP performance be improved?
 - (vi) What changes in *modus operandi* should be introduced to improve performance?
 - (vii) What guidelines could be followed to facilitate that change?

Figure 1
Leading Determinants of TASIP Performance



The following section comments on the listed issues before introducing the field research results. The analysis is organised along the structure presented in Figure 1 which exhibits the path model of our research.

There is little doubt that TASIP is, potentially, one of the most important areas of technical assistance. First, it addresses the growing needs of various constituencies in developing countries that are increasingly concerned with IP issues. Second, its content may be highly technical and rich in know-how and do-how. Finally, TASIP programs are related to

increasingly strategic aspects of economic development in R&D-based economies and - for that reason - attract a lot of attention from both business and governments. Therefore:

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

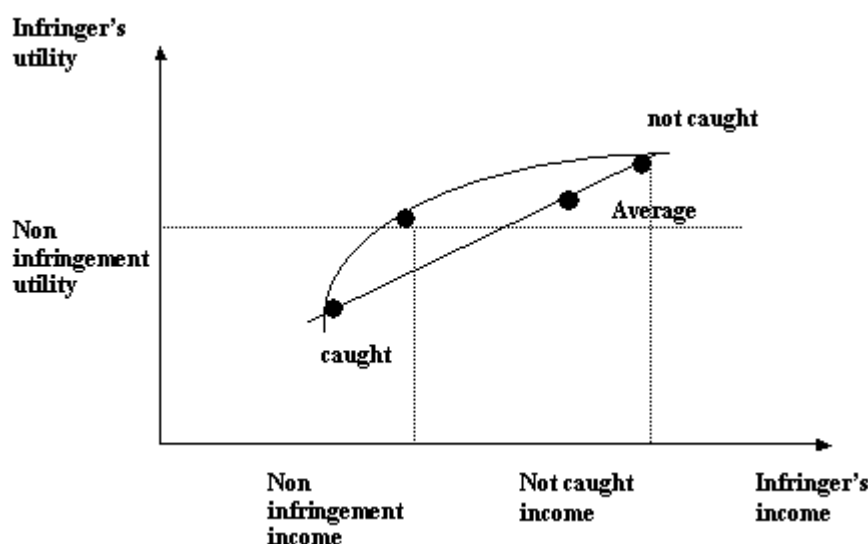
To put it in simple and direct terms, many TASIP activities are concerned with making infringement of IPRs not pay.. They therefore focus on issues of enforcement and implementation of IP law. The issue may be explained with help of the simple graph presented in Figure 2 below.

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

In order to protect IP one should ensure that the infringer's average utility is below the non-infringer utility. In such context TASIP – if supportive of IP interests – may contribute to the latter objective by:

1. increasing the utility of non infringement behaviour or by
2. discouraging free riding.

Figure 2
Ensuring that the Infringement of IPRs does not Pay



TASIP has a role to play in increasing the attractiveness of legal IP use through awareness

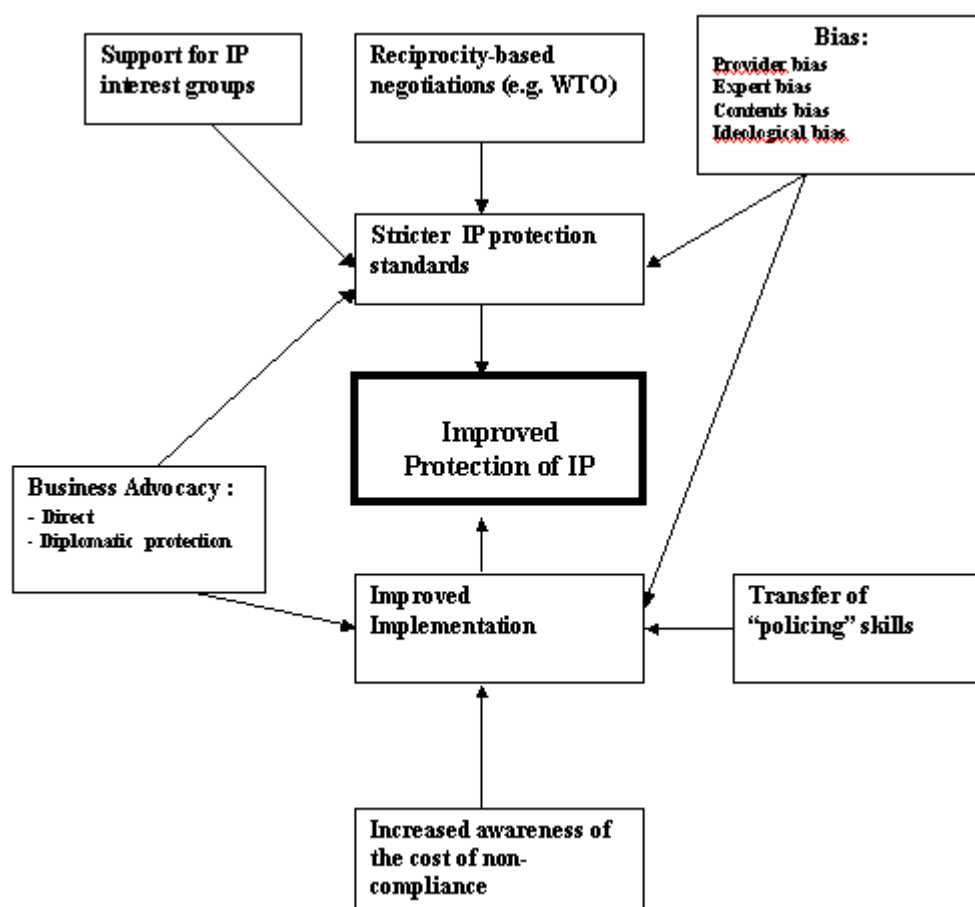
seminars, IP management training, coaching in IP-related projects, partner searches and so on. The model points to the critical importance of IP business training and consulting in reducing the attractiveness of IP infringement. Note that this type of TASIP is a Pareto-optimal policy (policy 1) since it decreases nobody's utility while increasing the utility of IP owners and IP users that abstain from free-riding..

