

Committee on Development and Intellectual Property (CDIP)

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STRENGTHENING AND DEVELOPMENT OF THE AUDIOVISUAL SECTOR IN BURKINA FASO AND CERTAIN AFRICAN COUNTRIES – PHASE II

prepared by the Secretariat

1. The Annex to this document, containing a project proposal on *Strengthening and Development of the Audiovisual Sector in Burkina Faso and Certain African Countries – Phase II*, addresses Development Agenda Recommendations 1, 2, 4, 10 and 11. The estimated cost for the project amounts to 540,000 Swiss francs of which 430,000 Swiss francs related to non-personnel costs and 110,000 Swiss francs related to personnel costs.

2. *The CDIP is invited to consider and approve the Annex to this document.*

[Annex follows]

DEVELOPMENT AGENDA RECOMMENDATIONS 1, 2, 4, 10 AND 11

PROJECT DOCUMENT

1. SUMMARY	
<u>Project Code</u>	DA_1_2_4_10_11
<u>Title</u>	<i>Strengthening and Development of the Audiovisual Sector in Burkina Faso and Certain African Countries – Phase II</i>
<u>Development Agenda Recommendation(s)</u>	<p><i>Recommendation 1</i> WIPO technical assistance shall be, <i>inter alia</i>, 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. Activities should include time frames for completion. In this regard, design, delivery mechanisms and evaluation processes for technical assistance programs should be country-specific.</p> <p><i>Recommendation 2</i> Provide additional assistance to WIPO through donor funding, and establish Trust-Funds or other voluntary funds within WIPO specifically for LDCs, while continuing to accord high priority to financing activities in Africa through budgetary and extra-budgetary resources, to promote, <i>inter alia</i>, the legal, commercial, cultural, and economic exploitation of intellectual property in these countries.</p> <p><i>Recommendation 4</i> Place particular emphasis on the needs of small and medium-sized enterprises (SMEs) and institutions dealing with scientific research and cultural industries and assist Member States, at their request, in setting up appropriate national strategies in the field of intellectual property.</p> <p><i>Recommendation 10</i> To assist Member States to develop and improve national intellectual property institutional capacity through further development of infrastructure and other facilities with a view to making national intellectual property institutions more efficient and promoting a fair balance between intellectual property protection and the public interest. This technical assistance should also be extended to sub-regional and regional organizations dealing with intellectual property.</p> <p><i>Recommendation 11</i> To assist Member States to strengthen national capacity for protection of domestic creations, innovations and inventions and to support development of national scientific and technological infrastructure, where appropriate, in accordance with WIPO's mandate.</p>

<p><u>Brief Description of Project</u></p>	<p>The sustainability of the film and television industries (here after “the audiovisual sector”) is an important development challenge while the digital migration taking place in Africa constitutes a significant opportunity to stimulate the local film and audiovisual content economy.</p> <p>Phase I of CDIP 9/13 highlighted that in Senegal, Burkina Faso and Kenya, copyright only plays a marginal role in film financing and in the exploitation/distribution of audiovisual works.</p> <p>Audiovisual stakeholders have had limited awareness of copyright and lack access to specialized legal training, resources and counsel. As a consequence, contracts are often non-existent leading to uncertainty in the ownership of rights and jeopardizing funding and investment opportunities for producers. Equally, revenues accrued by rights holders are by far not sufficient to finance a viable industry, due to insufficient distribution and exploitation opportunities. A more efficient use of copyright presents real opportunities to strengthen the sector but this process must be underpinned by corresponding structural changes.</p> <p>The project seeks to provide film professionals with practical tools to better utilize the copyright framework for raising financing and secure revenue flows through improved contractual practices, enhanced rights management and securing distribution and revenue flows through the development of legal value chains. Phase II of the project creates a new momentum to consolidate the project’s sustainability and effectiveness. It will capitalize on Phase I, which laid the first foundations to create awareness and knowledge on the use of IP in the sector and provide continuous support to practitioners, which remains essential in achieving tangible results in professional practices.</p>
<p><u>Implementing Program(s)</u></p>	<p>Program 3</p>
<p><u>Links to other related Program(s)/ DA Project(s)</u></p>	<p>Programs 9, 11,15, 16 and 17</p>
<p><u>Links to Expected Results in the Program and Budget</u></p>	<p>Program 3</p> <p>Enhanced capacities and skills for the effective use and management of copyright and related rights in the financing and legitimate exploitation of audiovisual content, to support the development of the local audiovisual sector in the digital era, with a view of promoting economic, social and cultural development.</p>
<p><u>Project Duration</u></p>	<p>30 months</p>
<p><u>Project Budget</u></p>	<p>Personnel costs: 110,000 Swiss francs</p> <p>Non-Personnel costs: 430,000 Swiss francs</p> <p>Total: 540,000 Swiss francs</p>

