

# WIPO



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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

## **PROVISIONAL COMMITTEE ON PROPOSALS RELATED TO A WIPO DEVELOPMENT AGENDA (PCDA)**

**First Session**  
**Geneva, February 20 to 24, 2006**

### **REPORT**

*Adopted by the meeting*

1. The WIPO General Assembly, in its session held in September – October 2005, decided to “constitute a Provisional Committee to take forward the Inter-sessional Intergovernmental Meeting on a Development Agenda for WIPO (IIM) process to accelerate and complete the discussions on proposals relating to a WIPO Development Agenda and report with any recommendations to the General Assembly at its September 2006 Session”. It was also decided that the “Provisional Committee shall have two one-week sessions, and the deadline for submission of new proposals shall be the first day of the first session of the Committee”. The First Session of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), was held from February 20 to 24, 2006.

2. The following States were represented: Afghanistan, Algeria, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belgium, Benin, Bolivia, Botswana, Brazil, Bulgaria, Canada, Chile, China, Colombia, Congo, Côte d'Ivoire, Croatia, Czech Republic, Democratic Republic of Congo, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lesotho, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malaysia, Malta, Mauritius, Mexico, Morocco, Mozambique, Myanmar, Netherlands, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia and Montenegro, Singapore, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, United Kingdom, United States of America, Ukraine, Uruguay, Uzbekistan, Venezuela, Yemen, Zambia and Zimbabwe (100). Palestine was represented in an observer capacity (1).

3. The following intergovernmental organizations (IGOs) took part as observers: African Union (AU), Commission of the European Communities (CEC), Eurasian Patent Organization (EAPO), European Patent Office (EPO), Food and Agriculture Organization of the United Nations (FAO), International Criminal Police Organization (INTERPOL), International Labour Office (ILO), Organization Internationale de la Francophonie (OIF), South Centre, United Nations Conference on Trade and Development (UNCTAD), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Industrial Development Organization (UNIDO) and the World Trade Organization (WTO) (13).

4. Representatives of the following international non-governmental organizations (NGOs) took part as observers: Central and Eastern European Copyright Alliance (CEECA), Centre for International Industrial Property Studies (CEIPI), CropLife International, Centre for International Environment Law (CIEL), Electronic Frontier Foundation (EFF), Civil Society Coalition (CSC), Consumers International (CI), eIFL.net, European Digital Rights (EDRI), Free Software Foundation Europe (FSF), Friends World Committee for Consultation (FWCC), Fundação Getulio Vargas (FGV), Institute for Policy Innovation (IPI), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Centre for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Film Producers Associations (FIAPF), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Pharmaceutical Manufacturers Associations (IFPMA), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association (ALAI), International Policy Network (IPN), International Publishers Association (IPA), International Trademark Association (INTA), International Video Federation (IVF), IP Justice, *Médecins Sans Frontières* (MSF), The European Law Students' Association (ELSA), Third World Network (TWN) and Union for the Public Domain (35).

5. Representatives of Intellectual Property Left (IPLeft), a national non-governmental organization (NGO) also took part as observer.

6. Following discussions by the PCDA it was decided that representatives of 3-D > Trade - Human Rights - Equitable Economy (3D) and The Authors Guild, Inc., would attend the meetings of the PCDA as "*ad hoc*" observers.

7. The list of participants is attached to this report as Annex II.

8. The PCDA discussed a proposal by the African Group, entitled "The African Proposal for the Establishment of a Development Agenda for WIPO" (IIM/3/2 Rev.), a proposal by Chile (PCDA/1/2), a proposal by Colombia (PCDA/1/3), a proposal by the United States of America, "For the establishment of a partnership program in WIPO: An elaboration of issues raised in document IIM/1/2" (PCDA/1/4), and a proposal by Argentina, Bolivia, Brazil, Cuba, Ecuador, Egypt, Iran (Islamic Republic of), Kenya, Peru, Sierra Leone, South Africa, United Republic of Tanzania, Uruguay and Venezuela, entitled "Establishment of a Development Agenda for WIPO: A Framework for achieving concrete and practical results in the near and longer terms" (PCDA/1/5).

Agenda Item 1: Opening of the Meeting

9. The session was opened by Mr. Geoffrey Yu, Deputy Director General of WIPO, who welcomed the participants on behalf of the Director General of WIPO, Dr. Kamil Idris.

Agenda Item 2: Election of Officers

10. The Meeting unanimously elected Ambassador Rigoberto Gauto Vielman (Paraguay) as Chair and Ambassador Muktar Djumaliev (Kyrgyzstan) as Vice-Chair.

11. The Chairman thanked the meeting for the trust it had demonstrated by allowing him to preside over the committee and said that he trusted that with the cooperation of all the participants in creating a positive environment, they would have a successful meeting and that they would be able to present to the Assemblies the outcomes and results of the debates. The Chairman submitted for the consideration of the Committee, that a few NGOs had asked to be Observers on an *ad hoc* basis and asked the Secretariat to read out the list of such NGOs. The Secretariat said that there were two NGOs, which had applied for accreditation to attend the meetings of the Provisional Committee on the Development Agenda (PCDA). The first NGO was: 3-D > Trade - Human Rights - Equitable Economy (3D) from Switzerland and the second, The Authors' Guild, Inc., from the United States of America. As there was no objection, the NGOs were admitted to participate as *ad hoc* observers without implications as to their status for future WIPO meetings.

Agenda Item 3: Adoption of the Agenda

12. The Chair proposed the draft agenda (document PCDA/1/1 Prov.), and as there were no comments, it was adopted.

13. The Chairman informed the Committee, that according to consultations that had been made at the regional level, it had been agreed to have a full five-day meeting, and that as had been done during the IIM meetings, a report would be prepared later and communicated to delegations for approval.

Agenda Item 4: Proposals Submitted by Member States

14. The Chair suggested that they begin with the proposal submitted by the African Group, which had already been submitted at the last meeting of the IIM. Thereafter, they could look at the proposals made by Chile, to be followed by Columbia, the United States of America and the Group of 14 Countries, referred to as the "Friends of Development". The Chairman invited the Delegation of Nigeria to take the floor.

15. The Delegation of Nigeria stated that it had the pleasure to formally make an elaboration on the African Group's proposal on the WIPO Development Agenda, on behalf of all members of the Group, and recalled that the proposal was submitted during the third session of the IIM.

16. The Delegation of Switzerland inquired whether groups would get the possibility to make general statements before they started discussing different proposals.

17. The Chair stated that Regional Groups could indeed take the floor at any point in time whenever they wished to make statements.

18. The Delegation of Switzerland, speaking on behalf of Group B, stated that they were confident that with the Chairman's diplomatic skills and under his guidance, they would be able to have constructive discussions on important and challenging issues facing them. It stated that during the IIM process, they had the opportunity to begin a useful exchange of views on the basis of the list of issues derived from written submissions from Member States. The Delegation added that in the meantime, new proposals had been submitted, which would certainly enrich their debate. The Delegation felt that one of the important factors on how they could proceed, was to ensure that all the proposals were before them on that day, as it was the deadline for making new submissions. The Delegation announced that Group B was looking forward to exchanging views on all proposals that they had not had the time to look into till then, including the new ones and to engage in a constructive and interactive debate. The Delegation asserted that for Group B, it was important that the debate was balanced and inclusive, and that new consideration would be given to all proposals, regardless of their origin. After the first consideration of all proposals, they should try to identify those proposals that all Member States would agree on for further in-depth discussion. The Delegation suggested that only those proposals enjoying the agreement of every Member State, and which were the result of a fully transparent inclusive debate, would have a realistic chance of being implemented at a later stage. Those were the primary views of Group B and they looked forward to participating in constructive discussions.

19. The Delegation of Croatia, speaking on behalf of the Regional Group of Central European and Baltic States, reiterated its support for the discussions on the relation between intellectual property (IP) and development, particularly with regard to WIPO's role in it and the possibility for its improvement. In that light, the Delegation welcomed the decisions adopted during the Assemblies, to continue efforts to enhance the development dimension in the Organization's work. The Delegation said that the meeting should draw upon the discussions it had already had under the umbrella of IIM in the previous year, so as to maximize the efficiency of the meetings and avoid unnecessary duplication of work. The Delegation said that during the IIM process, a number of useful proposals had been presented by various members, which should be the basis for future deliberations, and added that a number of delegations, including the members of its Group, had found similarities and overlaps in the universe of proposals, that had been presented up to that point. The fact that there were many proposals could create ambiguity and different interpretations among members as regard the workload that the meeting faced. In an attempt to clarify the situation, the Delegation said that it would welcome efforts to structure the debates better. As regards the process before the meeting, the Delegation went on to say that the countries from its Group welcomed the decision to have a five-day discussion during the present session, in order to be able to discuss thoroughly all open issues and prepare better for the next meeting in June. The Delegation stated that its Group remained open with regard to the duration of the next meeting, which meant that it would like to wait for the outcome of the present week's negotiations and deliberations. On that basis, the Delegation believed that it would be able to assess what type of meeting was needed in June, in order to successfully conclude the process. The Delegation pointed out intellectual property was one of the essential elements that countries deployed, to achieve sustainable economic growth. Furthermore, IP significantly contributed to the social, cultural and political advancement of the countries. The paramount importance of the issue, and its intrinsic relationship with the development objective, had been recognized by all member countries on numerous occasions during the discussions. The Delegation agreed that WIPO's role in the area of development should be reconsidered, but at the same time, the meeting had to bear in mind that the scope of WIPO's activities, as a part of the United System, was very limited. The Delegation recognized that intellectual property could be only part of the solution for development, just as WIPO's work was only part of the

solution that was being provided by various international organizations and bodies, aiming to help countries achieve their development objectives. The Delegation said that a precondition of the help should be that countries' development objectives should primarily be subject to the policies and initiatives of individual countries themselves, designed in harmony with the present international framework. The Delegation added that its Members appreciated the work WIPO had undertaken so far in order to ensure that IP became a genuine tool for development. The Delegation maintained that technical assistance and capacity building had been and still was at the heart of WIPO's agenda, which was demonstrated in the very detailed document issued by the Secretariat. The Delegation said WIPO continued to diversify and improve its assistance and programs for the benefit of all interested stakeholders. The Delegation added that WIPO's assistance in the area of raising IP standards had helped Member States to realize the potential benefits of active IP protection for development. Its Group's countries continued to benefit from various cooperation programs and assistance WIPO provided, and were confident that other members could benefit as well from such assistance. The Delegation wished to welcome all proposals that had been put forward by different delegations during the entire process, including the newest proposals received on that day. The Delegation added its Group had its own criteria to examine the proposals and that it merited some explanation, in order to enable members to understand some of the Group's comments and questions. Given the recent budgetary difficulties the Organization faced, the Group would tend to support those proposals that would not result in overstressing the budget and in bringing new obligations causing negative budgetary implications. The Delegation said that in that regard, the forming of new bodies within WIPO should not be their first priority, and that the possibility of using the present structure to its fullest capacity should be explored, if they wanted to act responsibly and efficiently. To that end, the Group of Central European and Baltic States reiterated its support for constructive proposals, which acknowledged the reality in which WIPO operated. The Delegation said that the interest of all Member States was at stake in the debate and therefore, it believed it should approach the negotiations sensibly and pragmatically, in order to ensure the best possible outcome. The Delegation said that the Group also felt that the agenda that was being pursued under PCDA should not jeopardize the normal functioning of the Organization and its various bodies. The Delegation wished to assure the Organization of the full support of Group of Central European and Baltic States in its attempt to guide the process forward. The Delegation added that it would be approaching the discussions in an active and constructive manner, aiming to conclude the process to the satisfaction of all interested stakeholders.

20. The Delegation of Austria, speaking on behalf of the European Community and its 25 Member States, and the acceding countries, Romania and Bulgaria, welcomed the decision of WIPO's General Assembly, at its September 2005 session, to establish the Provisional Committee in order to accelerate and complete the discussions and proposals relating to a WIPO Development Agenda and to report to the WIPO General Assembly at its September 2006 session. The Delegation added that it wished to express its commitment to taking forward the debate on the various proposals, which had been made, and to thank all delegations, which had submitted proposals. The Delegation said that it shared the premise that development-related issues should be better integrated in WIPO activities. It said it believed that it could be done within the terms of the existing WIPO Convention and the 1974 Agreement with the United Nations (UN), which underlined that WIPO was an integral part of the UN's family, and had a specific mandate to promote development. It went on to say that it was its belief that that task could be carried out in the most efficient way, if WIPO concentrated on its strength and comparative advantages in the area of building up relations with other relevant organizations. The Delegation said that WIPO has made great efforts for many years in translating its mandate into actions, including the three IIM Meetings which

had enabled WIPO Member States to have a constructive discussion on several issues, related to IP and development. It added that the European Community and its Member States continued to believe that making concrete progress in those discussions was of great importance and, to that end, it had earlier proposed that work should proceed by concentrating on those issues which were ripe for harvesting, that is, on which provisional agreement could be reached most rapidly. The Delegation believed that progressing in that way would help engender greater trust and cooperation, and enable them to move forward together. In conclusion, the Delegation wished to assure WIPO of the determination of the European Community to cooperate with it, and participate constructively in the deliberations of that session.

21. The Delegation of Thailand, speaking on behalf of the Asian Group, said that the Group welcomed the commencement of the work of Committee, as an important process for Member States to be able to further deliberate on the way forward for the Development Agenda. The Group wished to reiterate the importance of public policy objectives such as public health, access to medicine and educational tools, technology transfer and dissemination of information and biodiversity in any kind of norm-setting activity in WIPO, in achieving the Millennium Development goals. The Delegation said that the Group underscored the urgency and necessity to make progress in integrating the development dimension in WIPO, so that concrete and practical results could be achieved in the most timely and efficient manner, in accordance with the decision taken by the General Assembly. That would ensure that the norm-setting and other activities of WIPO were supportive of, and in conformity with, the public interest objectives of developing countries. The Delegation said that the Group believed, therefore, that the diverse implications of IP required close attention and further analysis, ensuring that the IP system was well balanced and responsive to the different circumstances of each Member State. The Delegation said that the Group, therefore, reiterated the need for development impact assessment of all programs and activities, including norm-setting, which would contribute to mainstreaming the Development Agenda in all processes and activities of WIPO. The Delegation said that sufficient time should be devoted to the thorough and comprehensive discussion of the various proposals at hand. It was supportive of devoting five days for discussion on the proposals, followed by adoption of the Chair's Summary at the end, and its report at the next PCDA meeting. It also welcomed the proposals submitted by Member States, which would help to further enrich the discussions and address the diverse dimensions of intellectual property. However, the Delegation felt that the Committee should take a pragmatic and coherent approach, by clearly structuring the debate. The Delegation stated that it wished to see further advancement of the Agenda, beyond a broad discussion of IP and development that evolved into a concrete framework of action. The Delegation suggested that the PCDA should recommend a concrete plan of action to the General Assembly and added that, at that stage, it wished to offer those general comments of the Asian Group and that it would refer individual Asian Group Member States to express their own specific viewpoints.

22. The Delegation of Kyrgyzstan, speaking on behalf of the Group of Caucasian, Central Asian and East European Countries, welcomed the opportunity to talk about intellectual property issues as those issues were very important. It stated that WIPO had done a lot of work in those areas and that one needed to continue to look at them for the future. At the beginning of the discussion, regarding the Development Agenda, several proposals had been made and that Delegation would like to thank everyone who presented them. It believed that in working on those proposals, one needed to concentrate on the areas for the achievement of the greatest benefit. The Delegation said that they should keep in line with WIPO's aims and those of other international organizations, while being mindful of the

Organizations financial resources, and suggested that the Committee should begin by looking at the proposals that had not been discussed, thereafter returning to the earlier initiatives proposed for a more detailed review. In conclusion, the Delegation expressed its hope that through joint efforts and work by interested countries, progress would be made in the meeting.

23. The Delegation of China was pleased to note that after the three meetings held in 2005, the debate on those issues continued in the PCDA. It hoped that after the debates, which were carried out in the three IIM meetings with the active participation of Member States, the discussions could go further. It thanked the Secretariat for all of its efforts in enabling the Member States to continue their debate. New technologies and their development were growing in importance in economic and social development, and also for the improvement of the quality of life of people through more knowledge. Intellectual property systems protected innovation; government policies that supported such systems and their use as tools, could ensure that creation and creative activities lead to results, which were recognized by all as positive. It was in the interest of all Member States to enable that so that economies could grow and develop. The situation in many different countries was unique and one had to ensure that the discussions were based on a principle that each country had its own priorities and that each country would participate in those areas it was most concerned with. The Delegation welcomed the proposal made by Chile, by Colombia, by Argentina and by the United States of America. It also welcomed the constructive spirit in which the proposals were submitted and said that that should help in the continued debate in the establishment and design of a Development Agenda for WIPO. It further hoped that the Member States would be able to maintain that spirit in finding common ground among the proposals and would be able to move away from those issues, which were divisive. The Delegation concluded by supporting the speech made by Thailand, on behalf of the Asian Group.

24. The Delegation of the United States of America associated itself with the statement made by Group B and was pleased that the WIPO General Assembly had established the Provisional Committee on a Development Agenda, to allow Member States to thoroughly examine the development-related aspects of intellectual property. It welcomed the opportunity to continue the discussion on the important role that intellectual property protection played in fostering economic development, especially given the United States' strong commitment to expand global economic prosperity. As the President of the United States of America had made clear, expanding the circle of freedom and prosperity was in the fundamental interest of the United States of America and all nations around the world. The Delegation asserted that United States policy with regard to development, built on the Monterrey Consensus articulated at the International Conference on Financing for Development in Monterrey, Mexico, in March 2002, which had emphasized aspects like national responsibility, rule of law, accountability of governments to their people and sound economic policies. Sustainable growth required a broad range of resources, including trade, foreign and domestic investment, domestic savings, private donations and remittances, as well as official assistance. The Delegation further stated that it was within the context of those principles that one could constructively and effectively examine WIPO's proper role in helping its members achieve sustainable development and growth. WIPO's mission, as set forth in Article 3 of the WIPO Convention, was "to promote the protection of intellectual property throughout the world, through cooperation among states, and where appropriate, in collaboration with other international organizations." The Delegation further noted that since joining the UN as a specialized agency in 1974, WIPO had excelled in carrying out that mission by, among other things, simplifying and streamlining procedures for obtaining intellectual property rights (IPRs), administering treaties and systems for doing that, and

providing training and technical assistance on how to use intellectual property for development. Those activities had greatly improved the stock of human knowledge by fostering creativity and innovation, domestic and foreign investment, and the transfer of technology in countries that had adopted effective IPR systems. Information dissemination efforts, particularly WIPO<sub>NET</sub>, had ensured Internet connectivity for all WIPO Member States and made vast collections of knowledge widely available for societies' use. It indicated that it seemed clear that because strong intellectual property protection was a fundamental part of any nation's sound economic policies, by its very nature, WIPO's mission, as currently elaborated, promoted economic development. At the same time, the role of intellectual property in development was dynamic, responding to a rapidly changing technological, commercial and social environment. Within that changing environment, it was appropriate for WIPO to continue refocusing its development-related intellectual property programs to respond to the evolving needs of Member States. It noted that the Program and Budget approved last fall for the current biennium, highlighted WIPO's objectives of assisting Member States to effectively use the IP system for development, extended support to small and medium-sized enterprises (SMEs) and enhanced their IP asset management capability. The Delegation did not, however, support the notion that all developing and least developed countries should adopt a "one-size-fits-all IPR system", that established a lowest common denominator of protection, as appeared to be advocated by some of the proposals being discussed. For example, some of these proposals call for mandatory transition periods, mandatory limitations and exceptions, etc. As agreed in Monterrey, each country was responsible for its own economic development, and each country must devise and implement its own policies, in line with its international obligations, that created the conditions for development and growth. It believed that the existing international framework for IP was strong and balanced, and provided flexibilities for countries to make choices as to how best to tailor their IP regimes to meet their individual circumstances and needs. The Delegation did not agree with the notion that IP ignored development concerns of that intellectual property protection hindered development. In past meetings, it had noted that intellectual property was only part of the equation and other infrastructure must exist in order for countries to develop. As part of the elaboration of the partnership proposal, it had additional ideas on how WIPO and its Member States could advance development goals within the mandate and competence of WIPO, and those would be elaborated upon later. Finally, it looked forward to a successful conclusion of the week's discussions and for the continuation in June.

25. The Chair thanked all the delegations that took the floor on behalf of the regional groups and for their commitment to the meeting. He noted that the United States of America had brought up an issue that was useful for the general debate, and that he would allow other delegations that would like to take the floor, to make a general statement. He also apologized to the African Group for postponing its presentation, but thought it was useful to have the preliminary statements.

26. The Delegation of India stated that it associated itself with the statement made by the Asian Group. A development agenda for WIPO had been the focus of deliberations during the previous year. While the need for a development agenda had been debated at length, the time had now come for a conclusive discussion. It was without doubt that WIPO had to have a development agenda, and Member States had to try and define its contours and dimensions. At the outset, the Delegation wished to recall its statement made during the Forty-First Session of the General Assembly of WIPO. On that occasion, it had emphasized the need to give a development orientation to the intentions and objectives of WIPO programs and suggested continuation of the IIM process. It was heartening to note that the General Assembly had decided to take forward the IIM process to accelerate and complete the



discussions on proposals oriented to a development agenda of WIPO, in the form of a Provisional Committee. By agreeing to continue the discussions, they had effectively demonstrated to the world community that, along with affording protection to individual efforts and creations, also of paramount importance were issues related to public interest and growth for all. This was also mandated by the Second South Summit and the eight UN Millennium Development Goals. The Delegation stressed that socio-economic development was a complex and challenging task, also significantly dependent on the production and promotion of intellectual property rights. However, the state of IP protection, as well as the quantum of new intellectual property created annually in countries, differed vastly, depending on the level of economic development of the country concerned. In order to evolve an equitable international intellectual property regime, the special needs of developing and least developed countries required to be addressed in a focused manner. It was in that backdrop, the Delegation continued, that they had initiated the present exercise. It was heartening to note that three sessions of the IIM had generated some noteworthy proposals, on what could constitute a development agenda of WIPO. Their task was then to prioritize and finalize the development agenda. It recalled that they had about 50 proposals for consideration. While some of them pertained to issues of micromanagement, the majority related to broader issues like technology transfer, technical assistance, impact studies, to mention a few, which were of immense relevance to the developing world. Issues such as easy and affordable access to knowledge; strengthening the strategic use of intellectual property through partnerships; analyzing the economic, social and personal impact of IPRs; encouraging partnerships; training of scientific and technical personnel; facilitating the transfer of technologies; enhancing investment in research and development (R&D) initiatives; and other related issues deserved to receive focused attention. By doing so, the Delegation explained, it would be ensured that greater attention was accorded to the main concerns of development, rather than issues, which were not central to the Agenda. The Delegation further emphasized that new norms and standards being set up in the area of intellectual property rights, had important implications for renovation and development, and that they affected almost all aspects of life. It was necessary to extend the required support to countries, which needed to strengthen the IP regime, ensuring that in the foreseeable future, they would become equal partners in the process of development. Given the realities of the highly diversified and unequal status of national economies, it was clear that there could not be a one-size-fits-all approach, and there was a need to build a consensus. By doing so, it concluded, they would be able to ensure that the welfare of all Members States was on an equal footing.

27. The Delegation of Nigeria pointed out that their proposals were predicated upon their collective experiences, as a body of developing and least developed nations, confronted by the challenges of development. It said that they were a group of countries, sharing the same pain and deprivations thrown upon them by common historical experiences and unequal international trading regime. Therefore, in order to realize the various Millennium Development Goals in their countries, they had to design policies that would be conducive to the democratization of the multilateral system, and endeavor to make it more development friendly. Secondly, it mentioned that their paper identified the current international policy frameworks related to development, that still required comprehensive implementation, and added that the imperatives for development, especially as regards Africa, had been enunciated in the NEPAD Plan of action. The UN had also been seized with the problems of development, as evidenced by the promulgation of the Millennium Development Goals and the work of institutions such as United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP), UNCTAD, World Health Organisation (WHO), ILO, etc. It was also significant, in that connection, to mention the report of the

United Kingdom Commission for Africa, entitled “Our common interests”. In section B, the Delegation underlined, they had underscored the importance of the cost of the establishment of a development agenda in WIPO, and their support for the proposals submitted by the “Group of Friends of Development”, whose membership comprised some African States. It viewed a number of the proposals submitted by the “Friends of Development” as compatible with their own aspirations in WIPO, and hoped that the two documents would be seen as mutually supportive, in order to advance the PCDA process forward. The Delegation also welcomed other proposals before the Committee in the same spirit. In section C of their proposals, it stressed the important part that intellectual property played in national, economic, social, cultural and intellectual development and the use of intellectual property as a veritable tool for development. Specific, thematic issues related to the establishment of a development agenda were presented in section D, which comprised the main body of their proposals. It believed that all aspects of their proposals were of critical importance. Technical assistance had to be development-oriented and demand-driven. While it acknowledged the importance of technical assistance and the part that it played in the development of intellectual property protection, such matters as individual national capacity to absorb such assistance, and the relevance of the same to the nation’s development, would have to be taken on board. The Delegation also suggested a few areas for consideration, such as effective financing and delivery, and impact assessment studies, to make it more relevant. It mentioned that technical assistance was not to be restricted to national IP offices alone. Institutions of high learning should also be beneficiaries of such programs. On transfer of technology, it shared the views of the United Kingdom Commission on IP Rights in its report entitled “Integrating Intellectual Property Rights and Development”. The Commission noted, *inter alia*, that “the critical issue with regard to intellectual property was not whether it promoted trade or foreign investment, but how it helped or hindered, developing countries from gaining access to technologies that were required for their development”. The question was to what extent was technology transfer relevant to the growth and development of the domestic economy and to the enhancement of innovation and creativity. In that context, the Delegation suggested that the laws governing technology transfer and access to the same, had to be reviewed to make them more suited to the development of individual national capacity to innovate and develop. It, therefore, called for the relaxation especially of the existing patent laws. The provisions of Article 66.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) also had to be looked at critically in connection with that subject. The Delegation recalled that the African Group had also called for the reform and modernization of the informal sector in member countries. African economies and indeed those of many developed countries, depended largely on that sector for employment and income generation. A modernization of the informal sector should seek to establish a complementarity with SMEs, to encourage rapid economic growth, while a special IP system, commensurate to the particular needs and characteristics of that sector, should also be developed. In doing so, novel methods of IP protection should be applied to encourage innovation, research and development to the informal sector. Modern IP systems, it was stressed, should not hinder the flourishing of the informal sector. This view had already been noted in the latest edition of the OECD “Oslo Manual on Guidelines for Collecting and Interpreting Innovation Data”. A special Annex to the Manual was devoted to conducting non-technological innovation surveys in developing countries. With regard to information and communication technology (ICT), the proposal pointed out the disparities that existed between developing countries and LDCs on the one hand, and their developed counterparts on the other. That was especially true in terms of ICT infrastructures, access to technology and R&D matters. Any extension of technical assistance to LDCs and developing countries should be mindful of those disparities. The Delegation added that the attempt to bridge the Digital Divide should also be diligently pursued within international frameworks, such as the

World Summit on Information Society (WSIS) and support for the Digital Solidarity Fund. In that connection it welcomed the establishment of the WIPONET project and wished to commend the Director General, Dr. Kamil Idris, for the efforts made in that regard. It also hoped that the proposals by the Delegation of the United States of America to establish a partnership with WIPO for the creation of an Internet-based facility for IP use, would reflect the conditions of existing infrastructure in LDCs and developing countries. The Delegation mentioned that the African Group's proposals also addressed crucial issues such as human resources development and brain drain, the use of flexibilities and international instruments, norm-setting and institutional mandates. During the course of the two PCDA meetings, a further elaboration would be made on those issues. The Delegation stated that integrating IP rights into development in a meaningful way was a primary objective of the African proposal. The objective of making IP rights relevant to development was important enough for the Government of the United Kingdom to institute a Commission on IP Rights to examine the subject. Another important document had been prepared by Mr. Sisule Musungu of the South Centre, on international IP Standard Setting and the role of Africa in the process. The Group was of the opinion that any meaningful discussion on IP and development should take into account the view that (a) there had to be a clear and consistent rationale for IP protection; and that (b) there had to be an assessment of the cost and benefits of IP protection. IP protection could not be divorced from the aspiration of developing and least developed countries toward economic growth and development, the acquisition of technological know-how, etc. The international IP architecture was made conducive to the fostering of protection of both tangible and intangible assets of communities and nations, especially with regard to traditional knowledge, genetic resources and folklore, where public interest concerns, such as access to knowledge, health and nutrition, agriculture and so on, had to be protected. The Delegation said that IP rights were to be used as tools to foster innovation and R&D in developing and least developed countries. The Delegation said that it was the collective hope and expectation of the African Group that those and other proposals currently before the Committee would be discussed in a positive, objective and constructive manner. It wished to see the spirit of consensus emerging in all issues in that regard, as no country or group of nations was opposed to development or to seeing other nations reach their full human and technological potential. As the ultimate goal of their endeavor was to cooperate and help one another, they were all "friends of development."

28. The Delegation of Pakistan, speaking on behalf of the Group of 77 and China, said that the Provisional Committee had been mandated by the WIPO General Assembly to deal with the unfinished business of the three sessions of the IIMs held in 2005 and so should deliver on that. The Group of 77 and China believed that the Development Agenda discussions in WIPO formed an important milestone. Development was placed at the center of international agenda by the World Summit in New York last year. As a part of the UN family, WIPO had an obligation to incorporate and mainstream development as a core value in its programs and operational activities. There were different perspectives on that issue. Its importance was evident from the large number of substantive proposals tabled during the ongoing discussion. The Delegation thanked the proponents of that discussion, as well as others who had contributed substantively to those proposals. However, Member States were yet to complete even a first exchange of views on all the proposals. It was hoped that the Provisional Committee would organize its work efficiently, in a more result-oriented fashion. The proposals presented so far, reflected a diversity of views on transfer of technology, technical cooperation, information sharing, promoting and operationalizing public interest flexibilities and enforcement issues. From their perspective, a structured discussion in those areas would form the basis for a result-oriented approach. The Doha Declaration, adopted at the Second South Summit in Qatar, in 2005, had emphasized that "while developing countries were

committed to undertaking their international obligations, these undertakings might impose high costs, and that given the differences in development and the ability of countries to assume obligations, it was imperative that identical obligations were not forced on unequal participants". The Declaration further emphasized the need to integrate the development dimension into international rule-making, taking into account the need for flexibility and national policy space for countries, while assuming international commitments. It was, therefore, important that mainstreaming the development dimension into all activities in WIPO should constitute a priority for the Organization. The Group of 77 and China were of the view that the most important issue at the heart of the development agenda discussion, was the need to ensure that the intellectual property system provided states at different levels of development, with the necessary policy space to meet their development needs. Development orientation in a norm-setting organization like WIPO primarily meant protecting and operationalizing flexibilities that could be utilized by countries at different levels of development in pursuit of their legitimate developmental objectives. During discussions in the IIMs the year before, affordability and accessibility of essential products like pharmaceuticals, text books and educational software were often cited as primary examples of areas, where such flexibilities needed to be either created or made operable with regard to the intellectual property system. Development impact assessments of normative activities of WIPO carried significance in that regard. The Delegation stated that development was a shared objective of the international community, and must not be allowed to be undermined or diluted by a difference of opinion on the ways and means to achieve that objective. It added that the PCDA faced the imperative of a meaningful discussion on a development agenda, that could produce results within the stipulated time. Based on the proposals, one had to agree on a concrete outcome that could form the basis of development-oriented decisions to be taken at the next General Assembly. As the largest and the most populous stakeholder in the process, the Group of 77 and China would be willing to work closely and to engage constructively with all parties during the important discussions.

29. The Delegation of Morocco expressed its gratitude to the Director General of WIPO for the importance that he had attached to the economic, social and cultural development within the field of intellectual property. It hoped that all the Member States could participate in and benefit from the intellectual property system. The Delegation supported the proposal made by the Delegation of Nigeria, on behalf of the African Group, and expressed its appreciation for the contributions made by certain Arab countries. The Delegation welcomed the decision made by the General Assembly of WIPO, which had established the Provisional Committee so that the IIM process could continue, allowing for further discussions on the proposals related to the WIPO development agenda. The Delegation hoped that that process would help Member States move towards global integration of the development agenda into WIPO's work allowing for beneficial and effective results. Therefore, that Group had a major advantage that was the collective work of the States and this was very important. At the same time, it believed that this debate should have a vision that took into account the interests of the actors, and stakeholders. Referring to the statement made by the Delegation of Nigeria, the Delegation said that the proposal reflected the concerns of many developing countries, which had targeted aims and matched their vision for the future of WIPO. Those activities had various facets, including transfer of technology, technical assistance, the reform of the sector in Africa, small and medium-sized enterprises and ICT, the problem of human resource development and flexibility in developing and implementing intellectual property mechanisms. It was necessary to make sure that the activities of WIPO were compatible with the existing initiatives in development, namely the Millennium Development Goals and the funds for solidarity, as well as the NEPAD Plan of Action. They had great national ambitions, which corresponded to those of WIPO, and would like this reflected collectively

on human development in Morocco for future benefit. It added that in looking at national development and human resource development, one would like a speeded up process for improvement and reform. The approach could be participative, which was reflective of what the government should have done to meet social challenges. With that in mind, Morocco had understood the signals given by the Group of 77 and China during the Summit in June 2005, which called upon WIPO to integrate development into all of its future plans and activities. Given that intellectual property was multisectoral, the Delegation felt that the concerns of the developing countries should not be reduced to technical assistance programs, legal assistance programs or capacity-building programs. Rather, one should try to understand how that affected the norm-setting activities, the availability of access to knowledge and information, which was supported by the *communiqué* that came from industrialized countries with regard to intellectual property and development held on March 21 and 22, 2005, in Munich. That *communiqué* recognized the need to go beyond capacity-building activities, to go deeper and understand the links between development of intellectual property and economic and social development, as well as cultural development. In a world dominated by economies based on knowledge, information and communication technologies, the Delegation felt strongly about the importance for all countries to intensify their modernization programs, access to IPRs, access to information and to computerize technology in order to bridge the digital divide. The Delegation said it wished to congratulate the Arab Bureau as well as the Africa Bureau for the important role they had played in fostering intellectual property in their respective countries. The Delegation concluded by reiterating the determination of its country to continue to contribute in a positive way to developing recommendations to be made to the next session of the General Assembly. The Delegation hoped that it would be a participative process, one that was inclusive, and demonstrated solidarity, which was the key element in enabling everyone to benefit from the diversity of proposals.

30. The Delegation of Zambia congratulated WIPO on the exceptional growth from North-East Asia for international patent filings and trusted that other regions, like Africa, would also be active in PCT activities in the future. The Delegation supported the statement made by the Ambassador of Nigeria who spoke on behalf of the African Group. The Delegation said that there was no doubt that developing countries were confronted by serious problems of development and unless something was done to help them in the efforts to develop, the MDGs set for the year 2015 might elude them. It was in that light that the African Group presented a paper in July last year on the establishment of a development agenda for WIPO. The Delegation called development partners to join them in the establishment and the realization of the objectives in the WIPO development agenda. It added that the African Proposal did not come from without. It was guided by the outcome of the Second South Summit in Doha, which *inter alia*, called upon WIPO to integrate development agenda in its various activities. Developing countries recognized the important role that intellectual property could play in development, in fostering creativity, innovation and economic growth in developing countries, including LDCs. The Delegation added that its role was merely to endorse the statement of the Delegation of Nigeria and to appeal for support.

31. The Delegation of Ghana stated that its intervention was to express a firm and unreserved support for the African proposal for the establishment of a Development Agenda for WIPO, which had been presented at the IIM. The Delegation said that it simply wanted to underscore and reiterate the important role that intellectual property played in development.

32. The Delegation of Argentina clarified that it was presenting document PCDA/1/5 on behalf of its Delegation, as well as the Delegations of Bolivia, Brazil, Cuba, Ecuador, Egypt,

Iran (Islamic Republic of), Kenya, Peru, Sierra Leone, South Africa, United Republic of Tanzania, Uruguay and Venezuela. The Delegation said that as Coordinator of that Group and also individually, it would like to come back the following day to some of the points that it was going to present. It said that the Group would like to support the declaration, which was made by the Delegation of Pakistan, on behalf of the Group of 77. The Delegation said that in order to present that submission, it would like to recall that in September 2004, the WIPO General Assemblies decided to convene inter-sessional and intergovernmental meetings, to examine the proposals put forward by the “Group of Friends of Development” in order to draw up a Development Agenda for WIPO, as well as other additional proposals which members presented. The Delegation pointed out that all the contributions enriched the debates and demonstrated the will of WIPO’s Members to move forward in drawing up a Development Agenda. Furthermore, in addition to the IIM meetings, a number of conferences and international meetings were held, demonstrating that the drawing up of a Development Agenda for WIPO was not an issue which was confined to the walls of WIPO, but was rather of a global nature. In all the debates, the Member States of WIPO had been able to exchange ideas and come to a better understanding of the different proposals made. The debate had been enriched by information provided by different players, such as Groups representing several societies, NGOs and industry representatives. The Delegation stated that in the previous General Assemblies, faced with the critical need to continue and conclude debates, Member States decided to set up a Provisional Committee to move forward and integrate the development dimension into WIPO’s work, in order to come to concrete and practical results in the most timely and efficient way possible. The mandate given to the Provisional Committee was to accelerate and conclude discussions on proposals regarding the WIPO Development Agenda, and to make recommendations to the Assemblies, which would be held in September 2006. That meant that the Committee would have to fully use all the measures available to it, in order to come to practical results, by the end of its second session on June 30, 2006. The Delegation pointed out that the General Assemblies had set out a time period for the presentation of new proposals for Members. The mandate given to the Committee, therefore, required that their debate be substantive and that concrete recommendations be brought out within a framework of action for adoption by the General Assemblies. The Delegation went on to say that the “Group of Friends of Development” had identified 50 proposals made by Members since the beginning of that process in 2004. Many of the proposals were inter-related, with regard to the issues they addressed. It stated that that was why its Group felt that despite the fact that Member States might have different positions with regard to the different issues, there was a common ground underlying the proposals. The fact that there were a number of proposals on the table, did not mean necessarily that the level of divergence between members was significant. The Delegation said that some of the issues had already been dealt with and they had made progress on, for example, greater participation of Groups representing public interest in the debates carried out in WIPO. There was an Agreement, that WIPO as a specialized agency of the UN’s family, had a responsibility to promote the development of nations as an integral part of its programs. Action was seen on some of the proposals for drawing up of a Development Agenda, for example, the proposal to hold public hearings before norm-setting activities were initiated by WIPO. That was being implemented through the decision to hold an open Forum on the Substantive Patent Law Treaty (SPLT). The Delegation said that taking into account all the considerations, and the meetings which had been held and the decisions which had been adopted, the “Group of Friends of Development” believed that it had come to a stage, where it was possible to identify a number of issues, which were key to its debate. These issues could be synthesized into six questions or paragraphs, and the response to the questions would contribute to responding to the challenge, with which they were faced. The aforementioned document, described on pages 4, 5 and 6, the six questions which their Group had identified. The first

question, norm-setting activities within WIPO, dealt with a number of questions, such as how to ensure that the priorities identified by Members were reflected in them; how the objectives reflected the interest of all Groups, including public interest; how they could ensure that impact assessments had been carried out; how developing countries could ensure that treaties and norms reflected the economic and social differences of different Members of WIPO and that there was a constant evaluation of costs, after the adoption of treaties for developing countries. The second question referred to the mechanism, the procedures or the rules of the Organization, so that they had a member-driven process under way. The third question referred to technical assistance, which was an area of extreme importance for developing countries and LDCs. In that regard, they had to determine concrete and practical ways to ensure that the impact and usefulness of the technical assistance took into account the specific circumstances of countries in a changing world. Furthermore, it should improve the availability and access to all information on activities to ensure the credibility of the program and a continued evaluation and impact assessment, including development impacts. The fourth issue dealt with the mandate of WIPO, by virtue of its Agreement with the United Nations to facilitate transfer of technology. In that area, they needed to determine what measures were necessary, in order to ensure that the Organization might address the issue of transfer of technology and competition policy that was essential for developing countries. Fifthly, taking into account the growing importance of access to knowledge and protection of the cultural heritage of people, and the need to maintain a robust public domain through norm-setting activities and enforcement of exceptions and limitations, what measures were necessary to facilitate access to knowledge. For example, that could be done through a treaty on access to knowledge, in order to maintain and build a solid public domain for all Members of WIPO. Finally, the sixth question referred to how to ensure that developing countries could benefit from political space or policy space, that was commensurate with their needs and levels of development, recognizing that WIPO as a part of the United Nations family had a commitment to contribute to the development within the framework of that system. To conclude, the Delegation said that the document showed the most appropriate way to conclude the work that was given to them by the General Assemblies the previous year, and how to present their recommendations to the General Assembly. The Delegation stated that they had come to a stage where it was possible to identify a number of elements, which were shared by all the proposals made. It added that the Committee might frame recommendations, for immediate action for the General Assemblies, as well as those for action in the medium and long terms.

33. The Delegation of Chile started by describing the proposal it had tabled, (document PCDA/1/2), which contained three different proposals. It believed that that proposal fell within WIPO's mandate and was not outside it. The first proposal was called Appraisal of the Public Domain and was based on two different ideas. The first, that it was almost impossible to create something out of nothing. Creation and innovation were inspired by creations, discoveries and innovations from others. A rich public domain made it possible to generate an innumerable amount of benefits for the entire society. The second idea was that the public domain was already unnecessarily affected, for example, by technological protection measures (TPMs). The Delegation added that the declaration of principles coming out of the World Summit on the Information Society, summarized that idea very well. It stated that a rich public domain was a key factor of growth for the information society, as it generated advantages, such as public information, new jobs, innovation, commercial opportunities and advance and progress in science. Easy access to information in the public domain was essential for the information society, as was the protection of information against any type of misappropriation, and that certainly fell within the intellectual property mandate. There was no doubt that intellectual property had gone through significant changes over the last century,

both in terms of volume as well as complexity. Not only did they have new categories of intellectual property, but also an increased number of rights holders. Furthermore, rights, which were originally conceived in order to protect some types of works or inventions, had been extended to protect almost all of creation. Trends were leading us to double and sometimes even triple the times of protection. It added that photographic works, were a good illustration of that. Protection had gone from 25 years, from the date on which the photograph was taken, to 50 years in our Internet treaties. Furthermore, those 50 years began to run after the death of the author of the work, not from when the photograph was taken. Originally, copyright was only supposed to protect reproduction, today we talk about copying, distribution, leasing, loaning, etc. Taken separately, those developments might be justified. However, together, they lead to a situation where the universe of creations were available in intellectual property, and not in the public domain. The Delegation stated that the defense of the public domain had been taken up by private organizations, NGOs, libraries, archives, international organizations. It believed that it was up to the Government to ensure that legal certainty was extended to all actors, with no distinction, and in order to do so, it proposed the creation of a worldwide database for the public domain. The idea would be that governments commit to identifying anything that might have already fallen within the public domain or where protection had lapsed. The second proposal related to the importance of complementary system, with regard to intellectual property. It believed that intellectual property was not an end in itself, but a tool to foster innovation. Again, it was not the only tool to foster innovation. There were many other ways to do so. That was why it believed that WIPO should study the inter-relation between intellectual property and other tools, for development and fostering of innovation. In the academic world, for example, they were seeing discussions that took place on a treaty on access to knowledge and a treaty on medical research and development. Those had already been mentioned in the proposals made by the “Group of Friends of Development”. Another option, it added, would be to analyze the policy space discussed in WTO, with regard to research and development, audio visual material. Those areas were strongly related to intellectual property. The Delegation noticed that within the intellectual property system, there were instruments, which worked within the system, such as utility models, open licensing, the creative commons, etc., which were already present in many countries, including Chile. The Delegation mentioned that it would like to study those complementary systems, and, therefore, proposed the creation of an electronic forum, so that it could exchange information and opinion, within WIPO’s mandate. Thereafter, within a year it could produce a document, summarizing the discussions made in the proposals. If it was found that there was interest in the proposal, it could be studied further. Another option may be to look at complementary systems, which would remain a permanent item on the Agenda of the Standing Committees. The third proposal referred to a study for assessing what were the appropriate levels of intellectual property. The Delegation pointed out that it was not looking at an analysis that should be carried out in all countries or at all levels. It would simply identify the link, which existed between intellectual property and development. For example, it could have a study carried out in a limited number of countries on a voluntary basis, in specific areas of intellectual property like in the patents area or on exceptions and limitations. In that context, it could then assess the institutional capacity of administering the IP system in various facets, including costs for governments and individuals in the application and implementation of intellectual property. Many studies existed already on the contribution of intellectual property to the GDP of countries, but it might also be important to know what percentage of GDP was being spent by those countries, to administer their systems.