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

What specific TASIP initiatives can contribute to an increased level of IP protection? The various modes of TASIP action - that may be implemented as part of policy 1 or 2 - are schematically presented in Figure 3 and discussed below.

- Higher levels of IP protection may be encouraged through TASIP activities aimed at the increased participation of developing countries in various international IP agreements. In particular, TASIP providers may offer to provide documentation centres, computer equipment or specialised libraries in exchange for acceptance of an IP agreement by the country's government.
- TASIP activities can aim to bolster domestic support in favour of stricter IP standards in the recipient country. This can be accomplished by providing support to endogenous R&D industry, specialised consultants and multinational companies in the beneficiary country. TASIP projects that develop contacts between such groups and local decision-makers may also boost the lobbying capacity of firms in favour of IPR enforcement.

Figure 3
TASIP and Making the Infringement of IPRs not Pay



- TASIP can also contribute to the transfer of skills in policing IPR violations.
- It may increase awareness of the cost of non-compliance with IP standards through promoting the message that weaker IP protection standards may result in retaliation from a major trading power (e.g. TRIPs or sections 301 or 337 of US Trade Law).
- Finally, TASIP's contribution to IP protection may be reinforced by numerous biases – provider bias, expert bias, contents bias and ideological bias – that are discussed below. TASIP affects, for example, the perception of what is an optimal IP policy by emphasising the positive rather than negative aspects of higher levels of IP protection (intellectual bias). Indeed, policy-makers, managers, and the public at large may be influenced by arguments such as H5: higher IP protection acts as an incentive for increased foreign direct investments (FDIs) in the country concerned, thus encouraging development of R&D-intensive sectors, stimulating innovation, industry R&D and related training and education.

Box 3 IP Protection and the WTO and WIPO TA Activities

WTO activities relating to TRIPs aim at improving the implementation of the Agreement by developing countries that are either WTO members or are in the process of the WTO accession. For example, TRIPs-related issues constituted one of the main stumbling blocks in the process of China's accession negotiations, and the delay in Russia's accession is partly due to IP-relevant negotiations. These approaches are also reflected in WTO technical assistance.

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

Therefore, the following hypothesis may be suggested:

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

Many traits of TASIP are rooted in the organisational culture of the provider institutions.

TASIP programs are largely provided by government agencies or intergovernmental international organisations which suffer from so-called “inside the box thinking”. Indeed, most government departments and intergovernmental organisations are rigidly “structured in boxes” and those in charge of technical assistance are affected by rigid bureaucratic administrative culture.

The TA staff of international institutions are, as a rule, compelled by the organisation's disciplines to dissociate themselves from their own values – a practice that stops any real debate on IP. Moreover, the administrators in charge rarely have any professional training or consulting experience (Kostecki, 2001). The result is inappropriate and low quality training and consulting, slow reactions to the changing environment and the priority of bureaucracy over value creation in the TA service. Though also relevant to most other TA activities, the following hypothesis may be suggested for TASIP:

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

Our preliminary research suggests that TASIP is perceived as one of the most controversial areas of TA activities. What are the reasons for this perception? The main cause is that many TASIP providers have clear interest in the area of intellectual property (Box 3). For example, the World Intellectual Property Organization (WIPO) is a major provider of TASIP and also manages numerous international IP agreements. Similarly, WTO is mainly interested in ensuring appropriate implementation of the TRIPs agreement rather than opening a debate on

the its pros and cons from a development perspective. Moreover, in most cases the partner institution in the beneficiary country is a national IP office, and other ministries (consumer affairs, culture, education or industry) are underrepresented or even excluded. This pattern reinforces pro-IP attitudes and support for the beneficiary country's increased participation in IP agreements. Therefore:

H4: The leading technical assistance programs are perceived as promotional tools to encourage wider acceptance or better implementation of the IP treaties administered by provider organisations (provider bias).

It is reasonable to expect that an expert trained in intellectual property issues favours approaches and attitudes that reflect (even unconsciously) a pro- IP stand. Indeed, it is a normal psychological reaction - frequently unintended - to assume that our professional activities create value added for most people.

The expert bias may also find its *raison d'être* in a simple observation that it is natural for a professional to side with an approach that favours his business. Moreover, in certain cases, conflict of interest may further increase the bias risk. Therefore, it may be suggested that

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

Another important source of bias is the content of TASIP activities. Two aspects of the problem may be mentioned:

(i) too little attention to development-specific interests and concerns, and
(ii) over-reliance on a canon of IP literature that deals primarily with issues of concern to developed country industries. As a result, where the lessons of previous experience with IP are applied in TASIP activities, it tends to be the experience of developed countries that is referred to. There is therefore a risk that developed country practices are directly transposed to developing economies, and development-related aspects of IP management and policy are neglected.