2. PROJECT DESCRIPTION

2.1. Results of Phase I

Phase I developed knowledge in the use of the IP system in the audiovisual sector notably for building a rights value chain to attract investments and was useful in creating an understanding of the potential of IP. The project carried out initiatives that contributed to copyright frameworks and structures, notably by influencing relevant laws and policies and supporting rights transactions and management through notably new collective management organizations (CMOs) in Kenya and Senegal, as well as developing the capacities of the existing CMO in Burkina Faso. Given the low levels of existing awareness, the project faced challenges in witnessing substantial change within the 32 month timeframe. Nevertheless, the feedback received indicated that examples of the desired changes had taken place: Practitioners started receiving practical knowledge and methodologies which they were able to incorporate profitably in their daily professional practice and started making increased use of contracts in financing and distribution deals. See: evaluation report, document CDIP 17/1.

2.2. Objectives of Phase II

The emergence of a market-driven audiovisual sector presents unique opportunities for socio-cultural transformation in Africa, through infrastructure development, tourist attraction, investment and employment creation. It is one of the most creative assets of the knowledge economy and a critical sector for Africa's economic growth and development, as also evidenced by the Dakar Declaration on Intellectual Property for Africa, adopted at the Ministerial Conference held in Dakar, Senegal from November 3 to 5, 2015: http://www.wipo.int/edocs/mdocs/africa/en/ompi_pi_dak_15/ompi_pi_dak_15_declaration.pdf

The spread of new technologies has stimulated a new generation of motivated independent film makers to enter global market places but has also affected the value of different IP rights in the industry. At the same time, the African audiovisual market is facing tremendous challenges, evidenced by the far reaching implications of the digital television migration, which will support throughout the continent a dramatic increase in the number of channels and the growth of new audiovisual services such as online video on demand (VOD) or Internet Protocol TV services (IPTV) including services designed for smart phones.

While the new digital infrastructure is creating new opportunities for local content, practitioners have been concerned about the sustainability of this evolving market which is still dominated by small and medium sized enterprises, a stagnant advertising market and small audiovisual companies, unable to license their content at sustainable market prices due to poor skills and lack of supporting infrastructures. The digital transition constitutes an opportunity to re-energize the local film and audiovisual content economy so as to integrate it into development policies. Countries should expand their efforts to protect the interests of their audiovisual industries, on the basis of recognized practices to foster investment confidence and enable the creative community to maximize the value of their creative assets.

Over the last months, WIPO has faced an increased demand for participation in the project, through formal expressions of interest. The project management responded to these requests by allowing a limited number of observers from three countries (Côte d'Ivoire, Uganda and Morocco) to participate in some training activities. However, as the project has taken an approach mainly based on the local contexts of each country, designed to address national realities, it would not be feasible to include all the candidate countries under the proposed project budget and duration.

The objective of Phase II of the Project is to consolidate and broaden the initial results, while building on the existing momentum and expertise achieved in Phase I to advance the development of the domestic audiovisual sector and provide increased legal certainty.

Phase II aims to achieve the following objectives :

1. Advance the development of the audiovisual sector of beneficiary countries through professionalizing, and deepening the creators and artists ' understanding of the interplay of the IP system in the sector so as to effectively manage IP -based assets in the formulation of business plans/strategies in the key stages of the film making process;
2. Support local content development and distribution through enhanced skills that will enable small and medium sized enterprises to secure revenue flows in local and international markets;
3. Enhance the profitability of copyright based transactions through improved management skills of IP assets, legal frameworks and improved institutional capacity through notably infrastructure development; and
4. Building respect for copyright.

2.2. Delivery Strategy for Phase II

Phase II of the Project will :

1. Pursue a country specific implementation approach to provide tailor made support to each beneficiary country;
2. Enhance regional and cross country participation to trigger the effective exchange of experiences and synergies;
3. Target existing beneficiary countries: Senegal, Burkina Faso and Kenya; and
4. Include two additional countries, Morocco and Cote d'Ivoire in the implementation strategy.

