

Terms of Reference for the Independent Review of the Implementation of the Development Agenda Recommendations

Background

At its 2007 General Assembly meeting, WIPO Member States adopted forty-five Development Agenda Recommendations. The 2010 WIPO General Assembly, when adopting the Coordination Mechanism, requested “the CDIP to undertake an independent review of the implementation of the Development Agenda Recommendations at the end of the 2012-2013 biennium. Upon consideration of that review, the CDIP may decide on a possible further review. The Terms of Reference and the selection of independent IP and development experts will be agreed by the CDIP.¹[see annex I – [Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities](#)] [annex II – [DA recommendations](#)].

Purpose and scope of the review

The independent review (the “Review”) shall assess, in a comprehensive manner, the relevance, effectiveness, impact, sustainability and efficiency of WIPO’s work to implement the Development Agenda Recommendations (hereinafter referred to as “WIPO’s Work”) during the period from 2008 to 2013.

Key questions to be addressed

1. **Relevance:** to what extent WIPO’s Work and the results of its activities for the implementation of the Development Agenda Recommendations serve the needs of Member States, stakeholders and other intended beneficiaries?
2. **Impact:** what is the impact of WIPO’s Work in the implementation of the Development Agenda Recommendations? To this end, the Review must address the actual impact of WIPO’s work in the implementation of the Development Agenda Recommendations at various levels and across WIPO’s bodies and programs.
3. **Effectiveness:** to what extent is WIPO’s Work effective in the implementation of the Development Agenda Recommendations? To this end, the Review must address whether WIPO’s work has been effective in achieving the outcomes in line with the Development Agenda Recommendations and also, whether the project-based approach has been effective.
4. **Efficiency:** how efficiently has WIPO used the human and financial resources in its work directed at the implementation of the Development Agenda Recommendations?

¹ Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities

5. Sustainability: to what extent are the results of WIPO's Work sustainable in the long term? To this end, the Review must also identify the best practices and the lessons learned from the WIPO's Work in the implementation of the Development Agenda Recommendations with the view to achieving sustainable outcomes in future.

Methodology

The review team is expected to undertake the Review in a rigorous and efficient manner to produce useful information and findings for WIPO Member States.

The methodology of the Review shall at least include the following: (a) desk review of documents relevant to the implementation of the adopted Development Agenda Recommendations; (b) interviews or focus group discussions with Member States, WIPO staff and beneficiaries; (c) field visits, as deemed necessary, bearing in mind budgetary constraints; (d) surveys. Additionally, the reviewers may utilize other appropriate methods in order to produce an in-depth and well-substantiated Review.

The WIPO Secretariat shall make available to the reviewers all relevant materials and information concerning the implementation of the Development Agenda Recommendations.

The Review Team

Selection process of the Review Team shall be conducted in accordance with the WIPO's established procedures.

The Review Team should possess the requisite skills, knowledge and experience required to conduct the comprehensive review in all six clusters of the Development Agenda in a credible and independent manner.

The team should be familiar with (a) WIPO's mandate, (b) Development Agenda Recommendations, including technical assistance, and (c) the development challenges of WIPO Member States.

The team should hence include two experts in the field of IP and development, including one with practical experience in delivery of IP technical assistance, and one with practical experience in dealing with development challenges, and one professional lead evaluator².

The Review Team should observe the UNEG guidelines, standards and norms for evaluations in the UN system, as well as the WIPO Evaluation Policy (2010) in the conduct of the Review.

Deliverables

In addressing the key questions, the Review shall also suggest possible improvements to WIPO's performance and its work in the implementation of the Development Agenda Recommendations.

The Review Team will first prepare an inception report, containing a description of the evaluation methodology and methodological approach; data collection and analysis methods;

² Regardless of the background of the experts, the team must review the implementation of the recommendations in all the six clusters of the DA.

key stakeholders to be interviewed; performance assessment criteria and the work plan of the Review.

The Review Team will then prepare a first draft Review report with preliminary findings and recommendations.

The final output of the Review shall be a concise and clearly-organized report of reasonable length, composed of an executive summary, introduction and brief description of the work undertaken to implement the adopted Development Agenda Recommendations, the evaluation methodology used, and clearly-structured, well-founded findings, as well as recommendations.