34. The Delegation of Colombia thanked the Chair for the opportunity given to present its proposal contained in document PCDA/1/3, which dealt with agreements assigned by private companies and governments to access specialized databases for the purposes of patents



searches. The proposal had one specific component with regard to development and WIPO. The Delegation highlighted some of the elements related to its proposal. Many national offices in developing countries were faced with obstacles in trying to carry out their work, one of which was limited resources to carry out searches which limited their capacity to determine prior art, for example. The Delegation added that an in-depth study of prior art was the basis for a strong patent title and therefore, WIPO should facilitate access for national offices of developing countries to the databases in question. The work done by patent examiners would be facilitated and in turn much stronger patents would be obtained. An effective patent system created an incentive for investment, provided more effective services and certainty. Innovation and transfer of technology generated jobs, employment and improved the quality of the workforce. A solid system of protection through patents stimulated scientific research in the field of knowledge. For the evaluation of patent applications, in particular the search and study of prior art, national offices' main tool was the national database and they had free access to databases produced by the different industrial property offices at a global level, which constituted an essential resource in the processes for obtaining patents. Although those databases contained a large volume of information, which was very important for their examination, they did have certain limitations, which lead to granting protection in a form that was not completely reliable. The Delegation mentioned that those elements were the basis of its proposal, and its aim was to strengthen the mechanisms and instruments available to offices of developing countries, in order to facilitate the process of grant of patent applications, by using commercial databases, which provided them with all the tools necessary to carry out their work. Those objectives could be met through an agreement(s), which might be drawn up between WIPO and private companies, providing them with access to their databases, for a limited period of time, each month for example, at no cost for national offices. The Delegation pointed out that its suggestion would enable WIPO to explore different options, in order to manage the agreements with private companies, and through those agreements, enable them to have access to the databases without any additional cost to the national offices.

35. The Delegation of the United States of America briefly introduced its proposal to establish a Partnership Program at the WIPO, adding that during the 2005 IIM process, the Delegation had been extremely gratified by the positive reception of the proposed WIPO Partnership Program. To facilitate their discussion within the provisional committee, the Delegation believed that it would be useful to expand and elaborate upon their original proposal and, therefore, the new proposals had been organized under six topics.

(1) "Intellectual Property's Role in Development;" (2) "WIPO's Role in Development;" (3) "National Base-Line Surveys for Economic Growth;" (4) "The Global Economic Contribution of Creative and Innovative Industries;" (5) "Technology and Economic Growth;" and (6) "The Relationship of Counterfeiting and Intellectual Property Piracy to Development." It pointed out that for each of the six topics, specific proposals would be made and that during their deliberations, they would discuss each proposal at greater length and would further point out some of the common themes in the proposals. The Delegation added that the basic premise was that an effective intellectual property system could facilitate economic and cultural development, but IPR alone could not bring about such development. Rather, the protection of intellectual property was only one factor, among many others, that would lead to economic growth and the reduction of poverty. Other important factors included: (1) developing human capital, which includes developing an educated and skilled labor force; (2) liberalizing trade and investment policies; (3) strengthening the rule of law; (4) pursuing stable, macro-economic policies, and (5) implementing pro-competitive regulatory policies. Conversely, endemic illegal copying and counterfeiting, ineffective government and corrupt practices would distort competitive markets, divert resources to

non-productive uses and deter investment and technology transfer. To that effect, the Delegation believed that although WIPO had an important role to play in assisting Member States to effectively use the IP system for development, each country was responsible for its own economic development, including the important role which was played by intellectual property. The process had to begin at home, with Member States taking an inventory of their intellectual property assets and efficiencies, and then developing practical intellectual property development related strategies with achievable goals. The Delegation added that within that broad framework, its proposals aimed to enhance WIPO's role in assisting Member States to develop and implement their own successful, practical strategies to use the intellectual property system for economic, social and cultural development. The Delegation briefly introduced and elaborated on each of the six proposals pointing out that proposal number one, assisting Member States to compete effectively in the knowledge economy, recognized the importance to the economic and cultural development of effectively participating in the knowledge economy, and that it called for the proposed WIPO partnership office to aggressively seek out potential partners to assist countries making the transition to or competing more effectively in the knowledge economy. Proposal number two, Stock taking of WIPO Development Activities, provided for a quantitative and qualitative stock taking of current WIPO development cooperation activities, with a longer term view of developing a statement of core policies and objectives, in the area of cooperation for development activities. It added that the proposal built on the impressive 300-page document of WIPO development cooperation activities, which had been prepared by the Secretariat and distributed during the 2005 IIM process. On proposal number three, Assisting Member States to Conduct Base-line National Economic Surveys, the Delegation thought that the WIPO Secretariat could play a leading role in assisting Member States to conduct base line national economic surveys related to intellectual property rights, for example, by helping Member States to develop survey methodologies and that the results of the survey information could then be made available to Member States. It added that based on those national experiences, Member States could establish best practices, related to fostering the development of creative industries and attracting foreign investments and technologies. Regarding the fourth proposal, "Measuring Global Economic Contribution of Creative and Innovative Industries," the Delegation requested the Secretariat of WIPO to expand the project to include the patent-based innovative industries to support the creative and innovative sectors with useful data. It added that the proposal built on the successful WIPO guide for surveying the economic contribution of the copyright-based industries, which the Delegation had been pleased to support. Elaborating on proposal number five, Facilitating IP-related Activities of Information Technology for Growth and Development, the Delegation believed that the WIPO Standing Committee on Information Technologies could be a forum for discussion, focusing on the importance of IP-related aspects of information technologies and communication technologies and their role in economic and cultural development. It added that specific attention should be focused on assisting Member States to identify practical strategies to use the technologies for economic, social and cultural development. Finally, with regard to the sixth proposal, "Increasing Understanding of the Adverse Effect of Counterfeiting and Piracy on Economic Development," the Delegation called upon the WIPO Advisory Committee on Enforcement to analyze the relationship between high rates of counterfeiting and intellectual property piracy and technology transfer, foreign direct investment and economic growth. In conclusion, the Delegation added that the proposal also called on the WIPO Secretariat to assist in the collection of data on piracy rates, with a view towards widely disseminating the information.

36. The Delegation of South Africa associated itself with the statements made by the Ambassador of Nigeria, on behalf of the African Group, the Ambassador of Pakistan, on

behalf of the Group of 77 and China, and the Ambassador of Argentina on behalf of the “Group of Friends of Development”. The Delegation said that its intervention sought to further elaborate on the proposal of the African Group, and added that the present intellectual property system was premised on the assumption that countries had the same level and stage of development. That assumption was not true, when it came to the African continent, as it was well known that Africa was still lagging behind in terms of growth and development. It pointed out that as the majority of the LDCs were found in Africa and it was in that context, that a proposal on the Development Agenda had been submitted. The Delegation hoped that the meeting would take into consideration their specific proposals, when the process concluded. The Delegation appreciated the discussions on the establishment of a Development Agenda for WIPO, hoping that those discussions would permeate and make a contribution to the economic and social development fabric of Africa, which was clearly reflected in the New Partnership for Africa’s development. It reiterated what had been proposed by the African Group, that WIPO should identify flexibilities under the TRIPS Agreement, with a view to giving practical advice for developing countries on how to access essential medicines and food, and how to access information and knowledge for education and research. It believed that developing countries and LDCs needed to be empowered to effectively use the flexibilities that existed in the international legal instruments, and that WIPO could assist developing countries, particularly African countries, to identify limitations and exceptions in copyright with a view to facilitating private use, teaching and research. The Delegation believed that that could improve and expand access to a vital and indispensable sector of production, which was knowledge. In that connection, the Delegation wished to under score that capital resources were now dominated by intellectual property assets, including portfolios of patents, trademarks, copyright and trade secrets, and added that it had observed, with regret, that global requirements demanded that developing countries, including LDCs, which were mostly found in Africa, should expand and strengthen its intellectual property system. The Delegation pointed out that those requirements were new and complex and emphasized that relatively few policy makers in developing countries had sufficient experience and knowledge, to understand the potential effects of those requirements. Besides that, many effects of stronger intellectual property rights standards were both theoretical and practically ambiguous, necessitating an empirical analysis. The Delegation believed that empirical research and analysis, which had been clearly articulated by the proposal of the “Group of Friends of Development” as well as the Chilean proposal, could make a positive impact and contribution, in identifying the kind of intellectual property instruments, which worked best for a particular stage of development, or a particular set of institutional circumstances. The Delegation viewed reforming the informal sector in Africa as underpinning development, and thought that in order for African countries to develop and expand their economies, the challenge of the so-called informal sector had to be addressed. The Delegation thought that WIPO’s contribution was important and added that the informal sector in Africa was rich with intellectual property-related material, that included traditional textile and clothing designs, traditional unique art paintings, and some traditional unique design musical instruments. Therefore, WIPO should ensure that requirements for securing protection of those valuable materials, did not unreasonably impair the opportunity to seek and obtain such protection. The Delegation added that WIPO could assist the African countries to explore protection of African traditional intellectual properties as was mentioned above. It pointed out that under the copyright system, protection was only offered against deliberate copying, consequently, independent creations of similar designs might not be prevented and that it was a well-known fact that small and medium enterprises were imperative for development. The Delegation stated that WIPO should design innovative ways and means, including fostering the transfer of technology, to enable small and medium enterprises to take better advantages of flexibilities, as was provided by the relevant

international instruments. WIPO should also strengthen individual national capacity for patenting of local creations, innovations and inventions, in order to develop national scientific and technological infrastructures. The Delegation added that development-friendly patent rules might be considered a policy option for developed, developing and least developed countries, to facilitate their drive towards technological and scientific development. The 2005 World Bank Study indicated that multinational trading firms did not base investment decisions on intellectual property rights in the poorest countries, where local threats of reverse engineering were their weakest. Therefore, the study concluded that a poor country hoping to attract inward, foreign direct investments might be better advised to improve its overall investment climate and business infrastructure, including educating its work force rather than strengthen its patent regime. The Delegation added that recent research had observed that about 30,000 skilled, African professionals migrated yearly to the developed countries and thought that WIPO, in cooperation with other relevant international organizations, could assist the African countries to create an appropriate legal and regulatory framework, thereby reversing brain drain into brain-gain. The Delegation pointed out that evidence showed that nationals of lower income developing countries filed very few patent applications, which was not indicative of non-innovative activities in those countries, but rather that the parent patent system did not provide a suitable means for protecting their efforts. The Delegation said that other possible reason for such a situation was the complexities and cost of acquiring such rights, especially in foreign markets; and above all, enforcing those rights in courts. It added that many countries, both developed and developing, had recognized the need to protect their inventions, which resulted from what might have been termed a sub-patentable type of innovations. Therefore, they had introduced a system usually referred to as utility models. In comparison with normal patent systems, utility models or petty patent systems, typically required a lower level of inventiveness and provided a shorter period of protection. The Delegation concluded that utility models were cheaper to obtain, as they were not subjected to substantive examinations before they were granted. The characteristics of utility models could make the patent system more attractive to small and medium-sized enterprises, which typically had no capacity to use the normal patent system. The type of innovative activity in small and medium enterprises, particularly in Africa, might be more focused on relatively small incremental improvement to the existing technology, with a view to developing completely new products. Such improvements, which did not necessarily have the same level of inventiveness as for normal patent protection, had contributed to technological advancement. Therefore, such a system should have been encouraged for mechanical products, such as toy manufacturing, which could have been produced domestically.

37. The Delegation of Benin stated that it was among the least developed countries and thanked the Ambassador of Nigeria for his contribution on behalf of the African Group. It added that the least developed countries, majority of whom were in Africa, had called for the development of a fund within WIPO, with specific goals for LDCs around the world. It further stated that its country also supported the declaration by the Ambassador of Pakistan on behalf of the Group of 77 and China, and said that its Delegation hoped that the present meeting would achieve results that were commensurate with its expectations.

38. The Delegation of the Sudan stated that the patent system was the motor, which pushed development in every state. It pointed out that the first step toward the protection of patent in Sudan was undertaken in 1979, but due to the civil war which destroyed the infrastructure and devastated the human and natural resources of the country, had prevented the patent system from fulfilling its role as it should have done. The Delegation further pointed out that an assessment of the IP system of Sudan was carried out last year, under the aegis of the Patent Office of Sudan and WIPO. It added that the report of that assessment revealed some very

important truths, namely, (i) no big influence of the patent law on the economic and social development in Sudan; (ii) most of the R&D institutions and SMEs, had research activities, but had not been able to protect their patents; (iii) those institutions had absolutely no relationship whatsoever, either direct or indirect, with the Patent Office; (iv) although there were many Sudanese researchers working in the field of science, most of the research results were not protected; and, (v) most of the researchers and creators had to either keep their inventions and creations secret or print them in some magazines, and, therefore, they were of no use to them or to the country. The Delegation added that within that system of the IP, and in the preparation for the entry of Sudan to the WTO, the Department for Patent Protection in Khartoum had carried out a project which had been adopted by the Cabinet, but many steps were needed to be undertaken in the implementation of the project, otherwise the law would only be on paper and most of the reforms would be in vain. The Delegation stated that Sudan tried to modernize its patent system with the modest resources available. In that connection, a website had been set up. The Delegation said that Sudan also thought of setting up databases, but that would require information support which could not be achieved by one's efforts alone. The Delegation expressed its support for everything that had been said by the Ambassador of Nigeria on behalf of the African Group, and it hoped that the visions would come together so that the objectives of the African Group could materialize.

39. The Delegation of Kenya expressed its satisfaction on the decision which was taken at the previous General Assembly of WIPO in September 2005 establishing the provisional committee, and mandating it with the responsibility of taking forward the IIM work to provide concrete and practical results, which could be achieved in a timely and efficient manner. It considered those meetings to be of great importance in assuring that the development needs of developing countries formed an integral part of the WIPO agenda. The Delegation associated itself fully with the African proposal and with the comprehensive statement made by the Ambassador of Nigeria, on behalf of the African Group. It urged the meeting to adopt the African proposal, which had just been introduced. The Delegation believed that it was important that development should be a global and comprehensive program, that would improve the living conditions of all peoples, and that it was imperative that the Millennium Development Goals were integrated in the international fora. The Delegation supported the African proposal, as it identified concrete proposals and the needs of African countries. It was of the view that intellectual property could play an important role in enhancing creativity, innovation and economic growth of developing countries. It stated that the issues which were raised in the African proposal, namely, co-existence, transfer of technology, reforming of the informal sector in Africa, small and medium enterprises, human resource development, use of flexibilities in international instruments, were key to development and enabling developing countries make maximum use of intellectual property, as a tool for their national development. In the area of technical assistance, while recognizing the role that WIPO had played in their national development, the Delegation thought that there was a need to strengthen and enlarge the scope to enable developing countries acquire the necessary infrastructure and other facilities to be able to make full use of intellectual property as a tool of their national economic development. In that regard, the Delegation appreciated the continuous and substantive assistance that they had received from WIPO, especially in the modernization of intellectual property infrastructure in the country. It added that the informal sector in Africa provided an important potential for creation of employment and income generation, and expressed the view that support in that sector could ensure the use of intellectual property information for technological, industrial, social and economic development. The Delegation stated that small and medium enterprises in Africa needed to be assisted, and in that regard the SMEs programs undertaken by WIPO could be further expanded. It considered the African proposal to be complementary to the proposal by the

“Group of Friends of Development” of which that Delegation was a co-sponsor. The Delegation also welcomed the proposal by Chile, which had been presented and stated that it intended to carefully study those three proposals. In conclusion, the Delegation pointed out that it intended to fully participate in the session and looked forward to a positive outcome.

40. The Delegation of Algeria supported the statements made by the Delegation of Pakistan and the Ambassador of Nigeria on behalf of Africa. It highlighted key elements that its Delegation wished to see studied as part of the debate. It referred first to technical assistance and said such assistance should be integrated in the national framework in such a way, that intellectual property protection becomes a factor in economic and social development. Secondly, technology transfer, which was a key element for developing countries and played a very important role in strengthening their economic base, had until then, been dealt with by political statements, without really leading to practical suggestions or political commitment. The strengthening of human resources and the halting of brain drain were also linked to the issue of technology transfer. Developed countries needed to take responsibility and recognize the efforts of developing countries in trying to stop the brain drain to the developed world. Brain drain was a terrible loss to developing countries, in view of the financial and human resources that were lost to the developed world. The role of WIPO in that context was of key importance. There was a need to focus on helping developing countries strengthen their capacities in human resources and to ensure, through technology transfer, that developing countries retained the most skilled people in their countries. That was a key element to overall development and progress that needed to be made in the developing world, and should therefore, be one of the main thrusts in attempts to assist development. The Delegation said that development of human resources should be strengthened through international instruments, so that developing countries could take advantage of intellectual property and use it as a tool for development. That aspect of development was well-known and its importance acknowledged by a whole range of bodies. WTO, for example, in spite of its trade focus, had accepted the importance of the development dimension in international trade, and other trade institutions too had recognized the role of development. It was incumbent on WIPO to mainstream the development dimension in all its programs, and ensure that it helped promote and protect intellectual property and ensured development. Virtually all speakers had acknowledged the importance of the development dimension in the work of WIPO. It said that although every proposal was to be given close attention, the committee should focus its work in order to find practical solutions to implement the development dimension in all the programs and activities of the Organization. The African proposal and that of the “Group of Friends of Development” contained clear and precise elements, which could be strengthened in order to reach a successful outcome. The Delegation said it was committed to contributing as much as possible to the work involved.

41. The Delegation of Tunisia associated itself with the statements made by Pakistan on behalf of the Group of 77 and China, and the statement made by Nigeria on behalf of the African Group. Africa’s needs and challenges related to development had been stressed in various bodies and in a number of statements for the past decade, beginning with the Millennium Summit right through to the Millennium Summit Plus 5, and the second phase of the World Summit on Information Society, which took place in Tunisia in November 2005. For that reason, and in view of the importance of technical assistance provided by WIPO to their respective countries, it was hoped that the committee would be able to adopt a flexible intellectual property system, which allowed the political space necessary to individual countries to respond to their development needs, as much as possible. The Delegation was of the view that intellectual property should be able to play a more important role in stimulating creativity, innovation and economic growth in their countries. To make that possible, they

needed a whole range of tangible proposals and measures, many of which were contained in the African Group's proposal, in particular, the strengthening of technical assistance for development, the facilitation and dissemination of new technologies at affordable prices, encouraging research and development, particularly in innovative sectors and strengthening links with SMEs. There was a need to take into account the informal sector in Africa, when they set up any industrial and artistic protection framework. Further, information and communication technologies should be used more effectively for development.

42. The Delegation of Bangladesh stressed its interest in other proposals, such as that of the "Group of Friends of Development" and Bahrain. It expressed the view that the committee would be able to make clear recommendations to the following WIPO General Assembly. From the outset, the Delegation aligned itself with the statement made by Pakistan on behalf of the Group of 77, that of Thailand on behalf of the Asian Group and Benin, on behalf of the least developed countries. Rather than asking the question whether WIPO was to incorporate a development agenda in its activities, the question to be asked was whether WIPO could do without it. The Delegation queried whether WIPO could afford to ignore the overriding priority of all UN organizations, which was to ensure the overall development of the peoples of the world, whether it was economic, social or cultural. In the globalized world of today, one could not afford to be outside the mainstream, where various actors had agreed to stay engaged and walk in partnership for creating and enabling an external environment, conducive to reaching the development goals. IP was not just private property rights. IP could positively impact society as a whole by ensuring that its benefits were shared by all. The United Kingdom Commission on IP, in its findings of February 2002, stated that the IP system in developed countries had had a direct impact on developing countries and restrictions on access to materials and data on Internet could affect everyone. It stated further that IP rules and regulations might be hampering research on important diseases and new crops, that affected developing countries. IP rights were best viewed as one of the means by which nations and societies could help to promote the fulfillment of human economic and social rights. The report also stated that IP systems, if care was not taken, could produce distortions that were detrimental to the interest of developing countries. Developed countries were to pay more attention to reconciling their commercial interests, with the need to reduce poverty in developing countries which was in everyone's interest. Meeting IP standards was not to be pressed on developing countries, without a serious and objective assessment of their capacity for development. The Delegation acknowledged the role of the Director General in activating the Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD). However, the Delegation felt that the focus of the PCIPD was narrow and confined to projects and micro-level developmental activities. The Delegation referred to paragraph 2 of the Report (PCIPD/4/2) that dwelled on the aims of the programs and activities of the WIPO under PCIPD and stated that WIPO had to bear in mind the Millennium Development Goals (MDGs). However, it was to be remembered that MDGs had specific goals and targets. It had become somewhat evident that some of the developing countries, and most of the least developed countries might not be able to achieve their MDGs, within the stipulated time frame. All the rhetoric about achieving the MDGs had become almost like elusive dreams. The relevant question, therefore, for WIPO would be how it could best promote the improvement of the external environment in support of development, through its various activities. To do so, WIPO had to undergo changes and transformations. The Delegation asked the question whether the activities under PCIPD would be sustainable in the long run and whether the PCIPD could ensure follow up on the implementation of WIPO's assistance program. The Delegation believed that the question of the transfer of technology was a more important issue when considered in relation to the question of sustainability. It was supportive of the "Group of Friends of Development" proposal to create a Standing

Committee on Intellectual Property and Technology Transfer. For LDCs, the issue of transfer of appropriate technology was critically important. Under the Brussels Program of Action, the development partners agreed to help LDCs by complying fully with existing multilateral commitments in the area of technology transfer, particularly by providing incentives as provided for and agreed to in Article 66.2 of the TRIPS Agreement. The Delegation ended by stating that comments on specific proposals would be provided at a later stage of the meeting.

43. The Delegation of Uruguay thanked countries from Africa, Chile, Colombia and the United States of America for the submission of their proposals, which had contributed a good deal to the debate. As a co-sponsor of the proposal of the “Group of Friends of Development”, the Delegation associated itself entirely with the statement made by the representative of Argentina the day before and expressed the wish to avail itself of the opportunity to stress some of the elements that it thought were of particular importance. An idea which had been expressed by other delegations and which was a key element of the document of the “Group of Friends of Development” was also shared by them and this was the idea that there was a need to identify common denominators in the various proposals which had already been submitted. The Delegation was of the opinion that the process of identifying points of convergence between proposals would be a good way for the committee to fulfill its mandate, as well as it could, by coming up with tangible recommendations. It was suggested that it might be useful, with the assistance of the Secretariat, to draw up a compilation of proposals in the form of a table, in order that one might see the common points more clearly and the points of convergence between the different proposals. That would be helpful for the discussions and facilitate the development of concrete recommendations, to be presented at the following General Assembly. The Delegation turned to specific proposals, which it considered were of particular importance. In the first place, there was the question of drafting standards, which were needed to maintain a balance between intellectual protection for rights holders and the general public’s interests, in particular access to knowledge. Secondly, standards were needed to enable states to apply them in accordance with their legislation, so that they could be useful for their economies. Another element, which was very important, was effective access to the public domain. With regard to impact studies, the Delegation supported the proposal and had done so regularly in various bodies in the organization. The Delegation ended its statement by pointing out that a whole set of useful proposals had been put forward and that they should be used in the debate.

44. The Delegation of Egypt stated that it considered the decision regarding the setting up of the provisional committee one of the most important decisions taken by the General Assembly of WIPO the previous October and that it was clear proof of the great importance that Member States attached to the question of including the development dimension in all the activities of the Organization. It was known to all that the decision not only aimed at continuing and completing the important discussions regarding the development agenda, as witnessed by the intergovernmental meetings during 2005, but also for these discussions to be expeditiously concluded so that Member States might present recommendations to the following session of the General Assembly in September 2006, as clearly stipulated in the decision of the General Assembly. The Delegation referred to the presentations made by the Ambassador of Nigeria on behalf of the African Group, as a constructive participation in the meeting. It stated further that the Delegation had nothing to add to such a great and comprehensive presentation, except to express the hope that the proposal would get the attention it deserved. It was certain that its valuable elements would be reflected in recommendations of the provisional committee, particularly since they emanated from the African continent, which was at the forefront of the countries that wished to include the development dimension, in the multilateral intellectual property system, in order to respond to



their priorities and national development needs. The Delegation reiterated a point stressed during the third session of the IIM the year before, namely that, it saw a clear continuity and complementarity between the proposal of the African Group and that of the “Friends of Development” of which Egypt was also a part and that there were close links with many of the elements of the proposal. At a time when they should attempt to give all the proposals presented on the development agenda equal opportunities for presentation, study, and discussion, including the proposal made by the African Group and which had not been suitably discussed as yet, it was important also that they bore in mind the fact that the work and the discussions within the committee had to take an objective and constructive character. That would be aimed basically at translating and interpreting the proposals regarding the development agenda, into effective practical proposals, which would then be presented to the General Assembly. The Delegation supported the important paper presented by Argentina on behalf of the “Group of Friends of Development”, which related to activating the work of the provisional committee. The ideas reflected in this paper could be a principal factor in gauging the success of Member States in carrying out their mandate, in response to the decision of the General Assembly. The Delegation thanked the Delegation of Chile for the proposal they presented. The three basic elements comprising their proposal were important as they dealt with matters vital to developing countries. The Delegation agreed fully with Chile that there should be an effective mechanism for protecting and supporting the public domain, because it constituted a basis that was required in the domain of innovation, creation and development. The Delegation believed that systems, complementary to the intellectual property system, were worthy of discussion and study, particularly in view of the fact that there were many other experiments in the field, which had presented intellectual property in manner, that gave priority to the public domain. The proposal also added new ideas to what had been dealt with before by other proposals regarding the preparation of assessment studies on the economic and social effects, which were dependant on the protection of intellectual property rights. The Delegation supported the proposal made by Colombia, because it dealt with a problem that affected their national office also. The process was such that sometimes, there was a wastage of time resulting in creators losing their rights. The Delegation thanked the United States of America for its presentation and regretted that it had not been able to look at it closely, due to a lack of time. It concluded by saying that Egypt supported the statement made by Pakistan on behalf of the Group of 77 and China.

45. The Delegation of Jordan reflected on the importance of intellectual property and how it had continued to impact on economic, social and cultural domains, including the lives of individuals and governments. It informed the meeting that its Government acknowledged the importance of the governmental dimension of the work of WIPO and its impact on the Member States. It supported all the proposals made by participating countries and hoped that in the end, the work accomplished would be of use to all countries and individuals. In that context, the Delegation wished to submit the proposal that the WIPO Secretariat set down all the points and proposals made by the various countries and present them in the form of clusters. The proposals would have a common objective or view and enable participants to find a common ground to reach a collective agreement as soon as possible. That in turn would allow them to save time and effort and direct discussion to precise points.

46. The Delegation of Côte d’Ivoire supported the African Group while highlighting some of its own ideas. The Delegation stressed that an effective IP system had to have a targeted policy for helping countries promote their intellectual property products, in order to create wealth and that the needs of developing and least developed countries had to be addressed. Intellectual property activities could promote economic growth by creating jobs, adding value and facilitating trade. The advantages to businesses from an effective IP system, had not been

optimally exploited yet, and so it was urgently required that companies producing wealth used the system more, by strengthening their role in the creation of jobs, employment and exports. WIPO, therefore, should provide more help to states through training in intellectual property and draw up guides, teaching materials and strengthen the capacities of support organizations for SMEs. The measurement of intellectual property had become a matter of concern for businesses in all countries, both in industry and in the cultural area. Intangible efforts, especially those deriving from IP, did contribute to national and regional economies, because of their link with value-added goods and services. For that reason, WIPO should help Member States by introducing policies and strategies for intellectual property. In another sector of development, the Delegation proposed that WIPO Member States set up a program on training in intellectual property in countries, that did not yet offer that discipline for economic and social development. Special courses for policy makers and people dealing with intellectual property matters in their respective countries should be proposed. WIPO should prepare an information guide to increase awareness of the importance of IP, especially among parliamentarians. The Organization should extend assistance by providing a legal instrument that would protect sources of traditional knowledge, which were being pirated at present. The Delegation expressed the wish for an international instrument for combating piracy, a problem that was ravaging developing countries and their industries. The question to be addressed was how the issue of development could be approached and also how intellectual property could assure development. WIPO should, as part of the discussions held at the international level, provide appropriate responses that would disseminate intellectual property information on the Internet.

47. The Delegation of Ethiopia associated itself with the statements made by the Group of 77 and China, as well as the proposals submitted by the African Group. Africa, it continued, was a continent where poverty, both in absolute terms and relative terms, had been on the increase. It also referred to wars on the continent. It was a continent where poverty was said to be on the increase, beyond even the millennium target date of 2015. Intellectual property had been well-documented for its ability to create wealth, but Africa, as in many other fields of human endeavor, was excluded from the enormous benefits to be gained from intellectual property. For that reason, the continent should be encouraged to harness benefits that would accrue from the enormous potential of the IP system. The Delegation was of the firm view that the submissions made by Africa would be given favorable and due consideration. It thanked the Organization for its enhanced support to developing countries in their efforts to set up an effective IP system, and expressed the wish that WIPO would continue to do so.

48. The Delegation of El Salvador stated that the committee had made a good start and was grateful for the proposals presented by countries in the regional groups and supported the proposals submitted by the Delegation of Colombia. It further stated that the proposal would facilitate the work of their intellectual property offices, particularly the patent office for prior art searches. El Salvador was building a new trademark office for which it had signed technical assistance and cooperation agreements with the Spanish Patent Office. It thanked the Spanish Patent Office, the European Patent Office and the Mexican Intellectual Property Office for their help in this regard. El Salvador was also considering establishing links with other offices in the Central American and Latin America regions. The Delegation also supported the proposal submitted by the Delegation of Chile, particularly with regard to the study on the impact of the intellectual property system.

49. The Delegation of Argentina welcomed, on behalf of the delegations of Argentina, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Egypt, Iran (Islamic Republic of), Kenya, Peru, Sierra Leone, South Africa, United Republic of Tanzania, Uruguay and

Venezuela, the African Group's proposal, which was an important contribution to enrich the debate, on the establishment of a development agenda for WIPO, as originally proposed by the Group. The proposals submitted by the African Group were in line with that of the "Group of Friends of Development" and were based on the understanding that development should be translated into a global and comprehensive program within WIPO. The various elements of both proposals reaffirmed the need for WIPO to play a more innovative and development-oriented role, in addressing the IP-related needs and concerns of developing countries. It recognized that intellectual property was increasingly important for societies and governments and the African Group's proposal raised concerns with regard to public policy issues and social and economic needs of developing countries. Common to both proposals, was the view that developing countries needed to integrate the question of intellectual property in a way that ensured that it would not constitute a barrier to the implementation of economic, social, cultural and industrial policies of developing countries. The Delegation said that within that context, a number of concrete proposals and relevant ideas submitted by the African Group deserved careful consideration by the provisional committee. The "Group of Friends" was happy to note that the submission especially acknowledged and welcomed the proposals submitted by the "Group of Friends of Development" and recognized that it reflected the concerns and interests of the African Group of countries. Its group was pleased to note the degree of compatibility and convergence between some of the elements proposed, and was of the view that both proposals were complementary and mutually supportive. It welcomed specific proposals submitted by the African Group that reflected the particular concerns of Africa and considered that the proposals should receive adequate consideration, since the whole idea of the development agenda was to find ways to address and find solutions to the particular problems, needs, priorities and aspirations of developing countries in areas that were vital for the welfare of their populations. The Delegation concurred with many of the interesting proposals on technical assistance and transfer of technology. The Delegation pointed out that the African Group's document stated that the relaxation of patent rules should be considered a policy option for developing and least developed countries, in order to facilitate the drive towards technological and scientific development. Finally, it expressed the conviction of the "Group of Friends of Development" that on the basis of consultations, and through the joint efforts of all parties, they would arrive at a common understanding on their future work. That would allow them to present substantive and relevant recommendations, based on both proposals, to the next General Assembly.

50. The Chair said that he would now request the Member States to present their proposals and called upon the Delegation of Chile to do so.

51. The Delegation of Chile stated that their document contained three proposals, each independent from the other. The first proposal was on the appraisal of the public domain. It said that it was not about putting a money value on the public domain, but highlighting its importance for society as a whole. The Delegation explained the benefits of a rich public domain for education, businesses, governments, archives, libraries and patent offices. Creation was inspired by the works of others, the greater the works in the public domain, the greater the creation. The Delegation said that it did not want to put fences around the public domain or have any inappropriate use made of it. It explained that it had picked out various examples of how the public domain might be affected. Intellectual property standards, especially patents and copyright, had negative effects or might have negative effects on the public domain. Many measures were adopted about a hundred years ago to increase intellectual property protection and many, in fact most of those measures, were justified. But on the whole, they might have had more negative than positive effects. Mentioning copyright as an example, it said that it was something which was originally designed to protect authors'

rights, and subsequently extended to the rights of phonograms, artists and performers. It added that discussions were now taking place in WIPO to consider new rights and also to extend the term of protection. For example, in Article 18, once the term of protection was increased for copyright, it was applied retroactively. So operas which were originally meant to have a term of protection of 50 years, would now get an additional 20 years. Further, there were better technologies for protection, all of which unnecessarily hindered access to certain works. In quite a few cases, there were presumptions of ownership of certain works. For instance, the so-called 'orphan' works, which were works where nobody was quite sure as to who the author was, whom to address and to ask for a license or pay royalty. The Delegation said that a few developed countries, including the United States of America were studying the issue on what measures to adopt to tackle the problem of 'orphan' works. So it was possible that that too would be covered. The Delegation suggested that WIPO could set up a worldwide database of works and inventions in the public domain. It mentioned copyright as an example, but added that it could also be extended to industrial property. The Delegation thought that they could do more as governments to identify what was in the public domain. Chile, for example, had a website with digitized information on patents and it would be beneficial for everyone to indicate when the invention was going to fall in the public domain. The same thing applied to copyright. The Delegation noted that the registration of a work under copyright was voluntary, but many countries had copyright registers. Authors considered that a good thing, as it gave them certain benefits, if one went to court. There were private initiatives like the Alexandria Library where private individuals made a list of what was in the public domain. WIPO, with its worldwide database on the PCT, could make a good contribution by stating clearly what inventions were in the public domain. The Delegation pointed out that it was also interesting to know specifically, for example, who had ownership rights to a particular copyright work, or which publishing houses were involved, while seeking permission for use of a work. The Delegation informed the Committee that they had digitized their patent databases, but there was room for further cooperation. They were now trying to digitize all copyright works registered in Chile, as it would be available to everyone, once they were in the public domain. The Delegation then elaborated on the importance of complementary systems to intellectual property and new ways of exploiting intellectual property. It thought that it would be important to have a more detailed discussion on the subject. It added that there were already interesting initiatives like Creative Commons. The Delegation said that they should discuss all that as they were in everyone's benefit and explained that there were governments who were implementing open-source systems. What was important, it believed, was to discuss what the incentives for intellectual creation were? It said that those were not the only systems, and there were others too, such as utility models, as mentioned by the African Group. These were already operating and were of great benefit to countries, such as Chile, as they were easy to use and did not require much effort in establishing novelty. The Delegation suggested the creation of a permanent forum to discuss the issue. One of the ways in which this could be done was to have an electronic forum, limited in time, to discuss new and complementary forms or systems of protection. Another way of discussing these alternative systems could be in the various Permanent Committees in WIPO. For example, issues regarding utility models could be discussed in the Committee on Patents. On the third proposal relating to a study for assessing the impact on development, the Delegation referred to what was said the previous day about the need for a country by country analysis. It, however, realized that it would be very ambitious and perhaps impractical, to cover all systems of intellectual property. Therefore, it thought that a more realistic approach to that might be to have studies on alternative or complementary systems to patents and copyrights. Those studies should be limited to a certain number of countries, not just developing, but also developed, to enable a proper comparison. The Delegation expressed Chile's readiness to be involved in any such study.

52. The Chair appreciated the proposal by the Delegation of Chile and added that it reminded him of when he was Director of Intellectual Property. They were discussing the public domain and realized that most patents fell into the public domain, long before their normal term, for the simple reason that in many countries there was an obligation to pay fees to maintain the patent. In most cases it was not profitable or there was a lack of interest or the invention had been overtaken by technology and so when the fee was no longer paid, automatically it fell into the public domain. The Chair added that experts from the EPO had told them that the average lifetime of a patent, in the 1980s and 1990s, was seven years; and stressed that most of them fell almost immediately into the public domain.

53. The Delegation of Mexico stated that it had studied the proposal of Chile in document PCDA1/2, in particular proposal two on page three of the Annex, on free software and added that free software and open codes were two subjects discussed widely at the World Summit on the Information Society held in Tunis, in November 2005. The Delegation said the issue of free software would be one of the key issues in the follow-up to the Tunis plan of action, and therefore thought that discussing the issue in that committee would be premature. It explained that it did not mean that they underestimated what WIPO could do on the subject. The Delegation suggested that Chile should bring up its document again in the meeting on February 24, 2006, in the UN involving the UNDP, UNCTAD and the International Telecommunications Union (ITU) as all the interested groups would be able to examine it. It noted that the Delegation of Chile did not mention that in its presentation. The Delegation concluded by asserting the importance of WIPO being associated in the follow-up work to the World Summit on the Information Society.

54. The Delegation of Panama expressed its satisfaction at the initiative of preparing a program of work, which departed from the traditional schemes and added that they should choose the main areas for action, based on the specific needs of members. The Delegation said that it had examined all the proposals, and expressed its thanks for all the efforts made. The Delegation said that it was seeking results, and the proposals were aimed at achieving those results. Some of them were similar, but many were complementary and they all had an impact on the collective work, that they wished to do. The Delegation supported the method of work suggested by the Delegation of Uruguay, to prepare a comparative table of proposals, as there were many similarities and many of them complemented each other. On the issue of the appraisal of the public domain, the Delegation said that the public should be informed that things in the public domain could be used, so that there was greater scientific knowledge, jobs could be created and commercial opportunities available. The Delegation added that there should be easy access to it. Turning to the second proposal on the importance of complementary systems to and in intellectual property, the Delegation said it found that relevant and stimulating, because human beings, by their very nature, were attracted by varied initiatives. Recently, in the case of Panama, they had taken a decision to incorporate into their legislation by way of an amendment, incentives to Universities and academic centers, not to register intellectual property, so as to promote greater use of the intellectual property system by national academic circles, which had low levels of patenting at present. That had already been applied in countries, which had small and medium-sized enterprises, where preferential treatment was given to indigenous centers which had creativity competitions. That had led to a great deal of interest, and so they were registering their collective rights, which were valued in Panama. The Delegation agreed with the Delegation of Chile on the need and importance of examining complementary systems to and in intellectual property and supported the proposal. The Delegation also supported the proposal on the study for assessing appropriate levels of intellectual property, considering the particular situation in each country, specifically

its degree of development and institutional capacity. It thought that each member needed to know its strengths and weaknesses, in order to develop a national strategy and to communicate that to the international community. The Delegation also supported the proposal for WIPO to publish guides for studying the intellectual property situation in each country. With regard to specific studies raised by the Delegation of Chile in its proposal, the Delegation thought that the specific suggestion linked to the strategic use of intellectual property was useful and supported that too.

55. The Delegation of Bangladesh said that with regard to the proposal relating to the appraisal of the public domain, it had listened with interest to the observation that if they had shorter terms for patents they could be transferred to the public domain, hence providing incentives to the society as a whole. The Delegation stated that there had to be a balance between private IP rights and welfare of society as a whole. The Delegation also agreed with the proposal of Chile, which called for an analysis of the implications and benefits of an accessible public domain. With regard to the protection and access to the contents of the public domain, the Delegation stated that they definitely had some pre-existing models, and perhaps the Organization of African Unity had a model draft law in the domain of traditional knowledge. Therefore, the Delegation suggested that they could draw upon existing or pre-existing resources, and have an exchange of ideas. The Delegation said that there should be more interaction between the Convention on Biological Diversity (CBD) and WIPO. That was very important, especially, for developing countries, which were concerned with genetic resources. Secondly, with regard to the question of the importance of complementary systems in intellectual property, the Delegation believed that the proposal of the “Group of Friends of Development,” for a Standing Committee on Technology Transfer was good. If the Standing Committee was established, it could discuss all the relevant issues, relating to technological transfer and innovation. The Delegation also listened with interest to the question of open licensing systems, software issues, and felt that developing countries should have the option of using free source software in addition to licensed software. The Delegation said that WIPO should involve itself in advising countries how they could develop their systems, with regard to anti-trust laws and competition policy. The Delegation supported the third proposal, also and added that they could draw on existing studies like the one done by UNCTAD. The Delegation added that least developed countries faced structural constraints and so their vulnerability and special needs should be taken into account, whenever such an impact study or assessment was carried out.

56. The Delegation of Argentina thanked the Delegation of Chile for its useful proposals, highlighting the fact that it contributed to the debate. It stated that it would like to point out that the proposal was similar with the proposals from the “Group of Friends of Development” because they were both based on the same philosophy and spirit. The Delegation indicated that its group concurred with the idea of the appraisal of the public domain and the importance of maintaining it to ensure and facilitate access to information. Further, they also agreed with the importance of the complementary systems and had stressed it in the proposal submitted to the General Assembly in 2004. Finally, it noted that the issue of impact assessment studies was something they had always been stressing as important. It stressed that there was a need to have rules and instruments, which should ensure that each country could make an individual study to adopt standards also to evaluate the technical assistance given to developing countries. The Delegation noted that they could work further on this issue to achieve concrete results.

57. The Delegation of Brazil thanked Chile for their interesting proposal and instructive exposition which it had analyzed carefully. It added that despite the fact that many proposals

had been presented during the discussions on the development agenda, there were many points of convergence between the views expressed in those proposals. It indicated that Brazil aligned itself with the statement made by the Delegation of Argentina that the Chilean proposal complemented many aspects of the proposals presented by the “Group of Friends of Development.” Firstly, it was important to emphasize the fact that the Chilean proposal reflected what seemed to be the common understanding between delegations that the development agenda was not, and should not, encompass technical assistance alone. Rather, it should incorporate concerns relating to norm-setting activities and also take up research studies to assess the impact of intellectual property rights in all countries, in particular, with the view to highlighting the different levels of development between countries. It agreed, with the proposal made by Chile, that measures should be put in place to safeguard the public domain, and understood that creative activity did not come from scratch, but drew upon the public domain. Therefore, measures should be put in place to safeguard the public domain. The Delegation also saw value in the Chilean proposal for the expansion of alternative software models, particularly free and open software, and felt that WIPO should incorporate in its activities, the progress that had been achieved in that respect, particularly, in the frame work of the World Summit on the Information Society. In conclusion, the Delegation also agreed with the Delegation of Chile that different levels of development among countries should be taken into account in all WIPO activities, including norm-setting. Referring to the statement of the Delegation of Argentina, it indicated that the “Group of Friends of Development” was engaged in trying to find a common ground between the proposals that had been presented by the different delegations. It understood that the Chilean proposal, converged with the document presented by the “Group of the Friends of Development” in certain aspects.

58. The Delegation of Austria, on behalf of the European Community and its 25 Member States and the acceding states, Bulgaria, and Romania, thanked Chile for its contribution to the debate on a development agenda for WIPO. It said that studying the impact of intellectual property on the economic and social environment was of great importance and, in that context, the proposal of Chile had touched upon some essential issues. Referring to the first proposal, the Delegation stated that it fully recognized the importance of the availability and dissemination of knowledge, which was in the public domain. On the second proposal, it acknowledged that intellectual property systems were a crucial tool for encouraging creativity and innovation, but that other policy instruments, such as the public procurement, competition and open licensing played a role as well. On the third proposal, it noted that the EU also believed that sound impact assessments could deepen the knowledge on the public interest flexibilities, provided in the intellectual property systems themselves. Further consideration of the envisioned role of WIPO and the individual Member States in conducting such impact assessments would be needed. In that regard, it welcomed further elaborations by Chile. The Delegation added that the European Communities favored analysis that would contribute to the development and promotion of information in the public domain. While stressing that such exercises should remain within the mandate of WIPO, it welcomed assessments of other initiatives promoting creative activity, innovation and technology transfer, in addition to intellectual property systems. It noted, however, that before initiating new studies, a compilation and analysis of studies, which had already been done, would be useful for WIPO and its Member States.

59. The Delegation of Iran (Islamic Republic of) thanked the Delegation of Chile for introducing its proposal and said that the positive points in the proposal could be considered. It said that there was no doubt that the public domain was one of the important pillars of IPR, which was providing basic information, particularly in the digital environment. It said that

the emergence of new ICTs, in particular the Internet, touched borders of the public domain and so making available more information on IP was useful. Referring to the second proposal, it highlighted that protection was not the only way of encouraging innovation. It said that the studies made by the Commission on Intellectual Property Rights, London, entitled, Intellectual Property Rights and Development Policy, showed that other policy instruments were also available to encourage innovation and creativity. Referring to the third proposal, it noted that it reflected proposals made by others, including the “Group of the Friends of Development” and added that such issues should be examined positively. The Delegation said that exploring a proper IP mechanism to be adapted to the specific situation of each country was the ultimate goal of other proposals. A prerequisite of such a work was precise identification of flexibilities in the IPR system.

