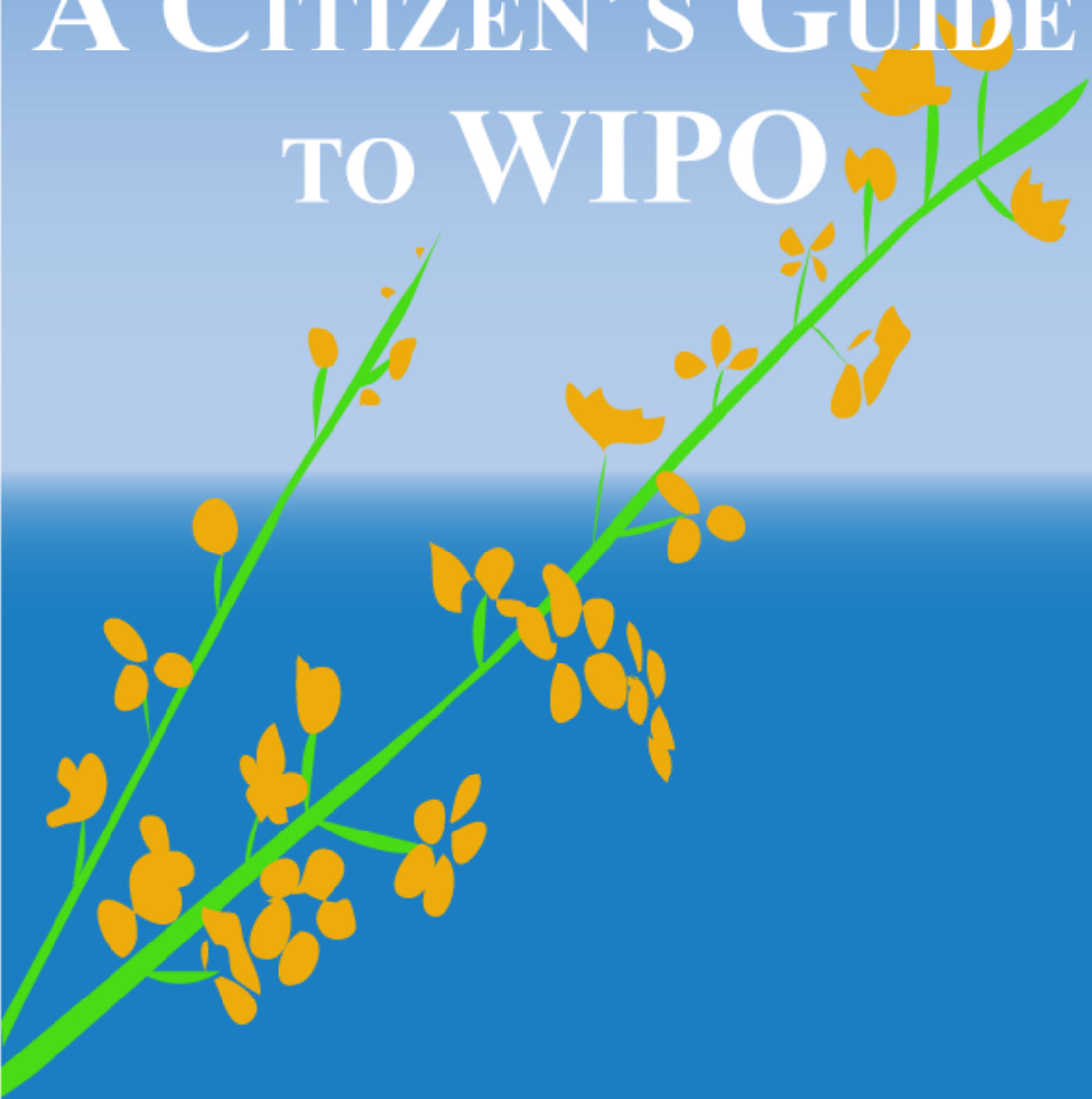


A CITIZEN'S GUIDE TO WIPO



CIEL

CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

ABOUT CIEL

CIEL is a nonprofit organization that uses international law, institutions, and processes to protect the environment, promote human health, and create a just and sustainable world. Through our offices in Europe (Geneva) and North America (Washington D.C. and Berkeley, California), we provide advice and support to partners in civil society, government and intergovernmental organizations.

CIEL's program areas include Chemicals, Climate Change, Biodiversity and Wildlife, Biotechnology, Trade and Sustainable Development, International Financial Institutions, Law and Communities, and Human Rights and the Environment. CIEL's work covers more than sixty countries on six continents, with emphasis on the Western Hemisphere, Central and Eastern Europe and the Newly Independent States, Asia and Africa.

The Project on Intellectual Property and Sustainable Development fits within CIEL's Program on Trade & Sustainable Development, which promotes systemic reform of the international framework of economic law, policy and institutions, to ensure that trade, investment and intellectual property rules promote accountability, equity, and sustainable development.

CIEL's Project on Intellectual Property and Sustainable Development aims at ensuring that international intellectual property rules and institutions promote sustainable development. This includes promoting a balanced international intellectual property system that:

- supports innovation and transfer of knowledge and technology;
- supports access to products covered by intellectual property rights;
- prevents abuse of intellectual property rights; and
- advances the public interest, broadly defined.

CIEL's intellectual property work over the past decade has covered a variety of topics, including seeking to ensure that the intellectual property system benefits ordinary citizens and communities and supports protecting biodiversity. Since 2000 in particular, CIEL has carried out work to assist developing countries and other stakeholders to be more effective in their participation in international intellectual property discussions. Work on WTO and WIPO negotiations, for example, has assisted developing countries, civil society organizations, and other stakeholders to confront the challenges arising from the complex processes of international intellectual property standard setting. More recently, work on bilateral and regional intellectual property discussions has focused on critically examining the development of "TRIPS plus" intellectual property rights provisions.

ACKNOWLEDGEMENTS

The *Citizen's Guide to WIPO* was elaborated by the CIEL Intellectual Property and Sustainable Development Project, led by Dalindyabo Shabalala, building on earlier work by María Julia Oliva. The *Guide* also received valuable input from CIEL's Trade and Sustainable Development Program, including Nathalie Bernasconi-Osterwalder, Daniel Magraw, Marcos Orellana, Palesa Tlhapi-Guye and Sofia Plagakis.

The *Citizen's Guide to WIPO* also benefited from the knowledge and expertise of a number of people outside CIEL. In particular, Viviana Muñoz provided critical research and text. Andreas Marc Schmalz and Marcia Aribela Pereira also contributed to different drafts. Their support is greatly appreciated. Finally, great thanks are due to Sisule F. Musungu, Davinia Ovet, and William New, who provided very useful suggestions and comments.

CIEL wishes to thank the Swedish International Development Agency, the South Centre and the Rockefeller and John D. and Catherine T. MacArthur Foundations for their support of this project.



2007

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Cover art and design by Karin M Dijkstra.

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LIST OF ACRONYMS

ACE	Advisory Committee on Enforcement
AIPPI	International Association for the Protection of Intellectual Property
CBD	Convention on Biological Diversity
EPO	European Patent Office
FAO	Food and Agriculture Organization
Group B	Group of Industrialized Countries
GRULAC	Group of Latin American and Caribbean Countries
IAC	Industry Advisory Commission
IGC	Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore
IIM	Inter-sessional Intergovernmental Meeting on the WIPO Development Agenda
IPR Commission	United Kingdom Commission on Intellectual Property Rights
JIU	Joint Inspection Unit
LDCs	Least Developed Countries
NGOs	Non-governmental organizations
PAC	Policy Advisory Commission
PBC	Program and Budget Committee
PCDA	Provisional Committee on Proposals related to the WIPO Development Agenda
PCT	Patent Cooperation Treaty
SCP	Standing Committee on the Law of Patents
SCCR	Standing Committee on Copyright and Related Rights
SPLT	Substantive Patent Law Treaty
TRIPS	Agreement on Trade-related Aspects of Intellectual Property Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

I. INTRODUCTION

“NGOs have been the single most important factor in raising the issue of the impact of the international intellectual property standards on development issues such as health, food and agriculture.”

Peter Drahos, Australian National University

If you have picked up this guide, it is likely that you or your organization are working, or are thinking of working, on intellectual property issues and are trying to understand the role that you can play in such discussions at the World Intellectual Property Organization (WIPO). The objective of the *Citizen's Guide to WIPO* is exactly that: to provide citizens and civil society organizations with the practical information required to promote and enhance their effective participation in WIPO discussions and activities. The *Guide* does not aim to address or explain the links between intellectual property and sustainable development, which have been extensively analyzed in a number of other reports and publications, many of which are listed in Annex A. Section II is meant to provide a quick overview of some of the issues and how they relate to WIPO. Nor is it a guide to WIPO's services on patents, trademarks or domain name disputes. Rather, CIEL's *Citizen's Guide to WIPO* describes WIPO's role in the development, implementation, and enforcement of intellectual property rules, and seeks to enable civil society to effectively insert public interest concerns into WIPO's programs and activities.

The importance of civil society participation in intellectual property discussions cannot be over-stated. The term “civil society” is used in this Guide as including all non-State, not-for-profit entities working in the public interest, such as environmental and sustainable development non-governmental organizations (NGOs), consumer groups, charities, foundations, public research institutions, and other such groups and organizations. This definition, which does not include groups and associations representing business and industry interests, differs from that used by WIPO – see Box 1. Where this *Guide* intends to include these groups it will refer to NGOs.

By increasing awareness and understanding of the relationship between intellectual property and public policy issues, civil society has significantly contributed to the promotion of a more balanced and equitable international intellectual property system. At the World Trade Organization (WTO), for example, the active participation of consumer advocacy and public health groups in the “Access to Medicines” campaign was critical to the adoption of the 2001 Doha Declaration on the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement) and Public Health. The declaration reaffirmed that the provisions of the agreement do not and should not prevent countries from taking measures to protect public health. Like the WTO, WIPO is an increasingly important arena for discussion and norm-setting in intellectual property.