The selection of these two additional countries is based on their previous participation as observers in Phase I of the project and the advanced stage of development of their audiovisual policy and institutional frameworks, which will enhance cross country exchange of experiences and best practices. In the course of Phase I, practitioners have regularly requested to benefit from the practices and experiences of more mature African markets.

The project objectives will be achieved through a combination of capacity-building activities, onsite training, the development/use of appropriate teaching materials including the distance learning program on *Copyright for African Film Professionals*. The e-learning pedagogy initial phase of the distance learning program will be finalized under Phase II and additional material from the new training workshops are foreseen to be integrated into online training to enrich the course content. A specific module on copyright for audiovisual lawyers will also be developed to complete the distance learning component of the Project. This module will be addressed to copyright lawyers who need to enhance their professional skills to assist local audiovisual sector stakeholders in Africa.

The delivery of the Project will continue to be based on cooperation with external African and international consultants with renowned professional experience, specialized organizations involved in the audiovisual sector and other stakeholders. A dedicated webpage will be created and regularly updated to create a network of film professionals in the beneficiary countries. The webpage will provide legal information relevant to the audiovisual sector and the Project, as well as any other market information.

The project will secure effective coordination with participatory countries by cooperating with a selected number of focal points. For the successful outcome of the project, it is perceived that such focal points should have a background encompassing good knowledge of the Project's, an established working relationship with audiovisual stakeholders in the region, speaking and project management skills. At the beginning of Phase II, country level project implementation strategies will be developed, which will constitute the basis of the implementation. Where necessary a fact finding mission will be conducted and the strategy will be regularly updated.

Project activity 1: Study

Phase I highlighted the absence of statistical data on copyright in the audio-visual sector in the beneficiary countries. It is therefore proposed to conduct a feasibility study to identify existing sources of information, assess market needs and propose a sustained approach towards data collection that can address transparency requirements of the evolving audiovisual market structure.

Project activity 2: Training and Professional Development: Investing in People

Training and awareness raising activities will be pursued and will be adapted to match the level of awareness and ability of local stakeholders to make strategic use of copyright, particularly in relation to evolving digital technologies, such as digital television and the Internet, so that the IP legal framework generates revenues to support economically a local industry. Audiovisual professionals from the new beneficiary countries will be included in these activities. Phase II will capitalize on past trainings and seek to consolidate the expertise of the main practitioners involved in the audiovisual value chain, such as directors, producers, distributors, while targeting a more direct and productive engagement of new specific categories of stakeholders such as:

- Lawyers and prosecutors;
- Broadcasting organizations and broadcasting regulators;
- Finance and banking sector; and
- Collective management organizations and their members.

One of the objectives is for practitioners to be able to effectively negotiate financial terms and requirements and to gain credibility and visibility with the finance sector. Sessions will make use of local and international case studies addressing issues such as : copyright documentation, contracts and copyright based transactions, presales and finance agreements, cross border agreements, licensing audiovisual works to broadcasters and on-line platforms, understanding the rights value chain and secondary markets (private shops and videos) etc. The training sessions will be organized, where possible, at the regional level in rural parts of the country, where least attention has been given to support audiovisual practitioners.

Project activity 3: Support to Frameworks and Infrastructure

One of the main objectives of the Project is "to increase revenue generation through improved legal frameworks, infrastructures for the management of IP rights based transactions". To date, audiovisual authors and performers have not secured effective revenue flows for their creativity. A key challenge lies in the inability to profitably manage copyright assets on multiple and digital platforms, and the insufficient bargaining power of creators when negotiating with users such as broadcasters. The study on *Collective*

Negotiation of Rights and Collective Management of Rights in the Audiovisual Sector, document CDIP /14/INF/2 available at:

http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_14/cdip_14_inf_2.pdf, provides that contracts can be negotiated in different ways:

- (i) Individually between a creator or a performer and a producer through contracts;
- (ii) By collective negotiations between associations and guilds representing parties; and
- (iii) By collective management organizations (CMOs) representing rights holders.