60. The Delegation of the United States of America thanked the African Group, Chile, and other sponsors of the new proposals and said that it saw some convergence among the proposals, especially those made by Bahrain and the co-sponsors and the African Group. It stated that while many delegations had addressed the issue of a possible procedure for moving forward, it would like to make its preliminary views known. The Delegation said that in order to achieve concrete and practical results, it supported the idea of a listing of all the proposals, without trying to characterize them. Further, they should attempt to identify those proposals, that had a better chance of gaining consensus so that concrete recommendations could be made to the General Assembly. With respect to the proposals made by the Delegation of Chile, it agreed that the public domain was a resource, which promoted access to knowledge, new creations and education. It said that it also agreed that innovation and creativity did not start from scratch, but were part of an incremental process. The Delegation believed that WIPO had considered, and should continue to consider, the importance of the public domain and its work. It noted that intellectual property by its very nature, aimed at enriching the public domain by rewarding creativity and innovation and providing for the wide dissemination of results. During the term of protection, the public domain was enhanced by allowing limited use and on expiry of the term of protection, it was greatly enriched for the use of society. Referring to the statement of the Delegation of Chile, the Delegation noted that it often occurred when right holders did not pay maintenance fees in particular territories, and WIPO could usefully help countries make the public aware of this fact, for example, through its information technology and technical assistance programs for IP offices. The Delegation said that intellectual property did not diminish the public domain, Copyright extended to specific expressions and not to all underlying ideas. Patents were granted only for those inventions that did not previously exist. Further, trademarks were protected only when they functioned in the minds of consumers of trademarks, such as indications of source and did not extend to terms that did not function as trademarks, such as generic terms. Therefore, it believed that WIPO, in helping to establish well functioning IP systems, was protecting and indeed helping to build the public domain. When WIPO established the WIPO<sub>NET</sub> project and its numerous Intellectual Property Digital Libraries (IPDLs), it also enhanced access to a vast store of public domain information. The Delegation supported the proposal that WIPO should continue to discuss the importance of a rich public domain in all its work, whether it be norm-setting or providing technical assistance. The Delegation also believed that WIPO Member States should deepen the analysis of the implications and benefits of a rich and accessible public domain, and should consider proposals for the protection, identification and access to the public domain. In that sense, it agreed with the first proposal of Chile that the public domain was a vital resource. With regard to the second proposal to set up a permanent forum for analysis and discussion of non-IP incentives for promoting creativity, innovation and technology transfer, it had doubts whether that would be an effective use of WIPO resources. The Delegation said that while it agreed that non-IP



factors played a significant role in creativity, innovation and technology transfer, factors like tax policies, procurement policies, government budgets and trade policies were also important. It acknowledged that legitimate alternative models for exploiting the fruits of creativity existed alongside the IPR system, and believed that those alternatives contributed to the diversity of choice for creators. WIPO's core mission was to help its Member States establish effective systems for the protection of intellectual property, so that creators had this important choice. The Delegation quoted from the proposal from the Delegation of Chile as follows: "in relation to economic incentives, intellectual property rights are undoubtedly of the greatest relevance", and added that it believed that WIPO should focus its efforts on intellectual property matters rather than on alternatives to intellectual property. It added that it agreed with the African Group that utility models as a form of IP, were an excellent form of protection and should be studied further. With regard to the third proposal on studying and assessing the appropriate levels of protection of intellectual property, it supported the idea of finding the appropriate levels of intellectual property protection, but believed that the question must be fundamentally addressed by each government, taking into consideration its particular situation and obligations it may have. WIPO helped countries establish IPR systems, and to make them adhere to conventions they wished to join. Further, it facilitated procedures for granting IPRs, and provided technical assistance and training. The Delegation said that the WTO agreed on minimum standards for IPR protection and enforcement in the TRIPS Agreement, and decided what transition periods should be applied. For example, the WTO General Council in October 2005 decided that least developed WTO members would have the possibility to extend their transition periods to 2013. It was doubtful that any study could determine the specific things proposed, such as appropriate level of protection, taking into account a particular situation and a particular country. The Delegation gave the following example to illustrate its point. Suppose country A, country B and country C were similarly situated, in terms of their level of development and institutional capacity. Country A may determine that full use of flexibilities, limitations and exceptions in international IPR agreements was appropriate. Country B, however, may determine that higher levels of protection were appropriate because it believed that that decision may lead to increased investment or technology transfer. Country C, which may be eligible for transition periods under the TRIPS Agreement, may decide to implement protection during the transition period precisely because it had determined that there were concrete advantages in doing so. Therefore, it found it hard to understand how a study could effectively determine the appropriate level of IPR protection for countries A, B, and C. In conclusion, the Delegation said that it did not support the proposal for embarking on such a study.

61. The Delegation of Japan appreciated the proposal and comprehensive explanation provided by Chile. With regard to the first proposal, the Delegation recognized that the public domain was important in cultural aspects and in the area of Information Technology. However, its understanding was that the public domain existed together with intellectual property and was complementary to the intellectual property system. Therefore, if the public domain was analyzed or studied, it was required to assess the balance between the public domain and intellectual property. Further, if such a study had to be conducted, it should be kept in mind that that kind of analysis had already been conducted in other organizations, so duplication of works should be avoided. As for the second proposal, the objective of WIPO was to promote the protection of intellectual property in order to assist creativity. Therefore, it added that it might be an interesting idea to discuss the incentives proposed by Chile if the discussion was made from the view point of promoting the protection of IP rights, and that studies which did not relate to the protection of IP rights should not be carried out within the existing structure of WIPO.

62. The Delegation of Colombia referred to the proposal made by the Delegation of Chile and added that they would also make some general comments on the procedure and scope of the meetings. The Delegation stated that they fully supported the comments made by other delegations on the vital importance of the public domain in WIPO's work. It also recognized the importance of guaranteeing effective access to information to promote human development through training, education and increasing human capacities through creative processes, that lead to social and economic progress. The Delegation, therefore, supported the initiatives by Chile which called for a more detailed analysis of the implications and benefits of an accessible public domain and welcomed the drafting of proposals and models for the promotion and identification of access to the public domain. It thought it was very useful to make full use of those models or studies, aimed at defining practical mechanisms that could be implemented to facilitate access to the public domain. Referring to paragraph (iii) of the Chilean proposal, the Delegation stated that it understood that reference to protection meant preserving and protecting the public domain from any illegal appropriation of this domain, and therefore supported the need of measures to preserve this public domain in normative processes in WIPO. Concerning the second proposal, the Delegation said that it was still studying and discussing that with their capital. Its government supported the third proposal, which referred to studies on the appropriate levels of intellectual property in various countries, especially bearing in mind the clarifications that Chile had made in its presentations. It added that those studies could lead to improved protection levels for intellectual property and its use within the country. The Delegation pointed out that those were the preliminary comments on Chile's proposal and wished to use the opportunity to refer to the methodology that was being used. It gave the example of Delegations like Panama and Uruguay, who had mentioned how important it would have been to have a full, updated list including all the proposals that were still on the table in the Committee. The Delegation believed that this could be a very valuable tool in order to focus their discussions and channel their efforts towards finding the best way to conclude the process. It suggested that the proposals could be listed under different themes, and the Committee could set some kind of priorities to see which proposals should be dealt with in more detail.

63. The Delegation of Nigeria made a brief observation on behalf of the African Group regarding the Chilean proposal and congratulated them for presenting it. It added that Chile was an important country within the developing world, therefore, proposals coming from such countries should be taken seriously and viewed constructively. The Delegation pointed out that regarding the public domain and knowledge, its group thought that making of knowledge inaccessible was to be resisted and therefore, it supported protection of the public domain, as was proposed by Chile. The Delegation further pointed out that the African Group's paper was also clear on this objective, as was stated in paragraph 9 of their main paper which stated *inter alia*, "therefore knowledge has no bounds or confines and has never had one single source. It is important in this context to draw an acceptable balance between legitimate and inalienable rights of nations to develop and the need for the enforcement of IPRs" It was also aware of the need for the adoption of instruments regarding the safeguarding of knowledge in the public domain. Concerning the second proposal on complementarity, the Delegation believed that it was important to have such a mechanism, especially in relation to the development of a data base to make comparative and empirical study in order to know which systems could be applied to what sectors. The Delegation said that certain sectors, for instance, the informal sector in developing countries, would require a special type of intellectual property rights protection, simply because they did not fit into the standard or western type of economic structures. Therefore, they should be treated differently, in terms of enforcement of IPRs. It also supported the proposal for assessing appropriate levels of intellectual property protection, in view of different levels of development of countries.

Therefore, there should not be a blanket application of IPRs to all countries, regardless of the level of development. It stated that the concept and the proposal should be looked into seriously, with a view to determining the level of enforcement and the extent of enforcement of IPRs, in terms of individual countries and that should the need arise, it would make further interventions.

64. The Delegation of Peru thought that Chile's proposal was a positive contribution which provided a fair amount of food for thought and concrete analysis that should be implemented. Regarding the first proposal, it also believed that they should deepen their analysis of the consequences and impact of the public domain and to keep it accessible. The Delegation thought that they should talk about safeguarding protection and that they could continue to work on the deepening of their analysis of those points. Concerning the second proposal, it requested that Chile indicate what the existing fora might be in order to look at those alternative proposals. The Delegation stated that Mexico had referred to discussions which had taken place in the WSIS under the framework of the ITU and they did not believe that it was the only place where they could discuss those issues. The Delegation also thought that there were many different issues that were all crosscutting issues being discussed in many different places. The Delegation added that analysis was being carried out on many of the issues tied to intellectual property rights and, therefore, thought that it was important that WIPO should be present in those discussions and requested whether the process that Chile was thinking of would be a specific one within a specific forum. It also inquired whether they had anything specific in mind, or as the Delegation had said the day before, whether it would be through an electronic form as a first step, and then be incorporated into another type of deeper analysis or discussion in a committee or another type of forum. Concerning the third proposal, the Delegation shared the view that that was extremely important, especially linking intellectual property policies to those of competition in countries such as Peru, where such institutions existed at the national level. The Delegation stated that it was an ambitious proposal and did not consider it important for each country to carry out that type of study, as long as the type of protection available to the IPR system was appropriate. The Delegation agreed with Chile that countries should carry out studies on a voluntary basis, enabling them to look at both costs and benefits, in implementing IP systems.

65. The Delegation of the Russian Federation stated that the proposal made by Chile was of interest, although it raised several questions which they hoped would be answered. It found the public domain proposal to be interesting, with far-reaching consequences, but it did raise doubts on the perspective of the protection of public domain as the main feature of the public openness and accessibility to the public. Therefore, work needed to be done on the extension of the entire content of the public domain. Concerning the second proposal on complementary systems to intellectual property, the Delegation pointed out that the analysis and discussion helped the creative process which was one of the interesting issues being discussed in WIPO and other organizations, and thought that as the problem was not directly within the terms of reference of WIPO, it should be resolved at the national level in the context of national legislation. Regarding the third proposal on carrying out a study to assess the appropriate levels of intellectual property, the Delegation said they would not object to the carrying out of such a study, although several questions arose as such a study had been carried out by WIPO and they had to examine and study the results of the study. It requested clarification on the following issues: the contents of the actual study, the uses of that study, the necessary funding for the study and also the status of recommendations with which such studies normally concluded and remarked that the expenditures on such a study would have to be considered within the budget of the Organization.

66. The Delegation of Kenya acknowledged that the Chilean proposal was a good basis for their discussions. It said that the public domain was a free resource available to all members of society without the need for authorization or payment of a license in contrast to the IPRs that were regulated by the owners. The Delegation pointed out that they had witnessed some members of their societies thriving and benefiting from public domain knowledge without even appreciating the custodians of the same. It supported the proposal by Chile that WIPO should deepen the analysis of the implications and the benefits of the public domain, draw up proposals and models for the protection, identification of, and access to the contents of the public domain and consider it within its normative process. The Delegation also supported the second proposal and the importance of complementary systems to intellectual property, and believed that due to the fact that the classical IP system did not address all IP-related issues comprehensively, there was, a need to provide a complementary system to address those gaps especially in relation to the informal sector. Regarding the third proposal, which related to a study for assessing what were the appropriate levels of IP in each country, the Delegation emphasized that they all knew that many countries were at different levels of development and that there was a need to establish what were the appropriate levels, by taking into account the particular situation in each country, the degree of development and the institutional capacity, so that they could draw a line at what were the minimum levels. The Delegation thought that those were good proposals which needed to be supported.

67. The Delegation of Azerbaijan supported the proposal and pointed out what the Delegation of Austria had said that the access to patent information was open for everything in the public domain and that given the very serious work involved in drafting the norms relating to the public domain, they would have to analyze what the public domain was and put all that information in electronic form. They did not want to incur significant resources, as WIPO had already earmarked a large amount of money for developing electronic information which had not been finally resolved. The Delegation was of the view that that should be completed first. As a great deal of finance was involved it might be more appropriate to define exactly what they wanted to achieve and reiterated what the Delegation of the Russian Federation had pointed out, that it was not really clear what protection meant. It raised the question that if that was open to general access, everyone had access to it and so what were the benefits to be gained? With regard to the second proposal, the Delegation pointed out that the Delegation of Argentina had mentioned that transfer of technology was part of WIPO's mandate and should be promoted. However, the Delegation did not think WIPO should waste money on setting up another permanent committee which might lead to another permanent committee, to work on all those things and added that a sort of green light for the introduction of inventions and open licensing could be set up. It added that if each State approached innovations the way countries like Singapore, Malaysia and Korea had approached it, it would create a favorable climate for investment in their countries. Those countries were developing very fast due to the introduction of such a system. It said that the second proposal required more careful examination and did not think that an additional burden should be imposed on WIPO. Firstly, those States whose economies were developing, had to think about how to create a favorable climate for investment and ask WIPO for help with software or other technical assistance. That was different, but the whole burden should not be placed on WIPO, because WIPO could not help all countries to introduce those technologies. The third proposal was very interesting, but at the same time every country knew its level of development and what benefits it was getting from intellectual property. The Delegation thought that questionnaires could be devised where countries could be asked about the various areas of protection.

68. The Delegation of Kyrgyzstan supported the comments made by the Delegation of the Russian Federation.

69. The Delegation of Brazil referred to the Chilean proposal and said that the idea that public domain was outside the mandate of WIPO was very strange because the public domain existed, in as much as intellectual property rights existed. Therefore, WIPO's mandate involved setting international norms to define what the system was and the extent to which the rights would be actually enforceable in each of the Member countries. In the end, the Organization defined the size of the public domain. The Delegation said it was mentioned that Brazil required investment in the same way as some other countries in Eastern Asia and Eastern Europe did. For that reason, the Brazilian Government was pushing forward important national policies relating to the definition and broadening of the concept of the public domain. The Delegation of Brazil was really in convergence with the Chilean proposal, and thought that those efforts had in fact led to an increase of investments in Brazil and not a decrease. Using the word "protection" for the public domain might have raised some doubts in the minds of people, but they understood what the Chilean proposal meant. It was not "protection" in the sense of owning some private property or private corporations owning a piece of the public domain. In fact, it was the opposite. It was protection in the same way that a natural reserve was protected, or a public park was protected from becoming privatized and used by private people, who should not be there. The whole concept of the public domain, was that it worked for the benefit of mankind. If referred to property where people were free to venture and use for their own enrichment and for furthering the development of human kind, science, knowledge, culture, etc. The idea of "protection" was protection against ownership and against encroachment by intellectual property rights, that might be excessive or enforced in ways that ended up encroaching unreasonably on the public domain and creating a burden for countries in areas such as education, culture, research, etc. The Delegation mentioned an example of public/private partnerships that many universities and research centers were entering into with certain private enterprises, that often times involved trade secrets being offered by universities. So if the intellectual property system, was not taken care of properly, it might lead to an enclosure being set up around knowledge. Where would that lead in the long run? The Delegation thought that it would not lead to more innovation, dynamism, investment, but to a destructive competition among the different economic agents, who would wish to push the frontier of private property towards the baseline of research. Further, the Delegation thought that the idea was up to countries to decide or define what was best for them, in terms of intellectual property rights or the public domain. The Delegation knew what level of IP suited them best and that was why they wanted to see it reflected in the flexibilities, limitations and exceptions that should be introduced and mainstreamed into all agreements in WIPO and that was also part of the Agenda. The Delegation thought that there was no burden on WIPO to carry out studies and to factor in those new ideas and concepts, that had to do with intellectual property. The Delegation pointed out that all those ideas were being discussed in universities that dealt with intellectual property rights, and were not something that was external to the intellectual property system. Most of those ideas came from academics who specialized in IP. WIPO had a treaty-making mandate, that not only dealt with producing treaties that led only to upward harmonization of minimum standards, but also included flexibilities, exceptions and limitations. They also had treaties that had a bearing on the definition of what the limits of the public domain should be. All those were obviously issues that were included in the normative aspects of WIPO. The Delegation thought that the idea the transfer of technology was not related to WIPO was a notion that it could not understand, because transfer of technology was what intellectual property was all about. In fact, that was the argument that most who favored more intellectual property tended to give and usually referred to studies

that would prove that more IP would promote more transfer of technology and that should be proven to them in some concrete way. There should be a benchmark that would indicate how that would happen in a developing country context. The Delegation said that monopolies were created by intellectual property legislation. The monopoly was acceptable to the extent that society got something back, either through information, knowledge, or transfer of technology, progress of science, etc. If the rights were being pushed too far ahead, you do not get the social balance in each and every country which was a member of that Organization. That was a fundamental aspect. The Delegation stated that the Organization should at least be asking the question what was going on in the realm of intellectual property rights, and what they could do about it and what about those developing countries who felt that the system might not be responding to their national needs.

70. The Delegation of Kazakhstan thanked the Delegation of Chile for its proposal and supported the positions taken by the Delegations of Azerbaijan and the Russian Federation. Those were very interesting issues, but were complicated and so needed a cautious approach, because they were not even unanimous on the definition of public domain. The Delegation stated that the second proposal was also rather complicated and there was a need to seek a solution. On the third proposal, it wanted the issue to be examined by countries whatever the outcome, because it was important to relate economic development in the country with creative development.

71. The Representative of the Civil Society Coalition (CSC) welcomed the Chilean proposal, which articulated three main points. One, it recognized the value of the public domain, two, the importance of complementary systems to and in intellectual property, and three, called for conducting a study for assessing what were the appropriate levels of intellectual property, considering the particular situation in each country, specifically its degree of development and institutional capacity. CSC said that WIPO was involved in negotiations, such as the Substantive Patent Law Treaty (PLT) and the Broadcasting-Webcasting Treaty, which could potentially privatize knowledge and shrink the public domain. Much of that work appeared to have been motivated by an uncritical belief that the enclosure of knowledge was the best way to promote creativity, invention and development. But the CSC believed that the older way of looking at things was wrong and outdated. The great success of the Internet, which was based upon public domain, technologies, free software and open access, publishing movements and projects, like the human genome project, illustrated, how it was useful to share knowledge widely. The Representative believed the Chilean proposal which said “the public domain was fundamental for ensuring access to knowledge,” was an explicit effort to have a greater balance at WIPO. CSC added, however, that it might be useful to modify the Chilean proposal by expanding the phrase “the public domain to be more inclusive, the public domain and other elements of the knowledge commons.” They were learning not only the value and the importance of the pure public domain, where knowledge was not earned by anyone, but also the value of other elements of the knowledge commons, where the private owners of knowledge could make them freely available to everyone, like the Wikipedia, much of the free software was licensed under a general public license. In that context, CSC also encouraged WIPO to look at the issue of open standards, which related to the public domain and the knowledge commons and was important for innovation and development. With respect to the second proposal by Chile, regarding the Importance of complementary systems, to and in intellectual property, CSC highlighted recent events at the WHO’s Executive Board, which submitted to the World Health Assembly, a draft resolution on a global framework on essential health research and development. That resolution, tabled by Brazil and Kenya, provided a process to consider a new global regime that was consistent with human rights and public health priorities. The

proposed resolution recognized the importance and relevance of the public sector and open source methods of supporting and doing R&D, and the need to have an appropriate balance between the public domain and intellectual property rights.

72. The Representative of the Third World Network (TWN) started with a quote from Sir Isaac Newton, “If I have seen further, it is by standing on the shoulders of giants.” The quote revealed the need to protect the integrity of the public domain, as it was the rich public domain that facilitated further innovative ideas. The Representative said that listening to the debates, it was clear that, on principle, all delegations believed in safeguarding the integrity of the public domain. Protection of the public domain was an issue that required immediate attention because what was at stake was the problem of “access”, be it to knowledge, technology information, medicines etc. For developing countries, access was crucial to achieve public policy objectives and to use tools that were necessary for their developmental needs. Presently, more and more rights were being created to cover material that was in the public domain, or that should have fallen in the public domain. The extension of rights of the IP holders was particularly prominent in the numerous bilateral free trade agreements that were being signed between the developed and developing countries. For example, several of the bilateral trade agreements were incorporating the idea of “evergreening” patents. That concept, for example, allowed patents to be granted on “new uses” of known substances, although those “new use” patents could in no way be considered to be rewards for new invention, as nothing new had been invented. But by granting patents on new uses of known substances, it allowed patent protection to be greatly extended - for each new therapeutic use of a known compound that was discovered, allowing a company yet another 20 year monopoly. Another example of an obligation that was also frequently found in bilateral trade agreements was to extend the term of patent protection (beyond the current 20 year patent term) to compensate for unreasonable delays by patent offices in granting patents or by the drug registration authority in granting marketing approval. In the context of access to medicines, those TRIPS plus obligations had devastating impacts, in particular, restricting access to affordable good quality generic versions of patented pharmaceutical products. It was evident that such obligations reduced the public domain since materials that should be in the public domain were now being further protected by extending the rights of the IP holders. The Representative said that she had only highlighted two provisions pertaining to patents and explained how they affected the public domain. But there were other provisions on patents, copyright, technological protection measures, that undermined the public domain, and as a consequence, created barriers to access to tools, such as knowledge and technology, that were necessary for development. The Representative added that protection or safeguarding of the contents of the public domain should also be a guiding principle in all norm-setting exercises taken up in future in WIPO. Finally, she stated her support in principle, for the ideas/proposals that Chile had put forward in its paper and in its presentation, though they required further elaboration and examination. The Representative ended with a quote from Thomas Jefferson who said: “He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me.”

73. The Representative of the Union for Public Domain (UPD) pointed out that they were dedicated to protecting and defending the public domain, and expressed its full support for the excellent proposal submitted by the Delegation of Chile, particularly, the recognition that the public domain was essential for access to knowledge. On the first proposal, they thought it was necessary for WIPO to include the protection of the public domain in the normative processes of the Organization and ensure its preservation as the only way of responding, both to public interest and private ones, that clashed in the area of the protection of intellectual

property, which various delegations had clearly explained. Creative processes were fed by access to knowledge, which was in the public domain. If they considered that one of the main functions of WIPO was to promote those creative and innovative processes, WIPO had a mandate to guarantee the preservation and access to the public domain. Restrictions on access to knowledge should be the exception and not the rule. Those restrictions should only be justified when they promoted well-being and development. Exceptions to the public domain, such as patents and inventions were limited in time, precisely so that inventions could go into the public domain. Low quality patents were considered an undesirable invasion of public domain. The United States Patent and Trademark Office (USPTO) had just published a report that recognized the problem and recommended legislative reform that avoided any sanctions, if those works were used. The Representative thought it was appropriate for WIPO to find an overall solution to those problems. UPD agreed with the Delegation of Chile that the first step could be analyzing the benefits of the public domain in creative and innovative processes, and considered that the analysis should cover the following benefits. First, some States had turned down efforts to create data protection systems, basically because companies had recognized that strong public domain stopped them from creating new products. Second, many companies used things that were not protected by patents to promote new models, for example, the Internet was based on unpatented technologies in the public domain. Third, some countries such as the United States of America did not allow protection by copyright of works produced by government employees, so as to promote public domain and access by the public. Four, many governments considered some knowledge was essential in the public domain and that there should be free access to that knowledge. As regard the second proposal, UPD reminded Member States that there were different models that should be included in the analysis. Some examples were the proposal for WIPO to negotiate a treaty for access to knowledge and public domain, etc. They also recognized the importance of the proposal that WIPO should carry out an independent study based on the reality of each country, especially their level of development, that should include, *inter alia*, an analysis of the exceptions and limitations that were recognized by the international treaties, and of the administrative cost and the effect on society of the protection systems imposed by different intellectual property treaties and clauses in Free Trade Agreements. Finally, UPD believed that Chile's proposals complemented the proposal made by the Member States, especially those of the "Friends of Development" and the African Group. Those proposals could form part of a global study, including the proposals made by the delegations.

74. The Representative of IP Justice stated that it was an International Civil Liberties Organization that promoted balanced intellectual property law and that it welcomed the thoughtful and constructive proposal put forth by the Delegation of Chile. The Representative said that Chile's proposal contained three specific and concrete measures that would greatly aid in bringing knowledge and innovation to the developing world, and that Chile's first proposal recognized the significant social value of the public domain that supported the public policy objectives behind intellectual property laws. The Representative noted that in addition to the ordinary consumers, creators themselves, were particularly dependent on access to a robust public domain for education and inspiration. For example, the works of Mozart and Shakespeare were prime examples of public domain works that had enriched humanity for generations; something only possible if those works were in the public domain. The Representative went on to say that Chile's second proposal examined complementary incentives for creativity and recognized that exclusive monopoly rights were only one tool among many available to reward creativity. The Representative stressed that in many cases, exclusive monopoly rights were not the best mode of incentivising creativity, and as a result WIPO should not insist on forcing member countries to rely only on propriety rights to achieve economic development. The Representative continued stating that there were many



alternative systems that had created enormous value, and cited the free and open source software and the Creative Commons licensing schemes as examples. The Delegation explained that WIPO had an obligation to remain neutral among the various tools for incentivising creativity and human development. The Representative stated that Chile's third proposal was also imperative to economic growth and development in the south. The Delegation said that what was often overlooked was the historical fact that the United States of America only recently began a maximal approach to IPR and it was because of the position taken in the past of permitting an open exchange of information that creativity and innovation, were able to flourish and the country was able to become strong. The Representative believed that today's developing countries should be permitted the same path to economic growth that the United States of America benefited from. The Delegation stated that a one-size-fits-all approach, extra large to IPR, would do more harm than good, on IP importing countries that needed the flexibility to protect their own national interests. The Representative concluded by stating that Chile's proposal was very helpful and that it was complementary to the "Friends of Development" proposal and should be incorporated into a development agenda at WIPO.

75. The Representative of the International Federation of Pharmaceutical Manufacturers Association (IFPMA) spoke on behalf its members, the innovative pharmaceutical companies in developing and industrialized countries, including bio-tech companies and small and medium-sized enterprises. IFPMA stated that it welcomed the opportunity to comment on the proposals that were put forth at the meeting. The Representative commented on the practical implications of the rules and the possible effects such rules could have on innovation within developing countries by domestic innovators. In relation to the Chilean proposal in the public domain, the Representative stated that it was important to note what the Delegation of Brazil had indicated, namely that inventions came to the public domain after the rights had lapsed. The Representative gave the example of the WHO Essential Medicines List; a basic portfolio of medicines designed by WHO experts, which served as a guide for countries developing what they needed for their countries. The Representative said over 90% of the innovative drugs on the list originally came from R&D-based industry and were developed using the incentives given by the IP system. Those were now in the public domain, but they came about thanks to the IP system. With reference to the public domain, the Representative said that the delegations might be interested to learn about a recent law in Brazil, namely the Technology Innovation Law of 2004, Law no. 10,973. It explicitly encouraged partnerships to move discoveries and inventions from the public sector into the private sector, specifying that those public sector institutions should use, in partnership with private institutions, intellectual property rights, trade seekers and licensing agreements. The Representative, noting that the question was one of complementary systems or alternatives to the IP system, stated that the intellectual property-based, trade-based mechanism/market model was what actually worked, either alone or through public/private partnerships. The Representative said that other models had been long debated by WHO. He added that state-driven R&D's simply did not work. The Representative clarified that the resolution that had been discussed previously had not been submitted by consensus to the WHO Assembly which was contrary to practice. The Representative said that only Brazil and Kenya had signed on to that particular resolution and many delegations had strong concerns about the 'usefulness of the exercise of trying to find alternatives to existing system and R&D based model. The Representative then elaborated on the question of the study of appropriate levels of intellectual property rights. With regard to intellectual property rules worldwide, the Representative said that it was false to assume that one-size-fits-all. The Delegation said that the TRIPS Agreement had set minimum standards, but LDCs had extended transition periods for implementing intellectual property systems. The Representative noted that several states

had also chosen to have enhanced intellectual property rights, because it met with their overall international needs. The Representative warned the delegations not to over-emphasize the so called flexibilities, as they were not always or even usually in the public interest of countries. As an example, the Representative explained that the Government of Morocco restricted parallel trade, a well-known flexibility, not due to their free trade agreement with the United States of America, but rather, as the Government of Morocco wrote in a letter to the United States Congress, that it was an infringement of domestic Moroccan legislation, and also that it was in the Moroccan interest to restrict that trade. The Representative went on to say that at a WHO conference, held the previous week in Rome on drug counterfeiting, discussed the important issue which led drug regulators from Africa, especially from Nigeria, Kenya and Ghana, to strongly caution against 'round-tripping', the diversion and repackaging of pharmaceutical products for re-sale, otherwise known as parallel trade. The Representative stated that the aforementioned regulated countries were concerned about the growing menace of counterfeit drugs and were very clear that if parallel trade increased, there would also be the likelihood of entry of false medications in the markets, which would threaten public health. Consequently, the Representative invited the delegations to keep that in mind when planning a review of intellectual property rights. The Representative said that it was clear that individual countries were far better placed to understand their individual needs and to make decisions based on their evaluation of the level of intellectual property and what would be appropriate for them. With reference to technology transfer, the Representative stated that IFPMA engaged in technology transfer all the time by working in markets around the world, including many developing countries. However, based on academic literature, it was clear that effective technology transfer would take place through voluntary arrangements and it was not enough, at least not in the pharmaceutical field, to simply copy the cook book and say "here you go lets make it". The Representative said that if a sustainable system had to be devised, it was much better to work on a voluntary licensing agreement and added that there were many factors involved in where and when technology transfer took place. The Representative said that weak intellectual property regimes, lack of enforcement or the weakening of regimes themselves, would not promote technology transfer or provide opportunities for further development. The Representative concluded stating that the comments made by certain delegations, particularly by those of the Russian Federation about the workability of the provisions should be seriously considered.

76. The Representative of the International Federation of Library Associations and Institutions (IFLA) explained that her organization represented the worlds' major libraries and libraries associations, with 1,700 member organizations in 150 countries and that they supported the intervention that would be made later at the meeting by the Representative from the Electronic Information for Libraries, one of their member organizations. The Representative said that IFLA welcomed Chile's proposal to have WIPO undertake an appraisal of the public domain and explained that it must include the issue of the impact of intellectual property laws, licensing, technological protection measures on access to public domain information and works in electronic form. The Representative agreed with the Statement of the Delegation of Chile, that the public domain provided a fertile source of content, on which creators could build new works, but that it needed to be nurtured and protected from erosion in the digital environment. It was said that the digitization of public domain works affected libraries' role as the world's custodians of human memory. The Representative conceded that while there were indeed major public sector digitization projects, many public sector libraries, such as the national, academic and public libraries, gave commercial publishers access to public domain content for digitization projects, because the libraries, could not afford the digitization themselves. The publisher, in turn, would use the content to provide databases of compilations, which would receive protection. The

Representative said that it was only right that the publishers should have rights in the compilation and receive a viable financial return from such investments for the specified period. Public domain content within commercial electronic materials was subject to a licensing regime, and was often non-negotiable in most countries, as contracts licenses were allowed to override copyright exceptions and limitations. Moreover, if the digital content was not otherwise available in an open access repository, it risked being locked up in perpetuity by Technological Protection Measures (TPMs) and Digital Rights Management (DRM) that enforced license terms. Libraries had already experienced how TPMs in e-books, e-journals, databases and multi-media products, such as film, broadcasts and sound recordings, removed users' rights to avail themselves of statutory exceptions and limitations to copyright, that included the rights of visually impaired people to have accessible copies made for them or to deploy read-aloud software. The Representative further stated that the worlds' great research libraries needed to keep digital works in perpetuity and be able to transfer them to other formats and platforms, in order to preserve them for the public domain, and make the content fully accessible and usable after the rights had expired. The Representative said that if the product was no longer made, there would be no new TPMs compatible with new operating systems and no facilities available to allow libraries to migrate content to new platforms. The Representative added that TPMs did not cease upon expiry of copyright, so the content could remain locked, even when no rights subsisted. By then the ownership of the rights might be impossible to trace, rendering the product orphaned and without a key. The Representative stressed that obsolete TPMs rendered digital content inaccessible to future generations of researchers, and that for libraries charged with creating and maintaining a patrimony of public domain works in the digital environment, that was serious. The Representative suggested that a low cost solution would require the publishers, who digitized public domain works, to furnish the library which provided the material with clean digital copies, so that not only would the library preserve the digitized works for prosperity and migrate them to new platforms, but could also make those public domain works freely available on an "as-is" basis to the public on library servers. The Representative said that it would immensely benefit access to public domain works by developing countries, especially if WIPO were to create a database or portal to those works, as the Delegation of Chile proposed. The Representative said that publishers should also be required to entrust major legal deposit and research libraries, stipulated by national legislation, with clean copies of their electronic products for the purposes of conservation and preservation, so that the content was not lost when the rights and the product expired. The Representative said that it would be helpful if the proposed appraisal were to address those points, and added that the library community believed that it was proper for WIPO to assume guardianship of the public domain, promoting its value and protecting it from encroachment. The suggestion made by the Delegation of Chile that WIPO establish a permanent unit which would work on public domain issues would be of great benefit to Member States and the IP community. The Representative said that IP was not just about generating economic benefit for nations and enterprise, an area of activity on which WIPO already advised, but was also about growing knowledge, innovation and creativity and delivering education, the bed-rock of economic prosperity. The Representative supported Chile's proposal for a "without prejudice" impact study, to assess the appropriate levels of IP, with regard to individual countries and endorsed the suggested criteria. They would expect the study to reveal the hidden costs met by libraries resulting from copyright protection, such as the fees they pay for licensing and document supply, book and journal prices, reprographics and levies and the expensive and frustrating process of copyright clearance, especially when tracing the right owners of orphaned works. Such a study would risk being flawed unless libraries associations and institutions in those countries were specifically invited by their governments to play a full part. The Representative urged WIPO to request Member States to extend such invitations and IFLAI would be pleased to assist in that regard.

In conclusion, the Representative urged the meeting to adopt the practical proposals made by the “Group of Friends of Development”.

77. The Representative of 3-D > Trade - Human Rights - Equitable Economy (3D) introduced the Organisation as a non-profit organization based in Geneva, which promoted collaboration amongst trade, development and human rights professionals to ensure that trade rules were developed and applied in ways that supported an equitable economy. The Representative said that 3-D encouraged the elaboration of intellectual property systems that were consistent with development commitments and human rights obligations of States. 3-D welcomed the proposals submitted to the PCDA and those that were submitted to the IIMs in 2005. Keeping the spirit of providing constructive and substantive input into WIPO’s Development Agenda discussions, the Representative drew the attention of Member States to a policy brief recently published by 3-D, entitled “Policy Brief on Intellectual Property Development and Human Rights - How Human Rights can support proposals for a WIPO Development Agenda”. The Representative said that the Organization believed that human rights could support a number of reforms that were put forward in the proposals for a WIPO Development Agenda. As an example, human rights mechanisms already supported the core for greater coherence between the policies of WIPO and those of other UN organs, and that the reporting and assessment dimensions of human rights law supported the idea of independent evaluation of WIPO activities and impact assessments of intellectual property policies. Furthermore, human rights law encouraged a more transparent, non-discriminatory and human rights-consistent approach to norm-setting activities on intellectual property and required the implementation of a system of meaningful public consultation and effective participation in decision-making. The Representative added that human rights also supported the proposals for the reform of WIPO technical assistance, in a manner that was non-discriminatory and responded to the needs of the most vulnerable and marginalized individuals and groups. In conclusion, the Representative said that human rights mechanisms and rules could provide a framework for the elaboration of a treaty on access to knowledge and technology, by putting the right to access information at the core of such a treaty. As such, the Representative encouraged WIPO Member States to use the PCDA discussions to achieve an actionable WIPO Development Agenda that was coherent with development and human rights commitments.

78. The Delegation of Chile expressed its thanks for all the comments from Member States and NGOs and said that it was difficult to answer all the questions. With particular reference to the comments on the first proposal, the protection of the public domain, the Delegation said that there was a clear indication of the need for more information on what was or was not in the public domain. The Delegation said that other NGOs had given examples of how the public domain could be affected by things such as Technological Protection Measures (TPM). The Delegation believed that they should be subject to exceptions, like exclusive rights, because there were specific problems, as IFLAI pointed out in relation to problems affecting libraries, particularly e-libraries. The Delegation said that they had referred only to patents and copyright because they were the best known categories of intellectual property. However, mention should also be made of trademarks. The Delegation thanked the Delegation of Brazil for their comments on the concept of the protection of the public domain. The Delegation added that there was some confusion as to what was meant by the protection of the public domain and explained that the protection of the public domain referred to access to the public domain by preventing encroachment on the public domain. The Delegation of Peru had used a good word, namely “the preservation” of the public domain. The Delegation said that was what they were referring to. They were not trying to put a fence around the public domain, but meant quite the opposite. It said that reference had been made of specific examples in the

previous session, such as how the public domain would be affected when protection lapsed, but then was extended to other objects, which were subsequently protected by law and the Berne Convention. The Delegation said that protection could be retroactive, and felt that such issues should be examined again. The Delegation explained that such examination would complement what the “Friends of Development” proposed in one of their clusters. The Delegation of Chile said that they were concerned by the statements made by some countries that had questioned the very definition of public domain. The Delegation said that there was a very simple public domain definition and believed all agreed on it, especially as not everything was protected by intellectual property. The Delegation said that they were not asking for anything complicated, but for a study to be made of issues relating to intellectual property systems. With reference to the overburdening of work or that it would cost too much, the Delegation did not believe that it would cost governments or WIPO very much and added that the PCT was already working on such matters. The study would be placed “on-line” and made available to all countries. The Delegation acknowledged that the European Union’s information on patents was public, but that did not mean that it was accessible or accessible to all. The lack of access was the idea behind digitizing the information and making it available to all. Referring to the second proposal, the Delegation said that the Delegation of Mexico had referred to free software being examined at the WSIS. Such free software went hand-in-hand with intellectual property and worked within the system. The Delegation stated that there were no reasons why such an endeavor should not be within the purview of WIPO, especially as that Delegation had always said that such issues should be dealt within WIPO. It referred to the Delegation of Mexico’s statement, whereby WIPO should participate in the meeting on information society, and to the statement made by the Delegation of Brazil whereby WIPO should incorporate the results of the World Summit in its work. Referring to the statement made by the Delegation of Peru, on how to implement the proposal regarding alternative and complementary systems, the Delegation stated that one system could be the electronic forum for a limited period, for example one year. The Delegation said that another option would be to place the item on the agenda of the permanent committees of WIPO, for example in the copyright committee, open, licenses or the creative commons could be discussed. In the committee on patents, utility models could be discussed. With regard to the comment made by the Delegation of the United States of America on other forms promoting creative processes outside intellectual property, the Delegation acknowledged that it was important to have discussions take place at WIPO. The Delegation expressed interest in Brazil’s new law on partnerships between private individuals and universities. The Delegation said it was an innovative approach and that it would be interesting to see how the registration of patents were promoted. The Delegation agreed with the comment made by the Delegation of Bangladesh on proposal three, to use existing experience about development impact assessments. It said that a look at organizations in Geneva would be needed. For example, UNCTAD had annual investment reports which analyzed trends in investment and such an analysis could be done for trends in patents, for example which patents were being asked for most in certain fields of technology. The Delegation also referred to UNDP’s experience in its report on human development. With reference to the questions posed by the Delegation of the Russian Federation specifically about existing experiences with development impact assessments, the Delegation indicated that it agreed with that and that they would have to look at other organizations in Geneva. The Delegation went on to say that UNCTAD, for example, produced annual investment reports and that it analyzed the current trends in investment. In the Delegation’s view, developing countries could also analyze for example, what the trends in patents were, and which patents were being asked for most in certain fields of technology. The Delegation added that the UNDP had also acquired experience, as attested to by the contents of its Report on Human Development, and that all of that experience should be examined. The Delegation

indicated that they had already given examples of the contents which could be limited to specific sectors such as patents or to exceptions and limitations. The Delegation further noted that the European Union had also made a suggestion which could be studied, namely the idea of flexibility for public interest, which would be of interest to many developing countries. On the matter of funding, the Delegation indicated that WIPO was financing studies of that type. In effect, the objective of the studies in question would be to determine the impact of intellectual property on development. If a study were undertaken on, for example, what was spent by each country on the administrative system, no one would be wondering why the TRIPS implementation time had to be extended for developing countries. The Delegation further observed that it would be interesting to determine why developing countries had not been able to comply with the conditions of TRIPS and that such analysis would be very useful for the Russian Federation when it joined TRIPS, which the Delegation hoped would occur very soon.

79. The Delegation of Honduras indicated that in its view the Chilean proposal was a positive and valuable one and that the Delegation supported most of the text. Having said that, the Delegation indicated that it nonetheless wished to make a recommendation in order to incorporate some elements mentioned in the proposal in question, such as universal lapses, facilitation of access, multilingualism, and other concepts. In order to amplify the broad concept of protection and identification mentioned in the Chilean proposal the Delegation made the following suggestions: Referring to page 3(e)(ii) on the fourth line of the text in bold letters, regarding protection and identification, the Delegation made a suggestion to improve the language and suggested introducing the words ‘development promotion, acceptability, and identification’ instead of the words ‘protection and identification’. In doing so, the word ‘protection’ would also be mentioned under (iii) and would complement the whole process and what they had been presented in other fora of the UN system, especially in UNESCO. In the Delegations’ view that would be more in line with the process they had followed for the protection and identification of the public domain. The Delegation also noted that that would be a very good opportunity for the WIPO Secretariat to initiate contacts directly with the WSIS process, because that was a process that it had followed very closely, since 2003, and that there were related issues between WIPO and the WSIS, for example as concerned internet public domain, multilingualism, and ICT for development. The Delegation further indicated that it would be important for Member States if the outcome of the WSIS could be incorporated in the Development Agenda. The Delegation concluded by stating that it supported the Chilean proposal which it believed to be a positive one, even if in the Delegation’s view, some language had to be improved in order to broaden the concept.

80. The Delegation of Nigeria, speaking on behalf of the African Group, indicated that it wished to make a brief presentation concerning their proposals. The Delegation went on to say that the African Group had deemed it helpful to table specific proposals, in operational or operative language, based on its official document “African Group proposal” that had already been circulated as a WIPO document (ref: IIM/3/2) dated July 18, 2005. The Delegation observed that what had been circulated that afternoon was a concise, specific synopsis of proposals that had been previously submitted in detail. The Delegation called the Chairman’s attention to the fact that the aim of such an exercise was to facilitate the process in accordance with his own wish. For the avoidance of any doubt, the Delegation wished to lay stress on the fact that the document that had been circulated that day did not supplant or detract from the official submission of the African Group. The Delegation further stated that the specific proposals that had been outlined in the synopsis, took on board most of the concerns and aspirations of different groups and delegations that had also submitted proposals to either the IIM or the PCDA. The Delegation, therefore, wished to rely upon their support and

understanding. The Delegation went on to say that its main objective was to move the process forward in a structured manner, so as to enable the PCDA to propose recommendations to the General Assembly for their adoption. The African Group expressed its deep appreciation to all those who had already voiced their support, either totally or partially, for the Groups' modest proposals. The Delegation concluded by stating that the document under consideration was a clear illustration of the common or shared concerns with respect to the overall WIPO Development Agenda, and that the African Group stood ready to engage in further consultations, if necessary, with other delegations to reach a common understanding and thereby ensure a successful outcome to the deliberations of such an important Committee.

81. The Delegation of the Republic of Korea welcomed the categorization and simplification of the proposal of the African Group. Given the fact that there were different proposals on the table, the Delegation suggested that the Secretariat compile a list of all the various proposals together with a summary of what each proposal was about. The Delegation went on to say that such list should be organized by topic, where similar proposals could be categorized together. In the Delegation's view such a list would enable the Committee to better identify duplication of proposals to accelerate its work, and to make negotiations and discussions more efficient. The Delegation concluded by indicating that it hoped that such a list could be prepared, as soon as possible, to help move the process forward in a structured manner.

82. The Delegation of Iran (Islamic Republic of) associated itself with the statement made by the Delegation of Argentina, on behalf of the "Group of Friends of Development", and welcomed the proposal made by the African Group, and indicated that it contained positive principles and notable materials for discussion. Following the decision of the General Assembly to establish a Development Agenda, the Delegation indicated it was pleased to be given the opportunity to discuss the African Group proposals, as it was understood that in many aspects developing countries and LDCs had the same concerns. The Delegation added that as indicated in the document, norm-setting at WIPO was an area which was of concern for developing countries, so it had to be conducted in a way where its diverse implications were assessed. The Delegation added that it shared the concerns of the African Group, with respect to some important issues, such as transfer of technology and support to enable developing countries to gain access to knowledge in a more convenient manner. The Delegation indicated that it also shared the views of the African Group on the need for the advancement of the negotiations, towards the adoption of an international binding instrument. The African Group correctly reaffirmed the need for development-oriented policies in WIPO, with regard to the provision of technical assistance, on a member-driven basis and in a more efficient manner, that ensured the balance between protection and safeguarding public interests.