The growing participation of civil society has proven invaluable in WIPO. Civil society has raised awareness about the negative impact of WIPO's programs and activities on areas such as the conservation of biodiversity, access to knowledge, food security, and transfer of technology. Civil society has also contributed innovative ideas to the discussions in WIPO, such as providing alternative texts to the proposed treaty on the protection of broadcasting organizations. The WIPO Development Agenda process has identified the participation of civil society as central to ensuring that WIPO's intellectual property rules serve the interests of all sectors of society (see Box 7). Nonetheless, the full and fair participation of civil society in

WIPO discussions remains challenging. Despite the acknowledgement that rising levels of intellectual property protection have major impacts and costs for all sectors of society, WIPO's structure, activities, and functioning continue to limit civil society involvement.

II. THE INTELLECTUAL PROPERTY AND SUSTAINABLE DEVELOPMENT DEBATE: THE ROLE OF WIPO

Intellectual property has a significant impact on many sustainable development issues. While WIPO does not structure its work around issues of Public Health, Food Security, Biodiversity and Access to Knowledge, its work on Patents, Trademark, Copyright and Enforcement are tightly linked to these issues.

A. WIPO and Human Health

Intellectual Property affects human health largely through the operation of patent systems that provide monopolies on drugs and medicines necessary for human and animal health. The TRIPS Agreement significantly changed the public health landscape by requiring countries that previously did not grant patents on pharmaceutical products, such as India, to do so. This explosion of patenting has led to increased prices and reduced access to medicines and health for many people. In addition, research into diseases that particularly affect marginalized group has not seen an increase despite the promise that increased patent protection would provide research incentives. This issue is within the mandate of WIPO's Standing Committee on the Law of Patents, which considers developments in patent law and sets norms. WIPO has not generally considered the public health impact of its activities, although the presence of civil society has begun to place such issues in the consciousness of the organization. Work towards further harmonization of patent standards at the level of standards in industrialized countries is threatening to further increase the scope and duration of patents, further reducing access to medicines for marginalized communities. The Substantive Patent Law Treaty is the major norm-setting process in this committee, and has largely been pushed by the industrialized countries and the WIPO Secretariat. Civil society and developing countries have been pushing to broaden the agenda of the committee to consider issues of public health, equity and sustainable development.

B. WIPO and Food Security

The patenting of plants and plant varieties has caused massive changes in farming practices, encouraging seed distribution chains that make farmers more dependent on large multinational corporations and farming methods that are unsustainable for local communities. In addition, the proliferation of Plant Breeders' Rights regimes such as the 1991 version of the International Convention for the Protection of New Varieties of Plants (UPOV 1991), has meant that traditional farmers' rights to sow, save, re-use and sell their seeds are being eroded and are in danger of being extinguished. WIPO's patent agenda aims to increase the ease of getting patents on plants and plant varieties, through work in the Standing Committee on the Law of Patents. Discussions in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore also cover the future protection of genetic resources and whether their ownership should rest in the hands of private actors, states, or indigenous and local communities. A real concern is the misappropriation of plant genetic resources by major multinational corporations. The WIPO Director General is also the Secretary-General of UPOV, which means that the two organizations share resources and personnel. It also means that the WIPO Secretariat's aim of 'promoting' intellectual property influences the agenda and goals of the UPOV Secretariat, prioritizing the interests of private corporations above those of small farmers and communities. WIPO continues to work to influence other organizations, including the Food and Agricultural Organization's International

Treaty on Plant Genetic Resources for Agriculture. Joint agreements have been pursued that would allow the WIPO Secretariat to be the primary advisor to the FAO on the treatment of intellectual property within the FAO system. This raises serious concerns about WIPO's influence on the FAO's mission which is primarily to ensure food access and security and not to safeguard the interests of private IP holders.

C. WIPO and Biodiversity

An issue of increasing concern, articulated in the Convention on Biological Diversity and in the International Treaty on Plant Genetic Resources for Agriculture, is the increased privatization, and misappropriation of plant and animal germplasm. Privatization through patents and other forms of intellectual property removes material from the communities where it has evolved through broad-based, collaborative and open cultivation practices. A proper balance must be achieved between enabling access to such resources and enabling equitable benefit sharing of the fruits of innovation. Issues such as disclosure of the origin of genetic resources are being addressed at WIPO in the Standing Committee on the Law of Patents, at the urging of developing countries and civil society groups. These issues also provided impetus for the formation of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore. Developing countries and civil society groups have pushed for recognition of indigenous and other local communities' rights to their traditional knowledge and folklore and have proposed alterations to the international IP system to accommodate the concerns and rights of such groups. In particular they have pursued the prevention of misappropriation of genetic resources. They have also highlighted the need to ensure that WIPO norms are coherent with the provisions of the Convention on Biological Diversity regarding Access and Benefit Sharing, the rights of traditional knowledge holders, and the conservation of *in situ* biological diversity.

D. WIPO and Access to Knowledge

The advent of digital and internet technologies (and their increasing availability) is challenging the historical imbalance between access to educational and other information and the rights of producers. Individuals are able to access, reproduce and distribute knowledge more widely and at almost no cost. The potential for removing barriers to accessing knowledge is, however, being challenged by the traditional copyright industries as they seek greater control over knowledge through technological protection mechanisms (among other tools), reducing the ability of individuals and States to exercise traditional public interest exceptions and ensure that copyright meets its basic goals of expanding the pool of publicly available knowledge. WIPO's Standing Committee on Copyright and Related Rights has been at the forefront of pushing for greater control by the major copyright industries, as can be seen in the WIPO Copyright Treaty and the WIPO Performers and Phonograms Treaty. This process continues in the push for a WIPO Broadcast Treaty aimed at providing greater and broader rights for broadcasting organizations, including over internet transmissions. Despite the push for broader rights, developing countries and civil society have succeeded in raising difficult questions about the broadcasting treaty and have worked to broaden the agenda of the committee to include access issues such as exception and limitations for education and the blind, open source production, and distribution.

III. USING THE CITIZEN'S GUIDE TO WIPO: FROM PARTICIPATION TO INFLUENCE

"When we got to WIPO, we weren't sure what we'd do. We knew a ton about using the U.S. Constitution as a lever to get rid of bad laws, about organizing activists to target elected representatives, and about influencing regulators, but we'd never worked in this kind of international forum. Just a few years later, we've helped form a huge, effective coalition that is making tremendous positive change at WIPO."

Cory Doctorow (EFF European Affairs Coordinator 2004 - 2005)

Although business groups, lawyer associations, and other intellectual property right-holder organizations have long been actively involved in WIPO, the broader participation of civil society is a relatively recent phenomenon. Most civil society organizations began their participation in WIPO with the establishment of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (Traditional Knowledge Committee (IGC)) in 2000. The Committee addresses issues of paramount importance for sustainable development (*e.g.*, biopiracy, indigenous community rights, and traditional local innovation) and encouraged the participation of a wide range of stakeholders through *ad hoc* observership.¹ Today, over 90 civil society organizations, including a number of indigenous peoples' groups, participate in the Traditional Knowledge Committee (IGC) sessions, providing fundamental information and perspectives. Civil society has also become involved in discussions in several other WIPO bodies, including the Standing Committee on the Law of Patents (Patent Committee (SCP)), the Standing Committee on Copyright and Related Rights (Copyright Committee (SCCR)), and – more recently – in the WIPO Development Agenda discussions. In all these cases, civil society participation has significantly enriched and balanced the debate.

Box 1: What is considered an “NGO” in the WIPO system?

In WIPO, the term “NGO” is basically applied to any organization that is independent from government. In contrast to other international organizations, there is no need for the organization to operate on a not-for-profit basis or to seek to advance the public interest. The World Bank, in contrast, defines NGOs as “private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development”¹. As a result, business groups and other private sector organizations are also considered “NGOs” in WIPO, rather than being separately categorized. Such terminology is confusing and can be misleading: 243 “NGOs” are currently accredited as permanent observers to WIPO, this number includes organizations such as the Asian Patent Attorney Association, the Biotechnology Industry Organization, the European Film Companies Alliance, the International Air Transport Association, and the International Publishers Association. Recently, a group of developing countries called for WIPO “to take appropriate measures to distinguish between user organizations representing the commercial interests of [intellectual property] right holders and NGOs representing the public interest

Nevertheless, civil society involvement can, and should, be improved. The technical nature of WIPO issues continues to deter and limit the participation of many civil society organizations. In response to the challenge of accessibility, a number of intergovernmental and non-governmental organizations have begun providing information and analysis to a wide

¹ Ad hoc observership, as opposed to permanent observership, relates only to a particular committee or working group within WIPO.

range of stakeholders. The South Centre, the United Nations Conference on Trade and Development (UNCTAD), and CIEL, for instance, provide extensive information on ongoing intellectual property negotiations and their impact on development and social issues such as transfer of technology, public health, biodiversity, and access to information and knowledge. The South Centre and CIEL produce the *IP Quarterly Update*², which provides a summary of relevant developments in multilateral, plurilateral, and bilateral fora and analyzes significant topics in intellectual property and sustainable development discussions. UNCTAD and the International Centre for Trade and Sustainable Development (ICTSD) produce numerous publications on intellectual property and sustainable development issues under a joint capacity building project (www.iprsonline.org). Many other NGOs also produce a number of publications that address and analyze matters relating to intellectual property and sustainable development (See Box 2 for list of organizations). Journalists have also begun to cover issues at WIPO and in other IP fora. The primary news source covering WIPO issues is IP Watch (www.ip-watch.org), an online publication with daily updates as well as a monthly reporter.