It concludes that that the project should aim to improve a combination of the individual exercise of rights and collective management, while acknowledging that in the audiovisual industry, a number of rights are in practice under the control of film producers, in order to facilitate the financing and exploitation of audiovisual content Training activities will showcase available tool, state of the art business practices and guidelines for licensing and collective bargaining, including voluntary model contract clauses including in the following areas:

- (i) *Appropriate tools and business rules in contracts between audiovisual creators, collaborators and financing partners.* Well drafted contracts ensure efficient exploitation and fair remuneration;
- (ii) *Development or consolidation of collective management of audiovisual rights for specific uses*, to ensure fair remuneration to creative collaborators including the strengthening of data management tools for collection and distribution. Such collective management areas include TV broadcasting, cable-retransmission rights, private copying schemes, and small public performances; and
- (iii) *Licensing mechanisms for online, on-demand services.*

The approach will be balanced seeking to ensure at the same time full exploitation possibilities for producers and fair remuneration opportunities to audiovisual creators and artists while taking into account user's interests activities will be established taking into account the extent to which audiovisual rights are recognized and managed in each country. Additional areas to be covered include enhancing the use of information communications technology (ICT) in rights management, awareness raising notably in relation to related rights, and business practices related to accountability and governance standards.

In Kenya, Burkina Faso and Senegal, right holders have been unable to license broadcasters. This situation excludes an important source of revenue and the possibility of negotiating presale funding with broadcasters. Phase II will consider capacity building activities to strengthen partnerships with broadcasters and regulatory bodies. Additional measures aiming at facilitating access of film professionals to professional markets will also be considered to support distribution and legitimate sales agreements.

Additionally, the project will continue to provide legislative advice on a demand driven basis to national authorities in their efforts to support the audiovisual sector through an enabling regulatory environment for production and distribution. Such governmental strategies may include the update of legal copyright or communications law frameworks, film policies or nay other relevant tools.

2.4. Risks and Mitigation Strategies

The project is based on a strong partnership with the beneficiary Member States and its successful outcome relies on the ability to undertake activities with the appropriate local partners. It also relies on the ability to adjust the project implementation to different national internal priorities and external factors such as the rapid evolution of new technologies and processes in the audiovisual sector in each country. The mitigation strategy implies flexibility to have timelines and implementation strategies readjusted in case of unforeseen circumstances linked in particular to political developments or institutional restructuring in the beneficiary countries.

Sustained collaboration with national authorities and focal points is also key in determining the level of support provided from the beneficiary Member State; smooth running of activities and timely implementation of the project. In order to mitigate risks the project manager will undertake careful consultations and request full involvement of local partners in the implementation of activities. It will also see partnerships with appropriate private sector industries and non-profit organizations and associations with the required expertise.

Given the number of beneficiary countries and the resources available for Phase II, the project will not be able to support all activities and projects requests of beneficiary countries. The mitigation strategy will imply consultations of the project management team with the focal points in determining priority activities and beneficiaries.

3. REVIEW AND EVALUATION

3.1. Project Review Schedule

A mid-term progress report (after 12 months) and a final project review report (upon project completion) will be prepared. The project outputs will be submitted to the CDIP for further consideration.

3.2. Project Self-Evaluation

In addition to the project self-evaluation, an independent evaluation will be undertaken for the project.

<i>Project Outputs</i>	<i>Indicators of Successful Completion (Output Indicators)</i>
Study	Research report published on WIPO website
Identification of focal points, consultations with national authorities and stakeholders/national strategies prepared	In each country, relevant stakeholders and local partners identified in coordination with lead institutions
Expert Workshops	Workshops conducted with positive evaluation by participants

<p>On-site training/capacity building on collective licensing and collective management</p> <p>Development of AV institutional infrastructure, skills and applications for rights transactions, management and use of AV rights</p> <p>Implementation of distance learning program and development of module for lawyers</p>	<p>Activities conducted with positive evaluation by participants.</p> <p>Systems, services and tools developed are accepted and put into practice.</p>
<p>Development of Awareness raising and Outreach material to disseminate best practices</p>	<p>Information/awareness-raising materials produced</p>

<i>Project Objective(s)</i>	<i>Indicator(s) of Success in Achieving Project Objective (Outcome Indicators)</i>
<p>To contribute to enhanced use of the intellectual property system for the financing, production and distribution of audiovisual works.</p>	<p>Participants make greater use of the acquired skills for financing, producing and distributing audiovisual works (to be ascertained via evaluation questionnaire provided to participants approximately six months after the completion of training)</p> <p>Increase in the number of intellectual property related transactions in the audiovisual sector in relation to production and distribution. (Baseline to be determined through the scoping paper).</p> <p>Increased legitimate channels for the sale of African film rights (Baseline to be determined through the scoping paper).</p>
<p>To advance the development of an effective infrastructure for intellectual property rights-based transactions and licensing and related skills to enhance financial returns to audiovisual creators and the industry.</p>	<p>Increase in the number of intellectual property-based transactions and contracts for the licensing of audiovisual rights through collective negotiations and collective licensing practices and implementation of guidelines. (Baseline to be determined through country plans).</p> <p>Increase and develop the infrastructure for the licensing of audiovisual rights, compatible with international practices, notably through collective management organizations. (Baseline to be determined through the study).</p> <p>Progressive implementation of appropriate tools and business rules for the management of audiovisual works compatible with international standards. (Baseline to be determined by the scoping paper).</p>