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

Another related issue is the lack of sufficient business history and economic perspective in TASIP programs. Indeed, the stages of business development and protection of intellectual property rights are closely interrelated, as suggested in Table 5.

During discussion of such cases dissident views are likely to be discouraged or ignored by TASIP. Therefore:

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

Another striking feature of TASIP is that it is focused in regulatory and policy issues rather than on IP entrepreneurship. Indeed, while numerous TASIP activities refer to IP protection and implementation, too little attention is paid to hands-on training of interest to developing country business. It is like having a car with enormous, well-performing brakes and no engine. That situation is partly due to the excessive role of bureaucracy in needs assessment and TASIP design and implementation. This is an important omission because efforts to increase standards of IP protection should coincide with efforts to encourage IP creation in low-income countries. Therefore:

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

The FDI bias means that TASIP programs emphasise the message that high standards of IP protection stimulate FDI in particularly attractive (R&D-intensive) sectors. Although the suggestion is true in numerous cases, counter-examples also exist: for example, China's success in attracting FDI despite relatively weak protection of IPRs. TASIP programs rarely explore such arguments in a balanced manner. Therefore, the following suggestion may be made:

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

Table 5
Stages of Development and Protection of Intellectual Property Rights

STADE I	New production is initiated; the emphasis is on exact copying of the superior (foreign) industrial product. The use of foreign designs or trademarks is frequently observed, especially in the informal sector. The newcomers (most often inexperienced and naïve) copy IP to improve their competitive position in unsophisticated emerging markets.
STAGE II	The infringer turns to borderline areas of infringement such as doubtful advertising, simulation (passing off), representation, etc. It is already aware of the risk of the strategy and aims to minimise conflicts. TASIP has an important role to play at the company level.
STAGE III	The infringer chooses (or is forced) to seek legitimate licence or other IP arrangements (due to economic reasons, government intervention or business pressures). Some R&D support may be needed. TASIP is essential to facilitate the process. It is at this stage and the previous stage II that the win-win type of TASIP (policy 1), as discussed above (figure 2), is essential.
STAGE IV	The former infringer has developed his own products or trademarks and is now in the need of IPR protection. His products are of good quality and highly competitive and often meet with protectionist barriers in exports.

Many TASIP programs suffer from what might be referred to as “interest group bias” resulting from the fact that most such programs have a tendency to encourage pro-IP lobbies in beneficiary countries. Indeed, numerous TASIP events address specialized government staff, academic institutions, lawyers, consultants and IP managers. In certain cases such pro-IP groups are not only offered training and consulting but also direct material support. Some of these issues have been already discussed above. Therefore, the following, more specific proposition may be advanced:

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

Finally, many TASIP initiatives seem to underestimate the fact that the informal economy is a reality in developing countries and that it often plays a crucial role in poverty reduction. As a result it is important that any assaults on such economic activities in the poorest areas be accompanied by appropriate measures of material aid and technical support. Therefore, the following proposition may be suggested:

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

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

In other cases, it is noted that those who benefit from lower standards of IP protection (consumers, informal sector producers or start-up SMEs) tend to have little say in the matter because not even their own government listens to them (Kostecki, 2005). Therefore:

Box 4
TASIP and Multi-stakeholder Decision-making

When a third party has not consented to or played a role in the carrying out of a given policy, the situation may result in a negative externality. Indeed, many bad things happen to individuals or organisations as result of their exclusion from the decision-making process. For example, a person may suffer as a result of other person’s careless driving and be obliged to repair the body of her car. Beyond the car repair example, trade policy externalities may have enormous effect on corporate performance, consumer well-being or even the welfare of an entire nation. In business and policy-making alike, in order to ensure that negative externalities are not illegitimately imposed, one should assure that all major stake-holders are involved in the decision-making process. That principle is especially relevant to many TASIP programs in which externalities are a common occurrence.

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

Box 5

TASIP and the Doha Round

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

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

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

3. Empirical Research and Data Analysis

The empirical research for this paper relies on management science research techniques comprising in depth interviews, e-mail administered questionnaires and the records of a panel (expert debate) on the issue. The sample of 40 interviewees was established through consultations between ICTSD representatives and the author. It comprised Geneva-based negotiators (WTO, WIPO, UNCTAD), staff members of several international organisations (WIPO, WTO, UNCTAD, ITC) and IP experts from business, NGOs and academia. Several

phone interviews have been also conducted with experts based in foreign capitals. As far as the interviews are concerned, the author succeeded in obtaining the co-operation of 22 individual included in the initial sample; this signifies a response rate of 55 %. The interview and the questionnaire responses were anonymous to encourage objectivity. Moreover, the research is supplemented by content analysis of interventions made by some 50 leading TASIP practitioners gathered at the ICTSD Dialogue on Technical Co-operation for Intellectual property Policy in Developing Countries (11 –12 July 2005). To illustrate the general tone and perception of TASIP projects, Box 6 presents a list of leading comments.

Let's now turn to the discussion of the empirical evidence concerning the various hypotheses announced in the previous section.

The Strategic Role of TASIP (H1)

There is little doubt in the mind of our respondents that TASIP is one of the most important areas of technical assistance. A critical observer of TA programs agrees that TASIP is one of the most promising areas because *it is technical in scope and addresses one of the most critical development issues*. An IP manager of a global company stresses that TASIP may assume a strategic role in economic development if it is *properly conceived and addressing subject areas of relevance for developing countries*. A participant of an WIPO on-line training program considers that the program is of *great interest but* - she also notes- *that most participants are unable to relate things that they learn to their country's reality*.