The Leader of the Review Team will be required to present the final Review to the Committee on Development and Intellectual Property (CDIP).

Budget

Budget Item Description	Unit cost SFR	Total SFR
Expert honoraria ³ (2 experts)	20,000	40,000
Lead evaluator's honorarium ⁴	25,000	25,000
Mission to Geneva during the Review process , including a briefing session with WIPO Member States; (Leader of the Review Team and 2 experts, 2 weeks)	13,500/ mission	40,500
Mission to Geneva for the presentation of the final report by the Leader of the Review Team (3 days)	10,000/ mission	10,000
Publication, translation and distribution of final review report	132/ sheet	3,960
Field visits (Lump sum for 5 missions)	8,000 / mission	40,000
Provision for unforeseen costs	n/a	2,000
Total budget		161,460

³ The Member States have given flexibility to the Secretariat to allocate additional budget (in accordance with WIPO usual practice), should additional time be required by the Experts to fulfill the task defined in these Terms of Reference.

⁴ The Member States have given flexibility to the Secretariat to allocate additional budget (in accordance with WIPO usual practice), should additional time be required by the Lead Evaluator to fulfill the task defined in these Terms of Reference.

Monitoring

The reviewers must keep the WIPO Secretariat informed of progress made in the Review on a regular basis.

The WIPO Secretariat will keep Member States informed on the selection process of the Review team, the inception report and the first draft Review.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40
Expected Output: Final Review report. The final report will be translated into official WIPO languages and published on CDIP webpage 3 months prior to its presentation to the fifteenth session of the CDIP, in May 2015, by the lead reviewer																																								

Based upon this table, if the review process is to commence after the fourteenth session of the CDIP (fourth week of January 2015), it would be achieved by the mid of November 2015 and the Review Report could be considered during the seventeenth session of the Committee, in May 2016.

This timeline is established on the assumption of a full working period. However, lower work activity is expected during the months of July and August could potentially delay some activities.

TIMELINE

ACTIVITY	DATE
Commencement of the review process: agreement of the CDIP on the ToR	January 26, 2015
1. Drafting and publication of the Request for Offers (RfO)	January 26 to February 22
2. Pre-screening of candidates	February 23 to March 8, 2015
3. Selection of candidates for the Review team	March 9 to March 29, 2015
4. WIPO administrative approval	March 30 to April 12, 2015
5. Preparation of the Inception Report by the Review team	April 13 to May 10, 2015
6. Review team visit to WIPO – Meetings with Member States Representatives and relevant WIPO Staff	May 11 to May 24, 2015
7. Review work	May 25 to August 16, 2015
8. Consideration of the draft Review Report	August 17 to September 13, 2015
9. Finalization of the Review Report	September 14 to October 11, 2015
10. Formatting, translation and publication of the Review Report as a CDIP document	October 12 to November 2, 2015
11. Presentation of the Review Report to the CDIP	CDIP/17 (April – May 2016, date to be determined)

[Annex I follows]

Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities

The General Assembly decides:

1. To adopt the following CDIP coordination mechanism principles:

- (a) The aim of the Development Agenda is to ensure that development considerations form an integral part of WIPO's work and the coordination mechanism should promote this aim;
- (b) CDIP, in accordance with its mandate, has the responsibility to monitor, assess, discuss and report on the implementation of all recommendations adopted;
- (c) All WIPO Committees stand on an equal footing and report to the Assemblies;
- (d) To avoid duplication of WIPO's governance arrangements the coordination mechanism should be consistent with, and where practical, use existing governance structures and procedures;
- (e) The coordination of the CDIP with other relevant WIPO bodies should be flexible, efficient, effective, transparent and pragmatic. It should facilitate the work of the CDIP and the respective WIPO bodies;
- (f) The coordination should be within existing budgetary resources of WIPO.

2. To establish a CDIP standing agenda item dealing with item (b)^{*} of the CDIP mandate. The agenda item:

- (a) should be the first substantive item on its agenda; and
- (b) shall be allocated sufficient time to complete its deliberations within the meeting schedule.