83. With regard to the African Group proposal, the Delegation of Argentina recalled that the Delegation had given its views on the proposal that morning, on behalf of the "Group of Friends of Development". The Delegation went on to say that it wished to refer to a different theme as it had taken note that a number of delegations, through the debates that had taken place that day, had referred to issues with regard to procedure and the methodology used. In the Delegation's view such issues concerned their future work and indicated that the Delegation had taken note of those proposals and suggestions. It felt that, in principle, that was an issue that should be dealt with under Item 5 of the Agenda, dealing with Future Work. Consequently, the Delegation hoped that the debate on that particular issue would take place when they got to Agenda Item 5, as the "Group of Friends of Development" would have a

statement to make at that point in time. The Delegation further declared that given the views which had been expressed that day, it would simply like to state that it hoped that the process would be a member-driven one, and would always be dealt with that way.

84. The Delegation of Malaysia stated that it looked forward to working closely with and ensuring a successful outcome of the meeting and thanked the African Group, which had submitted and presented the proposals. The Delegation indicated that after considering all the proposals, it wished to highlight some of them. The first one was strengthening national institutional capacity for further development of infrastructure in other facilities, with a view to making international intellectual property institutions more efficient and ensuring a fair balance between intellectual property protection and safeguarding public interests. The Delegation declared that it was of the view that that particular proposal fell under the technical assistance area. In the Delegation's view, such proposals should be development-oriented and demand-driven, and specific areas should be calculated for maximum effect and the time frame for completion should also be indicated. According to the Delegation, the effectiveness of the technical assistance could be improved to, *inter alia*, impact assessments which would provide a fair balance between intellectual property protection and safeguarding public interests. With regard to the proposal where WIPO would be requested (i) to examine the flexibilities under the TRIPS Agreement with a view to giving practical advice to developing and least developed countries to enable them to gain access to medicines and food, and (ii) to elaborate a mechanism to facilitate access to knowledge and technology for developing and least developed countries, the Delegation felt that there were various flexibilities under the TRIPS Agreement, which would enable developing and least developed countries to gain access to essential medicines and food on the one hand, and to gain access to information and knowledge for education and research, on the other. The Delegation further observed that it was important for developing and LDCs to be empowered to be able to effectively use the flexibilities, that had been provided in the international instrument on intellectual property. The Delegation went on to say that in that regard, WIPO had to examine the flexibilities, and give practical advice to enable them to improve and expand the access to factors of development. Another proposal that the Delegation wished to highlight was the proposal for WIPO to intensify its cooperation with UNCTAD, UNEP, UNIDO, WHO, UNESCO and the WTO, in order to strengthen the coordination and harmonization in undertaking developing programs. The Delegation pointed out that those UN agencies had an important role to play in development and that they had separate programs going in different directions with regard to development. Therefore, in the Delegation's view, it was important for WIPO to cooperate with those agencies to harmonize, coordinate and synergize development programs.

85. The Delegation of Austria thanked the Delegation of Nigeria and the African Group for having provided the Committee with a synopsis, in written form, to document IIM/3/2, which contained the proposal of the African Group. The Delegation went on to say that the European Community, its Member States and Romania and Bulgaria, welcomed the valuable contribution of the African Group to their discussions set out in document IIM/3/2. The Delegation indicated that the document contained an interesting set of proposals and also stated that the European Community and its Member States wished to make a few comments on some of those proposals at that stage. The Delegation declared that they were looking forward to discussing the proposal in more detail and underlined that the first two strands of the proposal, rightly recognized the need to strengthen national intellectual property institutions and to encourage the local use of intellectual property. The Delegation also pointed out that many bodies, including WIPO, EPO and OHIM, with the support of their Member States, were already very active in strengthening developing countries' capacities in



that field. The Delegation indicated it would, nevertheless, welcome further considerations of the need for donors to enhance their systems in that area. With respect to increased funding for WIPO, the Delegation observed that the European Community and its Member States believed that it was necessary, first to ensure that existing funding was being used to meet most needs-based activities to their maximum effect. The Delegation also noted that the African Group, like others who had submitted proposals, suggested ways in which WIPO's technical assistance activities could be enhanced. On the transfer of technology, the European Community and its Member States noted that the agreement between WIPO and the UN made it clear that WIPO had to contribute, within its competence, to the UN's work on technology transfer. That work also involved UNCTAD, UNDP, UNIDO, as well as other agencies within the United Nations system. With that in mind, the Delegation stated that the European Community and its Member States, whole heartedly agreed that WIPO had to play its role as far as the intellectual property aspects of technology transfer were concerned, and that they looked forward to hearing more about the ideas in order to discuss them, which they believed could happen within the existing WIPO structure. With regard to intellectual property impact and norm-setting, the Delegation said that the European Community and its Member States believed that impact assessments and evaluation had an important role to play, but those proposals would have to be considered further by the European Community before commenting on those items. Likewise, further considerations of the envisaged role of WIPO and individual Member States in conducting such impact assessments and evaluations, would be needed. In that regard, the Delegation indicated they would welcome a further elaboration by the African Group. On brain drain, the Delegation believed that the African Group proposal addressed an issue reversing the brain drain from developing countries which it agreed was an important issue, but in its view was one which went beyond intellectual property. However, the Delegation also noted that an appropriate intellectual property framework, that allowed creators and inventors to protect their creations in their own countries, might have an indirect role in discouraging them from leaving their own countries. On flexibilities in international instruments, the Delegation indicated that the European Community and its Member States, recognized the importance of WIPO providing balanced advice to developing countries and LDCs on the flexibilities provided under TRIPS.

86. The Delegation of the United States of America thanked the African Group for its thoughtful proposals and the Delegation of Nigeria for its excellent introduction to them. The Delegation indicated that it found many of those proposals very constructive and hoped that an agreement could be reached in the Provisional Committee for moving them forward, as appropriate. The Delegation stated that it supported the African Group's call for increased assistance to WIPO by way of funding by donor countries. As a contributor to WIPO's Funds in Trust program, the Delegation encouraged additional countries to participate in that program to increase WIPO resources for technical assistance. The Delegation also asked countries to increase bilateral technical assistance with countries in Africa, and pointed out that the United States of America had greatly expanded its technical assistance and training programs and it welcomed enhanced collaboration with African countries on IPR technical assistance matters. The Delegation emphasized that it fully supported the African Group's proposal for WIPO to facilitate access to foreign patent information and technical resources, and that it believed that the WIPONET project had greatly contributed to that goal and that more could be done. In addition to providing access to intellectual property offices through the WIPONET, the Delegation believed that WIPO could help countries find partners to help them improve patent information dissemination efforts within their countries to libraries, academic, scientific and research institutions, where patent information could be exploited. On the contrary, the Delegation indicated it did not believe that relaxation of patent rules would promote the transfer of technology. The Delegation observed that it had seen several

studies that had shown that weak intellectual property regimes discouraged inflows of foreign direct investment, licensing and collaborative agreements. The Delegation indicated it supported the proposal for WIPO to help African countries integrate areas of the informal sector into the mainstream of economic activities in individual countries. The Delegation also agreed that WIPO's assistance, for the strategic use of the intellectual property system, could help the informal sector become a major additive in employment and income generation. The Delegation indicated it supported WIPO's work in assisting SMEs to utilize the IPR system, and that it also supported WIPO's continued efforts to help developing countries improve their ICT infrastructure and the facilities of the intellectual property offices of Member States of African countries and other developing countries. The Delegation went on to say that it supported the proposal that WIPO, in cooperation with other relevant international organizations, assisted African countries to create legal and regulatory frameworks to reverse brain drain, by providing effective infrastructure and appropriate incentives. In the Delegation's view, WIPO, within its competence and mandate of course, had to focus on IPR matters. The Delegation noted that WIPO in recent years, had provided advice to Member States on the use of flexibilities in international IPR instruments. The Delegation indicated it supported individual countries making choices about which if any, flexibilities they should use in international IPR agreements to address their specific needs and circumstances. With regard to the IGC, the Delegation indicated it did agree that the IGC should accelerate its work with no outcome excluded. The Delegation also believed that any such instrument should not mandate in a one-size-fits-all approach, since discussions in the IGC had shown that many different and varied approaches worked well. As it had stated with regard to similar proposals, the Delegation recalled that it did not favor impact assessments for norm-setting. It believed that it was up to individual Member States of WIPO to consult with their stakeholders, evaluate the impact of any proposed norm-setting and to develop its position with regard to that proposed norm-setting. The Delegation observed that WIPO accredited a large number of NGOs and IGOs who could share their perspectives on impacts of norm-setting. The Delegation went on to say that Member States could also reflect on those perspectives to help shape their positions. In the Delegation's view, the intergovernmental nature of WIPO dictated that it was for the Member States to decide whether to proceed with norm-setting in a particular area, and for each Member State to assess what impacts that norm setting would have. The Delegation concluded by saying that it viewed the African Group's proposals as very constructive, and that it hoped that some concrete and practical outcomes could be reached that week.

87. With regard to the African Group proposal, the Delegation of Colombia expressed its thanks for all of the efforts made by all the countries in the African Group who had co-presented that proposal. The Delegation believed that the proposal was an important component of the Committee's discussion and that it would contribute positively to the work that would be carried out during the PCDA and the results that WIPO might achieve in contributing to the development of countries in the world. In the Delegation's view, that package of proposals was very constructive, as it covered many of the needs of developing countries and took a close look at the different areas where developing countries could benefit in a more effective manner from intellectual property systems. The Delegation went on to say that in many of those issues, it saw other related issues that were extremely important for the development and the strategic use of the intellectual property system in their economies and societies. The Delegation noted that many of the proposals in that package converged with other proposals submitted during that Committee or other meetings. In other words, in the Delegation's view, the African Group proposals might have some synergy with previously submitted proposals, and therefore could be integrated into the proposals from the "Group of Friends of Development." The Delegation further observed that the proposals of the African

Group might be complementary to other proposals made by other groups that had been looked at. Taking into account those general elements, the Delegation wished to specifically look at a number of the different parts of the proposals in question. One was the emphasis on the fact that other regions of WIPO had to be included. In that regard, the Delegation noted that some of the initiatives or proposals with regard to technical assistance, were only limited to one region and believed that with a collective effort in its organization, activities and programs, that could be set up as a result of the debate which took place in the Committee, it might not only benefit the African Region, but other regions as well. Therefore, the Delegation believed that those proposals should be broadened so that the Committee would guarantee that the interests of all countries were considered in the implementation of those proposals. The Delegation pointed out that another specific proposal under chapter two on the subject of technology transfer, referred to the creation of a new body, which would formulate, coordinate and assess transfer of technology policies and strategies. The Delegation added that it had already spoken on similar proposals, with regard to setting up a new body within WIPO, recalling that before defining or creating a new body, which no doubt would also have financial consequences, the needs to which such a body was supposed to respond had to be clearly defined. The general idea was that the Committee had to avoid duplication and overlapping, and instead try to make use of existing bodies and instruments for development activities. The Delegation added that under the chapter on ICTs, it had great expectations that the African Group would be able to link the Digital Solidarity Fund to WIPO activities. Although such a fund was created in a different forum, namely the WSIS, the resources and capacity that that fund might provide to WIPO, in order to develop projects with regard to research or technology transfer or the development of technologies in ICTs, could generate an alliance between the digital solidarity fund and WIPO. The Delegation observed that such an alliance could be useful, because many of the funds that existed such as the Digital Solidarity Fund could be used in a strategic way for the development of projects, specifically related to intellectual property. Under the chapter on Human Resources Development, the Delegation recommended that the issue of brain drain be examined closely, even though that was a subject that went beyond WIPO's scope. The Delegation emphasized that many of the different causes behind brain drain were social and economic causes. Nonetheless, the Delegation believed that such issues could be taken into account. The challenge would be to determine how WIPO and the intellectual property system could contribute to analyzing what the different factors of brain drain were, and whether WIPO could play a role in trying to reduce the existing trend. In the Delegation's view, under that chapter it would be important for developing countries, and Colombia in particular, to concentrate on or focus on activities in that area. Other regions could also collectively try to prove or manage those types of activities, that could benefit developing countries. The Delegation concluded by saying that it believed that the possibility of setting up a trust fund within WIPO, was also closely tied to a similar fund that had already been proposed by Bahrain. The Delegation added that it believed that the scope of that fund should not only be for LDCs, but that it should also cover other developing countries who needed assistance, particularly the contribution of international bodies and international cooperation.

88. The Delegation of Japan commended the African Group for its proposal contained in the document IIM/3/2. Referring to the paper which was circulated that afternoon, the Delegation indicated that with respect to item number two, Technology Transfer, it believed that in order facilitate technology transfer, a good set of intellectual property laws was not sufficient. Other factors such as financial assistance and training of specialists were needed for the success of any technology transfer. As to the item number seven, Use of Flexibility in International Instruments, the Delegation noted that certain flexibility existed under the TRIPS Agreement. However, the flexibilities under the TRIPS Agreement should be

examined within the TRIPS Council, and not at WIPO. Concerning item eight, Norm-setting, and more particularly the first paragraph that referred to the international binding instrument on the protection of genetic resources, traditional knowledge and folklore in the nearest future, the Delegation indicated that it simply wished to draw the Committee's attention to the fact that those instruments were being examined by the IGC and the Committee should wait for the outcome of the IGC.

89. The Delegation of Honduras thanked the African Group for the positive contributions it had made in its proposal. In the Delegation's view such proposals would be extremely helpful for all Member States of WIPO, as they would help them clarify further what type of activities had to be undertaken to foster development, while also assisting them in drawing up a development agenda. The Delegation indicated that it wished to address four specific elements that were mentioned in the proposal and pointed out that those were action-oriented proposals. As regards, technical assistance, the Delegation emphasized that it would be important to look at that critical aspect closely. There was a need to improve capacity building, more particularly, institutional capacity building, so that a balance between IP protection and safeguarding public interest was achieved. The Delegation also highlighted that under the information and technology paragraph, where it said that WIPO was requested to expand the scope of its activities aimed at bridging the digital divide by taking into account the WSIS outcome, it was important to include this in the present process as it related to the development agenda proposed at WIPO. On that particular point, the Delegation recommended that the Committee not only took into account the digital solidarity fund, but also all the relevant financial mechanisms. Concerning the third action-oriented request to WIPO, which referred to the chapter on norm-setting, the Delegation recalled that that was a point it had highlighted in the second IIM meeting, where the Delegation stressed the importance that WIPO should adopt an international binding instrument, on the protection of genetic resources, traditional knowledge and folklore. The Delegation further noted that some very important work was also carried out by UNCTAD in that regard and encouraged the Secretariat of WIPO to initiate a close coordination with that UN Agency. The Delegation noted that the fourth element from the African proposal related to the institutional mandate and sought to encourage WIPO to intensify its cooperation with other UN Agencies. In order to strengthen that particular paragraph, the Delegation suggested to take into account the outcome of all the relevant UN summits held in the past that embraced the concept of development oriented processes, and that were very much related to the development agenda that was discussed in WIPO.

90. The Delegation of Panama thanked and congratulated the African Group for its valuable contributions to the WIPO Development Program which took into account the needs of its countries and repeated its support for the proposals as a whole. It added that the suggestions set out important conditions that would, furthermore, make it possible to use complementary recommendations from other delegations. The Delegation said it referred, in particular, to technical assistance because it was an issue which had been a pillar of WIPO's programs and that, in the case of countries such as theirs, it continued to be essential and of particular interest. The Delegation said they were all facing new challenges and realized the need to use intellectual property as an instrument that enabled them to be more competitive. The Delegation said that following the application of free trade treaties and customs' unions on which their countries were working, it agreed that intellectual property should be used as a tool for adequate protection for which technical assistance was required. The Delegation said that it fully shared the position that technical assistance programs should be tailor-made to the specific needs of each member. Nevertheless, it continued, there should be a follow up and assessment of the results achieved because resources were scarce. The Delegation concluded

by saying that it would be interesting to start sharing the results and exchanging experiences which, it was sure, would be enriching.

91. The Delegation of Brazil supported the statement made by the Delegation of Argentina on the African Group's Proposal and added that it wanted to make some specific references to that particular proposal and identify the concerns, issues and ideas that were contained in the African Proposal with elements of the document put forward by the "Group of Friends of Development". The Delegation said that the African Proposal touched upon a wide range of issues, that were relevant to the idea of a Development Agenda for WIPO. First of all, it wished to mention technical assistance. The Delegation thought that technical assistance was very important and that there was room for improvement and for fine-tuning the kind of technical assistance that was provided by WIPO to developing countries. The Delegation thought that the meeting also had to look at technical assistance in a broader perspective. The Delegation added that developing countries had been called to be signatories to agreements which raised the levels of protection worldwide and reduced the policy space of developing countries. The Delegation said that what had happened in the course of time with those new agreements was that the policy space of developing countries had been reduced considerably, much more so than the policy space of developed countries. The Delegation said that it also thought that with the raising of international standards of protection under a sort of a one-size-fits-all approach, that was not necessarily at the lowest common denominator but often at the highest common denominator, had also led to an inversion of the logic behind what was being sought with the Development Agenda. The Delegation said that what had happened was that they were approaching the point where they were getting strong patents in the developing world and weaker patents in the developed countries. It believed that was a situation which had to be balanced properly, under a revision of the norm-setting activities in WIPO. The Delegation said it thought it was an issue of expansion of policy space and strengthening of patent monopolies in the developing world, which could not be compensated through technical cooperation alone. The Delegation said that technical cooperation was needed, but it was a drop in the ocean in many developing countries, including Brazil. It said that developing countries did not have the same legal and institutional framework for the adequate application of many of the intellectual property rules, systems and legislation. It went on to say that economic conditions in developing countries were not the same; competition was not the same; that the excessive consolidation of a monopoly through patents in a developing country may have a much broader consequence upon the level of market domination, than it would in a developed economy. Further, the levels of development of science and the transformation of science into innovation and into a marketable product did not happen to any great extent in a developing country. The Delegation explained that they were all elements that created an obvious difference of context in a developing country, as compared to a developed one and that intellectual property rights and legislation could not be applied, as if developing countries had the same conditions as developed countries. The Delegation said that it was pointing out the obvious, but sometimes the obvious was not found in the discussions and in norm-setting activities of the Organization. It therefore thought it was important to reiterate it. The Delegation returned to the issue of the African Group's Proposal and made a few references to the original document, which was IIM3/2, and said it would point the many elements in it that it thought were convergent with the concerns put forward by the 'Friends of Development' and by other developing countries in that process. The Delegation said it was pleased to note that the African Group had welcomed the Proposal made by the "Friends of Development". "The Friends of Development" also welcomed their proposal. The Delegation said that the African Group mentioned that the South South Summit held in Doha contained a statement that was fully compatible with the idea it had presented for a Development Agenda for WIPO. There

was concern about the relationship between IPRs enforcement and the protection of international human rights and norms and standards, and it thought that the relationship between IP and human rights should be a guiding principle in everything that was done in the Organization and lot of that had been heard from the NGOs who were observers. The Delegation said that the balance between the legitimate rights of nations to develop and the need for enforcement of IPRs was also the obvious balance they were trying to achieve through the Development Agenda for WIPO, and that the African Group had reflected that idea very clearly in their proposal. The Delegation added that ultimately, development was contingent upon policies of individual countries themselves. But for countries to be able to undertake those policies and objectives for themselves, they needed the corresponding policy space. If the policy space was taken away from them, they could not say that it was up to countries to take care of their own development. The Delegation asked: if there were agreements that simply did not provide for any flexibility for national policies, how would developing countries be responsible for taking their development into their own hands. There would not be any policy space for that. The Delegation went on to say that it thought that the policy space had to be constructed in such a way that countries could, in fact, take them into their own hands. It also said that the framework was consistent with the objectives of the Millennium Development Goals, and thought that it should apply to everything that was dealt with in the Organization. It went on to say that in technical assistance, there was the issue of the guidelines that should be adopted by WIPO, in providing technical assistance to developing countries. Those guidelines should be member-driven and development oriented, and should include assessments, as much as possible. The Delegation said that all that was convergent with the ideas and the guidelines and, in fact, with the principles that had been proposed by the "Friends of Development" as guidelines for technical cooperation activities in WIPO. The Delegation added that with respect to the issue of transfer of technology, the "Friends of Development" had the idea of creating conditions for individual nations to become self-reliant in the area of technology and that could be done through various means. One of them was facilitating access to patent information on technology, but there were also other means of doing that. There was a reference in the African Group's Proposal to relaxation of patent rules, which they thought could have a major impact on countries becoming self-reliant in the area of technology. The Delegation said that there was the relationship of WIPO with other UN Agencies. It thought the relationship with UNCTAD would be very positive as UNCTAD had recently carried out a series of studies and work, regarding economic development and had also studied the issue of transfer of technology and how technology could have an impact on the more dynamic sectors of world trade. The Delegation said that there was a lot of substance to be extracted from UNCTAD's work throughout the years, that could be used as a basis for the Committee to consider the new challenging issues that were on the agenda. It said that there was the issue of how transfer of technology initiatives could facilitate implementation of the multilateral environmental agreements by WIPO and, in particular, address the whole issue of respecting countries' biodiversity resources, which was also a very important issue. The Delegation said Brazil and many other developing countries, had been asking the international patent system to provide them with a solution to biopiracy and the misappropriation of traditional knowledge that was associated with genetic resources, and that until then, they had not received a very clear response from the system. It went on to say that that was an area that should be the object of study, because it was one of the few areas of IP where there was a requirement from developing countries for stronger protection. The Delegation continued by saying that the issue of disclosure of the origin of genetic resources, the issue of applying for consent, access, and benefit sharing were all very relevant and should be addressed in the forum that dealt with IP, both in WTO and in WIPO. It believed there was a very central element in the African Proposal that was convergent with the "Friends of Development" Proposal, which was the

whole idea of using the flexibilities in international instruments and that WIPO should include the use of those flexibilities in its technical assistance to developing countries. The Delegation said they should be part of the WIPO Technical Assistance Agenda to help developing countries worldwide to better understand the flexibilities that existed in agreements, their legal implications, how they could actually be used because there was a lot of imprecision as to the extent of these flexibilities. The Delegation said it was a loss for developing countries that no use of certain legal flexibilities existing in the agreements made in developing countries, that they did not, in fact, implement those flexibilities adequately because of the lack of legal understanding or assistance from WIPO. The Delegation said it would therefore very strongly support that type of activity, and obviously it would be linked with public interest objectives, such as those that were stated in the African Group's Proposal. Those were the objectives of increasing access to information in educational materials in developing countries, including technical and scientific information, access to medicine, health care facilities at affordable cost. The whole issue of cost was something that should be further developed in the Organization, because it was known that intellectual property protection was not only something that was important for innovation, but also carried a cost. There was an impact on price, and the impact would be different in different markets according to conditions of competition in different markets. Often, developing countries would not have a broadly competitive market, but a market dominated by few actors and therefore, the impact of IP might be much higher on prices than it would be in a developed economy. The Delegation said that finally, in norm-setting, there were concrete proposals that were also reflected in the Proposal from the "Friends of Development Group". One of them was the idea of facilitating access to knowledge and technologies for developing countries. It said that it converged with the Proposal of the "Friends of Development" and was on the same line with the Proposal of the Delegation of Chile as well. The Delegation of Brazil said that the "Friends of Development" had proposed that perhaps even an agreement on access to knowledge could be elaborated by WIPO, considering the need to diversify WIPO's Agenda. The conduct of independent impact assessment regarding technical assistance was again totally in agreement with ideas that the "Friends of Development" had been expressing in their proposal. Also contained in the African Group's document was the idea of improving the participation by civil society and other stakeholders in all of WIPO activities relevant to their respective domains and interest. The Delegation said it repeated the same idea that they had been putting forward that WIPO be a place for all segments of society, not only the corporate world and entrepreneurs, but also those who represented public interest groups and the civil society at large. They should all feel that they were welcome and invited to engage in discussions at the Organization and contribute their own views and specific proposals. The Delegation said that there was the institutional mandate, and the African Group stressed that the role of WIPO should be in line with its UN Special Agency status and because of that status, WIPO already had a broad mandate to deal with all development issues. It was not really a new mandate as being a UN Agency, it was automatically committed to moving forward such UN goals as, for example, providing developing countries with the necessary normative and technical cooperation conditions to attain the Millennium Development Goals. The Delegation said it saw a clear link there. The Delegation concluded by saying that, finally, it thought that there were issues in the African Group's Proposal dealing with funding and budgetary questions. It thought that the "Group of Friends of Development" would not disagree that budgetary issues had to be looked at if they were to mainstream development concerns into the WIPO Work Program. It thought that that was also an area of great importance, because dealing with development and diversifying the WIPO Agenda to take care of development and the development perspective, could not be done only through new mandates adopted by the General Assembly. The Delegation added that it would also require looking with new eyes at the WIPO Program and Budget for the

future to make sure that the allocations and resources were compatible with the new emphasis that they wanted, and new priorities that they wished to attribute to the different activities of the Organization.

92. The Delegation of the Russian Federation wished to express some views about the proposal that was submitted by the African Group and set out in the corresponding document. First of all, the Delegation wished to thank the African Group for their comprehensive proposal and a compilation of the basic ideas contained in the document, that had been circulated the previous day during the meeting. The Delegation was of the view that the documents prepared by the African Group contained a number of interesting and useful proposals, part of which the Delegation believed, could be the foundation for further discussions. The Delegation stated that the African initiatives were very specific and could be the basis for discussion of practical measures, when implementing the technical assistance programs and that they were not only applicable to the African Group, but also to the other groups of countries. The Delegation suggested that the initiatives be carefully studied, in particular those aimed at supporting the work of intellectual property offices, assistance for R&D and the area of culture, in addition to the measures proposed to strengthen national systems for innovation and invention, which in turn would strengthen national scientific infrastructure. The Delegation suggested that in the context of technical assistance, one could examine a number of other ideas, which were set out in the proposal. Under the heading of technical assistance, the Delegation was of the opinion that various aspects relating to SMEs and the informal sector could be resolved. The Delegation acclaimed private initiative for supporting innovation, which was in line with other delegations' statements made the previous day, with regard to intergovernmental meetings which were yet to be discussed during that session. In the context of technical assistance and on the organization of WIPO's work on providing technical assistance, the Delegation suggested to work on cooperating with other UN organizations. The Delegation stated that a number of proposals made by the African Group raised questions, such as the problem of transfer of technology. That was a comprehensive problem, requiring input from other international organizations as well, and that in that connection, the Delegation doubted whether it was advisable to set up a new body in WIPO on policy and strategy in the area of transfer of technology, as that would lead to a duplication of functions with other organizations and also the disbursement of funds, which could otherwise be channeled into technical assistance. The Delegation pointed out that a number of questions arose in connection with norm-setting and that a mechanism to facilitate access to knowledge and technology, for instance, raised several questions. A study on the impact of norm-setting on the creative process concerned a narrow range of issues and there was also the question of funding. As regards making the participation of civil society and other partners more effective in the norm-setting process, the Delegation felt that WIPO could use the experience it already had in that area, for example the experience gained with the Internet, which would be useful when the following WIPO Committee considers the issue. With regard to the proposal in section six, on human resources development and the brain drain, the Delegation felt that it would be logical if those issues were resolved at the national level, but the Delegation was prepared to listen to further clarifications on the proposal about what exactly was WIPO's role.

93. The Delegation of Peru associated itself with the statement made by the Delegations of Argentina on behalf of the "Group of Friends of Development" and stated that it shared many of the statements made by Brazil earlier. The Delegation felt that the statement of Brazil drawing a relationship between intellectual property rights and the Protection of Human Rights was interesting. With regard to the different items presented in the Africa Group proposal, the Delegation felt that they should do well to start with item 9 (ix), which dealt



with institutional capacity. The Delegation felt that WIPO could intensify cooperation with all the specialized agencies of the UN family, especially because there was reference to the work being carried out by the ILO and the International Organization for Migration (IOM). Furthermore, the Delegation felt that the proposals made by the African Group, in particular item three i.e. the reform of the informal sector in Africa and item 6, i.e., human resources and the brain drain problem, might not be problems that were specifically dealt with by WIPO. The Delegation referred to a conference, which was being organized by Peru for developing countries on migration flows in May 2006, which would study, among other issues, the brain drain problem in societies and in the knowledge-based societies. The Delegation highlighted the importance of trying to draw relationships and examined the ties that existed with the work that was being carried out by organizations to move forward on those different issues, which were of concern not only for Africa, but also for many other countries. The Delegation stated that another issue which was extremely important and related to the first point was for WIPO to try to assist in disseminating knowledge, with regard to flexibilities which were built in different international agreements, especially the TRIPS Agreement. The study would enable States to have a better idea of what possibilities existed for them and what flexibilities they could use with regard to their own intellectual property systems and how they could maximize on intellectual property for their own development, which was specifically tied to patents, as it related to access to technology. Another item, which the Delegation felt was important, and was also referred to by the Delegation of Brazil was the item on norm-setting activities i.e. item 8 of the African Group proposal. The Delegation was of the opinion that the first sub-paragraph was not just a request to WIPO, but in fact to all countries, to commit to dealing with the problem of bio piracy and to protect their genetic resources, traditional knowledge that were tied to genetic resources. Many countries such as Brazil, India and others were also in a position to request that the issue be looked at, which was being looked at in the WTO as well. The Delegation stated that they could try to perhaps have it developed in WTO and in the Committee on traditional knowledge, folklore and genetic resources, where they could endeavor to develop guidelines or elaborate the text that had been proposed with regard to traditional knowledge and folklore, in order to share the views on other two points under norm-setting i.e. the norm-setting activities having mechanisms within the organization.

94. The Delegation of India welcomed the efforts made by the African proposal in clustering their proposals and felt that it could form a useful basis for a forward movement on deliberations. The Delegation also felt that the clustering could be further defined and consolidated. The technical assistance cluster, for instance, could include the cluster on assistance to SMEs, and information and communication technologies. Similarly, the norm-setting cluster could include the use of flexibilities in international instruments. The Delegation was willing to work with the African proposal on development-oriented and demand-driven technical assistance, and on strengthening national institutional capacities. It could find a way on the proposal concerning the creation of an expert body to deal with various issues related to technology transfer and that the expert body could look into the identification of essential technologies, with a view to making them accessible and affordable to developing countries and to LDCs. In the area of norm-setting, the Delegation supported the proposal for an international binding instrument on the protection of genetic resources, traditional knowledge and folklore. The Delegation noted that the African Group had listed various clusters in a thoughtful order of priority, such as for example, technical assistance had been put in the first cluster followed by the cluster of technology transfer and so on. That order would pave the way for reaching a consensus in prioritizing various clusters, to facilitate further meaningful deliberations in the PCDA.

95. The Delegation of Sudan, commenting on the issue of the public domain, said that according to the law on the protection of inventions of 1965, rightholders had for a certain fixed period the monopoly of their discovery. But a new formula was then being used: the protection of the public domain. That might give the impression of a double protection. Therefore, instead of using the expression “protection of the public domain”, alternatively the expression “organization of the use of the public domain” could be used.

96. The Delegation of Switzerland found that the proposal of the African Group, and all the other proposals, deserved their attention and so should be discussed in detail so as to assess their specific and concrete implications. In its preliminary comments, the Delegation stated that it was important that technical assistance activities correspond as far as possible to the needs of the beneficiary countries. It was also important to discuss how those activities should be assessed to make sure that they had achieved their aims and could be adopted, if necessary. That assessment should be done on the basis of regular reports, as was being done in the context of the PCIPD, with a view to making the reports more operational in the future than they were to date. It was appropriate to discuss what measures should be taken under WIPO’s technical assistance activities and how to maximize available resources and coordinate them. Other proposals on the subject had been submitted from the United States of America and the United Kingdom and it would probably be useful, at a second stage, to study together all the different proposals on those issues. Turning to the activities proposed under technology transfer, the Delegation suggested to examine in the future whether specific work should be undertaken by WIPO under existing structures. That should be done taking into account WIPO’s own tasks, without duplicating work in other organizations, but creating synergies between their various areas of work. Various African proposals, as well as others, referred to small and medium-sized enterprises and the possibility to enable them to benefit from appropriate and effective protection of intellectual property rights, contained in international agreements. It would be useful to examine, under that sector, how to strengthen WIPO’s activities to better meet their needs. The Delegation pointed out that in their view, other concerns raised in the proposal by the African Group, such as the brain drain, did not correspond entirely to WIPO’s mandate. WIPO’s work to effectively protect intellectual property in its Member States might contribute to creating a favorable environment for keeping inventive and creative forces in the country. Echoing the latest proposal from the African Group, the Delegation stated that it was important that the development activities of international organizations were coordinated and not duplicated, and that each organization acted within its own area of competence. As many delegations had pointed out, intellectual property did have an important role to play in social, economic and cultural development, but it could not, in and of itself, resolve all problems. Other policies and a favorable environment had to be developed nationally, so that the various parties involved could benefit the most from an effective protection of intellectual property. In moving towards the conclusion of its statement, the Delegation referred to the various proposals put forward for assessment, drawing attention to the fact that such assessments had budgetary implications and that WIPO’s resources were not unlimited. It referred to the European Union’s proposal to prepare and make available a compilation of existing studies. Finally, referring to some issues which it considered slightly outside the range of WIPO’s activities, such as alternatives to intellectual property protection, it suggested the possibility to consider having open forums, like what had been done for the SPLT. The objective of such forums would be to bring together the positive experiences of people who, for example, had used open licenses and to contrast them with people who were working more directly with intellectual property. That would give them a clear idea of the various possibilities that existed and their implications.

97. The Delegation of Pakistan considered that the proposal of the African Group was very comprehensive, both in terms of form and substance, and enabled a structured discussion on the issue at hand. The proposal, which contained some very important elements, was made in the true spirit of the development agenda, because in the form that was circulated the previous day it made specific, clear recommendations in its different headings on how to fill the gaps that existed in the intellectual property system in its present form, and aimed at giving it the essential development orientation that was being sought. On that issue, the Delegation wished to temporarily shift the focus of the discussion from the African proposal, and comment on some of the observations made the previous day. While they were discussing the Chilean proposal, some delegations mentioned that perhaps it could not be taken further because it contained certain complications. The Delegation considered that, if there were complications with regard to the intellectual property system, it was all the more important to address those complications, particularly when dealing with the issue of development. It should be noted that individual countries with their meager resources, and particularly developing countries, could not deal with complications which required research and a broader handling within their meager resources. That was why specialized agencies were dealing with the complications arising out of the issues within their areas of responsibility. The African proposal used basically different lenses to examine and to propose specific actions that could be taken with regard to varied areas of the development agenda, and the Delegation wished to highlight some of those. In the section that dealt with technical assistance, the last point was to establish an independent development impact assessment with respect to technical assistance, technology transfer and norm-setting in developing and least developed countries. The Delegation said that it would like to recall that the provision was proposed as early as the Assembly in 2004, from where the whole development agenda discussion started and was pleased to see that it had been discussed since then and picked up in a number of proposals. The impact assessment was relevant, as it would help that body take informed decisions on the development agenda discussion. There was a difference of opinion on whether the IP system, as it now existed, was assisting development and if it was assisting development, to what extent, and what more was needed to be done. That could be assessed and a definitive conclusion reached, if one had the advantage of information that would come out of impact assessments. On the issue of technology transfer, the Delegation was in particular agreement with the transfer and diffusion of technologies at accessible and affordable costs to developing countries and LDCs. It had often been pointed out, as one of the major objectives of the Organization. The Delegation began discussion on the use of flexibilities in international instruments and the role of this Organization in two ways. Firstly, as had been mentioned in a number of statements made by the Delegation, it was necessary to identify the flexibilities that existed with regard to the intellectual property system. And secondly, it was important to make them operable, because there were certain areas in which flexibilities were made inoperable by multiple caveats. That was where the technical assistance, the research and the capacity-building of the Organization came in making those flexibilities operable for developing countries, enabling their utilization in the process of those countries' development. The Delegation also commented on the institutional mandate proposed in the African synopsis, in particular, for the need to intensify cooperation with other organizations in the UN system and other specialized agencies, which were dealing with the important issue of development. That was felt to be a useful proposition, one which would enhance not only the coordination of WIPO with those international agencies, but which would also help the Organization identify its own particular place, in contributing to the larger development discourse that was taking place internationally. Basically, the structure of the African proposal was characterized by three things: an insight into how further discussions should be structured; the use of impact assessments in regard to developing terms for norm-setting; and what impact the norm-setting exercises were going to

have on the development of countries at different levels of advancement. What one could deduce from the proposal was that one needed to adopt as quickly as possible, a structured approach, because of the limited time frame to deliver on a mandate imposed. As had been pointed out in a number of interventions made by various delegations the day before, the committee should at least look at a first consignment of recommendations, to be delivered to the forthcoming Assembly in September. To that extent, the approach taken by the African proposal was result-oriented and it would perhaps help in adopting the suggested approach in regards to the discussion of all the proposals that were on the table with a view to evolving action-oriented recommendations at the end of this process.

98. The Delegation of Chile thanked the Delegation of Nigeria, who spoke on behalf of the African Group with regard to the proposal. It was pleased with the contribution and believed that it was in line with the spirit of other contributions that had been made on the development agenda. It highlighted some of the proposals that were mentioned in the paper, such as technical assistance and the request for impact assessment studies. With regard to WIPO's technical assistance, it said that it should not be limited to countries coming from the African Group. On technology transfer, the Delegation supported the idea of devising criteria and methodologies so that everyone had the basic technologies. It welcomed the other proposals with regard to technology transfer: the know-how of essential technologies, the processes and methods that were necessary to meet the basic development needs of countries and the reform of the informal sector in Africa. In the fourth paragraph, provisions relating to small and medium-sized enterprises, was an idea welcomed by the Delegation and was seen as being linked to the use of flexibilities in international instruments. On ICTs, the Delegation thought it was a good idea to have the provision linked to the WSIS. It was known that WIPO and ITU had their own work to do in each of those areas, which should not be duplicated, as each organization had its own role to play. The Delegation thought that item 7 was a good idea on the use of flexibilities and added that it was related to proposals coming from the "Friends of Development". The Delegation said that norm-setting should include access to knowledge; and under item 9, the Delegation wished to highlight the relationship that existed between WIPO and other international organizations.

99. The Delegation of Azerbaijan noted that the African Group had done a great deal of work in preparing the document, which was arranged in sections. It noted that one of the important features of the proposal regarding technical assistance was that WIPO, through donor agencies, should give assistance to the development of African cooperation. It said, however, that while stress was laid on the countries of the African continent, the countries of the former-Soviet Union were receiving less and less technical assistance. In spite of that, it wished to thank the European Patent Organization and the Eurasian Patent Organization for the assistance received, which helped that nation address Internet related issues. WIPO did not have unlimited financial resources, but whenever the government asked for help from WIPO, it was provided. The budget needed to be flexible so that other requests were considered as well. Although the Delegation thought it could approve other items in the proposal, it first wanted to address the issue of the public domain and how technical assistance could be extended to all countries, coupled with a need to explain what was meant by technology transfer. The Delegation referred to a document circulated by Michael Ryan, George Washington University, and advised all delegations to take a look at the document to see what had been done with technology transfer in Brazil. It was important to note that the most important thing for technology transfer was a favorable climate. The Delegation cited an example to illustrate the point. A firm was producing and selling Philips products in China without its authorization. It was decided not to take any action against the firm. Philips preferred cooperation and the open licensing system. An agreement, on very favorable terms

to the Chinese firm, was entered into and products were produced under the supervision of the Dutch firm. The quality of the product was quite high. Both the firm and Philips benefited from this arrangement. The Delegation said that CIS countries had the concept of open licensing, but compulsory licenses had not been applied so far in those countries. Therefore, it would be advisable to develop what was meant by the transfer of technology from the point of view of the African countries. On the other sections, the Delegation did not consider setting up a new WIPO committee to be a good idea. It was better to give more work to the existing committees, so that they could work on the issues relating to development. On the subject of brain drain, section 6, each state should create conditions so that people receiving education abroad were interested in returning home. They should create opportunities for those people and WIPO could not do anything in that regard. It was only in cooperation with the UN or other organizations that it could produce a resolution encouraging people to return to their respective countries. Under item 8, genetic resources, traditional knowledge and folklore, the Committee on the subject had been working very successfully, but had not yet produced any concrete results. Not many countries had legislation in that area, so it should be considered in the very near future. The SPLT had not yet reached consensus, so dispersing funds in new directions should be done very cautiously.

100. The Representative of the Electronic Information for Libraries explained that the organization represented academic research and public libraries in 50 developing and transition countries including many countries in Africa, and that the statement was a joint statement with IFLA, The International Federation of Library Associations. In the synopsis of the African Group, there was a comment on technical assistance, paragraph 2, which dealt with the issue of developing the capacity of national IP institutions and the Representative wanted to show how that was extremely important. The Representative said that e-IFL and IFLA cooperated with the recently formed African Copyright and Access to Information Alliance. At the time of the launching of the conference in November 2005, there were a number of officials and lawyers from the region who were responsible in developing IP law in their countries. e-IFL recalled their surprise to learn that one LDC was considering amending its copyright law to include TRIPS and other provisions including database rights and that they were unaware of recent rulings of the European Court of Justice and the announcement of the European Commission that it would consult on future options, one of which was the withdrawal of the database directive itself. The Delegation further stated that at a recent Pan African workshop, e-IFL learned that a number of governments were not consulting with the library community on changes to Copyright law. From what could be seen on the WIPO website, training programs did not appear to cover the need to identify and consult with the stake holder community. If WIPO's technical assistance was to have satisfactory outcomes, training must specifically cover the issue of communication and consultation with all stakeholders including the library community and the importance of being up-to-date with global IP developments. Finally, the Representative referred to the proposal of the "Group of Friends of Development", where it was stated that the establishment of a WIPO Development Agenda had become a global discussion. At the World Library Congress, 2005 in Oslo, more than 300 librarians from all over the world, including a number of them from Africa, had debated the role of WIPO and Copyright related issues. The message was clear, the library mission was being increasingly hampered by law, which was illustrated and elaborated without reference to global developments and without consultation with the full stake holder community. Librarians, especially in developing countries, were looking forward to concrete and practical conclusions to those discussions.

101. The Representative of the International Policy Network (IPN), introduced the IPN as a development charity based in London, which worked to improve the lives of the poor through

sustainable development. The Representative stated that the promise made by some during the proceedings of the meetings reflected a fundamentally misguided view of the role of governments in the process of social, economic and cultural development. The Representative said that a pre condition of sustainable development was the strength of the institutions of the free society, property rights, the rule of law, free markets and limited governments. Most, if not all, poor countries lacked the rule of law, which in turn dictated that property rights were inadequately defined and contracts were poorly enforceable. Most had markets that were either controlled by the state or were otherwise not free. That was why people who lived in those countries poor. Those were also the same reasons that influenced the brain drain and the prevalence of the informal sector to which the African Group proposals referred to specifically. While those were legitimate concerns, there were symptoms of a greater problem caused by a lack of economic freedoms, which excluded people from legal rights, that would otherwise empower them and contribute to their development. The Representative explained that that had other profound impacts on access to meaningful use of and sustainable development of knowledge rich works and technology. As demonstrated in countries that adopted the institutions of economic freedom, which included the ability to claim ownership of the results derived from intellectual investments, a system of knowledge and technology use among the greater public was facilitated and not undermined. The market ensured that right holders were held directly accountable to consumers and through free trade, developed creative and innovative activity for the development of products, that reflected the diversity of demand. The Representative continued saying that tradable property rights, administered through the rule of law, enhanced competition among entrepreneurs seeking new markets. That expansion only increased access to and meaningful use of new innovations and creative works; that was in the interest of both right holders and consumers, as both groups sought constantly to find appropriate balances in a market place, that ensured wealth creation and development. The Representative further said that a great reliance on market institutions encouraged more technology transfer, more innovative and creative industries, more meaningful forms of employment, brain gain instead of brain drain and a better health outcome, among many of the results that were the result of market based growth. Importantly, a market environment with strong property rights did not restrict those who sought to establish licensing agreements, in fact the virtue of property was such that right owners were free to enter into any specific contract arrangement of their choice. The Representative concluded stating that WIPO should continue to offer its technical assistance, tailored specifically to individual countries, not just to institute an efficiently administered IP system, but also to improve the rule of law more generally. That could have a profound impact on not just creative and innovative activity, but on all economic activity, and hence contribute to development.

102. The Representative of the Institute For Policy Innovation (IPI) started by saying that it had long been observed that strong economic growth was the single most important factor in improving the lives of people, which included improving education, human health and human economic activity. Therefore, the factors that contributed to economic growth were precisely the factors that contributed to human improvement. The Representative said that throughout the IIM process in 2005, IPI urged WIPO to remain focused and active in its areas of core competency and to resist calls to become active in areas outside of intellectual property protection, promotion and education. The Representative stated the Institute's concern that WIPO was being urged to become involved in areas that was legitimate problems, but which was outside WIPO's expertise. For instance, the issue of brain drain which was mentioned in the African proposal was indeed a serious problem for many countries, but the Representative thought that by promoting a strong and consistent IP regime, WIPO was already doing what it could to encourage innovators and creators to pursue their dreams in their country of origin.

