

## **Committee on Development and Intellectual Property (CDIP)**

**Tenth Session**  
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### **TERMS OF REFERENCE FOR A COMPARATIVE STUDY ON COPYRIGHT RELINQUISHMENT**

*prepared by the Secretariat*

1. During the ninth session of the CDIP, held from May 7 to 11, 2012, and while discussing the document entitled “Scenarios and Possible Options Concerning Recommendations 1c, 1f and 2a of the Scoping Study on Copyright and Related Rights and the Public Domain”, Member States decided to follow a recommendation made by the Secretariat to commission a study on voluntary copyright relinquishment.

2. The annex to this document contains the terms of reference that shall govern the preparation of the above-mentioned study.

3. *The CDIP is invited to take note of the information contained in the Annex to this document.*

[Annex follows]

## TERMS OF REFERENCE

### I. BACKGROUND

These terms of reference shall govern the preparation of a Study (“the Study”) in English, entitled Comparative Analysis of National Approaches on Voluntary Copyright Relinquishment. The Study is commissioned by the Organization at the request of its Member States.

The WIPO General Assembly adopted in October 2007 a set of 45 recommendations (the Development Agenda) to ensure that development considerations form an integral part of WIPO’s Work. In addition, a Committee on Development and Intellectual Property (CDIP) has been established, composed of all Member States of WIPO. This Committee meets twice a year to monitor, assess, discuss and report on the implementation of all recommendations. During the Third Session of the CDIP in 2009, a thematic project on IP and the Public Domain (CDIP/4/3/Rev.) was approved, which contained components on patents, trademarks, traditional knowledge and copyright for implementation in the 2010/11 Biennium. The thematic project dealing with Recommendations 16 and 20 of the Development Agenda included a Scoping Study on Copyright and Related Rights and the Public Domain<sup>1</sup>, which was prepared by Mrs. Séverine Dusollier, Professor at the University of Namur.

The Study had the objective of providing assistance to Member States by raising awareness of the increasing importance of the public domain for a balanced and effective distribution of creative content. Moreover, the Study provides information for the evaluation of the possible benefits of a rich and accessible public domain. Finally, the author formulates a number of recommendations in regard to future activities on the public domain that might be carried out by WIPO, particularly in three areas. The first area relates to the identification of the public domain, for example for the mutual recognition of the status of orphaned works. The second one presents activities in the area of the availability and sustainability of the public domain, for instance in the development of registration systems including the interconnection of national databases. The third one focuses on the field of non-exclusivity and non-rivalry of the public domain.

During the Eighth Session of the CDIP, Member States agreed that the Secretariat would prepare an information document<sup>2</sup> clarifying the scope and possible implications of three of the recommendations, including recommendation 1c) relating to the voluntary public domain, i.e., copyright relinquishment. The recommendation reads as follows:

1c: “The voluntary relinquishment of copyright in works and dedication to the public domain should be recognized as a legitimate exercise of authorship and copyright exclusivity, to the extent permitted by national laws (possibly excluding any abandonment of moral rights) and upon the condition of a formally expressed, informed and free consent of the author. Further research could certainly be carried out on that point”.

During the Ninth Session of the CDIP, from May 7 to 11, 2012, Member States decided to follow a recommendation made by the Secretariat to commission a study on voluntary copyright relinquishment. In this context, the study needed to be balanced to reflect the concerns of both users and right owners. Moreover, the Study should not promote any specific regime but merely showcase the different approaches implemented in different countries.

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<sup>1</sup> Available at [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=22102](http://www.wipo.int/meetings/en/details.jsp?meeting_id=22102)

<sup>2</sup> Available at [http://www.wipo.int/edocs/mdocs/mdocs/en/cdip\\_9/cdip\\_9\\_inf\\_2.pdf](http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_9/cdip_9_inf_2.pdf)

## II. STRUCTURE OF THE STUDY

The Study shall begin with a preliminary outline of the issues and questions arising from copyright relinquishment, including:

1. the nature of copyright itself. If copyright is considered as a fundamental right, it is essential to determine whether it would be legal to abandon such right. However, if it is deemed to be a mere property right, the matter would be less complicated as it is possible in most legislation to renounce property itself. The Study will also focus on the additional complexities arising in Member States where copyright legislation grants unwaivable economic rights.
2. special attention to the inalienability of moral rights. Attached to the person of the creator, the protection of moral rights is deemed inalienable in many countries. This might contradict the will of the author to abandon his/her copyright.
3. the mechanisms to ensure that the author makes a free and informed decision about the relinquishment of his/her rights, knowing its consequences and absent any pressure distorting the expression of his/her will. These mechanisms might consist of formalities such as requirements that the abandonment of rights be expressed in writing or before a public authority. They could also be informational tools ensuring that information about the consequences of the decision be provided by public authorities or representatives of authors. These mechanisms could also have a remedial nature, consisting of remedies afforded to challenge any decision that does not derive from an expression of the free and informed will of the author.
4. the irrevocable nature of relinquishment. It is important to consider the implications of irrevocability, i.e. to determine whether the author should be able to change his/her mind and choose to exercise his/her exclusive right on the work again. In turn, the implications for the public at large and for specific third parties of any solution enabling this change of opinion also need to be examined, especially in cases where use of the copyrighted material took place on the basis of the earlier renouncement.

The Study will also cover a detailed analysis involving three different stages:

1. The first stage will address the completion of a “Survey of National Legislation and Jurisprudence on Voluntary Copyright Relinquishment”. The Study will be undertaken in regard to, at least, the following jurisdictions: Brazil, Chili, China, Colombia, Egypt, France, India, Kenya, the Republic of Korea, and the US.
2. The second stage will look at the practice of copyright relinquishment in different contexts of distribution and use of creative material, including creative industries, the online environment, with reference to collaborative creativity and user generated content, and in regard to materials prepared by not-for-profit and public institutions.
3. Once the first and second stages are completed, the subscriber will provide, as a third stage, the Conclusions of the Study. The Conclusions will outline the trends and common features identified in the previous stages in regard to copyright relinquishment in the different national jurisdictions. It will address, on the one hand, the interests of users in voluntary copyright relinquishment, in particular from the perspective of the availability of the public domain and access to knowledge. On the other hand, it will present the possible ways to protect the interests of the authors in the promotion of any such regime. It will also outline possible future activities to be undertaken by WIPO and Member States in this area.

[End of Annex and of document]