Another commentator notes that several recent TASIP events *deal mainly with technical issues and are not addressing strategic problems of major importance to developing countries*.

Box 6

Leading Comments on TASIP

Intellectual Property and Economic Development

- I feel that it is a taboo to talk about the fact that many developed countries went through a period of intensive IP theft.
- WIPO follows the “one-size-for-all approach”. They make no effort to search for development-friendly IP policies.

Needs assessment

- Most people in developing countries consider that there is too much technical assistance in IP of the type that favours interests of large business firms.
- Development countries want us to adopt model legislation on IP, that's it.
- We have many specific needs but TASIP experts are frequently not familiar with them because their experience concerns developed countries.
- Need - assessment is bureaucracy-driven and business and users interest are neglected.

Design

- WIPO and national IP offices are mainly interested in promotion of IP treaties that they administer. Their technical assistance is a big marketing operation.
- There are powerful IP industries beyond the scene and even though we get mainly government funds we are not totally free to do what is good for development.

Organisation in charge

- To many government agencies are involved. This signifies that there is a lot of bureaucracy and that the programs in question cost too much given their output.
- WIPO and WTO have funds for technical assistance concerning intellectual property. They use such funds to promote the IP agreements that they administer and worry very little about economic development.
- NGOs and private sector should assume a more prominent role in technical assistance concerning IP.

Implementation

- Most WIPO programs are of limited utility. Participants are, to a large extent, invited to participate as a reward for their support of WIPO policy.
- Numerous experts arrive in developing countries without having sufficient knowledge of the local IP issues and realistic IP options.
- Many programs are too abstract and largely irrelevant given our needs.

Evaluation

- Mainly accountants are involved in project evaluation. No serious job is done in that respect. Most evaluation reports are of little utility. They are written by bureaucrats for bureaucrats.
- It is important to improve the evaluation system because without an appropriate feed-back there will be no quality improvement.

Follow-up

- Once the project is over, not much happens.
- Follow up is a real problem in many TA projects. TASIP is not an exception to that rule.
- Most issues discussed in our training were of no direct relevance to what was going on in our country even though they were intellectually stimulating. We were unable to use the training in our job.

Box 7

Illustrative Statements about TASIP: Strategic Role of Technical Assistance

- Intellectual property issues tend to be complex in their legal, economic and policy dimension and, therefore, technical assistance is of great importance for developing countries that lack skills and experience in that area (Developing country trade diplomat).
- Assistance is particularly needed in the area of intellectual property in which most developing countries and the countries' business community are poor performers (A civil servant from Africa).
- Intellectual property regimes in developing countries should be modernized in order to ensure that the countries develop indigenous innovation and goodwill. Technical assistance should support such reforms (An academic from Latin America).
- IP is essential for economic development in today's economy. From access to medical treatment for poor segments of population to technology transfer and access to computer software and cultural sources – everything is about IP. We need assistance in that area to defend our interests (A lawyer from Asia).

Certain TASIP observers note that TA may be used as a strategic instrument by large corporations to reinforce their dominant position in developing countries. An international economist considers that "IPRs clearly favour global corporations which sell their products in developing country markets". A Geneva-based intellectual and consultant refers to still another aspect of the issue: "I have often a feeling that what certain developing trading nations gain in terms of market access is taken away from them through management of IPR protection, and TASIP assumes an important role in that process. Take for example Asia: Japanese companies often assist developing country firms within the framework of TASIP programs. Many of those management-oriented programs enable developing country firms to be integrated into global supply chains of Japanese companies. However, at the same time, the increasingly strict IPR protection ensures that such firms will never be able to free themselves from those relationships because IPRs are skilfully used to keep them in a situation of dependence".

Making the infringement of intellectual property rights not pay (H2)

Most interviewees agree that many TASIP programs attempt to impose higher standards of IP protection or to improve the implementation of those commitments. This discourages free riding in the area of intellectual property and reduces the degree of infringements on IP

rights.

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

It is apparent, that in spite of the TRIP s agreement and years of WIPO pro-IP policy, there is a lot of resistance - even among developed country experts - to the idea of "one size for all" in IP protection. Several interviewees quote a series of recent studies critical of the latter approach and note that the studies were representative of their views (e.g. Boyle, 2004 and Stiglitz, 2002). An interviewee – himself an IP expert and a distinguished TA personality – admits that he "does not encourage a developing country to implement its TRIPs commitment if the latter are contrary to the country's development interests. I would suggest that they delay the TRIPs implementation as long as they can".

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

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

Poor performance of the provider institutions (H3)

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

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

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

Several observers voice rather harsh comments about the TASIP activities provided by intergovernmental organisations. A former international civil servant notes that the training performance of WIPO is poor. He suggests that many participants who come to various seminars and workshops "are invited as a reward for their loyal support of WIPO policy objectives in their respective countries. He also thinks that the seminar evaluations are rarely reliable because many participants are happy to travel, to benefit from their per diem (frequently a high fraction of their income) and to have a break from their routine office duties". However, he agrees that, in many instances, TASIP events "may be important for networking".

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

A high ranking international civil servant and academic also suggests that the TASIP performance of international organisations should be improved because "it is cost-ineffective, poorly managed and rarely properly evaluated. He suggests that many evaluations were written by accountants (emphasis on financial reporting) or by "bureaucrats for bureaucrats". In his view, "much of TASIP should be moved out of WIPO and WTO to improve quality and increase value-added". He notes, however, that many TASIP activities, - both by WIPO and WTO - have been conducted by competent experts and that "a good share of such programs could be qualified as relatively successful".