He said that without a property right for his creation, a creator could not fully leverage his creation into economic opportunity. If people believed that there were structures in place in their country of origin that would allow them to fully realize their aspirations, many of them would no doubt choose to remain there. Such structures were as the rule of law, an independent judiciary, copyrights, basic infrastructure and availability of education or those, which assured people that they had adequate opportunity in their country of origin. WIPO could not address any of those factors. The Representative also expressed concern that WIPO was being urged to involve itself in the protection of the public domain. He frankly said that the public domain was not under threat; rather it was intellectual property that was under threat. He referred to the assertions which were heard over the past two days stating that patents should be weakened, that intellectual property was an invasion of the public domain, that intellectual property enclosed knowledge and walled off knowledge from the public. From those statements, one might get the idea that any number of villains had designs on the public domain, but that suggested that it was intellectual property that was vulnerable and not the public domain. In fact, he said that no one disputed the value of the public domain, no one disputed that much of the innovation was incremental and built on the strength of what was done before. No one disputed that the public benefited from knowledge that was widely available, and no one was trying to reduce the public domain or to enclose materials that were currently within the public domain. In fact, IP contributed to the public domain and was not an opponent of the public domain. IP gave incentives to invention and creativity, enhanced distribution of knowledge and all IP goods eventually made their way into the public domain. In fact, the threat to the public domain would come from a loss of intellectual property protection. If creators could no longer gain protection through patents, they would rely on trade secrets, and instead of disclosing and describing their inventions to the public they would simply keep the knowledge secret. The Representative concluded by saying that IP did not keep knowledge away from people; all it did was to keep someone from building a business around someone else's property, so IP protection in itself was a means of dissemination of knowledge and a tool for development. That was the way that WIPO could continue to aid development, by promoting IP and teaching countries and creators how to fully leverage an IP system tailored to their own unique situations.

103. The Representative of the International Federation of Reproduction Rights Organization (IFRRO) introduced the organization as one that represented collective management organizations in the field of reprographic reproduction and was supported by national and international associations of creators and publishers of books, journals, and other printed works. IFRRO had been set up in more than 50 countries on all continents; they licensed access to scientific and literary works through reprography and certain digital uses in a number of different ways, according to the laws and circumstances of the country, trying to strike a balance between their educational needs and their need to support local educational writing and publishing. IFRRO welcomed the contributions made to the debate about intellectual property in the developing world. The Representative stated that they were delighted by the varied and interesting contributions in the spirit of cooperation as those constructive proposals demonstrated. IFRRO shared the view that access to creative works was of mounting importance. The Representative supported all measures that aimed at facilitating such access in a legal manner and ensured that creators and publishers continued to be incentivized to create more such works. The Representative continued to say that IFRRO, as representatives of authors and publishers, functioned as a link between users and rights holders, and played an important role with respect to providing legal and easy access to works in copyrights. The term public domain was being used frequently and required some clarification, both as to its definition and with respect to the implications that its use carried. The Representative said that Public domain did not refer to works protected by copyrights,

but to works that were no longer protected by copyrights or were outside copyright protection, but whether the work was in the public domain or not can be a complex question. He explained how works can be a part of the public domain at different times in different jurisdictions and gave the example of a book to which the expiry of a term may apply to different rights at different times. Many representations appeared to imply that access to works and copyrights protection were diametrically opposed. The Representative said that was not true. Authors and publishers wanted their works to be accessed, but they wanted to receive a fair sustainable reward for their use. In that context, the Representative wanted to reiterate the important role that collecting societies could play and which was currently not recognized, in any of the proposals on copyright and development. He said that the thesis voiced frequently that strong copyrights laws and protection were not in the interest of developing countries, and that their implementation and execution was costly or had a high social cost, had not been substantiated from the perspective of creators and publishers living in the developing world, who felt entitled to contribute to the cultural diversity of their own nations and to enrich the lives of their fellow citizens. That was clearly incorrect. The Representative stated that IFRRO had its own development program, regularly in cooperation with WIPO and other international governmental and intergovernmental organizations. Support for their development program, and focus on developing collecting societies and collective licensing in the developing world was an important building block to empower local creators and publishers and to make intellectual property rights work for all.

104. The Delegation of Nigeria said that the African Group had listened very carefully and very keenly to the comments, observations and even reservations regarding specific proposals that were submitted by them. It thanked all those delegations, which made statements concerning their proposal, which the Delegation of Nigeria found to be very positive, constructive and useful. From those countries the Delegation mentioned the Republic of Korea, Iran (Islamic Republic of), Argentina, Malaysia, Austria, United States of America, Colombia, Japan, Honduras, Panama, Brazil, Russian Federation, Peru, India, Switzerland, Pakistan, Chile, Azerbaijan and NGOs; EIFL, IPN, IFPI and IFRRO. The Delegation stated that if there had not been a deadline for the submission of new proposals, they would have proposed that all those comments be gathered together and form a new proposal, which they would have supported, but said that that would not be possible. The Delegation stated that they noted a common theme running through all the proposals that were positive and very supportive. It noted the complementarity between the African Groups' proposals and other groups proposals, like the 'Group of the Friends of Development' or individual national proposals submitted by other groups such as Chile and that submitted by Bahrain on behalf of some Arab states. It thanked them for those observations. It did not want to dwell too much on the issues because all the comments were positive. Where the reservations were noticed or mentioned, it would not hesitate to say that they were quite willing and prepared to enter discussions, with the delegations of Japan, the United States of America, Azerbaijan, Russian Federation and others, who mentioned specific areas that may be problematic or considered out of the way of the core issues of WIPO. In that regard, it wanted to mention the valuable reflections of the NGOs that were heard a short while before. The issue of policy innovation, for instance, made some suggestions to reflect their submission in such an area as out of the profile or mandate or competence of WIPO. It wanted to discuss the issue with them as well as with delegations. The Delegation said that it would like to engage in constructive dialogue with them and also wanted to urge other delegations who had not taken the opportunity to speak on the proposal to do so, so that they would be enriched by their reflections, observations and comments, and could form their positions in the future when they were discussing the issue again. The Delegation said that it would also like to thank



everybody, those who had spoken or were yet to speak. It also extended its thanks to the Secretariat for the quick reproducing of the synopsis.

105. The Delegation of Colombia sought to present its proposal called 'Development of Agreements between WIPO and Private Enterprises' allowing national offices of developing countries to access specialized databases, for the purpose of patent searches. The Delegation of Colombia explained that the documents' aim was to facilitate the basic work carried out by national offices. Many of those national offices in developing countries faced obstacles in their patent search process when considering grant of patents. For example, looking at prior art, it said, these offices had limited resources for their searches on patent applications. Therefore, they needed to find additional resources. The additional resources that would be important in that process were commercial databases, which were owned by private companies and were important for patent searches or looking at prior art. It was noted that commercial databases, which belonged to private companies could offer benefits or advantages which made patent searches more effective. The advantages were that those databases were well structured, organized, and the search engines in the databases were effective and efficient. The Delegation explained that the information contained in the databases was categorized by area or by different processes, invention and subject matters. This was why the proposal that the Delegation had submitted was trying to request WIPO to explore options, where they would sign agreements with private companies so that they could have facilitated access to databases in their national offices. An ideal alternative would be for WIPO to enable them to have access for a limited period of time each month to those databases, without any cost to those national offices. Another alternative was that they might set up a generalized scheme of subsidies for access to the commercial patents database, this scheme could include packages of discounts and reduced tariffs that would facilitate access for national offices for developing countries. A third option would be to create in WIPO a bank of time of access to these specialized databases, where national offices may obtain free, but limited time of access in their processes of patent searches. Those were some of the elements that it had thought of in order to implement the proposal. Nevertheless, experience gained by WIPO might lead to other effective mechanisms, which could also satisfy the need that had been identified by developing national offices. The Delegation said that they thought that was a practical solution to the problem. To conclude, it hoped that with the implementation of that proposal, national offices in developing countries could have a functional assistance mechanism that could be useful in their patent searches.

106. The Delegation of El Salvador supported the proposal from Colombia and said that it had also felt that need. El Salvador had tried to strengthen its patent searches so that it could have strong patent titles and provide satisfactory services to clients by strengthening cooperation with WIPO and with other offices. However, the proposal from Colombia brought together several things that they had been interested in developing in relation to patent searches and they thought that a free or cheaper system would be very useful for countries like El Salvador. The Delegation said that their Patent Office could develop links with WIPONET for which they needed assistance from WIPO.

107. The Delegation of Panama stated that it recommended the development of agreements between WIPO and private enterprises, by allowing the national offices of developing countries to access specialized databases for the purpose of patent searches. In that respect, the Delegation wanted to acknowledge that WIPO had already reached agreements with some companies to reduce costs for the acquisition of databases, such as the Derwent database, and that Panama had acquired that already. The costs were lower for purchasing those, but they nevertheless remained quite high, and the limited resources that were available in their

industrial property offices, meant that it was very difficult for them to purchase and pay for updates. It was a good proposal and would lead to great benefits for technical aspects in offices. It would allow them to improve the quality of their reports and studies, facilitate useful tools for their experts using specialized databases for pharmaceuticals, which was important while examining applications related to those issues. The Delegation acknowledged the support coming from the Spanish Patent and Trademark Office, which had established a trust fund in WIPO. Through that trust fund and support of the European Patent Office (EPO), they were holding a South American Information Technology and Patent Cooperation Day, in which Panama and Colombia had participated and benefited

108. The Delegation of Ecuador supported the proposals and the comments made by the Delegation of Argentina on behalf of the "Group of Friends of Development," of which they were a part. With regard to the Colombian proposal, it wanted to point out, that it was interested in the proposal and wanted the provisional committee to ensure that a concrete and tangible report was presented to the General Assembly of WIPO.

109. Speaking on behalf of the European Community, its 25 Member States, and their acceding states, Bulgaria and Romania, the Delegation of Austria welcomed the proposal submitted by Colombia and said the document rightly underlined the importance of patent searches in order to grant economically useful and high quality patents. Inventions had to be novel and sufficiently inventive to merit patent protection and to make their contribution to knowledge and development. Thus, the European Community and its Member States invited the Delegation of Colombia to further elaborate on the possibilities of facilitating access to databases, especially with respect to the financial and legal implications.

110. The Delegation of Chile supported the proposal made by Colombia as it was convinced that national patent offices needed to take the most well-informed decision in relation to the study on prior art and in-depth studies of prior art, and needed to have access to other databases, not only those from other national offices in the case of Chile, where the Government was financing a lot of research and development. It said that when they made patent applications, a lot of them were late, because they eventually found that there already existed a patent in relation to that invention. Access to commercial databases would be useful, because they contained information, not only on previous patents, but all the relevant scientific and academic publications, and they needed to find out more about such issues. It said that entering into agreements with private companies would make it possible to get information on the studies of prior art, grant stronger patents, which in turn would lead to greater legitimacy and a stronger intellectual property system as a whole. Getting a limited time access for national offices, as Colombia mentioned, would be one of the issues that would need to be developed in the following months before June 2006, so that they could implement the useful proposal. It thought that that would be one way of making progress.

111. The Delegation of Azerbaijan supported the proposal made by Colombia in PCDA/1/3. It thought that it would take some time to implement it, but would propose it to countries who were interested in adopting such agreements. The Delegation mentioned that there were already such agreements with the EPO and enterprises in Europe, and also in regional patent offices in Europe and Asia. They had also entered into contacts with the national office of the Russian Federation and thought that bilateral links with their office would enable them to find useful modalities. Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT) had provided them with information on patents and Internet access to databases. The Delegation added that it thought the United States of America already had such structures for developing bilateral links. Of course, signing agreements between WIPO

and private enterprises would be useful, but it thought Colombia's proposal would be of interest not only for the countries of that region, but also countries throughout the world, including developed ones.

112. The Delegation of Japan appreciated the proposal made by Colombia. It believed it was meaningful to encourage developing countries to use databases, to conduct high quality searches and examinations, as Austria and others had pointed out. It said it would not object to WIPO's initiative for trying to make contracts with private companies which had commercial databases. However, at the same time, it was wondering if WIPO could succeed in such contracts, as it was ultimately the private companies' own business decision to be engaged in such contracts. Therefore, it was not appropriate for them to expect too much from WIPO's initiative at this stage.

113. The Delegation of the United States of America thanked the Delegation of Colombia for its concrete and constructive proposal. It believed that the proposal deserved further study and favorable consideration and said that they should look into the potential financial implications of the proposal. The United States of America supported all efforts to improve patent quality, including improving search tools and techniques and that was one of the major objective of the proposals made by them and other delegations, with respect to establishing a SPLT.

114. The Delegation of India said that the Colombian proposal for WIPO to explore possibilities for establishing agreements with private enterprises for providing access to databases, was apt and practical. Access to such databases for developing countries, would contribute to improved quality of searches, and efficiency in processing of patent applications. That would also facilitate easy access to knowledge and technological information, and deserved serious consideration.

115. The Delegation of Iran (Islamic Republic of) thanked the Delegation of Colombia for introducing the proposal and said that the idea of access to databases was useful and would facilitate the task of developing countries to search databases. Further details could be discussed with regard to the proposal.

116. The Delegation of Brazil thanked the Delegation of Colombia for the proposal and aligned itself with the statements that encouraged further consideration of that action-oriented and important proposal. The Delegation understood the importance of that proposal as it called for the improvement of the quality of patent examinations and was related to one of the concerns that had led to the proposal for the development agenda for WIPO. The proposal had some convergence with the concerns that they shared and were reflected in the proposals put forward by the "Friends of Development". The proposal shared their concern to improve the quality of the patent examination not only to observe with the patentability criteria, but also to widen the access to information, that was provided for in the patent system. In that regard, it could encourage the Delegation of Colombia to widen its proposal and propose a study on the quality of the information that was provided for in the patent system, and to access whether that information fulfilled the trade-off in the patent system, which was to prompt and foster further innovation.

117. The Delegation of Australia thanked Colombia for its proposal, which was a targeted and practical one. The Delegation thought that it was important to recognize the existence of national office resources on the internet for patent searching, some of which was freely available to users. It gave the example of ESPACE Net provided by the European Patent

Office (EPO) and Surf IP provided by the Intellectual Property Office of Singapore (IPOs). It added that Australia certainly would encourage other Member States with such databases to make them more accessible over the internet and freely available to users. The Delegation also encouraged, the point which was raised by the Delegation of Azerbaijan, regarding bilateral and trilateral discussions for making those databases available to other Member States. It stated that currently it was not sure that there was a need for WIPO itself to enter into agreement with private enterprises to allow developing countries access specialized databases for patent searching, and would be interested in further information on the financial and legal implications of the proposal.

118. The Delegation of Peru said it would like to join previous speakers in thanking the Delegation of Colombia and thought that it was very precise document. It shared the views expressed by Brazil that the proposal enabled them to address an issue which was extremely important for them in patent searches. It explained that if they could have those kind of agreements with private enterprises, many countries would be interested, as there had already been a number of agreements between patent offices and private enterprises. Such an agreement concluded by WIPO would deal with the problem of studies for patents, which was always a big problem in developing countries, as they had limited resources for doing searches.

119. The Delegation of Nigeria welcomed the proposals submitted by the Delegation of Colombia. It said that Colombia and African countries were all in the league of developing countries, and what Colombia highlighted, should naturally broaden their attention and keen interest. The African Group proposal had already mentioned that national institutions should be empowered in order to effectively discharge their responsibilities, both in the field of intellectual property rights protection, as well as contribution to the national wealth. It was in that regard that the Delegation of Nigeria welcomed the Colombian proposal which was considered appropriate. The Delegation said that entering into bilateral negotiations between national institutions and private institutions in the developed world was rather costly, in terms of buying the technology, expertise and training. It was therefore, instructive and important that the issue be brought up in the PCDA for consideration and implementation. It stated that the delegations who spoke before them had indicated the issue of cost, and therefore it wished to state that taking the route of private companies would perhaps add more cost than, in their view, taking up the subject through WIPO. The Delegation also wanted to stress that WIPO's activities should be recognized while discussing the development of individual national institutional capacities. In that context, it referred to the establishment of WIPONET by the current Director General, and also a proposal submitted by another Member State regarding the establishment of an internet based technical assistance program. Therefore, the Colombian proposal, if adopted and established, should not be delinked from other WIPO programs or the proposed United States of America proposal regarding assistance in internet based activities. The Delegation said it was crucial that the disparity between the level of development should be taken into consideration when such matters were discussed, so that what was being given to a country was appropriate to its needs and level of development.

120. The Delegation of Kenya associated itself with the statement made by the Delegation of Nigeria on behalf of the African Group. The Delegation supported the proposal by the Delegation of Colombia for allowing the national offices of developing countries to access specialized databases for the purposes of patent searches and also aligned itself with other delegations who had supported that proposal. The Delegation believed in improving the quality of patents granted. One way of improving that was by having access to a wide range of databases. In that respect, the Delegation proposed that WIPO looked at the possible

implications for other ways in accessing databases owned by private companies. Those were good proposals and it wanted other delegations to support it. The issue of patent search was problematic in developing countries, as they relied only on technical assistance on patent searches through WIPO, which sometimes took rather long.

121. The Representative of the EPO stated that EPO had 31 member states and was a technical organization which was carrying out searches and examinations of European patents. The EPO also performed searches under the PCT. The Representative said he wanted to share the EPO's experience which might contribute to the proposal made by Columbia. The EPO's databases had access to patent literature from the patent offices, non-patent literature from publishers, and also had databases provided by private agencies. The EPO had set up a system, which enabled them to access all databases at one time, with one software program that was used in the EPO and also in all member states who had access to the system. It was also used outside Europe in Latin America and Asia, with countries with which they had agreements. On the basis of that experience, the Representative wanted to draw the attention of the meeting to the following facts: Firstly, in order to use databases, they needed a high level expertise, for instance, if they wanted to work on a database on biotech, they need to have a biotech specialist and so on. Secondly, if they wanted to have access to each database separately, they had to be familiar with the language and if they had to use the specificity of each database, it was extremely time consuming and expensive. Therefore, EPO would like to suggest that in order to have that expertise, while they were negotiating with those private firms, they should also negotiate with the partners present there and also with each other to explore regional cooperation in that field.

122. The Representative of IFLA made a joint statement with the Electronic Information for Libraries (EIFL). It was pleased that at the heart of the proposal was the recognition that access to up to date knowledge was "a vital tool contributing to countries social and economic development". That was one of the principles that surrounded the discussions on a development Agenda for WIPO. As the African Group had indicated, the scenario described was a classic example of how institutions in developing countries did not have access to commercial databases, with enriched information, because it was costly. While patents were a specialized area, there were other major commercial databases to which institutions and business had access, in order to be on par with the developed world. IFLA referred to the division between rich information and poor information and said that in order to alleviate such situations, libraries joined together to form purchasing consortia, such as those supported by EIFL. Those consortia pooled their resources and negotiated fair licenses and prices. EIFL had a lot of experience in that field and was happy to advise any developing countries or even WIPO in that regard.

123. The Delegation of Colombia thanked all those who made positive comments and constructive suggestions on their proposal. Briefly, it wanted to respond to the comments. With regard to the comments of the Delegation of Austria which said that they had some concerns about the financial and legal implications of the proposals, it said that many of the proposals submitted for the consideration of that committee had financial implications and both WIPO and the Member States would be required to make additional financial commitments to implement such proposals. One of the reasons for their proposal was that many countries had financial limitations in their national patent offices, and so could not pay for commercial databases. On the legal issues, the Delegation asserted that a new proposal would always throw up doubts and concerns. At that moment, the proposal was in its infancy and they would have to examine the legal implications with WIPO, and also how they could implement the proposal. With regard to the Delegation of Azerbaijan, it thanked them for

their support. Azerbaijan mentioned that while the proposal was positive in terms of reaching those agreements, they should also look at concluding some on a bilateral basis. The Delegation would like to point out that their Office, like in many developing countries, had for a number of years implemented or concluded bilateral agreements with several national offices, for purposes of patent searches, like the EPO had done. They were doing that with offices which had substantial databases, so that they could get free access to such databases, within the framework of their cooperation agreements. With regard to the comments made by the Delegation of Japan, it understood that they did support the proposal to a certain extent, but had concerns regarding financial implications. They needed to continue to look at how, from a financial point of view, WIPO could implement the proposal. Finally, the Delegation referred to the comments made by the United States of America, which were of a general nature, positive and constructive, but did refer to financial implications too. The Delegation understood those implications and concerns and reiterated that many proposals on the future agenda of their committee, would necessitate some changes to budgetary implications and they would require new resources. Therefore, they would need the assistance and contribution of developed countries, in ensuring that they could implement many of those proposals.

124. The Delegation of Honduras said that it supported the proposal by the Delegation of Colombia and as was said in their earlier statement, many of the elements contained in the proposal were similar to the African Group proposals, namely development and universal access to information. The Delegation supported the proposal, but wanted to make a specific comment concerning the spirit of the Colombian proposal. It thought it was inclusive and participatory. Enterprises from the pharmaceutical, environmental or other sectors should also be included in the proposal. While it went beyond the expectations of many of the members of that committee, the Delegation thought that the proposal aimed to ensure that there was universal access to information, and that was one of the main findings of the World Summit on the Information Society. It recommended access for national patent offices to information relating to patents and thought that would be of great benefit to such offices.

125. The Delegation of the United States of America stated that it was pleased to briefly introduce the six proposals that were part of the elaboration of their original proposal to establish a WIPO partnership program. The Delegation wanted to add some further details, by way of background and to introduce those proposals. The general framework and premise of their proposal remained the same so they would only provide some background information in order to facilitate their discussions. It said that the first proposal, "Assisting Member States to compete effectively in a knowledge economy", dealt with building awareness within WIPO of the changing role of intellectual property in development, related challenges and opportunities facing Member States. Most recently, for example, the Director General reported: "the increasing market value of knowledge based creations and outputs and the economic dynamism they can fuel is generating new and broad-based opportunities for economies to create national wealth as the basis for sustainable development and to deliver more wide spread welfare gains from technological development". Building on that insight, the proposal recognized the importance of effective participation in a knowledge economy, and, therefore, called on the WIPO partnership office to aggressively seek out potential partners to assist countries making the transition to, or competing more effectively, in the knowledge economy. The second proposal related to "Stock-taking of WIPO development activities." As the Delegation had stated during the IIM process, far from neglecting its IPR related development mandate over the years, WIPO had responded to a wide range of requests from Member States. Such requests for assistance had included the use of IP flexibilities, legislation, traditional knowledge and genetic resources, studies on the

economic importance of copyright industries and the use of intellectual property as a tool to support innovation, competitiveness and sustainable economic development. Against that background, the Delegation thought that it was important to undertake a further stock-taking exercise, that would allow WIPO to focus its attention and limited resources in areas where they would be most responsive and effective to meet the changing needs of Member States. Thus, the second proposal, building on WIPO/EDS/INF/1, an important 300 page document which was distributed in a prior meeting during the IIM process, provided for a quantitative and qualitative stock-taking of current WIPO development cooperation activities, with the long term view of developing a statement of policies and objectives, in the area of cooperation for development activities. The third proposal related to “Assisting Member States to conduct baseline national economic surveys”. The Delegation said that the WIPO Secretariat should play a leading role in assisting Member States to conduct baseline national economic surveys related to intellectual property rights, for example, by helping Member States develop survey methodologies. The results of the surveys should be made available to Member States. Based on those national experiences, the Member States should establish best practices, related to fostering development of creative industries and attracting foreign direct investment and technologies. The surveys should identify specific problems and opportunities that countries faced in each sector that was targeted for growth. The fourth proposal, “Measuring Global Economic Contribution of Creative and Innovative Industries”, built on the successful WIPO Guide for Surveying the Economic Contributions of the Copyright-Based Industries, which the United States of America was pleased to support. It called on the WIPO Secretariat to (1) expand the successful projects to include the patent based innovative industries to the extent feasible, and (2) explore the feasibility of WIPO conducting its own economic surveys on a regular basis to support the creative and innovative sectors with useful data. It added that it was difficult to know where they were going, if they did not know where they were coming from. The fifth proposal was on “Facilitating IP Related Aspects of Information Technology for Growth and Development”. Harnessing ICT to advance a country’s economic development goals required developing and least developed countries to address complex issues related to infrastructure, investment, regulation, and human capital. Although many of those were issues beyond WIPO’s mandate, specialized competence and institutional capacity, it had an important role to play by assisting developing and least developed countries to maximize the use and effectiveness of IPR as a tool for economic, social and cultural development. Thus, the WIPO Standing Committee on Information Technologies (SCIT) could be a forum for discussion, focused on the importance of IP related aspects of ICT, and its role in economic and cultural development. Specific attention should be focused on assisting Member States to identify practical strategies, that is, those with achievable goals to use intellectual property and information and communication technologies for economic, social and cultural development. With regard to the sixth proposal, “Increasing Understanding of Adverse Effect of Counterfeiting and Piracy on Economic Development”, there was significant and growing evidence that rampant counterfeiting and intellectual property piracy was a brake on economic development. Weak intellectual property protection was a deterrent to foreign direct investment and technology transfer. Against that background, the proposal called for the WIPO Advisory Committee on Enforcement to analyze the relationship between high rates of counterfeiting, intellectual property piracy and technology transfer, foreign direct investment and economic growth. The proposal also called on the WIPO Secretariat to assist in the collection of data on piracy rates, with a view to making the information widely available. The Delegation appreciated the opportunity to add further detail with respect to the six proposals that were embodied in the elaboration of its proposal, and looked forward to a discussion on those items.

126. The Delegation of Honduras thanked the Delegation of the United States of America for submitting its proposal and for the broad information contained in it. Although it had identified a number of positive aspects in the proposal, it thought there were two questions that the Delegation would like to ask. One was, when it looked at the chapeau of the first chapter, intellectual property's role in development, it questioned the alternatives identified under that heading and what action WIPO could take, so that the proposal was realistically implemented. The Delegation asked that question because, under paragraph 2.1 page 3, they referred to maximizing the use of and effectiveness of intellectual property. It also mentioned a number of strategies that developing countries could follow, but many of those, in fact, were cross-cutting issues that went beyond WIPO's mandate. Under heading 2, WIPO's role in development, the Delegation asked about the concrete measures that WIPO could carry out and whether it was within its mandate?

127. The Delegation of Japan stated that it appreciated the proposal and the explanations provided by the Delegation of the United States of America. It referred to the discussions at the IIM last year, regarding the WIPO Partnership office and the WIPO Partnership Database, where it had said that through these they could comprehensively grasp the technical assistance activities at WIPO. The Delegation believed that based on the accurate understanding of the present activities at WIPO, further technical assistance activities could become more meaningful. The Delegation was also of the view that document WIPO/EDS/INF/1 under Item 2 was valuable and believed that discussions based on it could be of interest as also for proposals 3 and 4. Finally, it supported proposal number 6, since it was afraid that counterfeit medicine could deteriorate public health and also believed that the issue related to IP and development.

128. The Delegation of Austria, on behalf of the European Community, its 25 Member States and the Acceding States of Bulgaria and Romania, thanked the United States of America for its further contribution to the debate on a development agenda for WIPO. It further pointed out that it covered several initiatives, in addition to the WIPO partnership program, proposed at the first IIM in April 2005. It welcomed the document where it was proposed to enhance public private partnerships, with the active involvement of WIPO. The Delegation also agreed with the observation that there was still a need to further conduct quantitative and qualitative stock-taking of current WIPO development cooperation activities, and thought that it could be useful to explore more in detail the role of WIPO Secretariat in developing best practices to enhance domestic environment for the development of creative industries, and attracting foreign investments and technologies through intellectual property protection. In addition, the Delegation believed that further discussion was also needed on the relationship between the enforcement of intellectual property rights, in particular the rates of counterfeiting and piracy on the one hand, and technology transfer, foreign direct investment and economic growth on the other.

129. The Representative of IFLA gave a joint statement for the Electronic Information for Libraries and the International Federation of Library Associations and made comments on the proposal of the United States of America, which stated that intellectual property was only one factor in bringing about economic growth and the reduction of poverty. The Representative pointed out that the World Bank Institute had identified modern information infrastructure and effective research centers and universities as pillars in the knowledge for development program, but believed that those factors were also impacted by the intellectual property system, because they relied on education and education in turn relied on access to knowledge. The effectiveness of educational institutions in turning out successful students and quality graduates for the labor market, depended on the provision of learning support services



provided by libraries. The Representative pointed out WIPO's role and responsibility in those wider development issues, because the information environment was governed by copyright laws. Libraries and their users depended on fair and balanced copyright laws, without which copyright owners would have a complete monopoly over learning. The Representative reiterated that the proposal by the United States of America said that WIPO was well positioned to assist countries to use the intellectual property system to address the contents gap, which was due to the lack of online material originating from creators in developing countries. The Representative suggested alternative models such as free software, also known as open source software, which enabled the translation and adaptation of software for local needs and the many successful library applications and open access publishing, which aimed to make research articles in academic fields freely available on line. The Representative stated that EIFL was currently developing open access repositories in South Africa, Ukraine and Lithuania and also the University of Zimbabwe's institutional repository to be launched in April 2006, which included material from African languages research institutions. The Representative said that they would be pleased to advise the Secretariat on how open access was addressing the contents gap identified in the United States of America proposal, and that it illustrated the value of the proposal by Chile that WIPO should monitor complementary and alternative systems for creativity and innovation to prevent the Secretariat from increasingly falling out of step with the realities of the modern information environment.

130. The Delegation of Australia welcomed the elaboration by the United States of America on its proposal for the establishment of a partnership program. It reiterated what it had said in the IIM meetings of the previous year, that it saw significant merit in an internet-based tool to bring together stakeholders, to match specific needs with available resources, and to thereby improve the coordination and the development impact of intellectual property development assistance, to successfully build on previous successful programs including WIPONET and the WIPO Academy. Regarding technical assistance, the Delegation recognized the excellent work of WIPO in pursuing knowledge based development strategies, but also recognized the merit of conducting a qualitative and quantitative stock-taking of current WIPO development cooperation activities. In relation to proposal 3 and 4, it would consider what role the Secretariat might have in providing developing countries with methodologies for conducting surveys in their countries to analyze innovation systems and economic institutional regimes, as well as to conduct their own economic research into the value of creative industries in developing countries. The Delegation pointed out that it would be interested in looking at the financial implications and also what could be undertaken within WIPO's existing budget. Finally, in relation to proposals 5 and 6, it agreed that further discussion was required on issues like the intellectual property related aspects of ICT and economic development, piracy and economic development and that those issues could be examined in the committees mentioned in the United States of America proposal.

131. The Delegation of Brazil said that it was a positive step to see that the United States of America had engaged in a discussion on the concept of the development agenda for WIPO, by further elaborating on its previous proposal through the new document PCDA/1/4. It saw that the idea of maximizing WIPO's positive impact on economic, cultural and social development was convergent with the proposal made by developing countries to make WIPO more development sensitive and oriented. The Delegation thought that the idea of developing national base line surveys for economic growth; evaluating economic contribution of creative and innovative industries; technology and economic growth and the relationship of counterfeiting and piracy to development, were interesting, but outside the WIPO mandate, as it did not believe that WIPO had the mandate to survey or to support any type of survey of economic growth. It added that they had economic institutions that were specialized in

economic growth and also international agencies that provided solid literature on economic growth, indexes, etc. Therefore, the Delegation did not think that WIPO was particularly suited for that kind of job and did not think that that was required for studying the relationship between intellectual property and the development objectives of developing countries and the development objective that the UN system as a whole had undertaken to fulfil. Neither did they believe that counterfeiting and intellectual property was an intellectual property and development issue as, in their opinion, counterfeiting and piracy was something that happened throughout the world, as was indicated later. The Delegation emphasized that it was found to occur to quite a significant extent in developed countries, and as such was not a developing country problem or a problem that was exclusive to developing countries. Therefore, it did not see any relationship between the issues at hand and the development agenda. The Delegation referred further to the major issue of intellectual property's role in development and stated that it was acknowledged that the intellectual property system alone could not bring about development and emphasized that the Delegation could agree to such a statement. It also thought that intellectual property systems could hinder development, if it was not adequately fine-tuned to address the different levels of development of countries that were members of the system. Referring to the prescriptive list of things needed for countries to develop, as mentioned in the document, such as human capital, liberalizing trade and investment policies, strengthening the role of law, stable micro economic policies and pro competitive regulatory policies, the Delegation pointed out that while they understood and followed the reasoning, even though these were all issues that were usually dealt with in other fora, they thought they should concentrate on the issue of pro-competitive regulatory policies, although intellectual property legislation might not necessarily be pro-competitive. There was also an element of communality between the view of its Delegation and the need for establishing a pro-competitive environment in all countries. The Delegation thought that they should address the ways that intellectual property was frequently applied in developing countries, which could lead to anti-competitive policies, and added that they did not think that illegal copying was endemic to any particular country. It pointed to counterfeiting, ineffective government and corrupt practices, which distorted competitive markets, and stated that they did not know what that referred to exactly and to what countries were those concepts addressed. The Delegation found that those were perhaps global problems and therefore did not relate to the concept of a development agenda for WIPO as in their view WIPO did not have a mandate to address corrupt practices, ineffective government or enforcement of IP. The document further stated that WIPO was fully aware of the changing role of intellectual property in development. The Delegation pointed out that the debate indicated that there was room for more improvement and that a further analysis of the work agenda of the Organization would show that there was still a lack with regard to the changing role of intellectual property and development. It added that the issue of intellectual property and development had been brought about in a more significant manner by developing countries in the 2004 General Assembly. Through their work in that committee, they expected to push it further to the point that WIPO would demonstrate its awareness of the changing role of intellectual property and development. The Delegation thought that that was a common expectation and hoped that it would come through. Referring to the mention of the four pillars of the modern knowledge economy, it was not sure whether WIPO's role was to promote that as there were many books on that and to a large extent, it thought that that was an academic discussion. The Delegation also thought that although they all seemed very relevant they would have a different impact on developed countries and on economies of developing countries, and therefore, the different circumstances should be taken into account. Finally, with regard to adequate protection and enforcement of intellectual property rights, the Delegation believed that adequate was the key word. It questioned what was adequate protection and enforcement, underlining that it was one of the points that they were trying to

make with the development agenda, i.e., what was adequate for one country might not be adequate for another. The Delegation stated that the proposal to facilitate the process through a WIPO partnership office was already commented on during the previous United States of America presentation as they were concerned that it could lead to WIPO mediating the relationship of national patent offices and private companies in a kind of a match-making exercise or creating a kind of a market or opportunities for private entities to actually finance the UN to provide technical assistance. It added that the outsourcing of technical assistance and the privatization of funds for technical assistance seemed to lead them in the opposite direction of what the development agenda had put forward, underlining that they wanted more member driven technical assistance and for recipient countries to have more say, not less say in what kind of technical assistance was provided. The Delegation did not believe that if outsourced into a kind of a private market aid organization from the private world, a recipient country would have more say in the kind, type and quality of assistance provided. Further, it was not sure that private funding institutions would necessarily assist developing countries, for example, in exploiting the flexibilities which existed in the intellectual property system, as many of those organizations would be intellectual property holders themselves, and, therefore, would probably finance technical assistance to their own goals of promoting higher standards of protection, generally without concern to public interest goals, public policy objectives or social and economic development objectives of countries. The Delegation believed that charitable organizations seemed to be a little bit misplaced in the paragraph, and did not see what kind of charity could be brought about to deal with the issue of intellectual property and development, unless they considered that intellectual property itself was something that may actually hinder development, so they needed charity in exchange for protection. The Delegation pointed to the issue of WIPO's role in development and reiterated that it had been mentioned in the proposal that WIPO already had a very extensive role in development, which was demonstrated by the 300-plus page document that had been circulated in the previous meeting. It had made the point at the time when the document was distributed by WIPO that it was very informative and was basically a compilation of projects, missions and consultants that had been hired and computers which had been purchased for some intellectual property offices of Member States. It thought that that was relevant activity for the Organization, but it did not exactly translate the idea of a development agenda that was both substantive and geared towards a more fulfilling and substantive implementation of intellectual property treaties and legislation by developing countries. This Delegation thought that it was more of a micro management focussed technical assistance and that in some cases, it even had an emergency type character given the poor conditions under which some intellectual property offices in developing countries had to operate. The Delegation stated that nevertheless, because of the poor conditions, sometimes receiving a couple of new computers made a big difference in their activities and it was sure that this was not a problem faced by developed countries in the implementation of intellectual property legislation. It mentioned that the document ended with a proposal to conduct a quantitative and qualitative stock-taking of current WIPO development cooperation activities, with the longer-term view of development and hoped that there was a margin of consensus regarding what type of stock-taking or qualitative assessment WIPO could and should perform for its development cooperation activities. Regarding proposal number 3: Baseline National Surveys for economic growth, the Delegation pointed out that the point mentioned that a developing country seeking to develop creative industries would need to evaluate possible deficiencies in its intellectual property rights system, including enforcement, was not the kind of new thinking that they were trying to achieve through a development agenda for WIPO. It was not a question of looking at the intellectual property rights systems deficiencies in countries, but rather the deficiencies that existed in the international intellectual property rights system, as they did not take account of countries different needs and different capacities to implement the system.

The Delegation again thought that here there was a divergence of approach and perspective between what was suggested and what was the intention of developing countries through the proposal of a development agenda for WIPO. Regarding the second point which mentioned that a country conduct a survey to focus on possible impediments to the transfer of technology, the Delegation again thought that the issue of transfer of technology which they were trying to effect into the norms that were negotiated here, was referred back to the countries so that they would take care of transfer of technology for themselves. It understood that transfer of technology was something that should be favored by the intellectual property system, which should be induced by the intellectual property system, especially from technology generating and producing countries to those that did not have the capacity to generate and produce technology. The Delegation pointed out that it was known that the transfer of technology could take place, according to many different mechanisms, but the intellectual property system itself contained certain elements that could promote transfer of technology, for instance, through adequate disclosure of inventions in patent claims, as well as adequate dissemination of patent information. The Delegation further pointed out that all the countries that had dealt with the issue, had thought that there was a deficiency in developing countries accessing that information adequately. They had already considered Colombia's proposal, that dealt partly with the problem that patented information was not always readily available, and again, the disclosure requirement as was applied in many systems, were not fully satisfactory. Therefore, it may not be promoting the dissemination of technological information, which could lead to transfer of technology as well. The Delegation supported the idea of protecting the public domain, which was proposed by Chile, and was also an issue that could help transfer of technology. There was a reference in the document to establishing best practices, which related to enhancing domestic environments for the development of creative industries. The Delegation pointed out that there were no recommended best practices, as far as intellectual property was concerned. The Delegation made a reference to point no. 5 on "Technology, Economic Growth, Challenges and Opportunities" of the proposal, which had touched on WIPONET. It was of the opinion that some information concerning WIPONET was contradictory and that if WIPONET was to be considered as a possible contribution to the development agenda, it would be helpful if more detailed information was provided on its current status. It stated further that there had been articles in the *Le Temps* newspaper in Geneva, regarding a substantial investment of about one billion Swiss francs made by WIPO between 1998 and 2003. It pointed out that although a substantial amount of money was spent on WIPONET, it was not fully operational and that the Secretariat should provide further information in the matter. As budgetary resources had not been allocated in the next biennium for the continuation of WIPONET, it was imperative that the Organization provided updated information on its services to Member countries, if they were to form an opinion on its relevance in the context of the development agenda. On point no. 6, the Delegation said that assessment of national intellectual property systems should be based on each country's level of development, and not upon prescriptive generalizations, that stemmed from the experience and reality of countries that did not have to face the same constraints and challenges. Piracy and counterfeiting were not development issues, but a global phenomenon linked directly to development. The Delegation explained further that piracy and counterfeiting was common in developed countries and furthermore, what constituted piracy and counterfeiting was incumbent on the nature and application of each national law, irrespective of whether or not it was a developing or developed one. That was even more so in countries with a common law system, of which case law, a major characteristic, provided a definition on a case-by case basis and therefore, on an evolutionary basis, of what counterfeiting and piracy really were. For that reason, the terms counterfeiting and piracy were not to be used loosely for they were the complex result of each particular country's legal system, as applied by the judiciary. It further stated that WIPO had no

mandate to provide a definition for piracy and counterfeiting, and that it also had no enforcement mandate, another idea contained in point no. 6. The Delegation stressed that WIPO did not have an enforcement mandate with regard to IP rights, for they were private rights, granted on a national legal basis and were territorial in nature, and for that matter, subjected to the national legal and judicial systems of Member States.

132. The Delegation of Argentina informed the Committee that it would provide general comments and a summary of its assessment on a number of specific issues, dealt with in the proposals. The Delegation noted that the previous proposals had not gone beyond the question of technical cooperation, and that the development dimension was narrow. With regard to technical assistance, it seemed that what was being achieved was a mere *status quo*, without any qualitative or quantitative advantage for developing countries. The Delegation said that the proposals seemed to stress the need for greater efforts to be made at the national level, in order to achieve a high standard of intellectual property. The “Group of Friends of Development” understood that the international scheme under discussion comprised not only technical assistance but also transfer of technology, standard setting or norm-setting activities, access to knowledge, public domain and a plethora of other issues, which were part of the proposals coming from developing countries. Aspects concerning national focus based on national efforts were reflected particularly in proposals under headings 1, 2 and 3. In the case of proposal no. 1, the Delegation had doubts and needed clarification as to how the mechanism could be made to work. It was not convinced that making greater national efforts to find more ways of cooperation would be sufficient. The aim should be to seek greater transparency, outreach and to make information available with regard to technical assistance, all of which could not be achieved under the present mechanism. It was not clear what financing would be made available, nor where it would come from; there had been talk about banks, regional organizations and even charitable organizations and reference had also been made to development agencies, all for the purpose of assisting countries achieve higher standards in intellectual property at the national level. On the question of stock-taking of WIPO’s cooperation, the Delegation did not believe that the exercise would be of use, within the broader context of achieving set development goals. Furthermore, any kind of stock-taking assessment and setting of guidelines and benchmarks, required some form of follow-up, that would include technical assistance. It believed that none of that would impact on the present status. Under heading no. 3, the Delegation was of the view that it focused on the national framework, and it was not evident at that point in time how the multilateral framework would foster economic development at the national level, it was not obvious to them what could be achieved by pondering the question of whether or not WIPO had the mandate to carry out the requisite studies or surveys. It also had reservations about the proposals made under heading 4 and 5, where discussion had centered around successful projects carried out by WIPO, but it was not clear whether the projects concerned isolated studies or for that matter, what the basis was. Further, the statistics used in the surveys dated back several years before the year in which they were carried out, so they had a historical value, not a practical one. It was therefore not clear what the projects had consisted of exactly, and whether they had been broadly applied. Under heading no. 5, the Delegation stated that its own proposal, including that of others, referred to technologies and that the views expressed were based on other premises, ones that sought solutions other than those connected to WIPONET, which was a mere connection, or at least had been, between intellectual property offices and was not essentially what was going to bridge the technological divide. Information technology was a cross cutting issue and could not simply be relegated to a technical committee such as the SCIT. As had been requested by Brazil, it would be a matter of interest to acquire more information on how it began, how it evolved and what effectiveness or impact it had had, beyond its use as a link between IP offices and the

creation of a network. With regard to the final proposal, it was not of the opinion that it concerned the development agenda, and believed that if a link did exist, it had to be between enforcement and implementation of international agreements. It was, therefore, enforcement and implementation that were important issues for developing countries, because there were costs that had to be shouldered by countries, for the implementation of agreements that dealt with private rights and involved very often, foreign companies. In connection with the same topic, another delegation had spoken about counterfeiting of drugs and how developing countries were faced with problems arising from the high cost of drugs. That was a problem to which delegations attached differing degrees of importance. On the issue of piracy, the Delegation read an article from the *Le Figaro* newspaper of February 22, 2006, on how New York City was trying to deal with endemic counterfeiting. The Mayor, Mr. Michael Bloomberg, had taken it upon himself to fight the problem of counterfeited goods. The counterfeited goods market amounted to around 350 million US dollars in revenue. It was obvious from the facts presented that developing countries alone could not be blamed for the entire problem of counterfeited goods. However, it was not certain that a true link could be established between piracy, counterfeiting and the transfer of technologies and economic or technological development, within the context of the present discussions. The Delegation was of the view that the committee should develop a comprehensive framework of what the development agenda entailed, one that was more specific to developing countries.

133. The Delegation of Côte d'Ivoire opened its statement with a reference to proposal no. 6 of the United States of America, where a link had been drawn between piracy and transfer of technology. It reiterated that transfer of technology was an important point in the African proposal, but that African countries were not able to put across their point because the debate was carried out in different fora. Their point was that it was not enough to ship machines to African countries, for equally important were the human resources and training that would enable them to set up the technology required in their own countries. Transfer of technology, in the medical domain, was extremely important for developing countries. The Delegation pointed out that transfer of technology was not being sought for the purposes of counterfeiting, but rather, to respond to the needs of countries. In connection with piracy, it accepted that it existed in both developing and developed countries. No doubt, the requisite technologies were not used solely for counterfeiting and piracy in developed countries, and although in every country there were people who had no scruples and would readily misappropriate or misuse technology for such purposes, one could not infer that that would necessarily always be the case. The Delegation of Brazil in its statements had expressed the view that piracy and counterfeiting were not necessarily linked to development. However, the Delegation believed that piracy was indeed counter to development. In Côte d'Ivoire, 15% of musical products on the market were pirated goods and musical artists in particular were the main victims of the phenomenon. What was more, when products entered their markets illegally, government coffers were robbed of the taxes that might have been paid. Counterfeiting and piracy were therefore phenomena which blocked development, and had to be included in the present debate and ways and means of fighting them had to be sought.