Perhaps the largest obstacle to expanding and strengthening civil society participation in WIPO is the lack of information as to the nature, objectives, and operation of the organization. Several issues have deterred many civil society organizations from effectively engaging in intellectual property and development issues arising in the WIPO program and activities. These include:

- the complexity of WIPO's internal governance structure;
- the range of different bodies and discussions it hosts;
- the complexity of the international legal instruments and substantive issues in which WIPO is involved;
- the number of procedural questions that impact the substantive debate; and
- the uncertainty as to how civil society can make a difference.

The *Citizen's Guide to WIPO* aims to overcome these challenges. It is designed to provide clear and concrete information about the organization and functioning of WIPO. Emphasis is placed on presenting information in a strategic and practical manner. Information is described in the context of its relevance to civil society efforts to ensure that intellectual property-related activities in WIPO support sustainable development, including by promoting innovation and transfer of knowledge and technology, and advancing public interests. For each issue, moreover, concrete examples of the past or potential impact of civil society participation are provided. Finally, the *Citizen's Guide to WIPO* addresses a series of frequent logistical questions regarding civil society participation in WIPO, including:

- how to attend WIPO meetings;
- how to contribute views and positions; and
- how to interact, both formally and informally with other groups of stakeholders.

² Available at <http://www.ciel.org/Publications/pubipqu.html> and <http://www.southcentre.org/IAIP/newipquarterlyupdate.htm>.

Box 2 –Civil Society Resources on Intellectual Property and Sustainable Development Issues	
3D -> Trade - Human Rights – Equitable Economy	www.3dthree.org
Action Aid	http://www.actionaid.org/
Asian ICT Policy Monitor	http://asia.rights.apc.org/
Center for International Environmental Law (CIEL)	www.ciel.org
Consumers International	http://www.consumersinternational.org
Creative Commons	http://creativecommons.org
Edmonds Institute	http://www.edmonds-institute.org/
Electronic Information for Libraries (EIFL)	www.eifl.net
Electronic Frontier Foundation (EFF)	www.eff.org
European Digital Rights Initiative (EDRI)	www.edri.org/
Free Software Foundation Europe (FSFE)	www.fsfeurope.org
Fundação Getulio Vargas	www.fgv.br
GRAIN	www.grain.org
International Centre for Trade and Sustainable Development (ICTSD)	www.iprsonline.org
International Federation of Library Associations and Institutions (IFLA)	www.ifla.org
IP Justice	www.ipjustice.org
Knowledge Ecology International (formerly CPTech)	www.keionline.org
Medécins sans Frontières (MSF)	www.accessmed-msf.org
Oxfam International (and national affiliates)	www.oxfam.org
Quaker United Nations Office (QUNO)	www.quno.org
Quaker International Affairs Programme (QIAP)	http://www.qiap.ca
Sociedad Peruana de Derecho Ambiental (SPDA)	http://www.spda.org.pe
The Open Knowledge Foundation	www.openknowledgefoundation.org
Third World Network (TWN)	www.twinside.org.sg
TRALAC	www.tralac.org
Union for the Public Domain	www.public-domain.org

The following sections describe WIPO's history, mandate, governance, and activities (Section IV) and offer information to guide civil society organizations through the practical aspects of monitoring and participating, both formally and informally, in WIPO meetings and other activities (Section V). The *Guide* also includes 5 Annexes, namely:

- a list of treaties administered by WIPO;
- the criteria for permanent observership in WIPO;
- the Geneva Declaration on the Future of WIPO, a statement signed by hundreds of nonprofits, scientists, academics and other individuals that calls on WIPO to focus more on the needs of developing countries, and to view intellectual property as one of many tools for development - not as an end in itself;
- the agreed set of recommendations for a WIPO Development Agenda;
- a selected bibliography.

We hope that this *Guide* provides you with some of the answers you are seeking. In your interactions with WIPO and other civil society organizations, you will encounter a variety of viewpoints and approaches. It is important to remember that while this *Guide* may at times be critical of the activities and positions of the WIPO Secretariat and of some rights-holder organizations and member countries, there are many people in these groups who will be willing to discuss and engage with you on the issues that you care about. The opportunity to interact with such persons and to effect change is a real possibility, and you are encouraged to make the most of it.

IV. THE RULES OF THE GAME: WIPO'S STRUCTURE AND FUNCTIONING

“WIPO of today [is] a dynamic entity with 184 Member States, a staff that now numbers some 938... and with a mission and a mandate that are constantly growing.”

WIPO General Information at www.wipo.org

WIPO is an intergovernmental organization established in 1970 to “promote the protection of intellectual property throughout the world through cooperation among States, and where appropriate, in collaboration with any other international organization.”³ In 1974, it became a specialized agency of the United Nations (UN), being responsible for taking appropriate action “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.”⁴

Though the architecture of the international intellectual property regime now includes a diversity of multilateral agreements, international organizations, regional conventions and bilateral arrangements, WIPO remains one of its cornerstones. WIPO is mainly responsible for:

- negotiating international treaties;
- administering such treaties and other systems of global protection; and
- providing technical assistance and training.

For example, recent negotiations in WIPO have included a proposed Substantive Patent Law Treaty (SPLT), and a proposed Broadcasting Treaty. In terms of treaty administration, WIPO currently oversees 23 treaties⁵, including:

- treaties that define internationally agreed substantive standards of intellectual property protection;
- treaties that establish the international registration or filing of intellectual property rights; and
- treaties that create classification systems to organize information concerning inventions, trademarks, and industrial designs.

WIPO is, moreover, the main provider of technical assistance on intellectual property, having conducted meetings, expert missions, and other activities in 127 countries in the period from 2000 to 2005. WIPO's norm-setting, administrative, and technical assistance activities thus fundamentally affect intellectual property rules both at the international and national levels. The question increasingly being posed by civil society organizations and developing countries is: does WIPO properly include sustainable development in its work program and norm-setting? The answer seems to be “no.” (See Box 7). The governance structure of WIPO has come under particular scrutiny. Several issues have been raised, including:

- WIPO's interpretation of its mandate and understanding of its competence;

³ The WIPO Convention, WIPO's constituent instrument, was signed at Stockholm on July 14, 1967, entered into force in 1970 and was amended in 1979. The *Bureaux Internationaux Reunis pour la Protection de la Propriete Intellectuelle* (BIRPI), WIPO's first predecessor, was created in 1893.

⁴ Article 1, Agreement between the United Nations and the World Intellectual Property Organization. Available at <http://www.wipo.int/treaties/en/agreement/index.html>.

⁵ For a full listing see Annex D (also available at <http://www.wipo.int/treaties/en/>).

- the role of the Secretariat, Member States, and observers in WIPO; and
- the lack of effective mechanisms for oversight and transparency.

Civil society and academics have also highlighted the need for principles and guidelines for work that WIPO is, or should be, doing, in areas such as norm-setting, the provision of technical assistance, the promotion of transfer and dissemination of technology transfer, and related competition policies.

WIPO's structure and procedures are relevant for the content of norm-setting discussions as well. For instance, in the June 2005 session of the Traditional Knowledge Committee (IGC), consideration of the draft provisions for the protection of traditional knowledge and expressions of folklore against misappropriation took a back seat to the debate over the scope of the mandate of the committee. Indeed, developing countries consider the scope of the mandate to be inherently linked to the usefulness of the Traditional Knowledge Committee (IGC) for advancing discussion on these issues. Another example is the September 2006 session of the Copyright Committee (SCCR), which ended with a recommendation to convene a diplomatic conference, despite the clear objections of several countries to such a move. This highly contested conclusion to the meeting was in direct contradiction to the principle that decisions at WIPO are governed by consensus.