Public visibility, prestige attributed to international projects "and the opportunity to establish contacts with government officials in the region (who otherwise we rarely meet)" are mentioned by another interviewee as important outputs of TASIP conducted by WIPO and WTO. Another expert underlined that "the same message may have a different impact depending on the person that presents it to the audience. In Africa people won't listen to an African, they want an expert from far away".

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

Several comments referred to the issue of competition versus co-ordination between various donors and provider institutions. A TASIP provider can co-operate, co-ordinate or differentiate their activities to avoid redundancy. The providers may also compete with each

other and provide a better service. (In the TA jargon co-ordination figures particularly frequently). Obviously, WIPO is in a central position in the area of intellectual property rights with WTO assuming a supplementary role in trade-related matters.

It should be noted that most of the critical comments are not TASIP-specific but typical for any TA activity. Numerous problems discussed are deeply rooted in modus operandi of the UN system and most remedies that could be suggested would be beyond the scope of this report.

Provider bias (H4)

There is a general perception that TASIP takes place to justify developed countries' stand on IP. Five interviewees consider that technical assistance continues to play a major role in pushing for recognition of stricter IP protection standards, their better implementation and the fight against infringement.

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

Three commentators complain about the fact that within the recipient countries the national IP officers have a quasi-monopoly on IP-related technical assistance and that other government agencies and interest groups are not consulted.

A participant of the WIPO on-line course perceives the program as a clever marketing effort, although she recognises that "it is a useful training program and that the diploma delivered by WIPO may have some weight in the local labour market".

An international consultant suggests that "TASIP is a specialist area of technical assistance and for the most part, recipients and mainstream donors have been happy to leave it like this. Now the shortcomings of this approach have been acknowledged by many people – but reforms to the practice of TASIP are slow in taking place (...)."

Box 8

Provider Bias in TASIP: Interviewee Comments

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

- It is natural that an international organisation that manages numerous IP treaties uses its technical assistance activities to favour larger participation of developing countries in such IP agreements (An EU lawyer specialised in IP).
- WTO is mainly interested in making sure that TRIPs commitments are fully implemented. In numerous cases the flexibility provisions are not fully used. This may be seen, for example, in the case of accession negotiations. It might be advisable to have a neutral body providing technical assistance in the area to ensure more objective approach (An African diplomat).

An expert from a developing country also agrees that *the needs of individual recipient countries are very different – for example in the more advanced developing countries and transition economies, the legal frameworks are basically in place, whilst in many LDCs laws have changed little for decades or even longer*. Another commentator confirms that *the needs of individual countries vary greatly as they have different strengths, weaknesses and priorities and that “one size fits all” is not an appropriate approach*.

Another observer suggests that it is illegitimate to use TASIP to push developing countries towards stricter IP regimes because regimes as embodied in the TRIPs Agreement of WTO may not be considered as legitimate. Such vision is – in the view of two speakers - supported by history of intellectual property rights and their regime. The interviewee recalls that *the development of the US economy has been largely encouraged by massive copying in the beginning of the twentieth century and that Japan’s business followed the same path until the sixties* (Table 5). He considers that such equivalent opportunities should be granted to current developing countries.

A government official from a developing country considers that: *it is difficult to reduce controversy over TASIP issues when controversy exists on the subject matter, IP, itself. An important measure is therefore to address the broader issues and controversies and to target TASIP activities to support the measures to address the larger questions. (...) (One should wonder whether) there should be an implicit aim to reduce controversy regarding TASIP activities just for its sake*.

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

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

Still another observer remarks that there should be no controversy. (...) we have already entered into the IP protection world since the Uruguay Round, and it's inevitable. We have to face it but we need more preparation (...)

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

Expert bias (H5).

Several commentators agree that IP experts have a natural tendency to be supportive of high standards of IP protection the same way that doctors are supportive of hospital and solicitors or court cases.

Box 9

Expert Bias in Technical Assistance: Interviewee Comments

- Consultants engaged in technical assistance relating to intellectual property are often involved in other consulting activities in R&D business or companies practising product differentiation through trademarks, denomination of origin or industrial design.
- Most IP experts tend to be lawyers who deeply believe in the virtue of IP protection. Technical assistance in the area of intellectual property is not sufficiently focused on development concerns and priorities.

Several experts agree that corporatist reactions might have played a role but they also

underline that many experts may suffer from conflict of interests since some of them act both as TASIP experts and consultants to companies with vested interest in particular IP issues (pharmaceutical products, show business industry, etc).

Another observer stresses that both the provider bias and expert bias gives raise to the issue of neutrality. Multiple comments were made on the topic: Neutrality means taking no position concerning IP rights. Neutral consultant should not decide for the beneficiary neither should he impose his views. Neutrality means that we analyse without making any value judgement.

The diversity of comments proves our initial impression that “neutrality” is a concept that is “made of rubber” and that it may be interpreted and approached from different perspectives. Neutrality may signify (i) avoiding controversy through self-censorship, (ii) opting for dialectics resulting in a “balanced controversy” (iii) suggesting alternative solutions and conduct their cost-benefit analysis (iv) suggesting a single decision outcome based on an independent and honest evaluation. Which neutrality approach is desirable will depend on the beneficiary.