134. The Delegation of Iran (Islamic Republic of) thanked the Delegation of the United States of America for introducing its proposal and believed that the proposal, as well as a positive reaction to the development agenda, would be a step forward and help with the discussions. It referred to proposal no. 1, policies at the national level, which were considered as the only incentive for innovation and ultimately the cause of development. The Delegation agreed that there was an inter-relationship between the national strategy, the role of norm-setting and other requisite international factors. The definition of national IP strategy could not be determined, without taking into account the identification of diverse international

dimensions of IPRs. Assistance from the inter-governmental organizations' development agencies, the private sector, academia, or other sources was beneficial and should be discussed together with other common proposals in a structured manner. Under proposal no. 2, it expressed appreciation to the WIPO Secretariat for the provision of technical assistance to Member States in the past, as indicated on page 3 of the document. The Committee was reminded to bear in mind that provision of any technical assistance had to be structured within clearly defined principles for maximum use of capacities in an efficient manner and on a member-driven basis. With regard to proposal no. 5, it pointed out that developing countries and LDCs were at the very preliminary stage of the use of such technology and recalled that the rise of Internet use in developing countries was very low. Therefore, it was not clear whether addressing the inter-relation between IP and ICT would in fact fulfill the goals of the development agenda, or even provide a response to the concerns of developing countries and LDCs. In the case of proposal no. 6, it was to be noted that enforcement provisions were in almost all IP treaties and had been entrusted to national jurisdictions. The exchange of views on enforcement issues, as well as the fact that it was devoid of any kind of norm-setting activity, was expressly mandated by the General Assembly at its 37<sup>th</sup> session, to the Advisory Committee on Enforcement.

135. The Delegation of Romania aligned itself with the statement made by Austria on behalf of the EC and its 25 Member States and the newly acceding states of Bulgaria and Romania, in relation to the proposals put forward by the United States of America. At that stage, it declared that they would like to add a remark or two about enforcement of IP rights and development. The Delegation said that they did think that the question of examining the relationship between counterfeiting and piracy of intellectual property and technology transfer, foreign direct investment and economic growth was worth considering. The Delegation said that first of all, the Advisory Committee on Enforcement was set up by a resolution of the General Assembly at its 28<sup>th</sup> session in 2002 and that in Paragraph 114 of document WOGA/28/7, it said, "The General Assembly has decided to set up a single Advisory committee on Enforcement to deal with worldwide enforcement issues covering both industrial property and copyright and related rights." The Delegation added that the Committee met in June 2003 at its first session in Geneva and in the Chairman's conclusion, written in paragraph 5, "The Committee agreed, that the issue of the enforcement of intellectual property rights was of considerable importance and that WIPO was particularly well placed to provide technical assistance and training and contribute to awareness in this area." In paragraph 7, it said: "The Committee heard general statements by the countries of the Group of Latin American and Caribbean States (GRULAC) and Group B in their statements, these two groups welcomed the establishment of the committee and said that its work was considered important." Furthermore, the Delegation said that there were problems in the applications of rights that had been mentioned on agenda item 8 of the 2005 session of the General Assemblies, which decided that the next meeting of the Committee would be held in 2006. The Delegation was therefore convinced that that problem was a part of WIPO's mandate. The Delegation said that with a view to enhancing the enforcement of IP rights, Romania adopted in 2003, strategic measures, that were contained in the national strategy in the field of intellectual property for 2003 and 2007. The Delegation added that specific actions related to the coordination of the relevant authorities in capacity building, improving enforcement at the border, protecting consumers and so on. It pointed out that those steps were also meant to improve the general business environment in Romania, and that foreign direct investments would hesitate less when eyeing Romania as their next destination. Thirdly, the Delegation said that, not surprisingly, many countries around the world shared the concern for the impact of counterfeiting and piracy of IP rights on development. It added that globalization, counterfeiting and piracy had become a major concern and that the

establishment and optimization of effective IPR legal protection and enforcement systems, would play a significant and unique role in promoting social wealth, tax fairness, economic development, and in reducing the growth of trans-national organized crime, corruption and threats to human safety and security. The Delegation referred to the quotation from the Rio declaration that was adopted by the Latin America Regional Forum on Combating Counterfeiting and Piracy, co-hosted by the Government of Brazil and INTERPOL in Rio de Janeiro, June 13 and 14, 2005. The Delegation said that that Regional Forum was in preparation of the Global Congress for Combating Counterfeiting and Piracy. The second meeting took place in Lyon on November 14 and 15, 2005. The Delegation clarified that in paragraph 3 of the declaration, the Government of Brazil, the other countries of *Mercado Común del Sur* (MERCOSUR) and countries in the Latin American Region, their agencies and private sector partners, had identified trade in counterfeit and pirated goods, as a major problem causing significant harm to national and business interests, through the loss of tax and company revenues. The same document read in its conclusion: “All participating Latin America countries considered the protection of IP rights as key to economic development, and agreed to continue to enhance their efforts to make IP Enforcement more effective”. The Delegation concluded by saying that it thought that those remarks proved beyond any doubt the requirement of carefully examining the relationship between enforcement and development. For Romania it was a matter of priority, that WIPO, the specialized agency of the UN system on IP, should deal with the topic.

136. The Delegation of China said that it would like to make observations regarding item 6 of the United States proposal. It felt that counterfeiting and intellectual property piracy was a global problem, and added that as the Delegation of Brazil had pointed out in its statement, counterfeiting and piracy were not only problems of developing countries, but also of developed countries. The Chinese Government had consistently maintained a position of combating counterfeiting and piracy and effectively protecting intellectual property. For many years, the Chinese Government had taken a series of practical measures to vigorously combat counterfeiting and piracy, and had achieved notable results. It said that whether the current statistics of some countries and organizations on piracy and their investigation means, statistical criteria and methods were scientific and whether their statistical results were objective and accurate was very controversial. At present, the WIPO Secretariat had already taken on a very heavy workload. For the Secretariat to use a great deal of energy, manpower, and financial resources to collect data on piracy rates, went beyond the functions and capacity of a Secretariat. The Delegation pointed out that the PCDA should focus discussion on the development issues of great concern to developing countries, and that if the issues of piracy rates, on which there was a controversy was brought into the PCDA discussion, it would certainly weaken the PCDA's discussion on development. Based on the above, the Delegation did not support proposal number 6 in the United States of America proposal.

137. The Delegation of Japan said that although it had made several comments on the proposals of the United States of America, it wished to make another comment again. It said that the proposals referred to WIPO's role in development as item 2 in the document and that its Delegation shared that notion. It said that WIPO could play an important role in the context of IP and development and that in that context, it would like to share its recent experience related to WIPO's activity on IP and development, i.e., a WIPO High-Level Forum on IP Policy and Strategy, which was organized by WIPO, in cooperation with the Japan Patent Office (JPO), on January 26 and 27, 2006, in Tokyo. The Delegation added that there were about 100 participants from 40 countries, including the Asia-Pacific, African, Arab and Latin American regions and that most of the participants were IP policy-makers. It pointed out that Mr. Geoffrey Yu, Deputy Director General of WIPO also participated and



that the objective of the Forum was to provide policy makers from the different countries with an opportunity to discuss how best intellectual property protection could contribute to the economic development of nations. The Delegation said that participants made presentations on their intellectual property strategies to achieve economic development, discussing the role to be played by the government, in the context of IP policy. In the Forum, it was noticed that many of the countries were changing their policies and strategies to activate their intellectual property system for developing the economy. It added that some of them had already changed their IP policies and strategies, to utilize IP as a means to achieve economic development. The Delegation said that if any country was interested in the Forum, and needed further information, it could access WIPO's homepage and refer to Update 265 dated January 30, 2006.

138. The Delegation of Australia said that it would like to come back to the idea of the partnership office. In particular, it referred to the concerns on privatization of development assistance, which was said to give rise to conflict of interests with outcomes that were inconsistent with development objectives. It pointed out it did not see that proposal in that light. It looked at it as an effort to involve the UN system and the IP community, to match specific needs of available resources, enhance transparency, avoid duplication and increase the development impact of any assistance that was provided. The Delegation added that the idea of bringing together the government and non-government sectors to work in partnership for development was not a new one and, in their view, not inconsistent with a member or needs-driven approach for technical assistance. The Delegation said that some non-governmental bodies, which were listed as observers, would be involved in the partnership program. Involving the non-governmental sector would be valuable as they would bring a kind of assistance, that Member States, or WIPO as an IGO could not provide. It added that on the other hand, NGOs, whether charitable or advocacy-based, were better placed to provide the assistance. Finally, it said that the approach of the private-public sector partnership increased coordination and was based on the recognition that they did not have infinite resources, and that relying on governments alone would not be sufficient in achieving the development outcomes.

139. The Delegation of Nigeria said that it was speaking on behalf of the African Group, with regard to the proposals of the Delegation of the United States of America. The United States of America had made an interesting and useful proposal for the creation of an Internet based WIPO Partnership Program. However, due to the technical nature of the proposals, it could be judiciously commented upon only by experts from the capitals. The Delegation added that from their perspective, and in relation to the debate, the African Group welcomed the proposals, as potentially regenerative and constructive, especially in relation to the extension of technical assistance. However, it noted that crucial details, such as time frame for implementation of the program, funding procedures and other vital information were not provided and hoped that it would be provided with such details at the appropriate juncture. It viewed the proposals as falling under or within the scope of the African Group proposals, on technical assistance and building of national capacities and infrastructure. The African Group also felt, that the proposal had a direct bearing or relation to the proposal the Group submitted on the Information and communication technology, ICT. The African Group called upon the Delegation of the United States of America, to take into consideration, the proposals that had been specifically highlighted, in relation to technical assistance and ICT. The Delegation said that on many occasions, the African Group had highlighted the importance of the phenomena called the "digital divide", i.e., the disparity that existed between nations, especially between developed nations, developing nations and the least developed nations, in terms of existence and availability of IP, ICT and infrastructure. It was in relation to that disparity, and the

seriousness with which their countries viewed it, that the Group called a number of times, for the bridging of the digital divide. It was their expectation, that the United States of America partnership program with WIPO, was one step towards the conscientious and deliberate bridging of this digital divide, that existed between developed countries and developing ones. The Delegation added that in extending the program, or in eventually implementing the program, the African Group would have liked to call upon the United States of America, to provide the assistance beyond national IP offices to entities like universities, libraries, hospitals, research institutions and so forth, in order to enable them to build their ICT infrastructure and gain access to vital information and databases. The Delegation added that in connection with the idea of the digital divide, the African Group was encouraged to note that the proposal itself had acknowledged the existence of that divide, between the rich countries and poor countries, and it also noted, quite rightly, that many of the issues related to ICT and development, which were beyond the mandate of WIPO. It was in recognition of that fact and in realization of the limited mandate and specialized nature of the work of WIPO that the African Group in its proposal, highlighted the importance of institutional mandates. The Delegation said that it would foster cooperation between and amongst the various UN agencies and other international organizations, in delivering assistance, in all facets of development, to developing countries. It pointed out that it was also in that connection, that the African Group on numerous occasions, called for the support of the digital solidarity fund, that had been established in Geneva, by a number of developing countries with the support of some developed countries. The Delegation declared that the African Group had also called for the support of the WSIS process, especially, the outcomes of the first summit and the second one towards ameliorating the problems faced by the developing countries in their appreciation of ICT.

140. The Delegation of Panama expressed its thanks for the proposals of the Delegation of the United States of America. It said that the defined objectives such as increased transparency, avoiding duplication of efforts, and the direction of resources towards specific needs of the developing countries was in line with the proposals expressed in the meeting and strengthened the fact that everyone was aiming for the same goal. The suggestion of a partnership program, which would find people, or institutions that could provide technical assistance to countries, offered a whole range of opportunities that were unavailable at the moment. Transparency would be very valuable from that point of view, because those involved would have access to the available information so as to satisfy particular requests from Member States. The Delegation said that it was a role that WIPO<sub>NET</sub> had been able to play, although its objectives as a network were different. The Delegation realized that realities differed from country to country and in the case of its country, the issue of enforcement of IPRs was important, precisely because they were a country for transit of world trade. The Delegation said that its legislation contained severe penalties for misuse of those rights. In addition to the special application of border measures, they had established an Office specializing in intellectual property crimes, judges who dealt with intellectual property disputes, and a judicial technical police force. The Delegation said that in addition, there was the institution of the commission on intellectual property, which kept an eye on policies in intellectual property and was made up of all principal authorities in that area. In addition to the fact they had complied with their commitments, they also had programs modernizing the national intellectual property system, which included the development of national strategies for dissemination and enforcement. It added that WIPO supported them in the development of their national strategies by channeling resources towards areas that they had made requests. In addition, they had created synergies with international financial institutions. On some of the national initiatives supported by WIPO at their request, not only for technical and legal assistance but also in the area of human resources training, there had been intensive

work. For all those reasons, they welcomed the proposal with the reservation that due account should be taken of the different development plans of countries, in order to put it into practice.

141. The Delegation of the Russian Federation stated that with respect to proposal one, there were a number of concrete ideas for setting up the WIPO Partnership Program and that the elements for setting up a database for the partnership could be found in proposal three. In that connection, the Delegation stated that it would like to support the initiative for setting up the WIPO Partnership database. It went on to say that it would be very timely and useful and that they would be grateful if the Delegation of the United States of America would present them with an even more developed, concrete proposal on how that idea would actually be put into practice. The Delegation concluded by saying that it would be interesting to look at such a proposal and that work should continue in that direction.

142. The Delegation of Brazil noted that they had been extensively cited by the Delegation of Romania and that the latter had raised some very interesting issues. Firstly, it was very good to get some free, positive press with respect to Brazil's efforts in combating piracy and counterfeiting; which credentials, the Delegation submitted that they did have. The Delegation went on to say that regarding the Committee on Enforcement, the operative word was the fact that it was a consultative committee, in that it was a committee for consultation and as such it did not give WIPO any mandate to enforce IP laws in Member countries. Therefore, the Delegation submitted that the objective of the Committee on Enforcement was to consult and carry out educational work, awareness raising and the like and that the Delegation was of the view that such work was important. As such, the Delegation had no objection to such matters being brought up in that Committee. The Delegation added that while it was of the view that education and awareness raising regarding piracy and counterfeiting was important it did not give WIPO a mandate for enforcement. The Delegation recalled that the statement from the Delegation of Romania showed Brazil's excellent credentials in terms of combating piracy and counterfeiting, through national and even regional efforts, and that those credentials put them in a position to be able to suggest that the IP system needed some re-evaluation. Brazil's commitment to the IP agreements and to combating piracy and counterfeiting was really unquestionable as had been expressed by the Delegation of Romania. The Delegation explained that a great deal of effort had been made nationally to those ends. They had created an inter-governmental committee in 2001 to coordinate different government agencies in combating counterfeiting and piracy in Brazil. The Delegation stated that the central governmental committee had become a national council for combating piracy in 2004. The private sector sat on equal terms with the Government in this national council and had the same voice through its ability to vote. The Delegation wanted to know whether Romania had the same mechanism of equal representation of public/private sector in such a national committee, which worked nationally and even regionally, with its neighboring countries in combating piracy and counterfeiting.

143. At that point, the Chair interrupted the Delegation of Brazil and gave the floor to the Delegation of Romania, on a point of order.

144. The Delegation of Romania stated that it would like to call the attention of the Committee to the fact that what Romania did or did not do, was not on the one hand, the subject at the Committee, and on the other, questions about what the situation was concerning enforcement in Romania, was not a topic there either. Secondly, the Delegation added that it quoted the examples in the document as a relationship between enforcement and development. The Delegation submitted that the topic of the day was to discuss proposals

that were put before the Committee, and if it were to discuss the experience and expertise of each and every country, it would have prepared another statement.

145. The Delegation of Brazil explained that it had the credentials to raise issues regarding the adequacy of the IP system in terms of development and, that in fact, it did not think that piracy and counterfeiting had a bearing on the particular concerns that it had expressed and proposed in the Development Agenda. It clarified that the statements made by the Delegation of Brazil on those issues were referred to by other delegations on prior occasions, even during meetings held in Brazil. It submitted that since the statements were referred to by other delegations, it was incumbent on the Delegation to respond and clarify the context in which the statements were made. The Delegation then continued with its intervention and submitted that the efforts of Brazil were unquestionable and they indicated that combating counterfeiting and piracy was a national priority. It submitted that the fact that it had a Development Agenda did not mean that it was in favor of piracy and counterfeiting, that it meant only that it did not consider those issues to be development issues. Therefore, if countries felt strongly about those issues and they wanted to bring it up, there was a consultative committee where that particular issue could be dealt with. It said that as the Delegation of Romania rightly expressed, its Delegation had said that that Committee was an important one, and that it should carry on its work, within the terms of reference under which it was created at the time. The Delegation submitted that it found it odd that the Delegation of Romania would express its priority for piracy and counterfeiting, by citing initiatives against piracy and counterfeiting that were taken by Brazil and other Latin American countries. The Delegation pointed out that countries should express the priorities they attributed to issues, by citing their own national credentials and not those of other countries. Further, considering the strong views on counterfeiting and enforcement held by the Delegation of Romania, it might consider presenting its candidature for the chairmanship of the advisory committee on enforcement, where the issue could be addressed.

146. The Delegation of Azerbaijan submitted that the document PCDA/1/4 was of great interest for the discussions, and that since previous delegations had already analyzed the various sections of the document, it would not repeat all that. The Delegation stated that it was not a purely national task to combat counterfeiting and piracy. It was not an issue that a State could resolve on its own. It was one that had to be carried out in cooperation with other organizations and states. The Delegation referred to the practice of the countries in its region, and said that an attempt was made to deal with the problem, by amending its legislation under the treaties to which it had acceded. The Delegation stated that it would like to give examples from other countries, but the Delegation of Brazil had said that delegations should provide only their own internal examples. The Delegation pointed out that it had practical experience of countering these infringements, for example, in Finland and Estonia, where it had worked with the representatives of the customs and patent office and had seen that the work was very clearly defined in Finland. They had managed to reduce infringements almost to nil as their enforcement system was working. The Delegation cited another example of international cooperation in the audio visual area where, a private company was mandated to deal with infringements on the territory of, for example, Finland, but the work had become more complicated. The Delegation clarified that the point was made to indicate that WIPO alone could not give its Member States substantial help, whether it be consultancies or technical help such as seminars; the provision of appropriate materials; the provision of courses to train experts, etc. There were also norms for legislation and information among enforcement agencies, to raise awareness of the problem. Therefore, to ignore the proposal would not be a good idea. The Delegation submitted that the development of intellectual property could be held up by infringement, so that Member States must think how WIPO

together with WTO, could together help resolve the problem. The Delegation submitted that it was aware that there was no mandate, but questioned as to how some movement could be made in that direction, so as to weaken the infringement of the rights of intellectual property rights holders. The Delegation stated that it understood the point made by the Delegation of Romania although it had not been accepted by some delegations. The Delegation submitted that section 6 of the document should not be turned down, and that it should be worked on and reproduced in a more developed form at the next meeting. It was a very important point. Turning to section 5, the Delegation stated that it had some experience with WIPONET. WIPONET did exist, but it had not been well developed. It should now be developed to the extent that it could be a useful tool for those states needing such a tool.

147. The Delegation of Romania stated that it wished to respond to the suggestion made by the Delegation of Brazil, and stated that with a view to enhancing the enforcement of IP rights, Romania had adopted in 2003, strategic measures, which were contained in its national strategy. That had already been mentioned in its statement and would have been heard by the Assembly. Therefore, the Delegation had talked about its national experience, while speaking about the relationship between enforcement and development. The Delegation wished to clarify that the references to Brazil were taken from the final document of a regional meeting and not a national meeting.

148. The Representative of the Eurasian Patent Organization (EAPO) stated that its statement covered practically all the proposals and would be of a general nature. The previous year was the 10-year anniversary of the Eurasian Convention and it would be celebrating the 10<sup>th</sup> anniversary of the EAPO that year. EAPO was an IGOs, set-up with the direct support of WIPO. It was a regional organization, which dealt with the issue of the grant of a single patent. The achievements of the organization were testimony to the founding principles of the organization. Applicants, not only from its region, but throughout the world were helped with their applications and it took into account the interests of the LDCs as well. Applications from all countries, where income is under US\$300 per capita, were provided with a rebate. In ten years, the organization had developed and started to help the members of the Eurasian Patent Convention, as well. A website was set up with Internet access, but the Representative stated that it was unfortunately not able to cooperate with WIPO in WIPONET and had to carry out the project by itself. A search system was set up, which included all the minimum PCT documentation. That system made it possible to search all patent documents included in the system and it had access for a search of all the patent databases on Internet. The patent documents of all Member States of the EAPO had been included. The Representative stated that the organization cooperated with the Russian Patent Office, as of 2004. That system was open to all the Member States of the EAPO. Actions were carried out on a bilateral basis between the patent offices concerned and the EAPO. It was opened to other patent offices too. The formula was very simple, the patent office of a state gave its patent documentation in Russian and English and then it had access to the whole system. The Representative concluded by saying that it considered that on the basis of the three previous meetings and that meeting, any concrete decision on proposals in that area, independent of time, should be carried out by WIPO itself. ICT projects were under way, there was also the new building and the work of the SCIT. Great changes were taking place and for more than two years there had been no plenary of that Committee. In a whole year, there had been only one meeting of a working group of that Committee because of financial difficulties. In that connection, the Delegation submitted that it considered that first and foremost, WIPO should carry out its functions within its mandate and existing structures.

149. The Representative of the Free Software Foundation Europe (FSF Europe) said that the organization was a European non-governmental organization, dedicated to all aspects of free software, as defined by the four fundamental freedoms specified in the free software definition. The Representative submitted that it operated within a network of sister organizations in Latin America, India, Europe and the United States of America and that it worked in close cooperation with the Global Free Software community. The Representative submitted that a typical cycle of sustainable activities were characterized by three major columns: planning, action and analysis and that ideally, action followed on planning and analysis followed action and the results of the analysis provided the grounds for planning. In the WIPO context, the Representative stated that it could also describe those as norm-setting, implementation and review. Like all cycles, the WIPO cycle broke at its weakest link and that it was why the Representative stated that it could not agree with the expressed opinion that WIPO had no need for analysis and that studies only needed to be done on a national level. The Representative wished to state that there was a need for review on national levels but that review also needed to be conducted at the level of norm-setting and implementation. As a result of that, in its view, incomplete understanding of the process, the proposal focused on very concrete, mainly implementation oriented aspects. The Representative was of the view that that was not necessarily a bad starting point for building consensus. Many Member States made statements about WIPO activities greatly benefiting from a more participatory approach. Language ranged from including all stake holders with special emphasis on public interest groups to the United States of America proposal which asked that WIPO should “aggressively seek out potential partners in other inter-governmental organizations, development agencies as well as international and regional development banks, NGOs, the private sector academia, charitable organizations and other institutions.” That was, the Representative submitted, an excellent and possibly consensual notion, which could be built on quickly and in a concrete way. As also discussed during the WSIS, physical participation at such events substantially depended upon infrastructure and resources often not available to public interest groups, in particular. The problems remained similar, so maybe the solutions. Therefore, the Representative wished to briefly share some experiences from the WSIS. The previous week’s deliberations on the Internet Governments Forum under Mandate from the UN Secretary-General, Kofi Annan, were the most advanced in terms of incorporating the WSIS’ experience. All statements were transcribed live and projected on a screen above the Chair, facilitating better understanding during the session and making it easier for participants to do justice to all statements. After the session, the transcripts were put on line in a matter of minutes, making all statements of the session immediately accessible to all who were absent or had to leave the room while the meeting took place. Additionally, Free Software volunteers streamed the entire session live in an open and accessible format that allowed all computer users with sufficiently fast internet access to follow the session while it took place possibly getting in touch with those present in order to have them incorporate their views and comments in the statements. The recordings usually went on-line in a few days making it easy for people to follow the session after it took place. More could be done, but those two concrete steps have already done much to ensure that all stakeholders, including Member States, have an easier time following all the proceedings and help improve the effectiveness of the overall process. The Representative stated that information and communication technologies could be a wonderful tool to facilitate universal access and wide participation beyond cultural, geographical and financial barriers. In order for them to do so, it was important that they be used wisely and formats and protocols were chosen that that did not exclude any business model, stakeholder group or operating system. All WIPO on-line activities, including the WIPO Partnership Database, around which the proposal was built, should be conducted through open standards and accessible formats. Open standards in this context mean publicly documented and freely accessible formats for which at least

2 implementations exist, one of which should be free software so others can take it for reference and study as well as adapt it to their needs of multi-lingualism and accessibility. The format should be available on all three major families of desktop operating systems used today. Additionally, it was necessary that no such format actively mandates the use of proprietary software so as to not exclude people who wish to maintain control over their own information structure an issue of increasing importance for many Member States. Only, the open document format, ODF, fully fits this bill in the realm of all its applications. It should, therefore, be used for all future activities. The Representative submitted that it would gladly offers its expertise to WIPO for more in-depth elaborations of these issues and other areas. The Representative concluded by stating that all proposals seemed to share common ground in wanting to make concrete improvements in this area. It was on those grounds that it hoped that the basis had been made for a small step towards consensus of all Member States.

150. The Representative of the European Digital Rights (EDRi) said it represented 21 privacy and civil rights organizations in 14 European countries. It welcomed the opportunity to speak on the proposal tabled by the United States of America on Internet-based tools to facilitate development. It shared with the United State of America the belief in the power of the Internet and Internet accessible information as IP enforceability was not one of the strengths of the Internet environment. EDRi added that the protection of technological protection measures, established in the WIPO Internet treaties, was an attempt to address that challenge and that ten years later, that attempt remained highly controversial and had not been proven to work. They heard from a representative of the International Federation of the Phonographic Industries, that the on-line music market, was finally taking off and even if it was true, it was not related to Digital Right Management (DRM) at all. They said that the largest on-line music provider, Apple iTunes, allowed users to write standard red book audio CD's, which then can be converted into formats such as Ark Vorbis or MP3 with standard tools. The Representative said that the second largest service, E-music.com, with more than one million titles, from 3800 independent record labels, around the globe, was selling more than 3.5 million songs per month, was not using any protection technology at all, but was selling clean, unencumbered high quality of MP3s, which did not prevent but rather enabled them, to become number 2 in a difficult market place. So, the utility of DRM for turning the Internet into a market place, and therefore, the WIPO strategy of protecting these protection measures, is not proven to have worked. The Representative added that conversely, the harm DRMs were causing to the interests of consumers and industries, alike, had shown itself time and again. The Representative said that large-scale distribution and collaboration, was one of the proven strengths of the Internet. They found out that what had been termed, Commons based peer production, had unleashed a tremendous wealth of creativity in science, software, encyclopedias, textbooks, music and many other areas. They noted that those knowledge resources were freely accessible to people in the developing and the developed world alike, and that the necessary prerequisite for that collaboration was that the rights to those jointly produced works were held in common. The Representative concluded by saying that they agreed with the proposal on several points and that protection of IP was indeed only one factor that lead to economic growth. EDRi added that in order to fulfill its mandate, in a balanced way, WIPO in its assistance to Member States should convey the importance of the public domain, as outlined in the Chilean proposal. It explained that the dangers of overprotection limit the opportunities given for education, innovation and employment through commons licensing. It pointed out that assisting Member States and their Industries and finding the adequate level of IP protection could reap the potential of commons based, free and open collaboration, that the Internet held for economic and cultural development. While they believed in the power of information and communications technology, they disagreed that an on-line database could achieve development.

151. The Delegation of the United States of America said it had maintained that WIPO, certainly had a development agenda, and had addressed development concerns in its work, since becoming a specialized agency of the United Nations in 1974. From the start, the Delegation had indicated its willingness to discuss proposals aimed at strengthening WIPO's development agenda and was constructively engaged in those discussions. The mandate from the 2004 and 2005 General Assemblies had been to discuss proposals relating to a WIPO development agenda, including the original proposal, submitted by Brazil and Argentina, as well as other proposals submitted by Member States of WIPO. With the goal of strengthening WIPO's existing development agenda and in a spirit of cooperation, the United States of America had submitted its proposal for a WIPO partnership program. Since the 2004 WIPO Assemblies, they had discussed numerous proposals, aimed at strengthening WIPO's development work. During those discussions, the Delegation of Honduras had expressed support for several elements of the proposals under consideration and it hoped that concrete and practical results might result from those discussions. However, there were some the United States of America could not support. Primarily, those were based on two premises, they could not accept. Namely, that WIPO had not addressed development concerns, and that intellectual property hindered development. As Group B had indicated in its general statement earlier that week, only those proposals which enjoyed the agreement of every Member State had a realistic chance of being dealt with after the Second PCDA session. The Delegation hoped that its proposals might be among those agreed to by all the Member States, and expressed its disappointment, with some of the reactions, to its proposals. The Delegation said that while the original proposals by Brazil and Argentina were often referred to by that Delegation as "The Development Agenda", it was yet not the development agenda of WIPO's 182 Member States, unless and until it was embraced by the broad WIPO membership. That was something they had not seen in their discussions to date. The Delegation urged other delegations to look beyond their own proposals and find areas of agreement, and select concrete and practical improvements to WIPO's development work, so that it could be agreed upon. The Delegation expressed its willingness to consider those proposals, and urged other delegations to also show flexibility, so that consensus could be reached on a positive outcome. The Delegation briefly addressed a few specific points, raised by the Delegation of Brazil saying that the purpose of the WIPO partnership program was not to privatize WIPO development assistance, but to augment it by inviting outside institutions - both public and private - to partner with those countries, on a voluntary and demand-driven basis. It added that many countries were already doing so, as noted by the Delegation of Panama. The Delegation of Brazil also stated that counterfeiting and piracy were not IP and development issues. The Delegation disagreed and reiterated that counterfeiting and piracy hindered development and were closely related to IP and economic growth. The Delegation added that those who were fortunate to see the excellent Nigerian film show on February 21, 2006, saw African artists discussing the damage that piracy did to the creative sector. The Delegation added that efforts to address piracy and counterfeiting were within WIPO's mandate. The Delegation associated itself with the eloquent interventions made by the delegations of Côte d'Ivoire and Romania to underscore that point. It added that the contention that IP enforcement was outside the WIPO mandate confounded them, particularly, due to consensus decision of the General Assemblies to establish the Advisory Committee on Enforcement. It was also covered by Article 3 of WIPO Convention, that sets forth WIPO's mission to promote the protection of intellectual property throughout the world. The Delegation said that most people would agree that there could be no protection of IPRs, without enforcement. Furthermore, the WIPO General Assembly had unanimously approved the 1995 WIPO-WTO Agreement under which WIPO could provide assistance to WIPO and WTO Members, for the implementation of the TRIPS Agreement, which included a large



section on IPR enforcement. The Delegation pointed out that the Delegation of Brazil had stated that rather than looking at national IPR deficiencies, they must look at the deficiencies in the international IP framework. The Delegation said that it was ready to hear what specific IP policies hindered development, or what lack of flexibility existed in the international IP framework. The TRIPS Agreement had numerous flexibilities, including transition periods, including the extension of time upto 2013 for LDCs. The Delegation said that they should attempt to determine what proposals could gain the broad support of WIPO's membership. It would also be useful, and indeed necessary, to have the WIPO Secretariat inform them which of the proposals could be implemented within WIPO's existing budgetary and staff resources. That would facilitate the task of Member States in taking decisions to strengthen WIPO's development work. The Delegation said, in reply to questions raised by the Delegation of Honduras, that its proposal envisaged that WIPO would play a limited, but potentially important role, in assisting Member States achieve their own economic development goals. For example, if a developing country wanted to improve its national innovation system, including research centers and universities, to compete more effectively in the global economy, the Partnership Office could help to identify a regional development bank interested in such a project. On the second issue raised by the Delegation of Honduras, the Delegation clarified that development cooperation activities must keep pace with rapid changes in the legal, business and technological environments. Therefore, to ensure that WIPO used its limited resources in the most effective manner, it would need to gather and analyze information on the current development assistance needs of Member States, with a view towards making its programs and activities as responsive as possible, to the needs of developing countries. The Delegation concluded by saying it would be pleased to provide additional details on its proposals, as required.

152. The Delegation of Honduras suggested that since the objective of the Committee was to prepare future actions, related to the development agenda for WIPO, and as they would like to move as quickly as possible, the Secretariat could prepare some recommendations for Member States, which would enable them to make action-oriented proposals to the General Assembly.

153. The Chair then requested the Delegation of Argentina to present its proposals.

154. The Delegation of Argentina said that before presenting the proposal, on behalf of "Friends of the Development" it wanted to refer to the recent statements made regarding the request to the Secretariat. The Delegation said that it was not in a position to accept the proposal made by Honduras and the United States of America. When it talked about the proposals which might be implemented by WIPO, the Delegation of Argentina talked about WIPO as a body made up of its Members. It added that certainly there was a Secretariat that acted according to the terms of reference given to it, it was up to the Members to decide, when they approved the Program and Budget of the Organization as to what resources they should assign. So, the Delegation found it impossible to accept a recommendation, where the Secretariat was to decide what proposals could or could not be financed. The Delegation stated that that was a decision that had to be taken by the Committee on Program and Budget.

155. The Delegation of the United States of America said that it would be useful to clarify its statement with regard to the WIPO Secretariat. It did not ask for the WIPO Secretariat to tell them, which proposals should be proceeded with. What it wanted from the Secretariat was to indicate, which proposals could be implemented, within the existing budgetary framework and staff resources of the Organization, and what were the financial and staff implications of the ones, which did not fall under that category. It was only then that they would be able to

take formal decisions about what proposals they could proceed with, knowing its budgetary and staff implications.

156. The Delegation of Argentina thanked the Delegation of the United States of America for its clarification. The Delegation stated that, in any case, it did not think that proposals could be examined through budget issues and concerns. The issues being discussed were of a political nature and not budget matters. Therefore, the Delegation said it would continue to insist on the fact, that first of all, the Assembly should take the political decisions which were appropriate to developing policies for the development agenda, and then it would be up to Member States to measure what impact it was going to have. The previous year, the General Assemblies had already demonstrated its flexibility by finding the budget to cover the steps needed to be taken for the development agenda. The Delegation also accepted a certain amount of flexibility in the program and budget so that the Secretariat could work on the basis of programs and funds. The Delegation then went on to present the document submitted by Argentina, Bolivia, Brazil, Cuba, Equator, Peru, Egypt, Sierra Leone, South Africa, United Republic of Tanzania, Uruguay and Venezuela. It mentioned that it has already presented it in detail on February 21, 2006, and so it did not think that there was a need to go any further, with regard to the content. The concrete proposals had been explained and debated in detail, when it was presented in the General Assemblies in 2004. It added that the document reviewed the debates which had been held at WIPO and in other organizations on the developmental agenda, the mandate that the General Assemblies had given the previous year in order to continue with the process in the provisional committee so that they could have practical results in the most efficient and timely manner. The Delegation noted that the majority of proposals that were contained in it were interlinked, under the framework of the debate. The Delegation said that Members might have different points of view on many of the different issues. Despite that, they could see that there were common grounds that united all the proposals. It also noted that even if many proposals were on the table, it did not necessarily mean that there was a high-degree of divergence between the different proposals. The Delegation said that the document contained six questions, to try and help the Assembly to move forward with the proposal and to try and find common ground, from a conceptual point of view, in all the different proposals, which were on the table. The first question dealt with the norm-setting activities undertaken by WIPO. The second one related to studies and research that were being carried out, even independent studies, with regard to the development impacts of IPRs. The third one reflected on technical assistance, trying to find the common points existing in all the proposals. The fourth question referred to the mandate of WIPO, referring to technology transfers specifically. The fifth question referred to access to knowledge, measures, which should be adopted in order to facilitate access and build a robust public domain, for all members of WIPO. The sixth question referred to how the Assembly could create the policy space needed, within the framework of other activities including the norm-setting activities of WIPO. The "Group of Friends of Development" knew that it was possible to fulfill the mandate given to them by the General Assemblies last year, by presenting results and recommendations, to the General Assemblies in September 2006. The Delegation believed that they had come to a stage where it was possible to identify the common elements contained in most of the proposals, and that they should be able to adopt recommendations for action, in the short term. But that would be within the framework of a workplan, which also had medium and long term goals outlined in it, so that it would not have any negative effects on the holistic nature of their approach of trying to establish a developmental agenda. The Delegation said that they would be able to discuss the proposals in greater details, when they turned to item 5 of the Agenda on Future Work. The Delegation added that in parallel with the presentation of the proposal, it would like to say that it was seeing alarm bells ringing between the Members, because the multilateral system must be

based on consensus. The Delegation declared it wanted to continue and highlight the constructive attitude that should be adopted, in order to try to find a way of moving forward on the debate.

157. The Delegation of United States of America added that it would like to thank the groups debating the latest proposal, and that it agreed that the General Assembly mandate, to the PCDA was to accelerate and complete the discussions on proposals relating to a WIPO development agenda and report, with any recommendations to the General Assemblies of September 2006. It also agreed that they must structure and rationalize their work to achieve concrete and practical results. The Delegation did not agree, however, that they should recommend a program of work for the short, medium and long terms. Their mandate was to complete discussions on proposals submitted at the time of that meeting, trying to reach concrete and practical results. That meant to identify proposals, which could enjoy the support of all WIPO Members to move forward. It agreed with the Delegation of Argentina, that they operated on the basis of consensus, and added that it wished to constructively work to achieve such a consensus. It could see that some proposals may be short-term, some medium-term and some long term, but in its view, the PCDA did not need to identify these as such. It added that, rather than using the framework proposed by the Delegation of Argentina and its co-sponsors, it supported the Chair's efforts to cluster proposals under the general headings, pursuant to their consultations, and also supported his efforts to seek Member State reactions on the same. With that, at the next meeting, they would be able to identify the proposals that enjoyed broad support, in order to move them forward. It added that those that did not enjoy broad support in their view, should not be brought forward for further discussion, in light of their mandate to accelerate and complete discussions on the proposals. Looking ahead, the Delegation said that it believed their priority should be to implement those proposals agreed upon, rather than continuing discussions indefinitely on proposals that did not enjoy broad support.

158. The Delegation of Austria, speaking on behalf of the European Community and its 25 Member States, and the acceding countries, Bulgaria and Romania, thanked Argentina and the others for the proposal laid down in the document PCDA/1/5, to structure the future debate and to contribute to speeding up work towards commonly agreed recommendations to the General Assembly, in spite of Members' different positions and ideas on different issues. It said that it supported the principle of organizing their work around themes, and hoped that that exercise would help to bring forward their debate, without prejudice to their position on substance. In that context, the idea of distinguishing that proposal, on which consensus was more likely, and those which needed further consideration, was an approach they whole-heartedly supported in order to make progress.

159. The Chair said that he had held consultations with the Group Coordinators and groups to determine a set of clusters. After that, he had received proposals from GRULAC, Group B, Asian Group and the African Group. On that basis, he was going to prepare clusters with the help of the Secretariat. During the consultations, most groups said they would not like the names to be mentioned along with the proposals submitted under different clusters. The Chair said that he would distribute that list as soon as possible.

160. The Delegation of Brazil said it had a comment on the statement made by the Delegation of the United States of America, regarding the method of work. It would not be possible to achieve any concrete or positive result if delegations proposed that they worked on the basis of prior agreements, on each and every proposition that Members may wish to put forward in their proposals. It added that they needed an exercise for consensus building

between the two sessions of the committee, based on a kind of matrix document which would contain all ideas in the different documents, presented to the IIM and the Provisional Committee. It was not the practice in the Organization for countries to refuse to work on another country's proposal. It added that they had to be inclusive and map out all the different proposals in a single document. That should be the basis to work on, between the sessions, towards a consensus building exercise. It added that that was the type of work it envisaged as an outcome of the meeting.

161. The Delegation of India said the proposals submitted by Argentina, Bolivia and other Members States provided certain ideas on structuring the deliberations on various proposals submitted by the Member States. In its opening statement, it had underlined the necessity and importance of classifying various proposals and common clusters, including for instance, technical assistance, technological transfer, norm-setting, impact studies, management related issues and others. In its view, the work of classifying various proposals under the clusters to be proposed by the Chair or suggested by the Chair in consultation with the Regional groups, was a commendable way for continuing the deliberations in a purposeful manner, which might lead to certain conclusions, or suggestions, in a consensual manner. Some suggestions made earlier related to the availability of resources to implement the proposals. In its view that was premature, because once the proposal has been discussed and agreed upon, the General Assembly would be competent to provide the resources for the agreed proposals. Until those proposals were agreed upon, it was difficult to anticipate or provide further resources for the proposals that were not yet agreed upon. The Delegation was hopeful that the deliberations on clusters and proposals would lead to successful and amicable discussions. That may provide contours of various elements, to form a reasonable basis for deliberations in the intervening period between sessions, and perhaps lead to concrete results.

162. The Delegation of Panama said it would like to thank the "Group of Friends of Development" for the proposal which was submitted for the establishment of a Development Agenda for WIPO. It appreciated and highlighted the fact that the recommendations reflected the fruit of intellectual efforts made on all the different issues raised. They set out integral reforms on the different subjects mentioned, which might translate into substantive changes of the system as it stood today. It supported the proposal, which dealt with a number of issues and highlighted the role that WIPO should play as an engine for development, outlining solid results when faced with the challenges of development. It said that the technical assistance component, had been broadly developed in order to try to find concrete solutions to the different problems faced by developing countries. The group appreciated the efforts made by WIPO and the progress which had been made. It appreciated and agreed with the proposal, that transparency of guidelines for technical assistance was vital, noting the need to evaluate the impact of technical assistance and its effectiveness. The establishment of guiding principles was essential, because those would provide guidance on an equal footing for all Members. Furthermore, it outlined the vital needs to evaluate technical assistance provided by WIPO which would contribute to enabling them to know how WIPO's resources were used and how effective those types of programs were. Furthermore, in the proposal, it was stated that the information should be made available to the public, which would also give the opportunity to see what is taking place in different places in the world as well as different Organizations. That would enable us to share information and avoid duplication in those areas where needed. It also highlighted that technical assistance should be focused on development, emphasizing the need to take into account the different levels of development of countries, not only for the provision of technical assistance, but also in assessing technical assistance. As had already been said, the different proposals presented by delegations participating in the meeting, shared common ground, some of which were complementary.

The majority of those proposals were necessary in order to enable them to achieve common goals, in a positive way.

163. The Delegation of Chile said it would also like to thank the “Friends of Development” for the document which they had submitted. The first thing it would like to highlight was the clarity of the proposal, following the whole process of setting up a Development Agenda. Furthermore, it believed that that was an extremely constructive proposal, as could be reflected in heading III of the proposal in the summary. The proposal was an inclusive one, and enabled them to analyze all the proposals which had been made throughout the process. Organizing the different proposals into six clusters, coincided with what the Chair had proposed and it was pleased to see that Chile’s proposals were reflected in the proposal from the “Friends of Development”. It thought that it was a good way of moving forward in their work.

164. The Delegation of Nigeria, on behalf of the African Group, welcomed the proposals contained in WIPO document PCDA/1/5 of February 17, 2006, that was tabled by the Delegation of Argentina, that morning. African Group members, both individually and separately, called for the proceedings of the PCDA to be conducted in a rational, pragmatic, constructive and structured manner. The statement made by the Delegation of Pakistan, of behalf of the G-77 countries and China, had highlighted the necessity for a structured discussion of the PCDA. In that light, it welcomed the submission of the set of proposals for the way forward in the PCDA, as proposed in the document submitted by the “Group of Friends of Development”. It was the African Group’s expectation, that the proposals contained in the submission by the Group would meet with favorable acceptance of all the Members. Delegations need not be reminded that the “Group of Friends of Development” consisted of 14 important Member States of WIPO, out of which four were African countries. For that fact alone, and also if it became necessary for the commonality of purpose and viewpoints that they shared with the “Group of Friends of Development”, proposals that came from that group would be looked at by the African Group, in a constructive and accommodating spirit.

165. In response to the concerns of the Delegation of Nigeria, the Chair said that the mechanism that had been chosen, was that there would be no proposal excluded, especially as it was up to the delegations themselves to incorporate the proposals under the headings that corresponded in the consolidated document on the proposals made. The Chair impressed on the Committee that there was no possibility that a proposal would be left on the sidelines.

166. The Delegation of the United States of America, in response to the Delegations of Brazil and Nigeria, said that in case there was any misunderstanding of their earlier intervention about the process, the Delegation wished to indicate its full support to the process proposed by the Chair. The Delegation said that it never intended to exclude any proposals from the clustering process, but did indicate that the process seemed to overtake some elements of the “Group of Friends of Development” proposal, in the sense that the Committee was going to have to work with the Chair to come up with the headings, as opposed to accepting the headings initially proposed by the “Group of Friends of Development”. In addition, the Delegation said that while all proposals would be under consideration during the process, it was during the course of the Chair’s consultations at the end of the second session of the PCDA, that the Committee would have to make a decision on which proposals to carry forward. Based on the discussions held since the 2004 Assemblies, the Delegation did not believe that there was or that a decision must be taken by consensus, as referred to by the Delegation of Argentina, but rather that a consensus could possibly emerge on all the

proposals, or on each element of every proposal. The Delegation said that the Committee must examine all the proposals and reach concrete and practical results, so that the process could move forward, as mandated by the General Assembly. The Delegation concluded stating that it had not been their intention to exclude any of the proposals from the Chair's lists.