3. To extend, on an exceptional basis, if a clear need is identified, the duration of CDIP sessions, subject to the agreement of all Member States. In addition, during discussion of future work the Committee may consider the duration of the next CDIP meeting.

4. To instruct the relevant WIPO bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations. The General Assembly shall forward the reports to the CDIP for discussion under the first substantive item of its Agenda. The General Assembly may request the Chairs of the relevant WIPO bodies to provide it with any information or clarification on the report that may be required.

5. To instruct the CDIP to include a review of the implementation of the Development Agenda Recommendations in its report to the General Assembly, to be discussed in the

General Assembly under the standing item of the Report of the CDIP, as a sub-item entitled Review of the implementation of the Development Agenda Recommendations.

6. To instruct the relevant WIPO bodies to identify the ways in which the Development Agenda Recommendations are being mainstreamed in their work, and urge them to implement the Recommendations accordingly.

7. To urge the Director General to facilitate the coordination, assessment, and reporting of all the activities and programs undertaken by the Secretariat with respect to the Development Agenda, and to provide regular updates, through written submissions or oral briefings, on the progress of the implementation of the Development Agenda Recommendations to the CDIP, the General Assembly and relevant WIPO bodies. In particular, updates should focus on the work undertaken by other relevant WIPO bodies concerning implementation of the Development Agenda Recommendations.

8. To request the CDIP to undertake an independent review of the implementation of the Development Agenda Recommendations at the end of the 2012-2013 biennium. Upon consideration of that review, the CDIP may decide on a possible further review. The Terms of Reference and the selection of independent IP and development experts will be agreed by the CDIP.

9. To strengthen existing mechanisms within WIPO, such as the Internal Oversight Function, modalities for implementation of WIPO's Evaluation Policy and the Program Performance Reports, in order to effectively support the review and evaluation of the implementation of the Development Agenda Recommendations.

10. To include in the WIPO Annual Report to the UN, a report on the implementation of the Development Agenda, pursuant to the Agreement between the UN and WIPO.

*monitor, assess, discuss and report on the implementation of all recommendations adopted, and for that purpose it shall coordinate with relevant WIPO bodies.

DISCLAIMER: This document was adopted without paragraph numbers. The numbering was added by the Secretariat for ease of reference.

[Annex II follows]

The 45 Adopted Recommendations under the WIPO Development Agenda

At the 2007 General Assembly, WIPO Member States adopted 45 recommendations (of the 111 original proposals) made by the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA). The 45 adopted recommendations are listed below in the following clusters:

- Cluster A: Technical Assistance and Capacity Building
- Cluster B: Norm-setting, flexibilities, public policy and public domain
- Cluster C: Technology Transfer, Information and Communication Technologies (ICT) and Access to Knowledge
- Cluster D: Assessment, Evaluation and Impact Studies
- Cluster E: Institutional Matters including Mandate and Governance
- Cluster F: Other Issues

* Recommendations with an asterisk were identified by the 2007 General Assembly for immediate implementation

Cluster A: Technical Assistance and Capacity Building

* 1. WIPO technical assistance shall be, *inter alia*, development-oriented, demand-driven and transparent, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should include time frames for completion. In this regard, design, delivery mechanisms and evaluation processes of technical assistance programs should be country specific.

2. Provide additional assistance to WIPO through donor funding, and establish Trust-Funds or other voluntary funds within WIPO specifically for LDCs, while continuing to accord high priority to finance activities in Africa through budgetary and extra-budgetary resources, to promote, *inter alia*, the legal, commercial, cultural, and economic exploitation of intellectual property in these countries.

* 3 Increase human and financial allocation for technical assistance programs in WIPO for promoting a, *inter alia*, development-oriented intellectual property culture, with an emphasis on introducing intellectual property at different academic levels and on generating greater public awareness on intellectual property.

* 4. Place particular emphasis on the needs of small and medium-sized enterprises (SMEs) and institutions dealing with scientific research and cultural industries and assist Member States, at their request, in setting-up appropriate national strategies in the field of intellectual property.

5. WIPO shall display general information on all technical assistance activities on its website, and shall provide, on request from Member States, details of specific activities, with the consent of the Member State(s) and other recipients concerned, for which the activity was implemented.