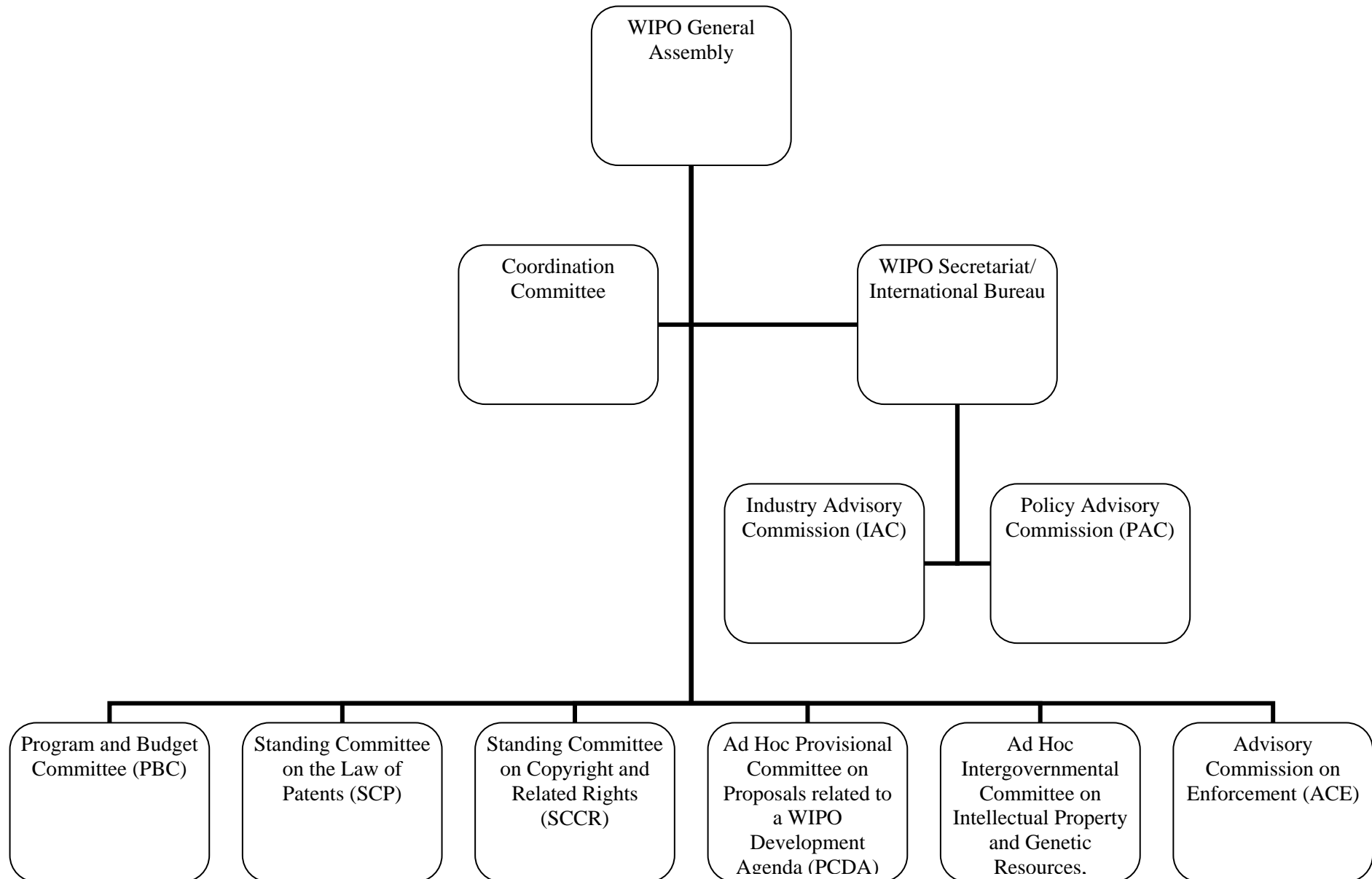
Understanding WIPO's governance, structure, and procedures is thus essential for enhanced and more effective civil society participation in ongoing discussions and negotiations. This section elaborates on the organization and functioning of WIPO. First, it explains the mandate of WIPO and its relevance to the work of the organization and to the broader intellectual property and sustainable development debate. Then, it describes the different organs that carry out WIPO's administrative and substantive functions, as well as the impact the organization and operation of these organs have on these functions. Finally, this section addresses deliberation and decision-making processes at WIPO, explaining the relevant rules of procedure and the dynamics of discussions and negotiations, as well as their relevance for any substantive outcomes.

A. Mandate

The interpretation of WIPO's mandate has proved to be central to the organization's approach to intellectual property. The element of its mandate that WIPO has historically emphasized and focused on is the objective of "promot[ing] the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonize national legislation in this field."⁶ The focus on this provisions, to the exclusion of others, has meant that the work program and activities in WIPO have aimed at increasing the scope and levels of protection as an objective in itself. Despite the increasing institutional references to the relationship between intellectual property and sustainable development in the last few years, higher standards of intellectual property are still generally favored over other approaches. The institutional rhetoric speaks of intellectual property as a "power tool" for development, a "universal value" that unreservedly contributes to the progress of societies. There is no consideration or analysis of the impact of WIPO's activities on developing countries and public policy issues, such as the price of essential medicines.

⁶ Article 4, WIPO Convention.

Box 3: Functional Organizational Chart-WIPO General Assembly and Subsidiary Bodies Discussed in this Guide



However, as a specialized agency of the UN, WIPO is mandated (Article 1 of the Agreement between the UN and WIPO) to fulfill its responsibility to “promote creative intellectual activity and to facilitate the transfer of technology to developing countries in order to accelerate economic, social and cultural development.” WIPO is obligated to include development within its mandate. Article 2 of WIPO’s Agreement with the UN requires WIPO to “co-operate in whatever measures may be necessary to make co-ordination of the policies and activities of the United Nations and those of the organs and agencies within the United Nations system fully effective.” Thus WIPO’s aims and purposes must be compatible with the Millennium Development Goals – the current focal point of the UN system’s action on development. WIPO is required to coordinate and cooperate with other UN organs and agencies, which have a significant range of expertise and resources related to innovation, development, and intellectual property.

B. Governance

WIPO was established by the WIPO Convention (1970). The Convention enabled WIPO to agree to assume, or participate in, the administration of other international agreements designed to promote the protection of intellectual property, such as the Paris Union, the administrative body of the Paris Convention on Industrial Property.⁷ These other international agreements sometimes establish their own governance structures which may or may not be otherwise connected with WIPO. Such is the case, for example, with the Union for the Protection of New Varieties of Plants (UPOV), which administers the International Convention for the Protection of New Varieties of Plants International, and is headed by the WIPO Director General. For a diagram of the relationship between the WIPO General Assembly and the Unions, see Box 5. The present section will only deal with the governance structure of WIPO as an organization.

⁷ For example, some of the multilateral treaties that States have negotiated in the various fields of intellectual property and are administered by WIPO have established a “Union” that consists of all the States that are party to a particular treaty. For instance, the Paris Union refers to the States party to the Paris Convention of 1883. Each Union establishes an Assembly where the main decisions relative to a particular treaty are made. The issues to be discussed by Member States on a particular treaty at the level of the Assemblies, are discussed at the Assembly of the Union and not the General Assembly of WIPO. The Assemblies of the Unions meet around the same date as the General Assembly. For more on the Unions and their relationship to WIPO, see WIPO document WO/GA/WG/CR/3/4, available at http://www.wipo.int/documents/en/document/govbody/wo_gb_ga/doc/ga_cr3_4.doc.

Box 4 – Does WIPO's funding impact its work program and activities?

WIPO, unlike many intergovernmental organizations, does not depend on the financial support of Member States. In fact, contributions from Member States are small in terms of WIPO's annual budget (which is over 600 million Swiss francs) and are not a significant figure in terms of WIPO's overall income. The main source of WIPO's income is the fees paid by the users of WIPO's global protection systems, which allow one international registration or filing for an intellectual property right to have effect in any of the relevant signatory States and make up to 91.3% of WIPO's income. The Patent Cooperation Treaty (PCT) system (see Section IV.B.2), for instance, accounts for 75% of WIPO's total income. The significant majority of users of the Patent Cooperation Treaty (PCT) system come from the United States of America, Japan, Germany, the UK, and France. The most active companies include Philips Electronics, Siemens, Robert Bosch GmbH, Procter & Gamble, Ericsson, and Matsushita Electric Industrial Co. Ltd. Recent reports show a large increase in the growth rate from participants from China

Both developing countries and civil society have drawn attention to the potential impact of WIPO's sources of funding on the orientation of the work in the organization. Concerns include that WIPO, beholden to the major multinational corporations that provide its funding, promotes those corporations' international agenda of higher intellectual property rights protection and harmonization as its own. In the context of the WIPO Development Agenda, the Group of Friends of Development (see Box 7) highlighted that "right holders do not 'fund' WIPO," but rather, as an international intergovernmental organization, WIPO is answerable only to its Member States. Indeed, the Group of Friends of Development noted that the global protection systems that contribute to WIPO's income are "systems that have been created by Member States," and payment for those services by right holders can thus in no way allow the claim that the users of those protection systems have the right to determine the agenda or priorities of the Organization."⁸

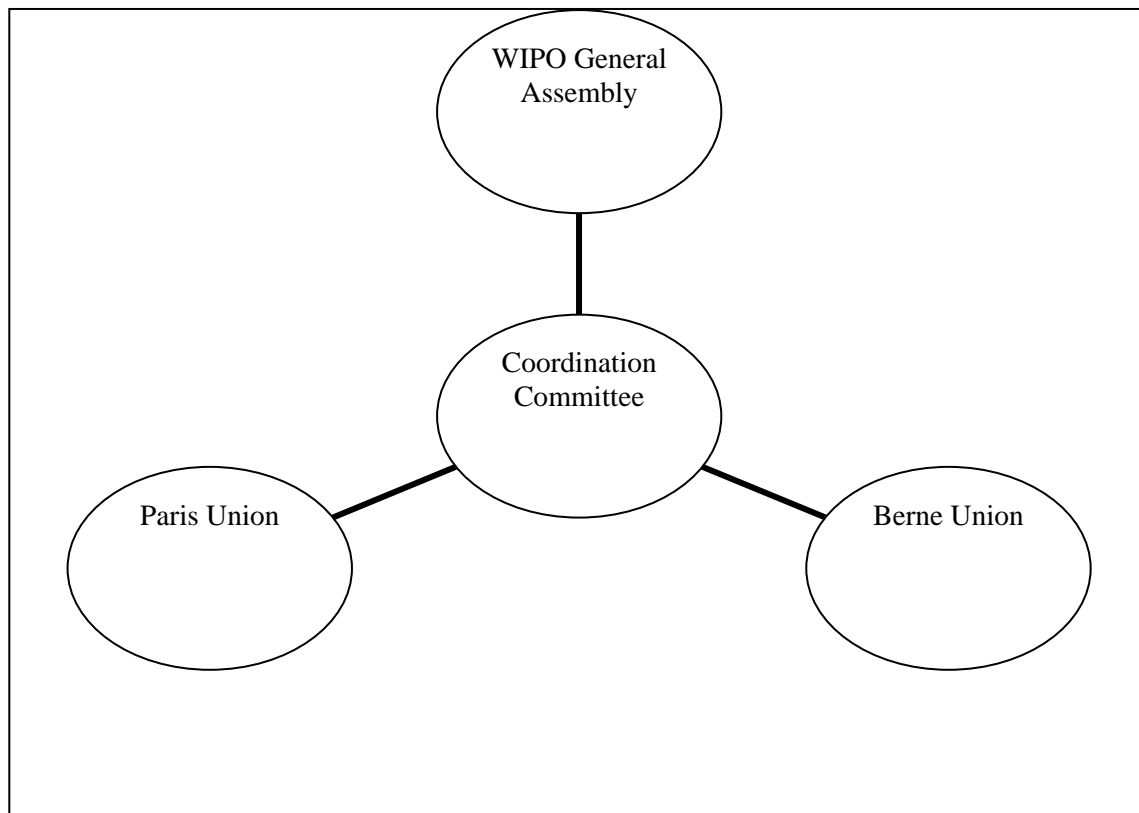
The governance structure of WIPO has been grouped into different tiers of bodies. For the purposes of this *Guide*, the following groups of bodies can be distinguished:

- **Governing bodies of WIPO, which include:**
 - ❑ the General Assembly
 - ❑ the Coordination Committee
- **Specific-purpose subsidiary bodies under one or more of the WIPO governing bodies, including:**
 - ❑ the Program and Budget Committee (PBC)
 - ❑ Standing Committees
 - *Standing Committee on the Law of Patents (Patent Committee (SCP))*
 - *The Standing Committee on Copyright and Related Rights (Copyright Committee (SCCR))*
 - *Standing Committee on the Law of Trademarks, Industrial Designs and Trademarks (not covered in this guide)*
 - *Standing Committee on Information Technologies (not covered in this guide)*

⁸ See "Proposal to Establish a Development Agenda for WIPO: An Elaboration of Issues Raised in Document WO/GA/31/11", submitted by the Friends of Development at the WIPO Inter-sessional Intergovernmental Meeting on a Development Agenda for WIPO, WIPO document IIM/1/4, Para II.2(27), available at http://www.wipo.int/edocs/mdocs/mdocs/en/iim_1/iim_1_4.doc.

- ❑ Advisory Committees
 - *The Advisory Committee on Enforcement (Enforcement Committee (ACE))*
- ❑ Ad Hoc Committees
 - *The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (Traditional Knowledge Committee (IGC))*
 - *Provisional Committee on Proposals related to the WIPO Development Agenda (Development Agenda Committee (PCDA))*
- ❑ Working Groups (established by each of the committees with a specific and time-limited mandate):
 - *Working Group on the Reform of the Patent Cooperation Treaty*
- ❑ Advisory Commissions aimed at giving direct voice to the private sector and non-State actors in relation to the Director-General's policymaking and medium term planning:
 - *Industry Advisory Commission (Industry Commission (IAC))*
 - *Policy Advisory Commission (Policy Commission) (PAC))*
- **The WIPO Secretariat/International Bureau** (not a decision-making body but provides administrative and substantive support to all WIPO bodies, including the Unions).

Box 5: The Relationship between the Unions and WIPO



1. Governing Bodies

a. General Assembly

The General Assembly holds the highest decision-making powers in WIPO, particularly in terms of rule making and norm-setting. All the States that are members of WIPO are members of the General Assembly. Its main functions, as established in the WIPO Convention, include:

- appointing the Director General of WIPO;
- approving the measures proposed by the Director General; and
- determining the admission of permanent observers to WIPO.⁹

In addition, it reviews and makes relevant decisions on the work conducted by its subsidiary committees, as well as proposals made by Member States. For example, in 2005, the General Assembly, among other things:

- reviewed and approved the program implementation report prepared by the International Bureau;
- adopted the program and budget for 2006-2007 – taking into consideration the recommendations of the Program and Budget Committee;
- decided on future meetings and focus of a number of committees, including the Patent Committee (SCP), the Traditional Knowledge Committee (IGC), and the Copyright Committee (SCCR), taking into account the recommendations made by those committees; and
- admitted a number of non-governmental organizations as permanent observers, including the Business Software Alliance, Consumers International, Electronic Information for Libraries, and the Third World Network.

Finally, every fourth year, the General Assembly requires the Director General to present a “medium-term plan” with a description of the medium-term objectives, vision, and strategic direction for the organization. The General Assembly considers and adopts the medium term plan. This is an extremely important agenda setting document that is almost always adopted without changes, allowing the Director-General to sometimes pre-empt issues that are still under discussion among member countries. It also tends to reflect the goal of higher IP standards. For example, in 2003, the main objectives of the medium-term plan were identified as the maintenance and further development of intellectual property protection - defined as preventing any erosion of existing protection.

Only NGOs admitted by the General Assembly as permanent observers are allowed to participate¹⁰ in its formal deliberations. This excludes the majority of sustainable

⁹ See Article 6 of the WIPO Convention. In practice, the General Assembly has also taken on other roles, including most of those that were initially established for another of the main organs of WIPO, the WIPO Conference, such as discussing general matters of interest in the field of intellectual property and adopting amendments to the WIPO Convention. In 2004, the WIPO Assemblies adopted an amendment to the WIPO Convention abolishing the WIPO Conference, officially granting its functions to the General Assembly; though this amendment will only come into force once three-fourths of WIPO Members ratify the amendment.

development-oriented NGOs, which participate in different WIPO bodies on an *ad hoc* basis. Although more NGOs are applying for permanent observership, the trend in the General Assembly over the last two years has been to address applications as one of the final items on the agenda, so that an organization, even if accepted, must wait until the following General Assembly to participate in the discussions.

Other challenges or considerations in relation to civil society participation in meetings of the General Assembly include:

- *The political nature of discussions.* Most of the substantive discussion takes place in WIPO bodies outside the General Assembly. The General Assembly largely addresses the political considerations that determine the way forward. This political approach explains the importance of the General Assembly, but it also makes developing country and civil society participation difficult. The problems that developing countries' often encounter with coordination and fragmented representation are exacerbated in the General Assembly, which is generally attended by high-level delegates, rather than those normally engaged in WIPO discussions. Civil society can play a crucial role in raising substantive points and ensuring that the position of developing countries in subsidiary bodies and committees is not undermined in the political discussion.
- *The number of issues on the agenda.* The range of topics addressed by the General Assembly is not only challenging from a substantive perspective, but it also allows industrialized countries to demand trade-offs on issues that are unrelated or indeed contradictory. In 2005, for instance, some industrialized countries would not discuss the renewal of the mandate of the Inter-sessional Intergovernmental Meeting on the WIPO Development Agenda (IIM) until developing countries agreed to move forward with the industrialized country proposal for a work program on the Substantive Patent Law Treaty (SPLT). Many developing countries considered the proposal to contradict the aims of the WIPO Development Agenda.
- *The role of the International Bureau.* There is significant anecdotal evidence that the International Bureau (the Secretariat), which has been seriously criticized for its partiality, is particularly active during the General Assembly, often exercising undue influence on developing countries (see Section IV.B.4).
- *Informal and closed meetings.* On the most contentious subjects on the General Assembly agenda, the actual negotiations take place in informal consultations closed to NGOs and even to some Member States. During plenary sessions countries generally only state their official positions. As a result, access to information can be particularly challenging.
- *Limited speaking time.* Despite the number and importance of the issues addressed in the meetings of the General Assembly, the time allotted to NGOs is very limited. Interventions are usually much shorter than those of Member States and may even be moved into evening sessions and made to a largely empty room. However, such statements are included in the report of the meeting and play an important role in ensuring strong institutional memory of the concerns of public interest organizations.

¹⁰ Participation in this context refers to the ability to make statements, usually after the Member States have done so. Organizations awaiting accreditation are usually still able to attend the General Assembly, without being accorded the right to speak.

b. Coordination Committee

The Coordination Committee is the executive organ of the General Assembly.¹¹ In carrying out this role, some of its most important functions include:

- nominating a candidate for the post of Director General to the General Assembly;
- preparing the draft agenda for the General Assembly;
- approving the agreements and arrangements of WIPO with other intergovernmental organizations and international NGOs; and
- approving the staff regulations.

In addition, the Coordination Committee performs a second role, acting as an “advisory organ.” In that capacity, the Coordination Committee provides advice to the various organs of the Unions and WIPO on matters of common interest in particular regarding the budget of expenses common to the Unions.

One of the issues that has been raised regarding the Coordination Committee is the need to redefine the mechanism by which Member States become members of the Committee.¹² At present only a fraction of Member States are members of the Committee: 82 countries out of 182 WIPO Member States are members of the WIPO Coordination Committee. States that are not members of the committee have the right to participate in the deliberations but not to vote. This raises questions regarding the transparency and democratic nature of its decisions, particularly as they are not subject to approval by other states and deal with important issues such as WIPO’s financial matters and relationships with other international institutions such as the Food and Agricultural Organization or the Convention on Biological Diversity. The Coordination Committee’s deliberations are closed to all observers.

2. Subsidiary Bodies

While the final decisions in WIPO are made in the Governing Bodies, discussions and negotiations on intellectual property and institutional issues take place in various subsidiary committees and working groups. This section will look at the role of the Program and Budget Committee (PBC) and other selected committees. The committees generally report directly to the General Assembly, which can establish or dissolve committees. Where the committees report to any other body, this will be noted below.

a. Program and Budget Committee (PBC)

The Program and Budget Committee (PBC) has a particularly significant role, as it reviews not only the budget of the organization but also its “vision,” as presented by the Director General. In 2005, for instance, the Director General highlighted a vision of intellectual property as an important tool for economic, social, and cultural development. He also established several strategic goals for the 2006/2007 biennium, including:

¹¹ The Coordination Committee was also the executive organ of the WIPO Conference, which is to be abolished under a 2004 amendment to the WIPO Convention.

¹² For a description on how Member States are currently elected to the Coordination Committee see WIPO document A/36/11, available at http://www.wipo.int/documents/en/document/govbody/wo_gb_ab/pdf/a36_11.pdf.

- building the foundation for a more solid and extensive intellectual property culture;
- promoting intellectual property policies; and
- further developing international intellectual property laws.

The proposed Program and Budget for 2006/2007 also established priority areas within these strategic goals such as:

- the strategic use of intellectual property *e.g.* by firms and academic institutions;
- traditional knowledge, traditional cultural expressions, and genetic resources; and
- enforcement.

