

**We, the undersigned public interest non-governmental organizations support the adoption of the proposal submitted by the Group of Friends of Development (FoD) for a Development Agenda at the World Intellectual Property Organization (WIPO).**

**Specifically, we call attention to the following principles in the FoD proposal and recommend that Member States:**

**1. AMEND THE WIPO CONVENTION (1967) TO EXPRESSLY INCORPORATE A DEVELOPMENT DIMENSION, CONSISTENT WITH WIPO OBLIGATIONS AS A UN AGENCY**

Public interest NGOs fully support Proposal 1 of the adopted Work Plan (Annex to Summary of Chair), which proposes amending the WIPO Convention to include explicit language incorporating a development dimension and the specific language for such change set forth in WO/GA/31/11, appendix 3.

The 1974 agreement between the United Nations and WIPO established WIPO as a specialized agency of the UN family with responsibility for “promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development, subject to the competence and responsibilities of the United Nations and its organs . . . .”<sup>1</sup>

Amending WIPO’s mandate will enhance and inscribe a development dimension into the organization’s core, ensuring WIPO will maintain its responsibility to the UN and promote the public interest, first and foremost.

**2. CONSIDER ELABORATION OF A TREATY ON ACCESS TO KNOWLEDGE AND TECHNOLOGY**

We fully support Proposal 3 of the adopted Work Plan that calls on Member States to consider elaboration of a Treaty on Access to Knowledge and Technology.

Access to knowledge and information sharing are fundamental to education and research and to fostering innovation and creativity. A treaty setting out user freedoms would address “the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention” as set out in the Preamble to the WIPO Copyright Treaty.<sup>2</sup>

A treaty on access to knowledge and technology would be a key component in policy interventions to alleviate the situation in disadvantaged countries and would be of benefit to the overall socio-economic and political development of a country.

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<sup>1</sup> AGREEMENT BETWEEN THE UNITED NATIONS AND THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, Art. 1, WIPO Publication No. 111 (1975) *available at* <http://www.wipo.int/treaties/en/agreement/index.html>.

<sup>2</sup> WIPO Copyright Treaty, *adopted* Dec. 20, 1996, WIPO Doc. CRDNR/DC/94 (Dec. 23, 1996) pmb1, *available at* <http://www.wipo.int/clea/docs/en/wo/wo033en.htm>.

### **3. ESTABLISH AN INDEPENDENT WIPO EVALUATION AND RESEARCH OFFICE (WERO)**

Public interest NGOs fully support Proposal 5 of the adopted Work Plan that calls for the establishment of WERO.

The creation of an independent research office that would report directly to the General Assembly is an important component to the reform mandated by the General Assembly's adoption of the Development Agenda. The creation of WERO would strengthen the oversight function of Member States at WIPO, enhance the credibility of WIPO and its programmes, and would comply with established international practice in other organizations such as the World Bank and the International Monetary Fund.

As set forth in the FoD Proposal, the establishment of WERO would provide a transparent, independent and objective body that would evaluate all WIPO programmes and activities with respect to their development impact in general and their impact on innovation, creativity and dissemination of knowledge and technology; assess the development impact of all proposed norm-setting activities in WIPO; and monitor and evaluate all WIPO technical assistance activities based on guidelines established by the General Assembly.

### **4. ADOPT PRINCIPLES AND GUIDELINES FOR THE TECHNICAL ASSISTANCE PROGRAMME**

We fully support the proposals which relate to Technical Assistance. These are Proposal 4 to Formulate and Adopt Principles and Guidelines for the Development and Implementation of Technical Assistance; Proposal 10 to Improve Information Sharing on Technical Assistance; and Proposal 13 to Develop Indicators and Benchmarks for the Evaluation of WIPO Technical Assistance.

We believe that these proposals would enhance the value of technical assistance to developing countries by providing opportunities to review technical assistance programmes and keep them fresh, to include new or alternative business and software models and to ensure that a cross-section of stakeholder interests are represented. Consultation with a wide range of groups such as libraries, educators, people with disabilities and consumers, as well as creators and rightsholders would help to build capacity and improve governance, a key component of the 2005 Report of the Commission for Africa.<sup>3</sup>

### **5. REFORM WIPO NORMS AND PRACTICES:**

#### ***A. Weigh the costs and benefits of copyright, patent and trademark rights***

Public interest NGOs fully support Proposal 7 of the adopted Work Plan to formulate and adopt principles and guidelines for norm-setting activities in WIPO. WIPO must acknowledge the costs and benefits of both information monopolies and harmonization.

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<sup>3</sup> See Our Common Interest: Report of the Commission for Africa, March 11 (2005) available at [http://www.commissionforafrica.org/english/report/thereport/english/11-03-05\\_cr\\_report.pdf](http://www.commissionforafrica.org/english/report/thereport/english/11-03-05_cr_report.pdf).

Continuously expanding the scope and level of copyright, patent and trademark rights creates real social and economic costs. Norm-setting activities must follow guidelines that balance public access and competition policies against monopoly rights in knowledge and information, and that weigh the economic cost of maintaining and enforcing these systems against the relative benefits in each country.