167. The Chair acknowledged the clarifications made by the Delegation of the United States of America to remove any doubts that might have still existed. The Committee had no prejudgments of any type and would strive to get the best results and outcome, possible from the process.

168. The Delegation of Argentina stated that their comments regarding the program they set forth in reference to the process proposed by the Chair, had not yet been discussed. The Delegation understood that the process, as well as the distributed list of clusters, were issues that were going to be addressed under item five of the Agenda. They reiterated that their proposal was one to gather consensus. It was drawn up in a spirit of pragmatism and there were certainly issues that were more difficult to grapple with than others. The Delegation further stated that where there was nascent consensus, the Committee must try to have results for the next General Assembly, noting that on other proposals, the Committee was going to have to dedicate more time and hold debates until there was some sort of consensus, especially as there was no consensus as yet on those issues. The Delegation said they were not implying that some of the proposals were to be eliminated from the Agenda. On the other hand, the work program they were proposing had short, medium and long-term goals, and it was meant to foster the creation of consensus amongst delegations.

169. The Delegation of Nigeria showed appreciation to the Chair for his reply reassuring the Delegation of Nigeria that nothing would be excluded. It was also grateful to the Delegation of the United States of America for the clarifications on their earlier statements.

170. The Representative of Consumers International (CI) introduced its organization as being one that supported links and represented consumer groups and agencies worldwide. Its membership was made up of over 250 organizations in 115 countries. The Representative said that it tried to promote societies through the defense of the rights of all consumers, especially the poor, marginalized and disadvantaged. The Representative congratulated the "Group of Friends of Development" on its proposals and extended their strong support to all proposals. The Representative welcomed the last document by the "Group of Friends of Development" which tried to facilitate the deliberations of the debate and to move the discussions forward. The Representative then presented a study on Copyright and Access to Knowledge that their Asia Pacific Office had recently published and said it was available at [www.consumersinternational.org](http://www.consumersinternational.org) The Representative briefly outlined the main issues of the study, which included a review of the copyright laws of 11 developing countries in Asia. The Representative said that it would submit its statement to the Committee, as it had direct relevance to the proposals submitted by the "Group of Friends of Development".

171. Speaking on behalf of the Fundação Getulio Vargas (FGV) of Brazil, the Representative briefly described the Foundation as being the leading Brazilian academic institution in the fields of economics, public and business administration. It was founded in 1944 and had since been responsible for the education of thousands of students. The Representative went on to say that the Development Agenda proposal was an important opportunity to achieve the UN Millennium Goals, and as such emphasized that WIPO, as a specialized body of the UN, was automatically driven by the same goals. The Representative further stated that the 2005

General Assembly agreed by consensus to integrate a developed dimension within WIPO. In order to achieve such an important dimension in the near future, the Representative said it was also important to learn from the recent past. The Representative said that the so-called intellectual property system was a relevant tool for development, but it should not be neglected in such a way as to impose significant costs, which then became burdensome, especially to developing countries. Such costs were widely recognized, not only in the present days, but also in the recent past, for example, one had only to refer to the 1958 United States Senate commissioned study on a Sub-Committee of Patents, Trademarks and Copyrights of the Committee on a Judiciary. Within the study, a renowned economist had raised relevant neglected causes of the so-called intellectual property regime, especially in the terms of the patent system. For example, according to the economist, the *“explanation for a long-term patent protection is probably more political than economic, one fact that is that many patent attorneys and few economists were heard by the legislative bodies”*.

172. The Chair invited NGOs to comment on the proposal they were discussing, namely the proposal from the “Group of Friends of Development” and to state what they thought about the proposal since that would help the Committee in its work. The Chair went on to say that if NGOs were going to collaborate and help make that meeting a useful one, that was what they had to do. He noted that if they wanted to make general statements or make propaganda about their organizations, or refer to issues which were not necessarily linked to the issue at hand, they were not going to help the process. The Chair clarified he did not want to interrupt anybody else, but asked those NGOs that were going to read written texts to provide those texts to interpreters so that the interpreters would be able to follow what they were saying. The Chair indicated that if NGOs wanted to refer to the proposal submitted by the “Group of Friends of Development” he would give them the floor, otherwise he invited them to circulate their texts.

173. The Representative of *Fundação Getulio Vargas* (FGV) went on to say that there would be those who disagreed with the conclusions and assumptions of the studies and proposals, while on the contrary there would be those who would give their full credit and support, precisely because of their vision of such proposals. The Representative clarified he had taken the floor to support the proposal of the “Group of Friends of Development” and all the delegations which supported an independent assessment of social and economic impact prior to implementation of any intellectual property treaty or soft law. He stated that it was his organization’s view that adequate planning should take place prior to any taking of action, especially in the norm-setting field. After a treaty was eventually agreed upon, it was their understanding that an independent monitoring of the impact and costs of the implemented treaty would follow. He pointed out that it was also important to emphasize that all the United Nations bodies had to be consulted prior to implementation of any intellectual property treaty or soft law, in order to make an impact assessment study of the benefits and costs of it. The Representative added that independent studies, such as the United Nations Development Program Reports, should not be ignored. The 1999 Report by the UNDP concluded that “tighter intellectual property rights raise the price of technology transfer and risk blocking developing countries out of the dynamic knowledge sector”. The Representative also underlined that in its 2001 Report, the UNDP concluded that intellectual property “can go too far, hampering rather than encouraging innovation and fairly redistributing the ownership of knowledge”. Again in its 2003 Report, the Representative observed that the UNDP had stated that rich countries had taken no real steps in ensuring the transfer of technology in the interest of reducing poverty in spite of their commitment in the TRIPS Agreement. The Representative pointed out that in its previous Report, the World Bank had concluded that preventing erosion of monopolistic returns for the owners of

technology through enhanced IPRs was of doubtful development benefit for the adverse developing country. The Representative mentioned the 2002 Report of the United Kingdom Commission on Intellectual Property Rights which stated that the intellectual property system was being used more for protecting investments than for stimulating innovation and creativity, and that intellectual property should not be seen as end in itself but rather as a means for contributing for the great of public good and for the fulfillment of the human economic and social rights. The Representative further noted that the private sector had also shared those conclusions. Likewise, he mentioned that the Business Software Alliance which represented the largest software corporation in the world, had issued a report in 2005 stressing several side effects of the patent systems' increased reliance on patents has also resulted in a number of practices that cause disruptions. First some people had accumulated patent portfolios, not to further innovation and development of new products, but to turn those portfolios into profit centres. Those individuals had used their patents to compel others to license technology from them.

174. The Representative of the Free Software Foundation Europe (FSF Europe) indicated that his organization fully supported most of the notions expressed in the proposal made by the "Group of Friends of Development". In particular, he wished to highlight the importance of the need for policy review and evaluation on the policy making level, and a possible treaty on access to knowledge. The Representative went on to say that FSF Europe was also strongly in favor of protecting the public domain from re-privatization. He recalled that, as was pointed out by the majority of delegations, the WIPO tool-set was supposed to serve the public domain by allowing a limited monopoly in return for expanding the reservoir of human knowledge, namely the public domain. That said, the Representative added that it seemed that the notion of software was sadly lacking from the "Friends of Development" proposal as it was lacking from some of the other proposals. The Representative indicated that FSF Europe believed that users of free software had no less right to publish the result of their work under a copyright license of their choosing, and that it also believed that software offices around the world should have full information about the licensing options, including releasing the software as free software, which was an enormously successful model in the social, political and economic sense. The Representative acknowledged that even though it might seem counter-intuitive to some, free software - under licenses providing the freedom to use the software for any purpose, such as the freedom to study the software in order to learn how it functioned, the freedom to adapt the software to the needs of any person or group, and the freedom to distribute that software in both the original and modified form - had greatly contributed to human kind in the past 20 years. He added that those freedoms provided by free software were central in bringing about the Internet and had enabled people around the world to train themselves and others. Those freedoms allowed people to adapt the software to their language and culture to support and accommodate their abilities and gave them the power to make sure that they would be the ones who controlled the digital infrastructure. The Representative stated that free software would still be doing that in the future, and while it was true that people and companies contributing to free software were useful for all of society, companies large and small around the world also proved economic success of the free software model. In the Representative's view, all software developers around the world deserved to be fully informed about their choices and WIPO should include free software in all of its activities. The Representative stated that WIPO should not only promote the use of a proprietary software by Member States or other organizations it interfaced with, since authors and users of free software were no less entitled to make their free choices of license, and WIPO should not exclude them precisely on the grounds of their legitimate choice of copyright licensing. The Representative concluded by saying that FSF Europe found it necessary to explicitly include free software in the proposals and future activities.



175. The Representative of IP Justice indicated that IP Justice had coordinated a group statement that had been endorsed by 138 public interest NGOs from all four corners of the world to express their complete and united support for the “Group of Friends of Development” proposal. She further observed that since the vast majority of those groups could not be there that day to express their views, IP Justice carried their message to that forum through such group statement. First, the Representative indicated that IP Justice fully supported amending the WIPO Convention to include explicit language incorporating a development dimension. In IP Justice’s view, as a United Nations Specialized Agency, WIPO had an obligation to promote the application of intellectual property rights in a manner that promoted economic, social and cultural development in both developed and developing countries. Second, the Representative pointed out that IP Justice fully supported consideration of a treaty on access to knowledge and technology. A specification of user freedoms was crucial for establishing the appropriate balance between author’s rights and the public interest, and that was critical for enabling development in disadvantaged countries and consumer rights everywhere. Particularly because rights holders often curtailed user rights by applying technological protection measures (TPMs) to copyrighted works, a clear demarcation of user rights was necessary to maintain the traditional balance of rights. In addition, the Representative indicated that they endorsed the reforms to WIPO norms and practices as outlined in the “Friends of Development” proposal. Third, the Representative observed that with regard to weighing the cost and benefits of intellectual property rights, WIPO had to adopt norm-setting principles and guidelines that would balance public access and competition against monopoly rights, with a unique evaluation for each country. Four, given the fact that intellectual property rights were not ends in themselves, the Representative indicated that WIPO had to carry out independent evidence-based development impact assessment in developing countries to ensure that application of those rights actually advanced public goals by promoting innovation, creativity and technical development. Five, the Representative remarked that a one-size-fits-all extra large approach to intellectual property rights did not foster development in all countries and that expansive application of those rights favored wealthy in developed countries and maintained the current imbalance in access to knowledge and information that the development agenda was intended to remedy. In its view, WIPO had to recognize the right of all countries to design development strategies according to their own national values. The Representative concluded by stating that intellectual property laws had to protect flexibilities and limitations, and also underlined that international agreements and developed countries’ own laws provided for flexibilities and limitations, such as competition policy and compulsory licenses for medicine. In the Representative’s view, those exceptions demonstrated that limiting monopoly rights often achieved important public benefits, and therefore WIPO technical assistance programs had to promote the full range of flexibilities provided for by the TRIPS Agreement.

176. The Representative of the Electronic Frontier Foundation (EFF) recalled that they had previously prepared a briefing paper for Member States on “Technical assistance recommendations in relation to the implementation of technological protection measure obligations in a WIPO copyright treaty and performances and phonograms.” The Representative stated that EFF wished to address two issues in the “Group of Friends of Development” proposal. Firstly, the Representative of EFF wished to express his organization’s support for the “Friends of Development” proposal for discussion of mechanisms to maintain and build a robust public domain, and for the complementary proposal of the Chilean Delegation for a study addressing the importance of the public domain to provide access to the knowledge necessary for social and economic development of nations. The Representative observed that for both developing and developed countries, the

public domain constituted the most significant source of information and collective knowledge for education, creativity and scientific research, and that it also provided the foundation upon which technological innovation could proceed. To provide practical guidance to Member States, the Representative indicated that EFF believed that any such analysis also had to consider recent global developments that had encroached upon the public domain and had limited Member States' ability to maintain the access that was essential to deliver benefits to their citizens. The Representative went on to say that the increasing use of technological protection measures or digital rights management, backed by over-broad national laws, would prevent access to works that were no longer under copyright protection, and that that would be further exacerbated by laws banning the tools that educators, students and scientific researchers, needed to remove such protection measures to be able to access public domain works. The Representative added that as those digital rights technologies became obsolescent, public domain material would become permanently inaccessible to future generations. In his view, those were real problems, the effects of which were already being felt in developed countries. The Representative recalled that in 2003, the United States Copyright Office rule-making process admitted exceptions to the otherwise banned circumventing technological protection measures, for example the United States Copyright Office was asked to grant an exemption to allow access to public domain movies released on technologically-protected DVDs. The Representative further indicated that the Internet archive, the largest collection of materials on-line, had also sought an exemption to allow it to bypass obsolescent technological protection measures that prevented access to software that had been donated to the Internet archive.

177. The Representative of the Civil Society Coalition (CSC) observed that nearly one and a half years ago, 14 WIPO Member States known as the "Group of Friends of Development" had submitted a proposal to the WIPO General Assembly to establish a Development Agenda. The "Friends of Development" called for WIPO to integrate the development dimension into the core of WIPO's program of work. He recalled that their basic concern was to ensure that WIPO's mandate, government norm-setting activities, technical cooperation, and transfer of technology, were driven towards development-oriented results. The three WIPO intersessional intergovernmental meetings brought a rich tableau of proposals that concretely addressed those concerns. In that context, the Representative indicated that CSC welcomed the proposal, PCDA/1/5 submitted by the "Group of Friends of Development", published on February 17, 2006, which provided a constructive template for framing the development agenda discussions. The Representative noted that the new proposal identified six common themes running through the proposals presented thus far. He added that the CSC felt that such a mechanism would ensure that all of the proposals submitted were adequately addressed at the forthcoming sessions of the PCDA and not merely consigned to the dust-heap of history. In particular, the Representative emphasized the support of the CSC for proposal five submitted by the "Group of Friends of Development" for WIPO to "facilitate access to knowledge generally around world and specifically in developing countries, for example by means of a treaty on access to knowledge", in the light of the growing importance of access to knowledge. With that in mind, the Representative welcomed the International Bureau's efforts in facilitating discussions on access to knowledge, specifically the WIPO Sub-Regional Roundtable on the Copyright-Based Business Publishing and Access to Knowledge to be held in Colombo, Sri Lanka, the following week.

#### Agenda Item 5: Future Work

178. The Chair invited the delegations to conclude their work on that day by considering Agenda item 5. But before they looked at that, he said that he would like to apologize for

having been strict with the NGOs. What he was trying to do was to ensure some discipline in the way they approached their work. He did have to interrupt a few speakers to remind them to stick to the particular issue at hand. He did not want to be offensive or strict with any NGO in particular and he did apologize if anyone was offended by what he had to say. It was not his intention to offend anyone. But he did want to ensure that they had some discipline in their meetings. He thought NGOs could make an extremely valuable contribution to the work that they were doing so he did apologize once again if any NGO or any speakers felt offended by what he had to say. The Chair said that he had distributed the paper with the set of clusters on the basis of which he would like to receive proposals. The groups should indicate which cluster their proposals should be placed in. He stated that in his consultations the day before, they had agreed that no proposal should be placed under more than one cluster because they had many proposals. If they decided to include proposals in more than one cluster, their work would become extremely complicated and difficult to complete. The Chair proposed that the groups should present their proposals to the Secretariat at 10.00 a.m. on Friday, February 24, 2006. The Secretariat would then prepare a consolidated list of proposals under the different clusters and circulate the same by 2.30 p.m. the same day. They could then meet in plenary at 3.30 p.m. to look at the draft document. The Chair continued that he would also work on preparing the Chair's Summary which would be a factual account of the meeting. The Summary would also be circulated at 2.30 p.m. the following day for adoption. He said that he intended to hold informal consultations with delegations, between the two sessions to determine how they should proceed in June 2006. He further stated that he would like to get a very clear idea about what they were going to do in the June session to achieve their objectives.

179. The Delegation of Argentina thanked the Chair and said it wanted to talk about the methodology. It was the understanding of the Delegation that the issues identified in the list did not have any order or priority. What it wanted to know was how they incorporated the proposals under each of those headings. The way it understood it was that the proposal was to list the different proposals under each cluster and asked whether that was correct. If that was the case, it would like some clarification from the Chair on why they could not follow a logic of using the structure that it had just proposed in a comparative table, showing one issue in relation to another, so that they could have a horizontal perspective, rather than a vertical perspective of the various proposals. It said that the reason why it was asking that was that they were trying to identify the connections between the different proposals and find convergence. It pointed out that they could be more focussed in their work if they could see the different proposals from a horizontal perspective, rather than a vertical one. If they were going to look at the structure, as suggested by the Chair, they would have difficulties identifying the coherence of the proposals they were working on. Therefore, it would like to hear what the problem was with working with such a horizontal comparative table. If there were no problems with that proposal, it would be a much more useful way of working in the future. It would help with the discussions and the negotiation process that would take place.

180. The Chair said that in the initial stage, they needed to have something very easy and quick to develop. He thought that the comparative table suggested by the Delegation of Argentina could take time to develop and each delegation would be responsible for doing that, in order to help the way it considered the various issues. The vertical structure was a much easier way of working. He thought it was better for the Chair to make a vertical list, otherwise it might prejudice the way they addressed the proposals. The Chair invited each delegation to decide where their proposals should be placed and that was why he did not intend to present the table in the form that was being suggested.

181. The Delegation of Argentina clarified that perhaps in order to understand this they had to make a subjective judgement. When it was talking about a comparative table, it was simply talking about the way of organizing their work in putting those proposals into columns. It was not talking about itself or the Secretariat deciding where to put things, but was simply suggesting five, six or seven columns, in which to place the various proposals identified by members themselves. But, it continued, that if that caused a problem, and an irreconcilable one, as clarity was not always their strong point, all the work that they would be doing before the following day, was to prepare a list under one of those clusters. Therefore, all that they needed to do was to check that the list of 22 issues sent by Argentina were reflected there. It said that there was nothing to adopt there, nothing to decide, they were simply asking them to list proposals under that structure that they had provided them with. It said that it thought they could do that very easily. They could send the list to the Secretariat the following morning, and were sure the Secretariat would do a very good job in drawing up the compilation in 24, 36 or 48 hours. It was convinced that the Secretariat would be able to do that perfectly, and did not think that they even needed to check it. If it sent to the Chair a list of 22 proposals and said it wanted four of them under A, four of them under B, etc, it was convinced that the Secretariat would be able to do that very easily. It thought that the day's work would be very easy, maybe it would not be ready at 10.00 a.m., but was sure they could get their group together for a meeting to check the work The Secretariat could then say when it could distribute the document. It further said that they would be able to do that the following day. They would be able to check it, but if all that they were going to do was to list the proposals under the different clusters, A, B, C, D or E, five from the "Group of Friends for Development", seven from the African Group and so on, it did not believe they needed the old complicated process the following day of meetings and compilations being drafted, comments and adoption of the document. It considered it better if they could have a much more flexible process the following day, which would make it much easier for all of them.

182. The Delegation of Switzerland thanked the Chair for the work he had done and stated that it was its understanding that his proposal was a compromise between the different proposals he had received. It said that they were all trying to find common ground. Most important was to achieve progress and to advance. It acknowledged that the Chair's proposal was one they could work with and supported it. It further stressed that it would like to make sure that all six different clusters would get equal treatment, once they were in the second session. The proposals made by the Chair on how to move the work forward, seemed to be quite reasonable so it supported them.

183. The Delegation of Pakistan thanked the Chair for his efforts in producing those clusters and continued that while it was listening to the discussion, it could not resist the temptation of recalling a famous line by an author. It was about dance: it said that a dance was a vertical expression of a horizontal desire. It considered that relevant to the discussions they were having, and because the desire was definitely horizontal, it wanted to have a common ground. The methodology proposed by the Chair was indeed vertical. But it did see merit in the proposal made by the Delegation of Argentina, that if the proponent of the proposals were listed, they could have a comparative analysis. Because, during the inter-sessional period, while the Chair would be engaged in consultations with groups, they would see the proposals that were overlapping. If they had the advantage of those columns, the delegations could also get together during the intervening period and see if they could come closer, and have a stronger foundation for their work in the next meeting of the provisional committee. So in that sense, it felt that it could be useful to have those columns. Secondly, it continued, the Chair had mentioned that there would not be the opportunity for the proponents to place their proposal under more than one of those clusters. It understood that that meant that elements of

each proposal, which were relevant to either of those clusters, would be placed accordingly, but there were certain issues which were cross-cutting by their very nature. For example, the issue of policy space had been brought up frequently during the discussion. It was, for instance, relevant to technical assistance because the Organization needed to provide technical assistance to developing countries with regard to identifying the flexibility, the space that they had with regard to development strategies in their countries. It was also relevant to norm-setting exercises, because there also it needed to be seen how to make that space available. It was also relevant to assessments, evaluations and impact studies, because again it must be an important goal in those particular impact studies that could be conducted to identify areas and policy space that was available and how it could or could not be effectively used. Those were cross cutting issues in the discussions, which may have to be placed under different headings. In that sense, they would need some flexibility. Perhaps the proponents of the proposals would need some flexibility to place these cross cutting issues under different headings, if it was valid in terms of the line of arguments that they had presented.

184. The Delegation of the Russian Federation thanked the Chair for his proposals and said that they had met all week, not to compare the different proposals, but to examine their substance. The Secretariat had made a vertical listing of the proposals, whereas what they needed was a comparison of the different proposals on the table, so as to be able to make tangible proposals regrouping all the common points.

185. The Delegation of Brazil thanked the Chair for his efforts to provide it with a way forward in their consideration of the different proposals that they had seen and examined throughout the course of those meetings. It also felt that the arguments put forward by the Delegations of Argentina and Pakistan were very solid. It thought that they would not quarrel with the issues as he had put them forward. It thought that the headings reflected the majority of issues that had been dealt with under the different proposals. It said that it could see his point that they were not listed in any order of priority. It thought that that was also important to retain because they should all bear in mind that that was a listing, without an order of priority and provided a guidance for them to insert the different elements of their proposals into a single paper. However, it did cause a difficulty if he was going to have simply a vertical listing of issues using those headings. They might lose some of the flavor of the different proposals and it made it more difficult to evaluate what was the degree of comparability between the different elements, that were contained in the proposals. There were elements that showed up in different documents that had a similar thrust. They should be juxtaposed along the line that was suggested by the Delegation of Argentina in different columns. It continued by saying that the problem of choosing which box to include in each particular proposition was not the responsibility of the Chair or the Secretariat. Countries would indicate under which column and box they would like their proposal to be included, so a judgement would not have to be made by anybody, but the proponent himself, as to where he would like to include it and it would be very interesting to be able to have a very quick method of evaluating qualitatively and quantitatively, the degree to which proposals converged. Additionally, it stated that as they had agreed before, no element of anybody's proposal would be left out of that comparative chart. It would just be a simple chart with columns and countries, including the contents under each box according to their own criteria. It thought that that would be a much sounder basis for them to converge toward a consensus building exercise and an outcome in the second meeting, which would be acceptable to all. Any exercise in which they engaged, required to look at those proposals alongside each other in a comparative fashion. It encouraged the participants not to lose that ability to have a very graphic and quick comparative chart, as an input into their work, so that they could have convergence and not lose track of the similarities that went along the different proposals.

186. The Delegation of Nigeria said that it just meant to underline that it understood the reason behind that decision and it considered that it was possibly a way to accelerate the process in order to come quickly to an outcome. Furthermore, that may be considered a fast and clear way forward. On those points it fully shared the Chair's view. Furthermore, it said that their discussions were time bound. The following day they would end that first PCDA meeting and in June they would have no more than five days and that would be the last PCDA meeting. It stated that they only had two meetings to come up with sets of proposals and decisions or recommendations, which could be submitted in September to the Assemblies. It further stated that that was a tall order within a short period of time. It was, therefore, necessary for them to come out with a working method, which would be consistent with the requirements of that process, so that they would be able to meet the objectives and mandates that they set for themselves. On the other hand, they could not discard any idea that was offered. It continued that the production of a matrix, as suggested by the Delegation of Argentina, was not a bad idea at all. But the time constraint before them was the main problem, if they were to conduct that exercise. It also pointed out that for general agreement, they would have to decide on who would do that matrix and how it would be done. It said that when they went into that process, it may take the rest of that evening and possibly the rest of the following day, but they were to understand that producing such a matrix would serve the purpose of clarity, and further help to compare the various proposals in order to determine their compatibility or divergence in relation to one another. It felt, however, that that should have been done at the beginning of the PCDA. Due to time constraints, they should, however, proceed with the proposal outlined by the Chair. It concluded its statement with a personal reflection. According to the Delegation, discussing the development agenda and trying to reach a set of objectives, seemed to be more like trying to catch a monkey. To do so, they had to have the knowledge. There were many ways to do that, but one needed to know the various ways, otherwise one could never catch a monkey. It thought that that was what they were doing. It suggested to have the know-how. The know-how was to agree on a set of objectives. What had been proposed was one way and it thought it would like to try that and see whether they could catch that monkey.

187. The Delegation of the United States of America said that after listening to all the comments, it found itself very much in agreement with the statement of the Delegation of Nigeria. At that point, in order to proceed, they needed to simplify, not complicate matters. If they spent too much time attempting to reach agreement on yet another matrix, they could possibly lose completely the chance to proceed. It did not feel that there was a need to put proposals under more than one heading, which would further complicate the discussion. In fact, the clusters as listed were quite extensive and of course there was always cluster F, "Others". If they continued to consider ways to group proposals, that could be a very lengthy discussion. The important issue was to consider the various proposals and to move forward towards recommendations. It continued that as it had stated earlier, they too had significant concerns about the time that would be needed to change the methodology. Therefore, it believed they should proceed to considering the proposals, as originally suggested by the Chair.

188. The Delegation of Azerbaijan suggested that Argentina could itself provide a comparative table to the Secretariat on the same day. So, if they wanted to take that initiative, it could ask them to prepare that comparative table. It continued that that would give all parties the opportunity to come to a consensus. If Argentina was volunteering to help the Secretariat, it would also welcome that.

189. The Delegation of Colombia thanked the Delegation of Argentina for providing an alternative, but thought that given the time frame they were working in, they should try to take the easiest and the simplest option available to them. One that would enable them to resolve issues. It thought that the comparative table was not a realistic option, since trying to reach perfection was going to take more time and debate. That type of table would mean that they would not only have to create the table, but decide on criteria, what was going to be compared and how it was going to be compared, etc. Time was not on their side given that they had to finish that session by the following day. It said that without trying to belittle Argentina's proposal in any way, they faced the reality of the time constraint. Therefore, they needed to adopt the most simple, straightforward option available to them. The Delegation had some concerns as to how, and what mechanism was going to be used to define or regroup the different clusters. It asked how were they going to use that in their next meeting. Although that list had no identifiable priorities, sooner or later they would have to identify priorities, just for having a methodology, for the next meeting. In June, they were going to need to know from that list what methods they were going to use. Those issues could be addressed in the consultations.

190. The Delegation of Venezuela felt that the proposal put forward by Argentina and supported by Pakistan would be the better solution, which would enable them to carry out the analysis. It thought that they needed to ensure that there would be quality in the substantive work they had before them, in order to carry out that analysis. It was important that they moved forward, but it thought that they should move forward in the right way.

191. The Delegation of Honduras said that since they began the process of discussions on the development agenda, one of the characteristics of the debate had been that they were trying to make it a participatory and inclusive process. In order to save time, they could begin with the vertical listing and then look at an action or a mandate so that there was a basis to enable them to have that comparative table that would enable them to carry out the analysis. It said that they could do that on the second day of their next meeting of that committee. In that way, they would be moving forward on both processes. Certainly, the vertical process would give them an idea of what should be included under each cluster heading.

192. The Delegation of Romania said that it would like to make three points concerning the process and how to move forward. Firstly, it would try to respond to a question put by the Delegation of Pakistan about cross cutting proposals, which was a good observation. There were some proposals, which were really cutting across all the issues they were talking about, and in that context, a suggestion might be put on other issues. Secondly, and perhaps it was of more of a general nature, the target of that exercise was to reach a conclusion. That should be kept in mind all the time. It had already been mentioned that they were coming to a critical point of time and the debates were quite lengthy. There were over 60 proposals on the table. That was a very important thing because it did not want to ignore some or treat others in a superficial manner. Thirdly, the exercise they were suggesting about putting proposals into clusters was also a very good opportunity for either proponents or groups that had worked together, to reach a common proposition. It suggested that they reconsider their proposals, and see whether there were proposals that were redundant, that came from different groups, but aimed at the same thing. So it would be a simple mathematical operation to remove some of them that were repetitive. That might help to reduce the number of propositions and prevent them from being repetitive. Finally, it said that a horizontal or vertical approach including columns were both workable. Perhaps, if they just started the process the way it was suggested, that all participants put their proposals in the appropriate cluster and concentrate then on working on it. Meanwhile, Argentina might work on the other issue, on

the comparative approach, with the columns in order to identify what they called the “threads” that linked the respective propositions. It said that on their return in June, they may find the results of that exercise helpful in assessing the proposals.

193. The Delegation of Argentina expressed its surprise about the number of things that could be discussed in an international meeting. It felt it was incredible that they had been talking for an hour on the horizontality or the verticality of a table. It further said that it was a good thing that their President did not pay much attention to how they were spending public money in that way. It addressed its words to the Chair and said that there may be some misunderstanding on what the Delegation was asking for. It was not trying to create or generate a methodology where one would come to some sort of rapid conclusions on the comparability of proposals; they were just putting proposals, side by side. Each proponent would simply tell the Secretariat where its proposals should go. So under the columns, they could identify the proponents themselves and that would even facilitate their task further. It suggested to circulate a sheet of paper for consideration of the meeting.

194. The Delegation of Mexico agreed with previous speakers that they needed to get to some conclusions and said that it considered the proposal of the Chair useful and suggested its adoption.

195. The Chair said that he would circulate the list suggested by GRULAC as referred to by the Delegation of Argentina. He suggested that they adopt the simplest method. A comparative analysis appeared to him as an enormous task. The important thing was to have an initial document, as a starting point, which did not mean that they could not develop a more comparative analysis later in different groups. Their task was to identify measures to be recommended to the General Assembly and it was always useful to indicate where those proposals came from. He said that in order to avoid prejudices and work on a very impartial document, it would be preferable not to refer to the delegations who had made the proposals, because that made it easier to hold the debate with a view to achieving concrete results. Some proposals and counter proposals could have gone in any of those columns, in fact many of them could come under various headings. Perhaps one might find it difficult to choose where one proposal should be placed. He, therefore, suggested to try to make an effort to put the proposals under the most suitable headings and avoid wasting time. That was important for the process of the provisional committee. The Chair then suggested that the proposals be handed over to the Secretariat the following morning at 10.00 a.m. The Secretariat would circulate them along with the Chair’s Summary and then they could meet at 3.30 p.m. to review the document.

196. Resuming the following day, the Chair thanked the delegations for submitting their lists in a way agreed the previous day. He particularly, thanked the “Group of Friends of Development”, which had done enormous work in including 66 proposals in the document submitted that day. He had met with the Secretariat before the meeting to review the position, and as they had not received the proposals from the “Group of Friends of Development”, he had requested the Secretariat that once the document was ready, it should be prepared for circulation, as a supplement to the original document that had been made available to the delegations, by the time agreed. That had now been done. The Chair pointed out that the “Group of Friends of Development” mentioned the source in their document, whereas there was no such mention in the other document. The Chair requested the Secretariat to produce a consolidated document, with no indication or mention of the source, particularly because that way the Chair could immediately start consultations, trying to adopt measures that were



acceptable to all. However, if the delegations wanted the source to be mentioned, he would do that.

197. The Delegation of Switzerland said, on behalf of Group B, that it would like to express its surprise about three things. First of all, it was very surprised that the meeting had ended up with two papers for the time being. Secondly, it was surprised that on one paper, there was still a mention of the source and thirdly, it was surprised that they had 66 proposals on it. The Delegation concluded that the spirit of compromise was not shared by all participants. So it suggested taking a break in order to give regional groups the chance to discuss how to go forward.

198. The Delegation of Argentina said that it hoped that the Delegation of Switzerland, who spoke on behalf of Group B, was not identifying the spirit of cooperation with the number of proposals. It hoped that the Delegation of Switzerland had not confused the two things. It said that it was sure that the Delegation of Switzerland was not suggesting that the level of cooperation was low. The reason why they had more proposals was because they started that exercise based on a different criteria, and that criteria of identification helped the meeting to have less proposals, in order to structure it in a way to handle the "*chapeau*" from the original proposal. That way they had 20 proposals. But when they separated them in detail, the numbers were higher. For example, under the issue of transfer of technology, they had eleven proposals. It stated that they could have had a more concise list, if they had approached it from a different angle. But, in any case, that was the basis on which they had worked, and they should not be discredited, simply because they produced a large number of proposals. The Delegation said that it did not have any problems in restructuring the list, but thought that that it would complicate the Secretariat's work as it would be difficult to recognize the proposals by group. It illustrated how it would not be possible to make out the source and theme from the list which had been prepared, and suggested another way to follow a logical order.

199. The Delegation of Côte d'Ivoire said that since the beginning of the meeting, 95% of the documents were made available in English and that it was very difficult for French speaking delegations to react properly. He requested for the French translation of the published documents.

200. The Chair said that also applied to documents in Spanish. The problem was simply time constraint and lack of resources to provide immediate translations. But they were going to ensure availability of documents, not only in French, Spanish and English, but also in Chinese, Russian and Arabic, which were also official languages of the Organization. He explained that it was going to be done later and at that first stage, the meeting had to work in the most common language, namely English.

201. At the request of delegations, there was a brief recess. On resumption, the Chair said that the Delegation of Argentina had agreed to have the names of the proponents removed from the list of proposals. He would now request the Secretariat to prepare a consolidated list, without the names. That would be the basis for the consultations from March.

202. The Delegation of Kyrgyzstan said that its Group had taken part in the discussions actively and had agreed with the order of work proposed by the Chair. That was good for continuing with the discussion on the development agenda.

203. The Delegation of Thailand speaking on behalf of the Asian Group recognized the efforts and contribution made by the “Friends of Development” on the proposals for the Development Agenda. It appreciated the compromise made to take out the origin of the proposals and support the Chair’s proposal.

204. The Delegation of Croatia speaking on behalf of the Group of Central European and Baltic States welcomed the proposals. It said that the important thing in front of them was to find out how the present clusters could be used to organize their work. It added that it understood that the deadline for submission of new proposals for consideration was until the beginning of that session. They were to be limited to the proposals that were put forward in “operational and actionable” manner. Therefore, it would not be able to accept the proposals that had been submitted later. Of course, for this the proposals would need to be analyzed, but that could be done during the process of informal consultations. It also commended the Delegation of Argentina for agreeing to remove the names from the list.

205. The Delegation of Switzerland said Group B supported what had been said by Croatia, on behalf of the Group of Central European and Baltic States. It expressed its thanks to the “Group of Friends of Development” for showing flexibility and not insisting on mentioning the source of origin of their proposals. Group B wanted to achieve results and they would go on working constructively. The Delegation said that the draft Summary by the Chair and the list of proposals was a good basis for them to work on the Development Agenda. It requested the Chair to ensure that a consolidated working list did not include proposals submitted later than on the evening of the first day of the First Session of the PCDA.

206. The Delegation of Nigeria, speaking on behalf of the African Group, thanked the Chair for reflecting all the proposals submitted in operational language to the meeting, which was redrafted and given under specific headings. It had gone through the draft Summary by the Chair and noted that all its proposals been incorporated in the draft Summary. It commended the “Group of Friends of Development” for their proposals. It noted that a number of issues dated back to the previous IIM meetings. For that reason, it would like to see that those proposals brought up by the “Group of Friends of Development” were not shunted aside or put in bins. In order for their work to continue and to come to a fruitful conclusion, no proposals should be let behind or excluded. As the English say, “the more, the merrier”. It supported the idea of a consolidated list. Wherever proposals were duplicated, they could be produced under one heading. If that was done, the process would be simplified and the document shorter.

207. The Chair said he would draw up all the proposals and during consultations check whether there were any new proposals on the list. If any delegation had no doubts, he would like to assure them that that was only a working document and not binding on any one. He was sure that new ideas would be thrown up during the process of consultations. He would do his best to make concrete recommendations for the General Assembly.

208. The Delegation of Argentina said that it would like to thank everyone for the work during the week. It added that the Chair’s last words had clarified the issue in paragraph 7 of the conclusions. In the last sentence of paragraph 7, it was indicated that the annex would form the basis for discussions at the second session of the PCDA. The annex or proposals within the annex, might change somewhat in the course of consultations, so they might have a more simplified version of the annex or a restructured version. So its understanding was that the annex could change during the course of consultations.

209. The Chair said that the annex was the only document they officially had at that stage. No one was committing themselves to any changes in particular, but that was what they intended to find. An attempt would be made to synthesize the proposal during the course of consultations. If in the process of consultations they came up with a few proposals, they could work on that basis.

210. The Delegation of Jordan expressed its appreciation to the Chair for the proposals and for the contribution he had made to lead to a consensus, with regard to preparing clusters and proposals of the different groups and countries. It said that it would also like to thank the Secretariat of WIPO for preparing the list that included those suggestions and proposals, it had referred to, based on the agreement that the Member States had reached.

211. The Delegation of Pakistan said it would like to join the chorus of gratitude to the Chair for his leadership in dealing with complex issues in the meeting. It agreed with the outline of work provided and looked forward to continuing consultations during the intersessional period, between that meeting and the meeting in June 2006. It hoped that the same spirit of consensus and positive attitude that had helped them reach that stage, would continue to be with them during the intervening period. It hoped that they would be able to deliberate on the mandate that was given to us them in the last Assembly. It believed that in the form of the document that was going to be produced now, they would be able to identify ingredients of synthesis. It had already been mentioned that there was a possibility of combining or merging proposals, that may be identical in that document and could form the basis for a further movement in a particular direction. It hoped that the Chair would be able to have a true consultation to produce the basic document, that at least identified the least common denominators that they had, with regard to a concrete and result based approach that was required in terms of the mandate given to them by the Assembly.

212. The Delegation of the Russian Federation associated itself with those delegations, which had spoken to express gratitude to the Chair and for his skills in search of a consensus. It assured the Chair of its support and to the method of work that was proposed. It also expressed its interest in participating in the intersessional consultations and assured the Chair of their intention to work during the consultations and the final session in the most constructive spirit.

213. The Delegation of Brazil said it would like to express its appreciation for the efforts by the Chair to achieve a positive outcome during the meeting. It wanted to be clear on how to proceed forward. First of all, if the annex was to become the basis for discussions at the next session, it should be all inclusive and contain all the proposals by all parties, without any merging of different elements, because that was the basis for discussions at the next session. It understood that holding consultations between the two sessions would mean that the consultations would be inclusive and include representatives from all sides that had made proposals for a Development Agenda for WIPO. It was their understanding that the annex they had not seen yet, but which would simply be the addition of the two lists that were before them, would be the basis of discussion at the second session of the PCDA. However, that would not prevent countries from presenting proposals based on the annex. Those proposals may assist the meeting to make recommendations to the General Assembly. Those proposals may even be the outcome of the consultations between the two sessions. Therefore, it understood that there was always the possibility of members making proposals for the second PCDA, which would be based on the annex. Those proposals could be presented with some kind of action oriented language or language that perhaps could assist us in making recommendations to the General Assembly.

214. The Delegation of Switzerland underlined that the meeting was not intended to be an interpretation exercise of the many interesting proposals received, and therefore saw no merit in undertaking a drafting exercise based on the interpretation of such proposals.

215. The Chair acknowledged that a consolidated document with all the various proposals submitted by delegations was presently available. The document would not prejudice what might happen during informal consultations and could not be used as the basis for decision making. The only decision-making body would be that same body which would meet in June. So for the moment, they had the present working document, and if consultations were successful, achieving wide ranging support or consensus, they would submit to the next session a suggestion for a new working document. But that was only a hypothesis at the moment, a possibility and only the delegations could decide whether or not that hypothesis would become a reality. They could not prejudice what might happen over the course of those consultations. It would be, of course, very simple to say that on June 26, 2006, they were going to get together and look at that paper and discuss it. But he felt it was more realistic to say that they were going to undertake a round of consultations between the two sessions. He hoped that they could achieve some form of consensus on a document that all could be comfortable with. He went on to reassure the audience that he was going to continue to conduct that informal round of consultations, as well as the formal part of the next session, in the most transparent way possible.

216. The Delegation of Colombia supported the approach proposed by the Chair. It also stressed that inter-sessional consultations, taking place between the two sessions, needed also to address a very important issue, i.e. defining the criteria for dealing with the proposals at the next session. They needed to decide how they were going to address the proposals in order to arrive at the next session. They would need to go straight to the substance and be able to assess the merits of the proposals, before they could make any recommendations to the General Assembly.

217. The Delegation of Romania supported the remarks of the Delegation of Colombia and the suggestion of having inter-sessional consultations, in which it was ready to take active part. It supported the Chair's view that they could not prejudice what might happen at the end of those consultations. However, notwithstanding that position, and with a view to reaching a consolidated workable list of proposals (which might combine old ones as well as new ones), it stressed that it was important to remember the decision taken by the General Assembly itself (and not by the present Committee) to put an end to the submission of proposals. The Delegation, therefore, pointed out that their effort in the inter-sessional period would focus on distilling the essence of the proposals already at hand, in order to consolidate a consolidated working paper that would have to be discussed in June.

#### Agenda Item 6: Summary by the Chair

218. The Chair presented the Draft Summary by the Chair and as no comments were made, it was adopted (reproduced in paragraph no. 220).

Agenda Item 7: Closing of the session

219. The Chair concluded the First Session of the PCDA and said they would meet again at the Second Session on June 26, 2006.

220. The following Summary by the Chair was agreed by the Meeting:

“1. The WIPO General Assembly, in its session held in September – October 2005, decided to “constitute a Provisional Committee to take forward the IIM process to accelerate and complete the discussions on proposals relating to a WIPO Development Agenda and report with any recommendations to the General Assembly at its September 2006 Session”. It was also decided that the “Provisional Committee shall have two one-week sessions, and the deadline for submission of new proposals shall be the first day of the first session of the Committee”. The First Session of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), was held from February 20 to 24, 2006.

“2. Ninety-eight Member States and 48 Observers participated in the session.

“3. The PCDA decided to admit, on an *ad hoc* basis, two non-accredited Non-Governmental Organizations, (NGOs) namely Association of 3D-Trade-Human Rights-Equitable Economy and The Authors Guild, without implications as to their status for future WIPO meetings.

“4. The PCDA unanimously elected Ambassador Rigoberto Gauto Vielman, Permanent Representative of Paraguay, as Chair, and Ambassador Muktar Djumaliev, Permanent Representative of Kyrgyzstan, as Vice-Chair.

“5. The PCDA adopted the draft agenda as proposed in document PCDA/1/1 Prov.

“6. The PCDA discussed a proposal by the African Group, entitled “The African Proposal for the Establishment of a Development Agenda for WIPO” (IIM/3/2 Rev.), a proposal by Chile (PCDA/1/2), a proposal by Colombia (PCDA/1/3), a proposal by the United States of America, “For the establishment of a partnership program in WIPO: An elaboration of issues raised in document IIM/1/2” (PCDA/1/4), and a proposal by Argentina, Bolivia, Brazil, Cuba, Ecuador, Egypt, Iran (Islamic Republic of), Kenya, Peru, Sierra Leone, South Africa, the United Republic of Tanzania, Uruguay and Venezuela, entitled “Establishment of a Development Agenda for WIPO: A Framework for achieving concrete and practical results in the near and longer terms” (PCDA/1/5).

“7. After consultations with the Regional Group Coordinators and the Member States/Groups, which had submitted proposals in ‘actionable and operational form’, the Chairman prepared a set of clusters and requested the said Member States/Groups to place their respective proposals in the most appropriate cluster. These clusters and proposals are contained in the Annex to this Summary. The Annex will form the basis for discussions at the Second Session of the PCDA, scheduled to be held from June 26 to 30, 2006.

“8. The PCDA noted that the Draft Report of the First Session would contain all the interventions made during the current session and also the Chairman’s Summary. This Draft Report will be prepared by the Secretariat and communicated to the Permanent

Missions of the Member States by March 17, 2006. The Draft Report would also be made available, in electronic form and on the WIPO website, to the Member States, IGOs and NGOs by the same date. Comments on the Draft Report should be communicated in writing to the Secretariat by April 4, 2006. The revised Draft Report would then be available by April 25, 2006 and considered for adoption at the beginning of the Second Session of the PCDA.”