* 6. WIPO's technical assistance staff and consultants shall continue to be neutral and accountable, by paying particular attention to the existing Code of Ethics, and by avoiding potential conflicts of interest. WIPO shall draw up and make widely known to the Member States a roster of consultants for technical assistance available with WIPO.

* 7. Promote measures that will help countries deal with intellectual property-related anti-competitive practices, by providing technical cooperation to developing countries, especially LDCs, at their request, in order to better understand the interface between IPRs and competition policies.

8. Request WIPO to develop agreements with research institutions and with private enterprises with a view to facilitating the national offices of developing countries, especially LDCs, as well as their regional and sub-regional intellectual property organizations to access specialized databases for the purposes of patent searches.

9. Request WIPO to create, in coordination with Member States, a database to match specific intellectual property -related development needs with available resources, thereby expanding the scope of its technical assistance programs, aimed at bridging the digital divide.

10 To assist Member States to develop and improve national intellectual property institutional capacity through further development of infrastructure and other facilities with a view to making national intellectual property institutions more efficient and promote fair balance between intellectual property protection and the public interest. This technical assistance should also be extended to sub-regional and regional organizations dealing with intellectual property.

* 11. To assist Member States to strengthen national capacity for protection of domestic creations, innovations and inventions and to support development of national scientific and technological infrastructure, where appropriate, in accordance with WIPO's mandate.

* 12. To further mainstream development considerations into WIPO's substantive and technical assistance activities and debates, in accordance with its mandate.

* 13. WIPO's legislative assistance shall be, *inter alia*, development-oriented and demand-driven, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should include time frames for completion.

* 14. Within the framework of the agreement between WIPO and the WTO, WIPO shall make available advice to developing countries and LDCs, on the implementation and operation of the rights and obligations and the understanding and use of flexibilities contained in the TRIPS Agreement.

Cluster B: Norm-setting, flexibilities, public policy and public domain

* 15. Norm-setting activities shall:

- be inclusive and member-driven;
- take into account different levels of development;
- take into consideration a balance between costs and benefits;
- be a participatory process, which takes into consideration the interests and priorities of all WIPO Member States and the viewpoints of other stakeholders, including accredited inter-governmental organizations (IGOs) and NGOs; and
- be in line with the principle of neutrality of the WIPO Secretariat.

* 16. Consider the preservation of the public domain within WIPO's normative processes and deepen the analysis of the implications and benefits of a rich and accessible public domain.

* 17. In its activities, including norm-setting, WIPO should take into account the flexibilities in international intellectual property agreements, especially those which are of interest to developing countries and LDCs.

* 18. To urge the IGC to accelerate the process on the protection of genetic resources, traditional knowledge and folklore, without prejudice to any outcome, including the possible development of an international instrument or instruments.

* 19. To initiate discussions on how, within WIPO's mandate, to further facilitate access to knowledge and technology for developing countries and LDCs to foster creativity and innovation and to strengthen such existing activities within WIPO.

20. To promote norm-setting activities related to IP that support a robust public domain in WIPO's Member States, including the possibility of preparing guidelines which could assist interested Member States in identifying subject matters that have fallen into the public domain within their respective jurisdictions.

* 21. WIPO shall conduct informal, open and balanced consultations, as appropriate, prior to any new norm-setting activities, through a member-driven process, promoting the participation of experts from Member States, particularly developing countries and LDCs.

22. WIPO's norm-setting activities should be supportive of the development goals agreed within the United Nations system, including those contained in the Millennium Declaration.

The WIPO Secretariat, without prejudice to the outcome of Member States considerations, should address in its working documents for norm-setting activities, as appropriate and as directed by Member States, issues such as: (a) safeguarding national implementation of intellectual property rules (b) links between intellectual property and competition (c) intellectual property -related transfer of technology (d) potential flexibilities, exceptions and limitations for Member States and (e) the possibility of additional special provisions for developing countries and LDCs.

23. To consider how to better promote pro-competitive intellectual property licensing practices, particularly with a view to fostering creativity, innovation and the transfer and dissemination of technology to interested countries, in particular developing countries and LDCs.