Contents bias (H6).

Several interviewees suggest that there exists what has been referred to as content bias in TASIP programs. Four experts explicitly note that too little attention is paid to development-specific interests and concerns. An experienced developing country IP lawyer stresses that most IP training programs *refer to classic (legal) literature that deals with issues of direct concerns to the developed country industries rather than developing country companies and that most lessons of experience concerning IP refer to developed country cases. What is evidently lacking is the emphasis on development-related IP issues and reference to policies that are not direct transpositions of developed country practices into developing world.*

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

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

Box 10

Contents Bias in TASIP: Interviewee Comments

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

- TASIP omits many issues of direct interest to developing countries (Government official from Asia).
- For us, beneficiary ownership is a weak point of many technical assistance services concerning IP because the program design and the consultants tend to be imposed on us rather than selected through a process of joint decision-making (Employee of a developing country NGO)

Ideological bias (H7)

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

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

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

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

Neglect of technical assistance for IP business (H8)

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

An academic stresses that *this is due to the fact that many providers of TASIP have policy focus rather than business orientation. He notes that in the case of least developed countries*

such focus makes little sense because the policies in place have limited scope for application since IP property hardly exists in such countries.

An international TA expert notes that *many funds are available for implementation of internationally-negotiated IP commitments but that there is much less concern for business aspects of IP in developing countries.* He supposes that *this results from the fact that IP-promotion lobbies and implementation concerns dominate within the government agencies of the donor countries.*

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

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

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

Overemphasis on FDI argument (H9).

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

Reinforcing the IP lobbies (H10)

Several examples are quoted to illustrate the impact of TASIP on pro-IP interest groups. First of all, it is clear that TASIP reinforces the positions of national IP offices which often obtain

additional equipment, documentation material and prestige thanks to the TASIP projects. In some cases *computer equipment and software support is offered to IP institutions in countries that agree to accede to certain international IP treaties*. In other cases IP government officials benefit from scholarships or invitations to various IP-related events. There is also little doubt that numerous TASIP programs *encourage interest in IP issues in academia and numerous research institutes*. In many cases *students are happy to participate in WIPO-sponsored training because they have impression to learn a lot and hope that the course diplomat will help them to find an interesting job*—commented a former university student.

There are numerous business associations and professional groups that benefit from TASIP. *Protection of copy rights is encouraged by pen clubs and film producer associations thanks to technical assistance support* – comments a professor of IP law. *Also lawyers are able to improve their competence thanks to training programs financed under bilateral and multilateral aid funds*.

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

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

Neglect of informal sector (H11)

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

There are no specific proposals on how the informal sector's voice could influence the IP policy formulation and TASIP. It is suggested that *the defence of the sector's interest should be assume by the department of social affairs and certain NGOs that deal with poverty reduction*. An observer stresses that *the infringement activities in informal sector rarely represent major danger to the legitimate IPRs owners, because the counterfeit products tend to be of poor quality*.

4. Assisting Technical Assistance

Empirical research in the milieu of experts familiar with TASIP events and TASIP users identifies a number of areas in which improvement might be required. Before offering

guidelines for TASIP improvement it is useful to briefly review the gap between what actually exists and what is needed, as shown in Table 6.

The vision

In numerous cases TASIP activities lack a convincing vision as to what should be done and accomplished with respect to the IP issues in particular developing countries. On the one hand, many programs lack appropriate needs analysis and strategic framework to enable successful management by objectives. On the other hand, most TASIP providers are lacking an appropriate strategic audit and global evaluation of its programs.

Several vision proposals were suggested during the interviews. They concerned funding of the TASIP activities, abuses of IPRs undertaken by large companies in developing countries and technology transfer options in which TASIP could have been particularly instrumental.

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

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

Table 6
TASIP: What Exists and What is Needed?

What exists	What is needed
Need assessment tends to be neglected by the provider or based on information given by national IP offices with clear pro-IP agenda.	Need assessment prepared with participation of all stakeholders concerned: other ministries, ip users, professional associations, consumers, etc.
“One size for all” is taken for granted in most TASIP activities.	Controversial issues should be more openly considered by TASIP.

IP industries advocate more emphasis in TASIP on implementation of IP protection.	The influence of IP industries on TASIP should be countered by influence of other interest groups such as government agencies dealing with education, culture and social issues, NGOs and consumers.
Emphasis on program of interest to developed countries.(“follow our example approach”).	Greater emphasis on issues of main interest to developing country business and population.
TASIP is subjected to limited public scrutiny and its decision-making is lacking transparency.	Multi-stakeholder model of decision-making should be favoured. More active role should be granted to various NGOs in evaluating TASIP activities.
WIPO and WTO promotional approach to TASIP is increasingly criticised but not much is done to change the situation.	More independent TASIP on WIPO- and WTO-related issues is needed. Certain TA might be shifted to an independent, neutral provider.
Little concern for follow-up and program sustainability	Emphasis on sustainable TASIP projects.
Substantial loss of funds and efforts resulting from over-bureaucratic management styles.	Great emphasis on professional training, consulting and hands-on coaching by private sector specialists and experienced policy-makers. Increased role of training specialist and consulting managers in TASIP.
Formalistic program evaluation, little feedback and very slow improvement.	Reliable evaluation mechanisms. Quality improvement is built into the program.