In order to reach effective results that meet the challenges of global development, internationally agreed upon developmental standards should serve as benchmarks for WIPO norm-setting activities to meet. The United Nations Millennium Development Goals,<sup>4</sup> which all 191 UN Member States have pledged to meet, establish development standards that copyright, patent and trademark laws should seek to facilitate.

***B. Copyright, patent and trademark rights are not ends in themselves and must foster the public goals of innovation, creativity and technical development***

Public interest NGOs fully support Proposal 8 of the adopted Work Plan to undertake independent, evidence-based “development impact assessments.”

International instruments recognize the underlying public goals of copyright, patent and trademark laws. The WIPO Copyright Treaty recognizes that copyright law serves “to maintain a balance between the interests of authors and the larger public interest, particularly education, research, and access to information.”<sup>5</sup> Trade Related Aspects of Intellectual Property (TRIPS) Art. 7 explicitly stipulates a balanced and harmonious outlook between these rights and the public interest.<sup>6</sup>

It is essential that copyright, patent and trademark rights foster innovation, creativity and technical development. WIPO must adopt a framework that can ensure that these information monopolies advance public goals in developing countries. The FoD proposal for a Development Agenda at WIPO provides an excellent blueprint to begin this reform.

***C. “One size (XL) fits all” approach to copyright, patent and trademark rights does not foster development in all countries***

International norms for copyright, patent and trademark rights need to take into account different levels of development to ensure that the primary rationale for granting the rights, to promote societal development by encouraging technological innovation, is actually accomplished.

Expansive copyright, patent and trademark rights disproportionately favor wealthy developed countries and perpetuate the current imbalance in access to and control of knowledge and information. Copyright, patent and trademark laws must reflect each country’s development

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<sup>4</sup> See UN Millennium Development Goals at <http://www.un.org/millenniumgoals/>.

<sup>5</sup> WIPO Copyright Treaty, *supra* note 2.

<sup>6</sup> TRIPS AGREEMENT art. 7, states:

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.

needs to better facilitate access to information and knowledge throughout the world. Such access is strongly called for in the “Doha Plan of Action” agreed by the Heads of State and Government of the Group of 77 and China<sup>7</sup> and in the “Declaration of Principles” of the World Summit on the Information Society<sup>8</sup>.

All countries have a right to make their own economic development strategies, which are inherently value based. Articles 1 and 8 of TRIPS recognize both national sovereignty concerning development strategies and national values.<sup>9</sup> WIPO’s “one-size-fits-all” approach improperly assumes that western intellectual property policy embodies universal values.

#### ***D. Copyright, patent and trademark laws need to protect flexibilities and limitations***

International instruments and developed countries’ own copyright, trademark and patent laws provide for flexibilities and limitations that ensure the promotion of social values. Competition policy, compulsory licenses for medicine, and fair use exceptions demonstrate that monopoly rights can be curtailed to achieve public benefits.

Countries need to have policy space to meet national developmental priorities. Creative expression is value driven and copyright, patent and trademark law governs what type of creative expression is either permissible or infringing, and what type of creative expression is “protectable” and to what extent. Since all Member States have a natural right to exercise their own values and the legal system is the principal means through which society can assert its values, all nations have a natural right to make value choices regarding their own level of copyright, patent and trademark rights.

WIPO technical assistance should promote the full range of flexibilities provided by TRIPS, including education and promotion of non-proprietary free and open access development models.

#### ***E. More transparent and Member driven with ongoing public interest participation***

Public interest NGOs fully support Proposals 6 and 9 of the adopted Work Plan which, respectively, seek to ensure wider participation of public interest NGOs at WIPO, and to establish a system of holding public hearings prior to the initiation of norm-setting activities.

The FoD proposal initiates an important dialogue on making fundamental changes to ensure that WIPO is truly Member driven, as the majority of WIPO constituents are from developing countries. In order to progress as a Member-driven organization, WIPO must address the development concerns of its Members in all aspects of its work.

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<sup>7</sup> *Doha Plan of Action*, Second South Summit, Doha, Qatar, 12-16 June 2005 (G-77/SS/2005/2) available at: [http://www.ipjustice.org/WIPO/Doha\\_Declaration\\_G-77.pdf](http://www.ipjustice.org/WIPO/Doha_Declaration_G-77.pdf).

<sup>8</sup> See WSIS Declaration of Principles (Dec. 12, 2003), available at [http://www.itu.int/dms\\_pub/itu-s/md/03/wsis/doc/S03-WSIS-DOC-0004!!PDF-E.pdf](http://www.itu.int/dms_pub/itu-s/md/03/wsis/doc/S03-WSIS-DOC-0004!!PDF-E.pdf).

<sup>9</sup> See Agreement on Trade-related Aspects of Intellectual Property Rights, art. 1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments—Results of the Uruguay Round vol. 31, 33 I.L.M. 1197 (1994), available at [http://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](http://www.wto.org/english/docs_e/legal_e/27-trips.pdf).