Cluster C: Technology Transfer, Information and Communication Technologies (ICT) and Access to Knowledge

24. To request WIPO, within its mandate, 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) also taking into account the significance of the Digital Solidarity Fund (DSF).

25. To explore intellectual property -related policies and initiatives necessary to promote the transfer and dissemination of technology, to the benefit of developing countries and to take appropriate measures to enable developing countries to fully understand and benefit from different provisions, pertaining to flexibilities provided for in international agreements, as appropriate.

26. To encourage Member States, especially developed countries, to urge their research and scientific institutions to enhance cooperation and exchange with research and development institutions in developing countries, especially LDCs.

27. Facilitating intellectual property -related aspects of ICT for growth and development: Provide for, in an appropriate WIPO body, discussions focused on the importance of intellectual property -related aspects of ICT, and its role in economic and cultural development, with specific attention focused on assisting Member States to identify practical intellectual property -related strategies to use ICT for economic, social and cultural development.

28. To explore supportive intellectual property -related policies and measures Member States, especially developed countries, could adopt for promoting transfer and dissemination of technology to developing countries.

29. To include discussions on intellectual property -related technology transfer issues within the mandate of an appropriate WIPO body.

30. WIPO should cooperate with other IGOs to provide to developing countries, including LDCs, upon request, advice on how to gain access to and make use of intellectual property-related information on technology, particularly in areas of special interest to the requesting parties.

31. To undertake initiatives agreed by Member States, which contribute to transfer of technology to developing countries, such as requesting WIPO to facilitate better access to publicly available patent information.

32. To have within WIPO opportunity for exchange of national and regional experiences and information on the links between IPRs and competition policies.

Cluster D: Assessment, Evaluation and Impact Studies

33. To request WIPO to develop an effective yearly review and evaluation mechanism for the assessment of all its development-oriented activities, including those related to technical assistance, establishing for that purpose specific indicators and benchmarks, where appropriate.

34. With a view to assisting Member States in creating substantial national programs, to request WIPO to conduct a study on constraints to intellectual property protection in the

informal economy, including the tangible costs and benefits of intellectual property protection in particular in relation to generation of employment.

* 35. To request WIPO to undertake, upon request of Member States, new studies to assess the economic, social and cultural impact of the use of intellectual property systems in these States.

36. To exchange experiences on open collaborative projects such as the Human Genome Project as well as on intellectual property models.

* 37. Upon request and as directed by Member States, WIPO may conduct studies on the protection of intellectual property, to identify the possible links and impacts between intellectual property and development.

38. To strengthen WIPO's capacity to perform objective assessments of the impact of the organization's activities on development.

Cluster E: Institutional Matters including Mandate and Governance

39. To request WIPO, within its core competence and mission, to assist developing countries, especially African countries, in cooperation with relevant international organizations, by conducting studies on brain drain and make recommendations accordingly.

40. To request WIPO to intensify its cooperation on IP related issues with United Nations agencies, according to Member States' orientation, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially the WTO in order to strengthen the coordination for maximum efficiency in undertaking development programs.

41. To conduct a review of current WIPO technical assistance activities in the area of cooperation and development.

* 42. To enhance measures that ensure wide participation of civil society at large in WIPO activities in accordance with its criteria regarding NGO acceptance and accreditation, keeping the issue under review.

43. To consider how to improve WIPO's role in finding partners to fund and execute projects for intellectual property -related assistance in a transparent and member-driven process and without prejudice to ongoing WIPO activities.

* 44. In accordance with WIPO's member-driven nature as a United Nations Specialized Agency, formal and informal meetings or consultations relating to norm-setting activities in WIPO, organized by the Secretariat, upon request of the Member States, should be held primarily in Geneva, in a manner open and transparent to all Members. Where such meetings are to take place outside of Geneva, Member States shall be informed through official channels, well in advance, and consulted on the draft agenda and program.

Cluster F: Other Issues

45. To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that "the protection and enforcement of intellectual property rights should contribute to the promotion of technological

innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations”, in accordance with Article 7 of the TRIPS Agreement.

[End of Annex II and of document]