

Breakthrough on WIPO Development Agenda

Member governments of the World Intellectual Property Organisation have agreed on an initial set of recommendations aimed at ensuring that development is the guiding principle of the institution.

In 2004, thirteen developing countries proposed to the WIPO General Assembly to start considering measures that would integrate a development dimension into all areas of the organisation's activities (Bridges Year 8 No.8 page 1). Over the next two years, member states tabled 111 reform proposals, but could not agree on how they should be addressed (Bridges Year 10 No.4 page 18). A breakthrough finally occurred at the February 2007 meeting of the provisional committee on the development agenda proposals (PCDA), where delegates managed to whittle down 40 proposals to 24 specific recommendations for action. These will be submitted to the September session of the WIPO General Assembly. The PCDA will address the remaining 71 proposals at its next meeting in June.

For the committee's February meeting, former WIPO General Assembly Chair Enrique Manalo had prepared a document that grouped the 111 proposals into six issue-based clusters: (a) technical assistance and capacity-building; (b) norm-setting, flexibilities (exceptions), public policy and the public domain; (c) technology transfer, information and communication technology, and access to knowledge; (d) assessment, evaluation and impact studies; (e) institutional matters, including WIPO's mandate and governance, and; (f) enforcement.

Wide Range of Issues

Among the nine recommendations agreed on technical assistance and capacity-building was that "WIPO technical assistance shall be, *inter alia*, development-oriented, demand-driven and transparent, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should include time frames for completion." Other recommendations dealt with the need for more funding and human resources to promote measures that would help countries better understand the interface between intellectual property rights and competition policies. Requests were also

made for facilitating developing countries' access to specialised databases in order to make patent searches easier, and the creation of a new database to match specific IP-related development needs with available resources.

The first of two recommendations on norm-setting stressed that negotiations on IP standards must be inclusive and member-driven, and take into account different levels of development, as well as a balance between costs and benefits. It also called for the involvement of a wide range of stakeholders and respect for the principle of neutrality of the WIPO Secretariat. In addition, WIPO members should "deepen the analysis of the implications and benefits of a rich and accessible public domain."

Five recommendations on the technology transfer and access to knowledge cluster included, *inter alia*, a request for WIPO to expand the scope of its activities aimed at bridging the digital divide, and to explore IP-related policies and initiatives necessary to promote the transfer and dissemination of technology to developing countries.

Members recommended that WIPO assess its development-oriented activities annually. The institution should also conduct a study on "constraints to intellectual property protection in the informal economy, including the tangible costs and benefits of IP protection in particular in relation to generation of employment," as well as undertake new studies to assess the economic, social and cultural impacts of the use of intellectual property systems.

Members also called on WIPO to assist developing countries, particularly in Africa, to conduct studies on 'brain drain' and make recommendations accordingly. They requested the institution to intensify collaboration with other UN agencies and the WTO "in order to strengthen the co-ordination for maximum efficiency in undertaking development programmes." WIPO should also ensure wide participation of civil society in its activities.

A final recommendation directed WIPO to approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns in line with Article 7 of the TRIPS Agreement, which provides that "the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."

Members Diverge on the Protection of the Public Domain

Discussions on the protection of the public domain were perhaps the most controversial. According to the chair's summary of the talks, Colombia expressed formal reservations about the issue's inclusion in the agreed text. It reportedly contended that intellectual property did not affect the public domain, since IPRs only create incentives for new inventions and creations. Therefore, Colombia argued that the public domain did not need 'protection' in the traditional sense of the term. Chile countered that a strong public domain would provide a basis for generating innovation and creativity that could in turn produce new intellectual property assets. Uruguay pointed to the importance of the public domain in fulfilling the rights to education and freedom of expression, as well as its role in balancing intellectual property with the rights to participate in culture and benefit from scientific progress.

The June PCDA session will address the more divisive proposals, including the negotiation of a treaty on access to knowledge. Documents related to the February meeting can be found at http://www.wipo.int/edocs/prdocs/en/2007/wipo_pr_2007_478.html.