Finally, it was suggested that *one could improve prospects for technology transfer to poor countries along the lines of the detailed proposals included in a recently published paper by Hoekman and Maskus. (<http://spot.colorado.edu/~mascus/>)*

New Modalities

TASIP is a service but its management suffers from lack of professionalism. The latter is especially due to (i) the absence of quality improvement system (strategies and practices of recruitment, training, motivation, evaluation and feedback are often rudimentary) and (ii) the poor needs assessment. TASIP tends to be bureaucracy-driven, many stakeholders are excluded from the consultation process and dissident voice is rarely listened to.

Many TASIP donors and providers don't grant enough freedom of choice to the beneficiaries concerning consultant recruitment, choice of providers, area and mode of assistance and program design. TASIP initiatives tend to be poorly integrated with the beneficiary country

innovation policies, SME promotion strategies, public health projects, etc., because national IP offices usually have quasi monopoly as local partners.

A developing country expert suggests that *TASIP providers and donors should use new tools that are being developed such as DFID commissioned Diagnostic tool for capacity building.*

A US professor stresses that *more impact studies (surveys of managers and public agencies) are a top priority (...).*

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

Another commentator suggests that *the UNDP representations in developing countries should be asked to maintain a public website on TA. The TA provider should be obliged by the donor to place the project document on the website and sign a co-operation agreement with those who are engaged in a similar activity.*

Provider's organisational culture

Many traits of TASIP are rooted in the organisational culture of the institutions that act as promoters of specific IP agreements managed by them. In the beneficiary countries TASIP activities often aim to enforce pro-IP lobbies and suffer from a bias.

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

Bureaucracy constitutes a non-negligible source of inefficiencies and “inside the box thinking” of many TASIP initiatives. Expertise of TASIP consultants tends to be good although conflict of interest is often an issue of concern since certain specialised consultants also act as advisors to IP industries.

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

Improving contents

Too many TASIP projects focus on policy and legislation rather than on optimal use and management of IP options and assets by developing country companies and business community. It is regretful because the later favours a win-win approach whereas “the making

of IP free ride not pay” emphasises the win-lose aspect of IP arrangements.

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

Another expert considers that *more information sharing and talking together amongst donors and recipients (such as the DFID “reflection on IPR-TA workshop” in September 2004)* would be useful.

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

There is also too little emphasis on hands-on training and coaching (do-how), more of which is clearly needed in many developing countries than teaching and pure training. (The latter functions might be well taken over by academia and various professional training institutions on the spot).

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

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

A Checklist for TASIP reforms: provider and donor perspectives

A checklist might be useful to systematise the reformer’s thinking about various options of TASIP improvements

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

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

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

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

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

It is known in the theory of finance that reduction or stagnation of the available budget (a frequent occurrence concerning foreign aid budgets in developed countries today) can be partly compensated for by creating a greater freedom of choice for the spender between the various budgetary positions. This approach should be also applied to TASIP. In particular, it is possible to increase the beneficiary's freedom of choice affecting expert recruitment, provider institutions, areas of TA or budgetary compensation between various positions of TA.

4. Is your TASIP proposal sustainable and quality oriented?

Make sure that there is a critical follow-up and use of feedback mechanism in program design and implementation. Quality improvement programs should be more widely introduced in TASIP, the way they are used in professional training, business consulting or certain TA institutions such as the World Bank. Evaluation, critical follow-up and feedback mechanisms should be further encouraged to promote quality assistance programs in the area of intellectual property.

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

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

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

Turn-around management requires new human resource policies. Search for TASIP management that is familiar with professional training, consulting and modern methods of services management.

7. How to encourage entrepreneurial spirit in TASIP?

Something should be done to discourage the bureaucratic culture of many international organisations and government departments that get involved in IP-related TA . "New public management " might offer a useful inspiration (see, for example Osborne and Gaebler,

1992). Whenever feasible, TASIP should be freed from excessive bureaucratic restrictions by revising the standard operation procedures (modern companies revise such procedures every 2-3 years) and favouring competition among provider institutions and greater involvement of non-governmental actors. What is often missing in TASIP is joined-up thinking among government, NGOs and companies: a strategic partnership approach to solving some of these problems. Good TASIP is unachievable without the help of business and NGOs, yet the issue of balanced approach and legitimacy remains. What should be the common framework to reconcile the two? Companies can offer valuable inputs in the areas of expertise, past experience, expert comment and financial support. However, a balanced solution requires other players – development lobbies, consumer groups and trade unions, for example - to be involved as well. To take steps in the right direction one needs creativity and an open mind. Increasing the role of academia in the TASIP process is one such step. In particular, departments of law and business schools should be more actively involved.

Dealing with TASIP reforms: The beneficiary institution's perspective

It is one of the main themes of this study that beneficiary countries should become more proactive in TASIP design and implementation. What guidelines may be offered to encourage such attitudes on the part of developing country governments and various interest groups? Several suggestions are presented below.

- Be absolutely clear what you expect that the program should do for you. Consult other major stakeholders in your country to ensure legitimacy of the program. Decide among the people concerned the questions that you want the project to answer or the criteria on which it shall be evaluated.
- Draw up a short list of alternative providers of the needed type of TASIP program. Invite proposals from some three providers, analyze them and then schedule a consultation process for the TASIP providers to learn about their approaches, credentials and team profiles. The keep/drop decision should also comprise such measures as the beneficiary's overall satisfaction or perceived value of the TA services offered. The trend in technical assistance towards larger choice of service provider and towards building relationships with beneficiaries continues to grow, and TA agencies are becoming increasingly interested in retaining beneficiaries over the long run.
- Do not blindly approve the team members that are suggested for the program. Review detailed CVs and interview the main providers of the TASIP service (over phone or e-mail) to test their knowledge and experience. In particular make sure that administrative staff of the delivering agency do not weight too heavily in the project implementation.
- Keep the focus on value and how it should be created. Specify how success and failure of the TASIP program will be evaluated. This will encourage the service providers to define a yardstick against which they will be able to judge their

performance.