[Annexes follow]

ANNEX I

PROPOSALS BY CLUSTERS SUBMITTED FOR A  
WIPO DEVELOPMENT AGENDA

A. Technical Assistance and Capacity Building

1. To make technical assistance development-oriented and demand-driven. Furthermore, it should be targeted at specific areas and include timeframes for completion.
2. To develop and improve national institutional capacity through further development of infrastructure and other facilities with a view to making national intellectual property (IP) institutions more efficient and ensuring a fair balance between IP protection and safeguarding public interest. This technical assistance should be extended to sub-regional and regional organizations dealing with IP.
3. To strengthen national capacity for protection of local creations, innovations and inventions in order to develop national scientific and technological infrastructure.
4. To provide increased assistance to WIPO through donor funding, so as to enable the organization meet its commitments in regards to technical activities in Africa.
5. To establish a Trust Fund within WIPO to provide specific financial assistance for least developed countries (LDCs).
6. Development of agreements between WIPO and private enterprises, allowing the national offices of developing countries to access specialized databases for the purposes of patent searches.
7. To expand WIPO's advice and technical assistance provided to SMEs and sectors dealing with scientific research and cultural industries.
8. To request WIPO to assist Member States in setting-up national strategies in the field of intellectual property.
9. To increase financial resources for technical assistance for promoting an IP culture with an emphasis on introducing intellectual property at different academic levels.
10. To request WIPO to establish a voluntary contribution fund to promote the legal, commercial and economic exploitation of intellectual property rights in developing countries and LDCs.
11. WIPO Partnership Program Database: Create a WIPO Partnership Program Database, an Internet-based tool to facilitate the strategic use of intellectual property by developing countries by bringing together all stakeholders to match specific IPR-related development needs with available resources, thereby amplifying the impact of intellectual property development assistance.

12. Competing in the Knowledge Economy: Recognizing the importance to the economic and cultural development of effectively participating in the “knowledge economy,” the WIPO Partnership Office (described more fully below under cluster E) should aggressively seek out potential partners to assist countries making the transition to or competing more effectively in the knowledge-economy.

13. To implement principles and Guidelines for technical assistance to ensure, *inter alia*: (a) transparency; (b) that flexibilities existing in international treaties are taken full advantage of; (c) that technical assistance is tailor-made and demand-driven.

14. To create a web page containing technical assistance information provided by WIPO and other relevant international organizations, in order to enhance transparency, by including, for example, requests of technical assistance made by Member States.

15. To make publicly available all information about design, delivery, cost, financing, beneficiaries and implementation of technical assistance programs as well as the results of internal and external independent evaluation.

16. To establish in the Program and Budget Committee consistent pluriannual programs and plans for cooperation between WIPO and developing countries aiming at strengthening national intellectual property offices, so that they may effectively become an acting element in national development policy. Those programs should be guided, moreover, by the principles and objectives as proposed in document WO/GA/31/11.

17. To take into account the different levels of development of various countries in designing, delivering and evaluating technical assistance.

18. To expand the coverage of technical assistance programs to include matters related to the use of competition law and policy to address abuses of intellectual property and practices that unduly restrain trade and the transfer and dissemination of technology.

19. To provide neutral technical assistance of an advisory nature based on actual and expressed needs. The assistance should not discriminate among recipients or issues to be addressed and should not be perceived as being a reward system for supporting certain positions in WIPO negotiations.

20. To ensure that laws and regulations are tailored to meet each country’s level of development and are fully responsive to the specific needs and problems of individual societies. The assistance should correspond to the needs of various stakeholders in developing and least developed countries and not just the intellectual property offices and right holders.

21. To separate the norm-setting functions of the WIPO Secretariat from those of technical assistance.

22. To establish a Code of Ethics for the Secretariat technical assistance staff and consultants.

23. To make publicly available roster of consultants for technical assistance.



24. To ensure that WIPO technical assistance staff and consultants are fully independent and avoid potential conflicts of interest.
25. To provide technical cooperation to developing countries, at their request, in order to better understand the interface between intellectual property rights and competition policies.
26. To ensure that legal-technical and technical assistance activities provided to developing and least developed countries are able to implement the pro-development provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), for example, *Articles 7, 8, 30, 31 and 40*, in addition to subsequent pro-development decisions, such as the Doha Declaration on the TRIPS Agreement and Public Health.
27. To mainstream development dimension into all of WIPO's substantive and technical assistance activities and debates, including the way in which the Organization deals with "enforcement" issues.
28. To ensure that technical assistance is demand-driven in the sense that it corresponds to the needs and global political objectives of developing and least developed countries, taking also into account the legitimate interests of various stakeholders and not only those of right holders.
29. To orient technical assistance to ensure that national regimes are set up to implement international obligations in an administratively sustainable way and do not overburden scarce national resources that may be more productively employed in other areas.
30. To ensure that technical cooperation contributes towards maintaining the social costs of IP protection at a minimum.
31. To ensure WIPO's legislative assistance tailors national laws on intellectual property to meet each country's level of development and is fully responsive to the specific needs and problems of individual societies.
32. To promote model approaches on how to implement the relevant provisions on anti competitive practices of the TRIPS Agreement.

#### B. Norm-Setting, Flexibilities, Public Policy and Public Domain

1. To request WIPO to examine the flexibilities under the TRIPS Agreement and Doha Summit decisions with a view to giving practical advice to developing and least developed countries on how to enable them gain access to essential medicines and food, and also to elaborate a mechanism to facilitate access to knowledge and technology for developing and least developed countries.
2. To request WIPO to adopt an internationally binding instrument on the protection of genetic resources, traditional knowledge and folklore in the nearest future.
3. To elaborate a mechanism to facilitate access to knowledge and technology for developing and least developed countries.
4. To formulate and adopt measures designed to improve participation by civil society and other stakeholders in WIPO activities, relevant to their respective domains and interests.

5. Best Practices for Economic Growth: Compile and disseminate the “best practices” of Member States related to fostering the development of creative industries and attracting foreign investment and technologies based, at least in part, on the baseline national surveys for economic growth, which are discussed more fully below under cluster D.
6. Increasing understanding of the adverse effect of counterfeiting and piracy on economic development: Through the WIPO Advisory Committee on Enforcement (ACE), conduct analyses of the relationship between high rates of counterfeiting and intellectual property piracy and technology transfer, foreign direct investment and economic growth.
7. Draw up proposals and models for the protection and identification of, and access to, the contents of the public domain.
8. Consider the protection of the public domain within WIPO’s normative processes.
9. To establish in WIPO an area of analysis and discussion of incentives promoting creative activity, innovation and technology transfer, in addition to the intellectual property system, and within the intellectual property system, for example emerging exploitation models. This could be achieved through either of two mechanisms:
  - (i) An electronic forum maintained by WIPO for the exchange of information and opinions. It could have a limited duration (e.g. one year), after which proposals and discussions could be summarized in a document. If there is interest and critical mass, we would analyze if and how to proceed. Discussions in the forum could be organized under the following sections: Tools within the intellectual property system (e.g. utility models, systems of free and open licenses and creative commons), and those complementary to the intellectual property system (e.g. subsidies, Treaty on Access to Knowledge, Treaty on Medical R&D).
  - (ii) To include this issue as a permanent item in the agendas of the WIPO Committees.
10. To adopt development-friendly Principles and Guidelines for norm-setting activities.
11. To undertake debates on the feasibility and desirability of new, expanded or modified rules, prior to engaging in norm-setting activities, especially by means of public hearings.
12. To ensure member-driven procedures in which the WIPO’s Secretariat does not play a role by endorsing or supporting particular proposals, particularly in the negotiation of international treaties and norms.
13. To ensure that norm-setting activities recognize the different levels of development of Member States and reflect a balance between benefits and costs of any initiative for developed and developing countries.
14. To pursue a balanced and comprehensive approach to norm-setting, emphasizing the design and negotiation of rules and standards that are guided by and fully address the development objectives and concerns of developing and least developed countries and of the international community.
15. To preserve the interests of the society at large, and not only those of IP owners in norm-setting activities.

16. To reflect the priorities of all WIPO Members, both developed and developing countries, in all norm-setting activities.
17. To ensure that norm-setting activities are fully compatible with and actively support other international instruments that reflect and advance development objectives, in particular Human Rights international instruments.
18. To include in treaties and norms provisions on, *inter alia*: (a) objectives and principles; (b) safeguard of national implementation of intellectual property rules; (c) against anti competitive practices and abuse of monopoly rights; (d) promotion of transfer of technology; (e) longer compliance periods; (f) flexibilities and “policy space” for the pursuit of public policies; (g) exceptions and limitations.
19. To include in all treaties and norms operative and substantial special and differential treatment provisions for developing and least developed countries.
20. To ensure that norm-setting activities provide developing countries with policy space commensurate with their national development needs and requirements.
21. To ensure that norm-setting activities help identify and maintain a robust public domain in all WIPO’s Member States.
22. To examine non-intellectual property type and/or non-exclusionary systems for fostering, creativity, innovation and transfer of technology (e.g., free software development and creative commons models).
23. To ensure that new subjects and areas for norm-setting are identified on the basis of clear defined principles and guidelines and on assessment of their development impact.
24. To establish a Treaty on Access to Knowledge and Technology.
25. To develop an international framework to deal with issues of substantive law relating to anti-competitive licensing practices, primarily those that adversely affect the transfer and dissemination of technology and restrain trade.
26. To protect and promote in all negotiations the development oriented principles and flexibilities contained in existing Agreements, such as the TRIPS Agreement.
27. To promote models based on open collaborative projects to develop public goods, as exemplified by the Human Genome Project and Open Source Software.
28. To set objectives and issues to be addressed in each proposed treaty or norm based on the views of all stakeholders, with special emphasis on participation by public interest groups.

### C. Technology Transfer, Information and Communication Technology (ICT) and Access to Knowledge

1. To develop criteria and methodology to select essential technologies, monitor and facilitate the transfer and the diffusion of such technologies in accessible and affordable cost to developing countries and LDCs.

2. To contribute effectively to individual nation's self-reliance, including through relaxation of patent rules in the area of technology by facilitating access to foreign patented information on technology and technical resources.
3. To create a new body for formulating, coordinating and assessing all transfer of technology policies and strategies.
4. To develop and maintain, in collaboration with other intergovernmental organizations, a list of essential technologies, know-how, processes and methods that are necessary to meet the basic development needs of African countries aimed at protecting the environment, life, health of human beings, animals and plants, promoting education and improving food security.
5. To work on any initiative intended to facilitate the implementation of technology-related provisions of Multilateral Environmental Agreements (MEAs), so as to ensure that countries where biological, traditional or other environmental resources originate from, participate in the process of research and development.
6. To request WIPO to expand the scope of its activities aimed at bridging the digital divide in accordance with the outcomes of the World Summit on the Information Society (WSIS) in its future activities, especially in respect of existing proposals within the context of the development agenda that should also take into account the significance of the Digital Solidarity Fund (DSF).
7. To devise innovative ways and means, including the fostering of transfer of technology, to enable SMEs take better advantage of flexibilities as provided by relevant international agreements.
8. To request developed countries to encourage their research and scientific institutions to enhance cooperation and exchange with research and development institutions in developing countries and LDCs.
9. Facilitating IP-related aspects of ICT for growth and development: Provide for a forum in WIPO Standing Committee on Information Technologies (SCIT) for discussion focused on the importance of IP-related aspects of ICT and its role in economic and cultural development, with specific attention focused on assisting Member States to identify practical strategies to use IP/ICT for economic, social and cultural development.
10. To adopt development-friendly principles and guidelines on transfer of technology.
11. To explore policies, initiatives and reforms necessary to ensure the transfer and dissemination of technology to the benefit of developing countries.
12. To adopt specific measures that ensure transfer of technology to developing countries.
13. To incorporate in intellectual property treaties and norms relevant provisions dealing with anti-competitive behavior or abuse of monopoly rights by rights holders.
14. To debate on supportive IP-related Policies and measures industrialized countries could adopt for promoting transfer and dissemination of technology to developing countries.

15. To promote measures that will help countries combat IP related anti-competitive practices.
16. To devise a mechanism whereby countries affected by anti-competitive practices request Developed Countries authorities to undertake enforcement actions against firms headquartered or located in their jurisdictions.
17. To establish a special fee on applications through the Patent Cooperation Treaty (PCT), the revenues of which would be earmarked for the promotion of research and development activities in the developing and least developed countries.
18. To establish a WIPO Standing Committee on IP and Technology Transfer and a dedicated Program on these issues, including related Competition Policies.
19. To adopt commitments like those contained in *Article 66.2* of the TRIPS Agreement, expanded to benefit all developing countries.
20. To establish an intermediary conduit to reduce the asymmetric information problem in private transactions between technology buyers and sellers, for knowledge about successful technology-acquisition programs that have been undertaken by national and sub-national governments in the past.
21. To negotiate a multilateral agreement where signatories would place into the public domain, or find other means of sharing at modest cost, the results of largely publicly funded research. The objective would be to set out a mechanism for increasing the international flow of technical information, especially to developing countries, through expansion of the public domain in scientific and technological information, safeguarding, in particular, the public nature of information that is publicly developed and funded without unduly restricting private rights in commercial technologies.

#### D. Assessments, Evaluation and Impact Studies

1. To request WIPO to develop an effective review and evaluation mechanism, on an annual basis, for the assessment of all its development-oriented activities.
2. To establish an independent development impact assessment with respect to technical assistance, technology transfer and norm-setting on developing and LDCs.
3. To conduct a study in developing countries and LDCs on obstacles to intellectual property protection in the informal sector, with a view to creating substantial programs, including the tangible costs and benefits of IP protection with regards to generation of employment.
4. To request WIPO to undertake studies to demonstrate the economic, social and cultural impact of the use of intellectual property systems in Member States.
5. Baseline National Surveys for Economic Growth: Provide assistance through the WIPO Secretariat to Member States requesting help to conduct base-line national economic surveys and make the results of such surveys available to other Member States.

6. Measuring the contribution of national creative and innovative industries: Expand the successful WIPO Guide for Surveying the Economic Contribution of the Copyright-based Industries to include the patent-based innovative industries.
7. Conducting Global economic surveys of the creative and innovative sectors: Explore the feasibility of WIPO conducting its own economic surveys on a regular basis to support the creative and innovative sectors with useful data.
8. Collecting Data on Global IPR Piracy and Counterfeiting: The WIPO Secretariat should assist in the collection of data on global piracy and counterfeiting rates with a view toward making the information widely available.
9. WIPO should deepen the analysis of the implications and benefits of a rich and accessible public domain.
10. Study to evaluate the appropriate levels of intellectual property, to identify the links between IP and development. For example, a study of a limited, but representative, number of countries, with participation on a voluntary basis, in specific areas of IP, such as patents, exceptions and limitations and institutional capacity to administrate the IP system, including costs to government, as well as to individuals (cost in GDP).
11. To establish, through a member-driven process, an independent Evaluation and Research Office (WERO) that would be responsible for, *inter alia*, evaluation of all WIPO's programs and activities and carrying out of "Development Impact Assessments" in norm-setting activities, and technical cooperation.
12. To undertake independent, evidence-based "Development Impact Assessments" with respect to norm-setting activities that could be carried out by the proposed WERO.
13. To compile empirical evidence and carry out cost-benefit analysis that consider, *inter alia*, alternatives within and outside the IP system. These endeavors should form the basis of norm-setting activities that attain the objectives pursued with less monopoly of knowledge.
14. To continuously evaluate WIPO's technical assistance programs and activities to ensure their effectiveness.
15. To establish Indicators and benchmarks for evaluation of technical assistance.
16. To establish a mechanism, overseen by Member States, to ensure a continuous objective evaluation of the actual impact and costs of treaties that have been adopted, especially for developing countries.

E. Institutional Matters including Mandate and Governance

1. To request WIPO to assist African countries, in cooperation with relevant international organizations, to create, as appropriate, legal and regulatory framework in order to reverse brain drain into brain gain.

2. To request WIPO to intensify its cooperation with all UN agencies, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially WTO in order to strengthen the coordination and harmonization for maximum efficacy in undertaking development programs.
3. Proposal to reinvigorate the PCIPD.
4. WIPO Partnership Office: Establish within the WIPO Secretariat a Partnership Office staffed by WIPO personnel deployed for the purpose of evaluating requests by Member States for assistance related to IPR and development and actively seeking to find partners to fund and execute such projects.
5. Stocktaking of WIPO Development Activities: Conduct a quantitative and qualitative stocktaking of current WIPO development cooperation activities with a longer-term view of developing a statement of core policies and objectives in the area of cooperation and development activities.
6. To amend WIPO Convention, bringing it in line with WIPO's mandate as an UN-specialized agency.
7. To undertake measures to ensure wider participation of civil society and public interest groups in WIPO's activities.
8. To adopt UN system criteria regarding NGO acceptance and accreditation.
9. To maintain the mandate of WIPO's Advisory Committee on Enforcement within the limits of a forum for exchange of information on national experience, excluding norm-setting activities. The ACE agenda of discussion should also tackle how to best ensure the implementation of all TRIPS-related provisions, including those that provide for exceptions and limitations to the rights conferred.
10. To reinforce WIPO's member-driven nature as a United Nation system organization. That would include, *inter alia*, that formal and informal meetings or consultations held between Members or organized by the International Bureau upon request of the Member States should be held in Geneva, in an open and transparent manner that involves all interested Member States.

#### F. Other Issues

1. To establish a working group on the Development Agenda to further discuss issues of the Development Agenda and the Work-Programme for WIPO that were not subject of decision in the 2006 General Assembly.
2. To adopt measures that provide for membership and functions of the Policy Advisory Commission (PAC) and the Industry Advisory Commission (IAC) being determined by Member States.
3. To approach intellectual property enforcement in the context of broader societal interests and development-related concerns, in accordance with *Article 7* of the TRIPS Agreement.

4. To adopt a high-level declaration on intellectual property and development.

[Annex II follows]



ANNEX II

I. ÉTATS/STATES

(dans l'ordre alphabétique des noms français des États)/  
(*in the alphabetical order of the names in French of the States*)

AFGHANISTAN

Assad OMER, Ambassador, Permanent Representative, Permanent Mission, Geneva

Ahmad KHALIL NASRI, First Secretary, Permanent Mission, Geneva

AFRIQUE DU SUD/SOUTH AFRICA

Natalie Anastasia SUNKER (Ms.), Deputy Director, Intellectual Property: Policy and Legislation, Trade and Industry Department, Pretoria

Simon Z. QOBO, First Secretary, Permanent Mission, Geneva

ALGÉRIE/ALGERIA

Boualem SEDKI, ministre plénipotentiaire, Mission permanente, Genève

Boumédiène MAHI, premier secrétaire, Mission permanente, Genève

ALLEMAGNE/GERMANY

Li-Feng SCHROCK, Senior Ministerial Counsellor, Trade Marks and Unfair Competition, Federal Ministry of Justice, Berlin

ARGENTINE/ARGENTINA

Alberto J. DUMONT, Embajador, Representante Permanente, Misión Permanente, Ginebra

Marta GABRIELONI (Sa.), Consejero, Misión Permanente, Ginebra

AUSTRALIE/AUSTRALIA

Tegan BRINK (Ms.), Third Secretary, Permanent Mission, Geneva

AUTRICHE/AUSTRIA

Johannes WERNER, Deputy Head, Department of International Relations, Austrian Patent Office, Vienna

Elisabeth SÜß (Ms.), Legal Department B, National Trademarks, Geographical Indications, International Relations, Austrian Patent Office, Vienna

Alois LEIDWEIN, Attaché, Permanent Mission, Geneva

Nicole ADLER (Ms.), Advisor, Permanent Mission, Geneva

AZERBAÏDJAN/AZERBAIJAN

Zahir HAJIYEV, Deputy Director, International Cooperation Department, State Agency for Standardization, Metrology and Patents, Baku

BANGLADESH

Toufiq ALI, Ambassador, Permanent Representative, Permanent Mission, Geneva

Muhammad Abdul QUADER, Deputy Secretary, Ministry of Industries, Dhaka

Mahbub-uz-ZAMAN, Minister, Permanent Mission, Geneva

Nayem Uddin AHMED, Second Secretary, Permanent Mission, Geneva

BARBADE/BARBADOS

Corlita BABB-SCHAEFER (Mrs.), Counsellor, Permanent Mission, Geneva

BELGIQUE/BELGIUM

Mélanie GUERREIRO RAMALHEIRA (Mlle), attaché, Ministère des affaires économiques, Bruxelles

Michel GEREBTZOFF, premier secrétaire, Mission permanente, Genève

BÉNIN/BENIN

Yao AMOUSSOU, premier conseiller, Mission permanente, Genève

BOLIVIE/BOLIVIA

Mónica Idalid LAFUENTE ROJAS (Srta.), Tercer Secretario, Misión Permanente, Ginebra

BOTSWANA

Tshepo MOGOTSI, First Secretary, Permanent Mission, Geneva

BRÉSIL/BRAZIL

Marcos ALVES DE SOUZA, Deputy Manager, Copyright, Ministry of Culture, Brasilia

Cristiano Franco BERBERT, Second Secretary, Permanent Mission, Geneva

Guilherme PATRIOTA, Counsellor, Permanent Mission, Geneva

Ana Paula JUCÀ SILVA (Mme), déléguée, Ministère de la santé, Brasilia

Henrique CHOER MORAES, Secretary, Intellectual Property Division, Ministry of External Relations, Brasilia

Leopoldo NASCIMENTO COUTINHO, Directory for Institutional Partnerships and Technological Information, National Institute of Industrial Property, Rio de Janeiro

BULGARIE/BULGARIA

Petko DRAGANOV, Ambassador, Permanent Representative, Permanent Mission, Geneva

Dessislava PARUSHEVA (Miss), Second Secretary, Permanent Mission, Geneva

CANADA

Danielle BOUVET (Mrs.), Director, Copyright Policy Branch, Departement of Canadian Heritage, Ottawa

Michel PATENAUDE, Senior Policy Analyst, International Affairs, Canadian Intellectual Property Office, Department of Industry, Ottawa

Edith ST-HILAIRE (Mrs.), Deputy Director, Intellectual Property, Information and Technology Trade Policy Division (EBT), Ottawa

Sara WILSHAW (Mrs.), First Secretary, Permanent Mission, Geneva

CHILI/CHILE

M. Carolina BELMAR (Srta.), Jefe Departamento Propiedad Intelectual, Dirección General Relaciones Economicas Internacionales, Ministerio Relaciones Exteriores, Santiago de Chile

Maximiliano SANTA CRUZ, Primer Secretario, Misión Permanente, Ginebra

CHINE/CHINA

LIU Jian, Division Director, International Cooperation Department, State Intellectual Property Office (SIPO), Beijing

DUAN Yuping (Mrs.), Division Director, Copyright Administration Department, National Copyright Administration of China (NCAC), Beijing

XU Yong (Ms.), Deputy Division Director, Trademark Examination Department, Trademark Office of the State Administration for Commerce and Industry (TMO), Beijing

FU Cong, Counsellor, Permanent Mission, Geneva

ZHAO Yangling (Ms.), First Secretary, Permanent Mission, Geneva

ZHANG Ze, Attaché, Permanent Mission, Geneva

COLOMBIE/COLOMBIA

Ricardo VELEZ BENEDETTI, Ministro Consejero, Misión Permanente, Ginebra

CONGO

Kellie-Shandra OGNIMBA (Mlle), Juriste, Mission permanente, Genève

CÔTE D'IVOIRE

Kouassi Michel ALLA, sous-directeur, Affaires juridiques, Ministère de la francophonie et de la culture, Abidjan

CROATIE/CROATIA

Gordan MARKOTIĆ, Ambassador, Permanent Representative, Permanent Mission, Geneva

Željko TOPIĆ, Director General, State Intellectual Property Office, Zagreb

Josip PERVAN, First Secretary, Permanent Mission, Geneva

DANEMARK/DENMARK

Kaare STRUVE, Senior Legal Advisor, Danish Patent and Trademark Office, Ministry of Economic and Business Affairs, Taastrup

ÉGYPTE/EGYPT

Mohamed Sherif EL-ESKANDARANY, Vice-President, Academy of Science and Technology (ASRT), Cairo

Ragui EL-ETREBY, First Secretary, Permanent Mission, Geneva

Heba MOSTAFA (Miss), Third Secretary, Ministry of Foreign Affairs, Cairo

EL SALVADOR

Martha Evelyn MONJIVOR CORTEZ (Sra.), Consejera, Misión Permanente, Ginebra

ÉQUATEUR/ECUADOR

Juan Carlos FAIDUTTI ESTRADA, Embajador, Representante Permanente, Misión Permanente, Ginebra

Luis VAYAS VALDIVIESO, Primer Secretario, Misión Permanente, Ginebra

ESPAGNE/SPAIN

Javier MORENO RAMOS, Director, Departamento de Coordinación Jurídica y Relaciones Internacionales, Oficina Española de Patentes y Marcas, Ministerio de Industria, Turismo y Comercio, Madrid

Carmen DEL OLMO OCHOA (Sra.), Técnico Superior, Departamento de Coordinación Jurídica y Relaciones Internacionales, Oficina Española de Patentes y Marcas, Ministerio de Industria, Turismo y Comercio, Madrid

ÉTATS-UNIS D'AMERIQUE/UNITED STATES OF AMERICA

Michael S. SHAPIRO, Attorney-Advisor, Office of International Relations and Trademark Office, Alexandria, Virginia

Paul E. SALMON, Senior Counsel, Office of International Relations, and Trademark Office, Alexandria, Virginia

Joyce WINCHEL NAMDE (Mrs.), Office of Technical Specialized Agencies, United States Department of State, Bureau of International Organizations, Washington, D.C.

ÉTHIOPIE/ETHIOPIA

Esayas GOTTA SEIFU, First Secretary, Permanent Mission, Geneva

EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE/THE FORMER YUGOSLAV  
REPUBLIC OF MACEDONIA

Dzemail ELJMAZI, Director, State Office of Industrial Property, Skopje

Irena JAKIMOVSKA (Mrs.), Head, Patent and Technology Watch Department, State Office of Industrial Property, Skopje

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Mikhail FALEEV, Director, International Cooperation Department, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow

Evgeny ZAGAYNOV, Counsellor, Permanent Mission, Geneva

Elena KULIKOVA (Ms.), Counsellor, Legal Department, Ministry of Foreign Affairs, Moscow

Ilya GRIBKOV, Third Secretary, Permanent Mission, Geneva

FINLANDE/FINLAND

Sami SUNILA, Senior Government Secretary, Industries Department, Ministry of Trade and Industry, Helsinki

Riitta LARJA (Ms.), Coordinator of International and Legal Affairs, National Board of Patents and Registration of Finland, Helsinki

FRANCE

Marion DEHAIS (Mme), Sous-direction des affaires économiques, Direction des Nations Unies et des organisations internationales, Ministère des affaires étrangères, Paris

Gilles BARRIER, premier secrétaire, Mission permanente, Genève

GABON

Malem TIDZANI, directeur général du Centre de propriété industrielle du Gabon (CEPIG), Ministère du commerce et de l'industrie, Libreville

GHANA

Kwame BAWUAH-EDUSEI, Ambassador, Permanent Representative, Permanent Mission, Geneva

Ernest S. LOMOTEY, Minister-Counsellor, Permanent Mission, Geneva

GRÈCE/GREECE

Stella KYRIAKOU (Ms.), Attaché, Permanent Mission, Geneva

GUINÉE-BISSAU/GUINEA-BISSAU

José DA CUNHA, directeur national du Patrimoine culturel, Secrétariat d'État à la culture, à la jeunesse et aux sports, Cabinet du secrétaire d'État, Bissau

Augusto Admir PAMPLONA GOMES FERNANDES, directeur de Cabinet du droit d'auteur, Secrétariat d'État à la culture, à la jeunesse et aux sports, Cabinet du secrétaire d'État, Bissau

HAÏTI/HAITI

Emmanuel DERIVOIS, Bureau haïtien du droit d'auteur (BHDA), Ministère de la culture et de la communication, Port-au-Prince

HONDURAS

Benjamín ZAPATA, Embajador, Representante Permanente, Misión Permanente, Ginebra

Javier MEJIA GUEVARA, Primer Secretario, Misión Permanente, Ginebra

HONGRIE/HUNGARY

Orsolya TÓTH (Ms.), Second Secretary, Permanent Mission, Geneva

INDE/INDIA

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Mohinder S. GROVER, Deputy Permanent Representative, Permanent Mission, Geneva

Radhey Shyam JULANIYA, Joint Secretary, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, New Delhi

Nutan Kapoor MAHAWAR (Mrs), First Secretary (Economic), Permanent Mission, Geneva

INDONÉSIE/INDONESIA

Dian WIRENGJURIT, Minister Counsellor, Permanent Mission, Geneva

Abdul Kadir JAILANI, First Secretary, Permanent Mission, Geneva

IRAN (RÉPUBLIQUE ISLAMIQUE D')/IRAN (ISLAMIC REPUBLIC OF)

Hekmatollah GHORBANI, Legal Counsellor, Permanent Mission, Geneva

IRAQ

Ahmed AL-NAKASH, Third Secretary, Permanent Mission, Geneva

IRLANDE/IRELAND

Jacob RAJAN, Head, Patents Section, Intellectual Property Unit, Dublin

ISRAËL/ISRAEL

Noa FURMAN (Mrs.), Counsellor, Permanent Mission, Geneva

ITALIE/ITALY

Augusto MASSARI, First Secretary, Permanent Mission, Geneva

JAMAHIRIYA ARABE LIBYENNE/LIBYAN ARAB JAMAHIRIYA

Nasser AL ZAROUG, First Secretary, Permanent Mission, Geneva

JAPON/JAPAN

Satoshi MORIYASU, Director, Multilateral Policy Office, International Affairs Division,  
General Administration Department, Japan Patent Office, Tokyo

Fumio ENOMOTO, Officer, International Affairs Division, General Administration  
Department, Japan Patent Office, Tokyo

Shintaro TAKAHARA, First Secretary, Permanent Mission, Geneva

Shigechika TERAOKADO, First Secretary, Permanent Mission, Geneva



JORDANIE/JORDAN

Mamoun Tharwat TALHOUNI, Director General, Department of the National Library,  
Ministry of Culture, Amman

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and Trade, Amman

Azzam ALAMEDDIN, Second Secretary, Permanent Mission, Geneva

KAZAKHSTAN

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National Institute of Intellectual Property, Almaty

KENYA

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Ministry of Trade and Industry, Nairobi

KIRGHIZISTAN/KYRGYZSTAN

Mukhtar DJUMALIEV, Ambassador, Permanent Representative, Ambassador, Permanent  
Mission, Geneva

Muratbek AZYMBAKIEV, Counsellor, Permanent Mission, Geneva

LESOTHO

Lebohang MOQHALI, Counsellor, Permanent Mission, Geneva

LETONIE/LATVIA

Janis KARKLINS, Ambassador, Permanent Representative, Permanent Mission, Geneva

Zigrīds AUMEISTERS, Director, Patent Office, Riga

LITUANIE/LITHUANIA

Rimvydas NAUJOKAS, Director, State Patent Bureau of the Republic of Lithuania, Vilnius

LUXEMBOURG

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MADAGASCAR

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MALAISIE/MALAYSIA

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Azwa Affendi BAKHTIAR, Second Secretary, Permanent Mission, Geneva

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MALTE/MALTA

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MAROC/MOROCCO

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MAURICE/MAURITIUS

Vishwakarmah MUNGUR, First Secretary, Permanent Mission, Geneva

MEXIQUE/MEXICO

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MYANMAR

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NIGÉRIA/NIGERIA

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Maigari Gurama BUBA, First Secretary, Permanent Mission, Geneva

NORVÈGE/NORWAY

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OUZBÉKISTAN/UZBEKISTAN

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PANAMA

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PARAGUAY

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PAYS-BAS/NETHERLANDS

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PÉROU/PERU

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POLOGNE/POLAND

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RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

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RÉPUBLIQUE DOMINICAINE/DOMINICAN REPUBLIC

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RÉPUBLIQUE DÉMOCRATIQUE DU CONGO/DEMOCRATIC REPUBLIC OF THE CONGO

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RÉPUBLIQUE DE MOLDOVA/REPUBLIC OF MOLDOVA

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RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

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ROUMANIE/ROMANIA

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ROYAUME-UNI/UNITED KINGDOM

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Pamela TARIF (Mrs.), Second Secretary, Permanent Mission, Geneva

SAINT-SIÈGE/HOLY SEE

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SERBIE-ET-MONTÉNÉGRO/SERBIA AND MONTENEGRO

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SINGAPOUR/SINGAPORE

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SOUDAN/SUDAN

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SRI LANKA

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A. Dayaratna SILVA, Minister, Permanent Mission, Geneva

SUÈDE/SWEDEN

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SUISSE/SWITZERLAND

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THAÏLANDE/THAILAND

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TUNISIE/TUNISIA

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TURQUIE/TURKEY

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UKRAINE

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Alexandr STASYUK, Senior Specialist, European Integration and International Cooperation Division, State Department of Intellectual Property, Kyiv

URUGUAY

Maria Cristina DARTAYETE BARREIRO (Sra.), Directora Nacional, Dirección Nacional de la Propiedad Industrial, Montevideo

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YÉMEN/YEMEN

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Adel AL-BAKILI, Minister, Permanent Mission, Geneva

VENEZUELA

Alessandro PINTO DAMIANI, Segundo Secretario, Misión Permanente, Ginebra

ZAMBIE/ZAMBIA

Mathias DAKA, Deputy Permanent Representative, Permanent Mission, Geneva

Ngosa MAKASA (Miss), Senior Examiner, Patents and Companies Registration Office, Lusaka

ZIMBABWE

Richard CHIBUWE, Counsellor, Permanent Mission, Geneva

Francis MUNHUNDIRIPO, Counsellor, Permanent Mission, Geneva

II. OBSERVATEUR/OBSERVER

PALESTINE

Osama MOHAMMED, Counsellor, Permanent Mission of Palestine, Geneva



III. ORGANISATIONS INTERNATIONALES  
INTERGOUVERNEMENTALES/  
INTERNATIONAL INTERGOVERNMENTAL  
ORGANIZATIONS

CONFÉRENCE DES NATIONS UNIES SUR LE COMMERCE ET LE  
DÉVELOPPEMENT (CNUCED)/UNITED NATIONS CONFERENCE ON TRADE AND  
DEVELOPMENT (UNCTAD)

Victor KONDE, Economic Affairs Officer, Geneva

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET  
L'AGRICULTURE (FAO)/FOOD AND AGRICULTURE ORGANIZATION OF THE  
UNITED NATIONS (FAO)

Themba N. MASUKU, Director, FAO Liaison Office, Geneva

Panos KONANDREAS, Senior Liaison Officer, FAO Liaison Office, Geneva

Paul PAREDES-PORTELLA, Liaison Officer, FAO Liaison Office, Geneva

ORGANISATION DES NATIONS UNIES POUR L'ÉDUCATION, LA SCIENCE ET LA  
CULTURE (UNESCO)/UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND  
CULTURAL ORGANIZATION (UNESCO)

Ingeborg BREINES (Ms.), Director, Representative, Liaison Office, Geneva

Jessica PAUTSCH (Miss), Intern, Geneva

ORGANISATION DES NATIONS UNIES POUR LE DÉVELOPPEMENT INDUSTRIEL  
(ONUDI)/UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION  
(UNIDO)

Víctor Manuel HINOJOSA-BARRAGÁN, Senior Liaison Officer, Geneva

ORGANISATION INTERNATIONALE DU TRAVAIL (OIT)/INTERNATIONAL  
LABOUR OFFICE (ILO)

Birgitte FEIRING (Ms.), International Labour Standards Department, Geneva

Francesca THORNBERRY (Ms.), International Labour Standards Department, Geneva

Chloé NAHUM CLAUDEL (Ms.), International Labour Standards Department, Geneva

Huseyin POLAT, Cooperative Branch, Geneva

Finn ANDERSEN, Cooperative Branch, Geneva

Leonie THEURKAUF (Ms.), Cooperative Branch, Geneva

COMMISSION DES COMMUNAUTÉS EUROPÉENNES (CCE)/COMMISSION OF THE  
EUROPEAN COMMUNITIES (CEC)

Luis FERRÃO, Principal Administrator, European Commission, Luxembourg

Jens GASTER, Principal Administrator, Directorate-General Internal Market and Services,  
Unit D.2 Industrial Property, European Commission, Brussels

OFFICE EUROPÉEN DES BREVETS (OEB)/EUROPEAN PATENT OFFICE (EPO)

Johan AMAND, Director, International Affairs, Munich

Barbara PICK (Miss), Expert, Munich

ORGANISATION INTERNATIONALE DE LA FRANCOPHONIE (OIF)

Sandra COULIBALY LEROY (Mme), chargée d'affaires a.i., représentant permanent adjoint,  
Genève

ORGANISATION EURASIENNE DES BREVETS (OEAB)/EURASIAN PATENT  
ORGANIZATION (EAPO)

Khabibullo FAYAZOV, Vice President, Moscow

ORGANISATION INTERNATIONALE DE POLICE CRIMINELLE  
(INTERPOL)/INTERNATIONAL CRIMINAL POLICE ORGANIZATION (INTERPOL)

Aline PLANÇON-LECADRE (Mlle), officier de police, Lyon

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE  
ORGANIZATION (WTO)

Jayashree WATAL (Mrs.), Counsellor, Intellectual Property Division, Geneva

Xiaoping WU (Mrs.), Legal Affairs Officer, Intellectual Property Division, Geneva

SOUTH CENTRE

Sisule F. MUSUNGU, Team Leader, Intellectual Property, Investment and Technology  
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Ermias Tekeste BIADGLENG, Project Officer, Intellectual Property and Investment, Geneva

UNION AFRICAINE (UA)/AFRICAN UNION (AU)

Khadija Rachida MASRI (Mrs.), Permanent Observer, Permanent Delegation, Geneva

Sivaramen PALAYATHAN, Minister Counsellor, Permanent Delegation, Geneva

IV. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/  
INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

3-D > Trade - Human Rights - Equitable Economy (3D)

Carolyn DEERE (Ms.) (Acting Director, Geneva); Davinia OVETT (Ms.)  
(Programme Coordinator, Geneva)

Association littéraire et artistique internationale (ALAI)

Victor NABHAN (Président, Lausanne)

Bureau international des sociétés gérant les droits d'enregistrement et de reproduction  
mécanique (BIEM)/International Bureau of Societies Administering the Rights of Mechanical  
Recording and Reproduction (BIEM)

Willem A. WANROOIJ (Personal Assistant Official, Amsterdam)

Central and Eastern European Copyright Alliance (CEECA)

Mihály FICSOR (Chairman, Budapest)

Centre d'études internationales de la propriété industrielle (CEIPI)/Centre for International  
Industrial Property Studies (CEIPI)

François CURCHOD (représentant permanent auprès de l'OMPI, professeur associé à  
l'Université Robert Schuman de Strasbourg, Genolier)

Centre pour le droit international de l'environnement (CIEL)/Centre for International  
Environment Law (CIEL)

Maria Julia OLIVA (Ms.) (Director, Project on Intellectual Property and Sustainable  
Development, Geneva); François MEIENBERG (Law Fellow, Geneva); Marcia ARIBELA  
PEREIRA (Ms.) (Law Fellow, Geneva); Palesa THLAPI GUYE (Ms.) (Law Fellow,  
Geneva); Marcia Aribela DE LIMA GOME PEREIRA (Miss) (Intern Fellow, Geneva)

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC)

Thaddeus J. BURNS (Senior Corporate IP Counsel-Europe, General Electric Europe NV,  
Brussels); Ivan HJERTMAN (European Patent Attorney, IP Interface AB, Stockholm);  
Peter Dirk SIEMSEN (Senior Partner, Dannemann, Siemsen, Bilger & Ipanema Moreira,  
Rio de Janeiro); Daphne YONG-D'HERVÉ (Ms.) (Senior Policy Manager, Intellectual  
Property and Competition, International Chamber of Commerce (ICC), Paris);  
Sandra LEIS (Ms.) (Lawyer, Rio de Janeiro)

Civil Society Coalition (CSC)

Thiru BALASUBRAMANIAM (Representative, Geneva); Viviana MUÑOZ TELLEZ  
(Miss) (Fellow, Geneva); John MITCHELL (Representative, Geneva);

Comité consultatif mondial des amis (CCMA)/Friends World Committee for Consultation  
(FWCC)

Nicholas TYABJI (Program Assistant, Geneva); Martin WATSON (Representative, Geneva)

Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC)

Willem A. Q. WANROOIJ (Director, Strategy and Development (Buma/Stemra), Amstelveen, Netherlands); David UWEMEDIMO (Director, Legal Affairs, Paris)

CropLife International

Javier FERNANDEZ (Intellectual Property and Trade Affairs Manager, Brussels); William GRAHAM (Chairman of Intellectual Property Teams, Brussels)

eIFL

Teresa HACKETT (Ms.) (Project Manager eIFL-IP, Electronic Information for Libraries (eIFL))

Electronic Frontier Foundation (EFF)

Gwen HINZE (International Affairs Director, San Francisco, California)

European Digital Rights (EDRI)

Volker GRASSMUCK (Delegate, Berlin)

Fédération internationale de l'industrie du médicament (FIIM)/International Federation of Pharmaceutical Manufacturers Associations (IFPMA)

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Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI)

Shira PERLMUTTER (Ms.) (Executive Vice-President, Global Legal Policy, London)

Fédération internationale de la vidéo (IVF)/International Video Federation (IVF)

Laurence DJOLAKIAN (Ms.) (Legal Advisor, Brussels); Theodore SHAPIRO (Legal Advisor, Brussels)

Fédération internationale des associations de bibliothécaires et des bibliothèques (FIAB)/International Federation of Library Associations and Institutions (IFLA)

Winston TABB (Dean of University Libraries, John Hopkins University, Baltimore); Barbara STRATTON (Ms.) (Senior Advisor, Copyright, Chartered Institute of Library and Information Professionals (CILIP), London)

Fédération internationale des associations de producteurs de films (FIAPF)/International Federation of Film Producers Associations (FIAPF)

Valérie LÉPINE-KARNIK (Mme) (directrice générale, Paris); Bertrand MOULLIER (conseiller, Paris); Akim MOGAJI (Creative Director, BBC World Service, London); John AKOMFRAH (Film Director, Smoking Dogs Films, London)

Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM)  
Thomas DAYAN (secrétaire général adjoint, Paris)

Free Software Foundation Europe (FSF Europe)  
Georg C.F. GREVE (President, Hamburg); Karsten GERLOFF (Office, Hamburg, Germany); Giacomo PODERI (Advisor, Hamburg)

Fundação Getulio Vargas (FGV)  
Ronaldo LEMOS (Director, Rio de Janeiro); Pedro DE PARANAGUA MONIZ (Project Lead, Assistant Professor, Center for Technology and Society (CTS), Brazil)

Institute for Policy Innovation (IPI)  
Tom GIOVANETTI (President, Texas)

International Centre for Trade and Sustainable Development (ICTSD)  
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International Federation of Reproduction Rights Organizations (IFRRO)  
Olav STOKKMO (Secretary General, Brussels)

International Policy Network (IPN)  
Alec VAN GELDER (Research Fellow, London)

International Trademark Association (INTA)  
Bruno MACHADO (Geneva Representative)

IP Justice  
Robin D. GROSS (Ms.) (Executive Director, San Francisco); Petra Brigitte BUHR (Miss) (Intern, San Francisco)

Médecins sans frontières (MSF)  
Ellen 't HOEN (Ms.) (Director, Policy Advocacy and Research, Campaign for Access to Essential Medicines, Paris); Pascale BOULET (Ms.) (Legal Advisor, Campaign for Access to Essential Medicines, Paris)

The Authors Guild, Inc.  
Paul AIKEN (Executive Director, New York)

The European Law Students' Association (ELSA)  
Gian Carli STÄUBLI (Head of Delegation, Bern); Ebru GUNAYDI (London); Erik HAHN (Germany); Eleonora PECORA (Observer, Italy); Giuseppe PINELLI (Observer, Italy); Alexander RETTIG (Germany)

Third World Network (TWN)  
Martin K.P. KHOR (Director, Penang, Malaysia); Sangeeta SHASHIKANT (Miss) (Researcher, Geneva)

Union for the Public Domain (UPD)  
Judith RIUS SANJUAN (Ms.) (Representative)

Union internationale des éditeurs (UIE)/International Publishers Association (IPA)  
Jens BAMMEL (Secretary General, Geneva); Antje SORENSEN (Mrs.) (Legal Counsel, Geneva); Juliana PETRESCU (Ms.) (IPA Delegate, Geneva)

V. ORGANISATIONS NATIONALES NON GOUVERNEMENTALES/  
NATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Intellectual Property Left (IPLeft)  
HeeSeob NAM (Chair person, Seoul); Chun Eung HWI (Representative, Seoul)

VI. BUREAU/OFFICERS

Président/Chair: Rigoberto GAUTO VIELMAN (Paraguay)

Vice-Président/Vice Chair: Muktar DJUMALIEV (Kirghizistan/Kyrgyzstan)

VII. SECRÉTARIAT DE L'ORGANISATION MONDIALE DE LA  
PROPRIÉTÉ INTELLECTUELLE (OMPI)/  
SECRETARIAT OF THE WORLD INTELLECTUAL  
PROPERTY ORGANIZATION (WIPO)

Geoffrey Sau Kuk YU, vice-directeur général/Deputy Director General

Sherif SAADALLAH, directeur exécutif, Bureau de l'utilisation stratégique de la propriété intellectuelle pour le développement/Executive Director, Office of Strategic Use of Intellectual Property for Development

Edward KWAKWA, conseiller juridique/Legal Counsel

Pushpendra RAI, directeur par intérim, Division de la propriété intellectuelle et du développement économique, Bureau de l'utilisation stratégique de la propriété intellectuelle pour le développement/Acting Director, Intellectual Property and Economic Development Division, Office of Strategic Use of Intellectual Property for Development

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