The approach of the Program and Budget Committee to the draft Program and Budget has been criticized by some developing countries as inappropriate, given that it prejudged the position of Member States and the outcome of ongoing discussions in subsidiary bodies. Although the General Assembly is the body that eventually adopts the Program and Budget, making any adjustments it deems necessary, their substantive implications are typically not discussed in General Assembly meetings. The General Assembly usually simply ratifies the recommendations of the Program and Budget Committee. As a result, discussions in the Program and Budget Committee (PBC) are particularly significant, though they have received very little attention from observers and many countries. For example, in the Eighth Session of the Program and Budget Committee (PBC), in April 2005, discussions addressed important issues such as:

- the mismatch between the priorities and programs being established in the proposed Program and Budget and ongoing substantive discussions on the priorities of the organization, particularly those related to the WIPO Development Agenda; and
- the need to increase the oversight and control exerted by Member States on the organization, as reported by the Joint Inspection Unit (JIU)¹³, an independent external oversight body of the United Nations, that reviewed the management and administration practices of WIPO

In 2005, Member States also approved the establishment of an *Audit Committee* to complement existing control and oversight mechanisms in WIPO, and to submit regular reports to the Program and Budget Committee. The Audit Committee is not made up of Member States, but rather has nine experts acting in their individual capacity.¹⁴ The terms of reference of the Audit Committee include:

- promoting internal controls;

¹³ Review of Management and Administration at WIPO: Budget, Oversight and Related Issues (JIU/REP/2005/1). Available at http://www.unsystem.org/jiu/data/reports/2005/en2005_1.pdf.

¹⁴ Members are selected as follows:

- (a) Seven members are nominated by Member States and elected by the PBC, with consideration of expertise as well as geographical distribution;
- (b) One member is selected by the above-mentioned seven members of the Audit Committee based on his/her qualifications as a senior oversight professional or senior manager in the United Nations system; and
- (c) One member is selected by the above-mentioned seven members of the Audit Committee based on his/her qualifications as a senior oversight professional or senior manager from outside of the United Nations system.

- focusing assurance resources; and
- monitoring audit performance.

The Audit Committee was a direct response to the weaknesses in management and administration pointed out by the Joint Inspection Unit.

Box 6 – Member State representation at WIPO

As an intergovernmental organization, WIPO is ultimately run by its Member States. Nevertheless, factors such as WIPO bodies' understanding of WIPO's and their own competence and the role of the Secretariat affect the approach to negotiations and other activities. Moreover, the type of delegate sent by Member States to WIPO has tended to distort the range of interests and concerns considered and reflected in WIPO, placing public interest and sustainable development issues in a vulnerable position.

In particular, intellectual property offices have traditionally constituted the majority of Member State delegations to WIPO standard-setting discussions. As the agencies responsible for administering patents, copyrights, trademarks, and other intellectual property rights, intellectual property offices have unquestionable technical expertise. However, they often have little understanding of intellectual property as a tool for achieving public interest goals, particularly in developing countries. In addition, given that many have undergone training and received technical assistance from the WIPO Secretariat, they are generally more inclined to view WIPO Secretariat advice and initiatives positively rather than through the lens of domestic public interest objectives. Improved coordination within governments, particularly those of developing countries, but also those of industrialized countries, is thus fundamental to ensuring the coherence of intellectual property policy with broader development policies.

However, there are increasing efforts by developing countries to include in their delegations to WIPO meetings representatives from ministries or agencies addressing public policy areas impacted by intellectual property, including health, education, and environment. In the February 2006 discussions on the WIPO Development Agenda, for example, Brazil, Cote D'Ivoire, Guinea-Bissau, Haiti, and Jordan had officials from their respective Ministries of Culture in their delegations. Brazil's delegation also included representatives from the Health Ministry and the National Health Surveillance. Participation in meetings on traditional knowledge also reflects increasingly varied and inclusive representation in developing country delegations. Nevertheless, this broader representation still lacks consistency and, because funding for attendance is often provided by WIPO (through the Secretariat), which can select whom to fund, it may not truly reflect the diversity of interests and concerns in developing countries.

b. Standing Committees

The system of Standing Committees was established in 1998 with the aim of constituting "the vehicles by which discussions can proceed for the progressive development of international intellectual property law." Standing Committees are open to all Member States and determine, within their sphere of competence and the program and budget, the agenda of items on which work should proceed. In general, however, Standing Committees address substantive issues in preparation for establishing new intellectual property rules and norms. They make recommendations to the General Assembly for the convening of a diplomatic conference to conclude a treaty or adopt guidelines or resolutions. (See Section IV.C for an explanation of norm-setting in WIPO.)

i. Standing Committee on the Law of Patents (SCP)

The Patent Committee (SCP) serves as a forum to discuss issues, facilitate coordination, and provide guidance concerning the progressive international development of

the law of patents. Patent Committee (SCP) discussions have included issues such as the harmonization of patent formalities¹⁵ and problems raised by biotechnological inventions. As a result of the "Patent Agenda" launched by the WIPO Director General, work in the Patent Committee (SCP) has focused on the harmonization of substantive patent law, in particular, the Substantive Patent Law Treaty (SPLT). This is despite growing concerns regarding the negative impacts of such harmonization for the ability of developing countries to formulate policies appropriate to their level of development. The Substantive Patent Law Treaty is one of the most controversial discussions currently taking place in WIPO. The non-governmental organization GRAIN, for example, states that:

The SPLT would remove most of the remaining national flexibility in patent systems and pave the way for a future world patent granted directly by WIPO. This is an appealing prospect for transnational corporations and large powers like the US and the EU, who see patents as the primary means to control a globalized economy. But a world patent system is bad news for developing countries and their citizens, who would lose even the limited freedom left by the WTO's TRIPS Agreement to adjust patent systems to national development goals.¹⁶

Civil society participation in the Patent Committee (SCP) has been fundamental to supporting developing country efforts to ensure a more balanced development of patent law. Earlier sessions of the Patent Committee (SCP) were characterized by a significant imbalance in participation with very few interventions by developing countries. However, following concerns raised by several analyses from intergovernmental and non-governmental organizations, as well as academics, developing countries significantly increased their involvement in these negotiations.¹⁷

Beginning in the Ninth Session of the Patent Committee (SCP), in May 2003, developing countries actively participated in the discussions and made various proposals. In addition, civil society organizations themselves have become increasingly active. In the Ninth Session of the Patent Committee (SCP), only two out of twenty-two "NGOs" registered for the meeting were public interest organizations. By the Eleventh Session of the Patent Committee (SCP), in June 2005, four more public interest organizations had received *ad hoc* accreditation to the meeting. The increased involvement of civil society and developing countries led to a much broader consultation process and discussion. One result of this was "The Open Forum on the SPLT," which aired a wide variety of views on the desirability of harmonization. The 2006 General Assembly reached an impasse when the inclusion of developing country initiatives to broaden the agenda of the Committee and to safeguard the public interest in the SPLT were blocked by the industrialized countries. In light of this, the General Assembly directed the Patent Committee (SCP) to suspend formal discussions until the 2007 General Assembly.

¹⁵ This led to the Patent Law Treaty (entered into force April 28, 2005). The Patent Law Treaty, which deals with formalities, should be carefully distinguished from the Substantive Patent Law Treaty which is still under discussion in the Patent Committee (SCP).

¹⁶ GRAIN, "One Global Patent System? WIPO's Substantive Patent Law Treaty," October 2003.

¹⁷ See, e.g., the IPR Commission, "Integrating Intellectual Property Rights and Development Policy," IPR Commission, London, 2002; GRAIN "One Global Patent System?" 2003; and Musungu, S., and G. Dutfield, "Multilateral Agreements and a TRIPS-plus World: The World Intellectual Property Organization (WIPO)", QUNO, Geneva and QIAP, Ottawa, 2003.

Despite the effective work done so far, a broader range of civil society participation is still necessary to counter the influence of “NGOs” representing patent holders. One example of this influence is a submission presented by the United States, Japan, and the European Patent Office (EPO) in May 2004 (proposing an SPLT negotiations framework that would exclude most of the proposals put forth by developing countries), that was based on a suggestion of the International Association for the Protection of Intellectual Property (AIPPI) at a seminar in early 2004. Such groups continue to be the main driver of the industrialized country position that harmonization should only include narrow issues such as novelty and grace periods, of concern primarily to industrialized countries.

Other relevant discussions on patents are taking place at the *Working Group on the Reform of the Patent Cooperation Treaty (PCT)*, established under the Patent Committee (SCP). The Patent Cooperation Treaty (PCT) establishes a system under which patent applicants can file one international application valid in various countries party to the agreement. WIPO notes that, in over 25 years of operation, it has simplified and cut the cost of obtaining protection for inventions throughout the world. It has also experienced enormous growth in the number of contracting parties and applications filed in the system. WIPO also notes that an important factor in the success of the Patent Cooperation Treaty (PCT) has been its constant evolution, “in which particular regard has always been paid to the needs of both applicants and offices.” Negotiations towards amending the Patent Cooperation Treaty (PCT) are currently taking place at the Working Group on the Reform of the Patent Cooperation Treaty. Although the immediate objective of these negotiations relates to issues of coordination, it is likely that they will eventually lead to discussions of a more substantive reform. Some industrialized countries have called for the Patent Cooperation Treaty (PCT) to move from procedural to substantive rights, in what is seen as a step towards a global patent. In spite of the potential impact of these negotiations, civil society participation has been limited.

ii. Standing Committee on Copyright and Related Rights (SCCR)

The Copyright Committee (SCCR) was established to consider emerging issues and advance the progressive development of international law in copyright and related rights. The substantive issues addressed by the Copyright Committee (SCCR) emerged from the Program and Budget for the 1998-1999 biennium and included:

- the protection of audiovisual performances;
- the protection of databases;
- the protection of the rights of broadcasting organizations; and
- copyright and related issues in digital technology.