- Manage the performance of your TASIP project. Build in several reviews and give the providers the opportunity to take remedial action mid-project if necessary.

5. Conclusion

TA in the area of intellectual property has a number of distinctive characteristics. It is perhaps more significantly influenced by vested interest groups than other TA activities and biased in favour of IP protection. In numerous cases the national IP offices in the beneficiary countries tend to have a quasi-monopoly position with respect to TASIP. Other stakeholders both within and outside government are rarely involved in the projects design, needs assessment or the program implementation.

Technical assistance related to intellectual property puts emphasis on legal and policy issues rather than business-relevant training and hands-on projects that could show how a pro-IP strategy is a viable business proposition for a developing country firm. Certain TASIP programs are irrelevant to developing countries that have little IP ownership and are not greatly concerned by IP issues. TA related to international IP negotiations also suffer from a North-South divide because it is hard to practice reciprocity in international negotiations when there is such a significant asymmetry of interests and power involved.

TASIP is generally considered as a particularly useful TA activity because IPRs are perceived as an important factor of economic development in the contemporary information society and its content tends to be highly technical, both in legal and economic terms. Yet, this form of technical assistance is not free of ideological overtones. The major conflicts of interest in the field of IPRs are reflected in TASIP, and therefore the issue of what is a development-friendly approach to IP is highly controversial. In other words, TASIP can be a normative or a positive form of technical assistance. Positive assistance is one referring to purely technical aspects of intellectual property. The normative dimension of technical assistance involves value judgements such as whether a given level of IP protection or a given technical aspect is a development-friendly approach.

According to certain experts the issue of optimal IPR protection should be a live one reflected in TASIP activities and projects. According to other (more realistic?) observers developing countries have already entered (since the Uruguay Round) the world of IPR protection and the objective of TASIP should not be to question it, but rather to make the best out of the present situation working within the current international IP regime to the advantage of developing countries. The choice is, thus, between *Realpolitik* and an idealistic pro-development policy. It is up to the reader to decide.

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Annex 1 :
A Note on Research Methodology

In-depth interviews and questionnaires administered over the Internet proved to be a useful tool for the model development testing and the design of our research. The initial design of our theory-building research was inspired by literature on technical assistance and training and consulting treated in more general terms.

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

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

The questionnaires sent over the Internet contained the following questions. 1. TASIP deals with various aspects of intellectual property (IP) such as (i) preparation of legislation and (ii) impact studies, (iii) negotiation of international agreements, (iv) implementation of IP commitments or (v) improvement of know-how and do-how of managers or consultants related to IP business applications. What TASIP activities should be reinforced or reduced?

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

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

Annex 2: Illustrative List of Technical Assistance Services in Intellectual Property Activities

Level	Donor	Project	Description	Host/Beneficiary	Period
WIPO - Government	WIPO	WIPO-ASEAN Sub-Regional Colloquium for Judges on the Enforcement of Intellectual Property Rights	Capacity building for IP law enforcement	Various ASEAN countries	Jun-98
Intergovernmental	Denmark	Danish Patent Office IPR Training Course	Training course given as part of WIPO's World Wide Academy	Jamaica, Malaysia, Georgia	Jun-03
Intergovernmental	JITAP	Module II: Strengthening Reference Centers and National Enquiry Points	Capacity-building for policy transparency, including TRIPS obligations.	Various African countries	Ongoing
Intergovernmental	APEC	IPEG Public Education and Awareness of IP	Program of education and awareness-raising on benefits of effective IP system	Indonesia, Thailand, Philippines	2003
UN - Civil Society	WHO	Regional Meeting of the TRIPS Network, Thailand	Strengthen research network for monitoring the impact of TRIPS on access to medicines	Asian health researchers	Apr-04
UN - Government	WHO	Technical briefing to ANDEAN Ministers of Health	Provide information on impact of IP provisions in trade agreements on public health	ANDEAN governments	Mar-04
Treaty Secretariat - Government	UPOV	National Seminar on the Protection of New Varieties of Plants under the UPOV Convention, Lao PDR	Capacity-building for understanding of UPOV Convention	Government officials and research scientists	Nov-03
IGO - Private Sector	ITC	Publication of 'Marketing Crafts and Visual Arts: The Role of Intellectual Property: A Practical Guide'	Provide information on using IP to market crafts and arts	Entrepreneurs in developing countries	Jun-05
Government - private sector	EC	European Patent Office Workshop for domestic SMEs	Training in IP management for export sales	Philippines private sector	Nov-02
Private sector consultancy	MindVault	IP Audits and Training Services	Business Consultancy offering IP Audits and Training in Malaysia sponsor of World Customs	Malaysian private sector	Ongoing
Private sector advocacy	GBLAAC	Global Congress on Combating Counterfeiting	Organisation-organised Congress	World Customs Organisation	May-04

Source:: WTO/OECD Doha Development Agenda Trade Capacity Building Database, <http://tcbdb.wto.org>

Prepared by Andrew Stevenson, International Centre for Sustainable Development, Geneva