4. TOTAL RESOURCES BY RESULTS

(a) Biennium 2016-2017

Project outputs	<i>(Swiss francs)</i>						
	2016		2017		Total		Total
	Personnel	Non-personnel	Personnel	Non-personnel	Personnel	Non-personnel	
Study		20,000				20,000	20,000
Identification of national authorities and stakeholders and elaboration/update of working plans		12,500		12,500		25,000	25,000
Expert Workshops		42,000		91,000		133,000	133,000
Onsite Training on Management/rights transactions		20,000		35,000		55,000	55,000
Support to Institutional AV framework and infrastructure		20,000		40,000		60,000	60,000
Implementation of distance learning program and development of module for lawyers in the curricula				27,000		27,000	27,000
Development of Awareness raising and Outreach material		10,000		20,000		30,000	30,000
Admin support 50%	35,000		55,000		90,000		90,000
Total	35,000	124,500	55,000	225,000	90,000	350,000	440,000

(b) Year 2018*

Project outputs	<i>(Swiss francs)</i>				
	2018		Total		Total
	Personnel	Non-personnel	Personnel	Non-personnel	
Study and Project evaluation		10,000		10,000	10,000
Identification of focal points, national authorities and stakeholders and elaboration of implementation strategies					
Expert Workshops		40,000		40,000	40,000
Onsite Training on Management/rights transactions		30,000		30,000	30,000
Support to Institutional AV framework and infrastructure					
Implementation of distance learning program and development of module for lawyers in the curricula					
Development of Awareness raising and Outreach material.					
Admin Support 50%	20,000		20,000		20,000
TOTAL	20,000	80,000	20,000	80,000	100,000

* Subject to approval by the Program and Budget Committee.

5. NON-PERSONNEL RESOURCES BY COST CATEGORY

(a) Biennium 2016-2017

Activities	(Swiss francs)							Total
	Travel, Training and Grants			Contractual Services				
	Staff Missions	Third-party Travel	Training and related travel grants	Conferences	Publishing	Individual Contractual Services	Other Contractual Services	
Study						20,000		20,000
Identification of focal points, national authorities and stakeholders and elaboration of implementation strategies		5,000				20,000		25,000
Expert Workshops	31,000	62,000		40,000				133,000
Onsite Training on Management	15,000			6,000		34,000		55,000
Support to Institutional AV framework and infrastructure	10,000	15,000		5,000		30,000		60,000
Implementation of distance learning program and development of module for lawyers in the curricula						27,000		27,000
Development of Awareness raising and Outreach material					10,000	20,000		30,000
TOTAL	56,000	82,000		51,000	10,000	151,000		350,000

(b) Year 2018*

Activities	(Swiss francs)							Total
	Travel, Training and Grants			Contractual Services				
	Staff Missions	Third-party Travel	Training and related travel grants	Conferences	Publishing	Individual Contractual Services	Other Contractual Services	
Evaluation						10,000		10,000
Identification of focal points, national authorities and stakeholders and elaboration of working plans								
Expert Workshops		20,000		20,000				40,000
Onsite Training on Management				15,000		15,000		30,000
Support to Institutional AV framework and infrastructure								
Implementation of distance learning program and development of module for lawyers in the curricula								
Development of Awareness raising and Outreach material								
TOTAL		20,000		35,000		25,000		80,000

* Subject to approval by the Program and Budget Committee.

(b) Year 2018*

Activity	1 st	2 nd
Evaluation		X
Identification of focal points, national authorities and stakeholders and elaboration/update of working plans	X	
Expert Workshops	X	X
Onsite Training on Management		X
Support to Institutional AV framework and infrastructure	X	X
Implementation of distance learning program and development of module for lawyers in the curricula	X	X
Development of Awareness raising and Outreach material.	X	

* Subject to approval of the project budget for 2018 by the Program and Budget Committee.

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