On all these issues, the 1998-1999 Program and Budget (which was prepared by the International Bureau) envisioned only one to three preparatory meetings before moving ahead to a diplomatic conference. This was despite the fact that these issues are complex and may have significant impacts on public policy and sustainable development concerns. Indeed, the scope of copyright protection determines the balance between providing incentives for creativity and increasing access to knowledge and knowledge-based products for the general public. These and other social objectives, such as freedom of expression, are inextricably

linked to the copyright system. Moreover, these issues also entail the further development of copyright legislation in regards to new technologies, particularly the Internet, with likely negative effects for developing country efforts to harness their full potential.

Concerns raised by developing countries and, increasingly, civil society organizations have meant that discussions in the Copyright Committee (SCCR) have lasted beyond the timing originally envisioned by the International Bureau. The result has been to force the Copyright Committee (SCCR) to address sustainable development considerations. An example of this transition is the proposed treaty for the protection of broadcasting organizations. In 1999, several industrialized countries proposed this new treaty to “modernize” the protection of broadcasting and address the problem of signal piracy. However, the proposed “update” extends well beyond signal protection and would generate new exclusive rights possibly encompassing all transmissions over the Internet.

Civil society organizations have worked closely with developing countries to insist on a signal protection based approach to the international regulation of the rights of broadcasting organizations, as well as to oppose any type of inclusion of internet transmissions (webcasting) in the proposed treaty. For example, Chile proposed language to allow countries to incorporate exceptions for activities such as private use, journalism, and education or scientific research. It was only in September 2006, after a contentious meeting, that a decision to recommend a diplomatic conference was taken, subject to agreement on a basic text.

The discussions on a Broadcasting Treaty were characterized by a new phenomenon at WIPO: the close coordination between business groups and civil society organizations in recognition of the possible negative impact of the treaty on some industries’ business models as well as on consumer and public interest welfare. The coordination had its roots in national consultative mechanisms and coalitions, especially in the United States, but may prove a resilient model for further collaboration on other issues at WIPO. Key to this process was awareness raising by several national and international civil society groups with major domestic corporate interest groups, working to convince them that positions taken by their government on behalf of other domestic groups could be potentially harmful. This highlights the importance of translating WIPO discussions into the domestic arena and of ensuring that domestic coalitions bring the fruits of such coordination to WIPO discussions.

c. Advisory Committees

In principle, Advisory Committees are created because certain topics require further exploration and discussion at a technical level before work can be undertaken towards norm-setting and treaty-making. In practice, the establishment of Advisory Committees has been the result of political compromises that postpone difficult decisions. Advisory Committees have been used to limit discussion on controversial or sensitive topics on which few Member States are ready to commit themselves or WIPO.

i. Advisory Committee on Enforcement

The *Advisory Committee on Enforcement* (Enforcement Committee (ACE)) was established to address global enforcement issues covering both industrial property and copyright and related rights. Its mandate is limited to technical assistance and coordination,

and specifically excludes norm-setting. The Enforcement Committee (ACE) thus focuses on objectives such as:

- coordinating with organizations and the private sector to combat counterfeiting and piracy activities;
- public education;
- assistance;
- training programs; and
- exchange of information.

The lack of a norm-setting mandate does not minimize the relevance of the Enforcement Committee (ACE). Norm-setting should not be seen only in the context of treaty-making or setting binding standards. A number of activities, including the determination of “best practices,” can result in normative systems that directly or indirectly put pressure on countries to adopt certain measures. Any normative outcome of the Enforcement Committee (ACE) is of concern. The Enforcement Committee (ACE) has paid little attention to ensuring that enforcement contributes to the transfer and dissemination of technology and promotes socio-economic welfare.

d. Ad Hoc Committees

In addition to the Standing Committees, other committees may be constituted in WIPO to address particular issues and then report their findings back to the General Assembly, in the form of recommendations or proposals. The General Assembly grants these *ad hoc* committees specific mandates and timelines, which can nevertheless be modified or extended by Member States in subsequent General Assembly meetings. For much of the period leading up to the 2007 WIPO General Assembly, two *ad hoc* committees, the *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (Traditional Knowledge Committee (IGC)) and the *Provisional Committee on Proposals related to the WIPO Development Agenda* (Development Agenda Committee (PCDA)) addressed critical issues for WIPO and sustainable development more generally.

i. Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

The Traditional Knowledge Committee (IGC) was created in 2000 as a forum to address the intellectual property issues that arise in the context of access to genetic resources and benefit-sharing and the protection of traditional knowledge and expressions of folklore. These were seen as cutting across the conventional branches of intellectual property law (Patent, Copyright, and Trademarks) and therefore did not fit into existing WIPO bodies. Nevertheless, the Traditional Knowledge Committee (IGC) was, in reality, a direct response to developing country proposals on these issues in the Patent Committee (SCP). It was expected to provide concrete outputs to address concerns about gaps in the existing intellectual property system.

In September 2003, the General Assembly both extended and substantially broadened the mandate of the Traditional Knowledge Committee (IGC). The IGC was instructed to, among other things, “accelerate its work” and “focus on the international dimension of

intellectual property, GR, TK and folklore,” excluding “no outcome, including the possible development of an international instrument or instruments in this field.” The IGC’s mandate was extended for two years with few changes in September 2005, and in 2006, it was charged to begin substantive discussion on the issues, reflecting the frustration of many countries with the continued efforts of industrialized countries to delay progress towards concrete outcomes.

The participation of indigenous groups and non-governmental organizations has been particularly significant in the Traditional Knowledge Committee (IGC). As noted by the International Bureau on the WIPO website, the number of “non-governmental organizations” accredited to the Traditional Knowledge Committee (IGC) as *ad hoc* observers – over 100 – reflects the diverse range of interests and issues addressed by the committee. Civil society organizations have actively contributed to the discussions and presented a range of comments, technical papers, and other documents. They also routinely organize side events to elaborate on the issues being discussed during the meetings of the Traditional Knowledge Committee (IGC), linking them to developments in other fora.

Notwithstanding such extensive participation by indigenous groups, there has been little progress achieved in the committee. Developing countries have increasingly expressed concern about the lack of progress and called for a more focused and result-oriented debate. In particular, they have highlighted the need for concrete and tangible intellectual property-related measures that would enable developing countries to effectively protect their traditional knowledge and folklore from misappropriation. Moreover, the work of the Traditional Knowledge Committee (IGC) has often been used by industrialized countries to shift attention from important initiatives taken in other intellectual property fora to protect traditional knowledge from misappropriation. For, example, some countries have responded to proposals on “disclosure of origin” of genetic resources at the WTO by stating that these issues should not be raised in that forum since they are under discussion at WIPO. Simultaneously, they have been working to ensure that discussions on these issues do not progress at WIPO. This is despite the fact that the current mandate of the Traditional Knowledge Committee (IGC) makes clear that discussions are without prejudice to other international processes. Civil society organizations can play a significant role in ensuring that the IGC properly reflects the concerns of indigenous and other local communities, and that discussions in the Traditional Knowledge Committee (IGC) support and complement developments in other fora. The IGC should not be used as a dumping ground for difficult issues that have been legitimately raised in other fora such as the WTO.

ii. Provisional Committee on Proposals related to the WIPO Development Agenda (PCDA)

The Development Agenda Committee (PCDA) was established by the 2005 General Assembly to accelerate and complete discussions on proposals relating to the WIPO Development Agenda and report back any recommendations. The WIPO Development Agenda discussions had been launched a year earlier in response to calls by developing countries for WIPO to integrate the development dimension into all of its activities.¹⁸ The 2004 General Assembly welcomed the initiative for a development agenda and convened inter-sessional intergovernmental meetings (IIM) to examine the proposals submitted by Member

¹⁸ The proposal for the establishment of a development agenda for WIPO was presented by Argentina and Brazil, and co-sponsored by Bolivia, Cuba, the Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania and Venezuela. These countries are referred to as the Group of Friends of Development.

States. IIM discussions were characterized by a general consensus on the need to view intellectual property rights as a policy tool and to ensure that the work of WIPO is coherent with development and other public policy concerns. A number of proposals were put forward – both by developing and industrialized countries but no agreement was reached regarding the continuation of the IIM process. Thus, no recommendations were made to the 2005 General Assembly.

At the 2005 General Assembly, Argentina, on behalf of the Group of Friends of Development, emphasized the need to continue the IIM process. It argued that discussion on a WIPO Development Agenda “should be a continuous one,” with sufficient time to develop recommendations that would “incorporate and implement progressively, step by step, concrete measures in all the activities of WIPO.”¹⁹ Some industrialized countries, however, opposed prolonging the IIM, pointing out that “WIPO had a specific mandate to promote development” and “had to continue to play its role,” and that discussions on development should thus be conducted in the existing WIPO framework.²⁰

A compromise was reached by establishing a *Provisional Committee on Proposals related to the WIPO Development Agenda* (Development Agenda Committee (PCDA)). This Committee was constituted to move discussions forward on the WIPO Development Agenda (see Box 7) and to report any recommendations to the 2006 General Assembly, without prejudice to the activities of other WIPO bodies on development issues. The Development Agenda Committee (PCDA) met four times: twice before the 2006 General Assembly and twice afterwards. The 2006 report to the General Assembly was the result of a difficult and controversial process, established and pushed through without full consensus by the chair. The 2006 General Assembly directed further discussions to conclude consolidation and agreement of the 111 proposals at the table. Two meetings in 2007 resulted in agreement on a full set of proposals and recommendations to the General Assembly in 6 areas:

- Technical Assistance and Capacity Building;
- Norm-Setting, Flexibilities, Public Policy, and Public Domain;
- Technology Transfer, ICT, and Access To Knowledge;
- Assessments;
- Evaluation and Impact Studies;
- Institutional Matters Including Mandate and Governance.

In addition, the Development Agenda Committee (PCDA) recommended the establishment of a Standing Committee on Development and Intellectual Property to, among other things, monitor the implementation of the agreed proposals. In light of the establishment of a standing committee, the committee also recommended non-renewal of the PCDA. This outcome of the PCDA represents a major shift in the attitude of Member States towards the mandate and responsibilities of WIPO. It also presents a significant opportunity for civil society organizations to have their concerns fully addressed and to help Member States to hold

¹⁹ Report, WIPO General Assembly, Thirty-Second (17th Ordinary) Session, Geneva, September 26 to October 5, 2005, WIPO document WO/GA/32/13.

²⁰ See, e.g., the statements of the United Kingdom on behalf of the European Community at the 2005 WIPO General Assembly.

the Secretariat accountable for achieving the sustainable development and public interest goals and objectives that have been agreed to.

Civil society organizations have been crucial to the success of the Development Agenda in the Development Agenda Committee (PCDA). The process brought together many organizations that had only worked as *ad hoc* observers in individual committees and unified them around a major committee process. These organizations were able to share information, resources and strategies, providing advice and assistance to developing countries and ensuring that public pressure was brought to bear on countries that may have been reluctant to allow the Development Agenda to go forward.

3. Advisory Commissions

Advisory commissions in WIPO aim to provide the private sector and non-Member State actors with the opportunity to provide advice to the Director General on policy issues. In practice, their reports and recommendations exert significant influence on the decisions of the International Bureau. Given this influence, it is imperative that there is more representation of civil society and sustainable development and public policy experts in the commissions

a. Industry Advisory Commission

The *Industry Advisory Commission (IAC)* is composed solely of industry group representatives, as it was created to ensure “a direct input of industry into the policy-making processes of WIPO.” Access and knowledge about these meetings is extremely difficult to obtain, as is any description of the full membership of the committee. The last official WIPO statement as to the membership of the industry commission dates to 2000.

b. Policy Advisory Commission

The *Policy Advisory Commission (PAC)* is made up of eminent personalities, including Heads of State and Government and Senior Ministers of different Member States. The need to include different perspectives and to ensure a more balanced discussion on intellectual property policy has not been considered in the selection of these personalities. None of the discussions for a more development-oriented approach to the work program and activities of WIPO that are taking place in other WIPO bodies has been reflected in the Policy Commission (PAC). This has prompted several Member States to call for the Policy Commission (PAC) to add new members – particularly independent experts without links to industry or government – to expand its discussions and views.

Box 7 – The WIPO Development Agenda

The Development Agenda has been an unusually effective and active process, which has created what may be the first true multi-stakeholder discussion at WIPO. It was the outcome of several years of pressure by civil society and developing countries raising serious concerns regarding the implications of WIPO activities for sustainable development.

Both developing and industrialized countries put forward a number of specific proposals in the WIPO Development Agenda. The Group of Friends of Development, for instance, elaborated on their initial proposal in an extensive document that offered a conceptual platform for the intellectual property and development debate in WIPO. The Group presented particular proposals in four key areas: the mandate and governance of WIPO; norm-setting; technical assistance; and transfer of technology.²¹

The African Group, while noting that the proposals of the Group of Friends of Development reflected the concerns and interests of African countries, also submitted a number of proposed measures, including: more development-oriented and demand-driven technical assistance; examination of and training on the use of flexibilities in international intellectual property law; and an internationally binding instrument on the protection of genetic resources, traditional knowledge and folklore. Other developing countries, such as Chile, Mexico and Colombia have also made proposals.

The WIPO Development Agenda process has also been significant in engaging industrialized countries in the intellectual property and development debate, even if their response has not been as constructive as developing countries would have hoped. The United States, for instance, presented a proposal focused primarily on technical cooperation. The United Kingdom proposal also consisted of suggested steps in respect of technical cooperation, though it did recognize that the intellectual property and development debate is much broader and referred to the work of the UK Commission on Intellectual Property Rights.

Proposals and discussions have highlighted the important role of public participation for the establishment of a WIPO Development Agenda. The Group of Friends of Development, for example, noted that “given the broad public policy implications of intellectual property, it is crucial to involve a commensurately broad range of stakeholders in the discussions on intellectual property, both at the national and international levels, including in all norm-setting activity.” As a result, the Group called for WIPO to “foster the active participation of public interest non-governmental organizations in its subsidiary bodies to ensure that, in IP norm-setting, a proper balance is struck between the producers and users of technological knowledge, in a manner that fully services the public interest.” Civil society also actively contributed to discussions in the Inter-sessional Intergovernmental Meeting (IIM) and Development Agenda Committee (PCDA) sessions, providing fundamental information on the impact of intellectual property on the availability of electronic information for libraries in developing countries, consumer rights, and access to medicines. In the final outcome of the PCDA, the role of civil society is addressed in proposal 42 which notes that WIPO should work “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.”

²¹ See WIPO document IIM/1/4.

4. WIPO Secretariat/ International Bureau

The International Bureau is directed by the Director General, assisted by several Deputy Directors General, and currently consists of almost one thousand staff members. According to the WIPO Convention, the Director General is the chief executive and representative of the Organization, and he reports to, and carries out the instructions of, the General Assembly. The current Director General is Dr. Kamil Idris, a national of Sudan, who has been serving as Director General since 1997. Deputy Director Generals head particular sectors of WIPO, including:

- Copyright and Related Rights;
- General Affairs and Administration;
- PCT and Patents, Arbitration and Mediation Center, and Global Intellectual Property Issues; and
- Technical Assistance and Capacity Building.²²

The Copyright and Related Rights Sector, for instance, currently works on the development of international norms and standards in the area of copyright, through supporting the Copyright Committee (SCCR) and a range of other tasks. Despite the different sectors, the International Bureau remains highly centralized. It has recently been criticized for its personnel practices, including abuse of mechanisms of direct recruitment, personal recruitment and the overall increase in personnel.

The role of the International Bureau as the Secretariat of WIPO is only minimally defined in the WIPO Convention and the General Rules of Procedure. Nonetheless, it performs a wide range of tasks that are crucial to the functioning of the organization. In addition, the International Bureau is active and influential, both formally and informally, in determining WIPO's vision, work program, and different activities. The influence of the International Bureau is such that concerns have been increasingly raised regarding the loss of the member-driven nature of WIPO processes. For example, in one of their proposals on the WIPO Development Agenda, the Group of Friends of Development pointed out that the Secretariat has often played an active role in norm-setting processes, which has impeded a full and fair debate on the feasibility and desirability of new, expanded, or modified rules. Indeed, the International Bureau has been particularly criticized for its promotion of a narrow and unbalanced perspective on intellectual property.

In the exercise of its functions, there are examples of the sometimes negative influence of the International Bureau over the course of WIPO activities. Nevertheless, it is important to highlight that these are only some of the tasks of the International Bureau, which executes (often in a balanced manner) a range of technical and administrative functions in relation to the treaties administered by WIPO, including the following:

- *Defining the vision and work program of the organization.* The International Bureau prepares the initial draft of the medium term plan and the biennial work program and budget (see Section on Program and Budget Committee, above).
- *Actively contributing to the meetings of the various Member State bodies.* The International Bureau performs tasks in regards to these meetings that include:

²² For a list of personnel in these position and offices see <http://www.wipo.int/about-wipo/en/intburo.htm>

- ❑ *Drafting the agenda and reports.* Both these documents are critical to discussions and negotiations in WIPO, establishing the issues that the bodies will discuss and transmitting what has transpired to the governing bodies that are tasked with reviewing the work and acting on any recommendations. Indeed, the content of the agenda and reports can have a direct bearing on substantive discussions. Developing countries have sometimes pointed out concerns regarding these documents. For example, in the first session of the Inter-sessional Intergovernmental Meeting (IIM), there was considerable concern about the lack of an agenda item allowing for the adoption of the meeting report, as is customary in other WIPO meetings. As a result, the chairman's summary, which many developing countries disagreed with, took on a much greater significance as the only reflection of the meeting's discussions. The role of the chairman (a Member State delegate), who is usually reliant on the Secretariat, is an issue that has also sparked controversy in other WIPO bodies
- ❑ *Taking part in discussions.* The WIPO Convention establishes that the Director General and any staff member designated by him may participate, without the right to vote, in all meetings of the governing bodies and any other committee or working group. The Director General or a staff member designated by him is also the *ex officio* secretary of these bodies. Through such participation, members of the International Bureau work closely with the chair of the meeting to determine how to deal with different substantive and procedural issues. The International Bureau also contributes its opinions and statements on these issues directly to the meetings, which have at times contradicted those of Member States.
- ❑ *Submitting its own documents and proposals.* The International Bureau prepares various documents for discussions and negotiations in the different WIPO bodies, either at the request of Member States or at its own initiative. In both cases, however, these documents have been criticized for not reflecting the interests or positions of developing countries, but advancing an opposing agenda. One example is the presentation of draft rules of procedure for a diplomatic conference on the proposed Broadcasting Treaty to the 2005 meeting of the General Assembly, despite the fact that there was still significant disagreement about moving forward with that conference.
- *Organizing consultative meetings.* Consultations are called by the International Bureau among Member States or other stakeholders with various aims, including:
 - ❑ to gather comments and recommendations regarding a particular process;
 - ❑ to promote consideration of emerging issues; and
 - ❑ to encourage progress in ongoing discussions and negotiations.

As a tool for increasing consensus in the context of negotiations, however, such consultations have grown increasingly controversial. In particular, many developing countries have criticized the lack of transparency and inclusiveness, as well as the use of these consultations to evade developing country delegates who have taken the lead on specific issues. For example, the 2004 WIPO Assemblies mandated informal consultations to determine the dates of the next Patent Committee (SCP). The consultations, however, turned into an invitation-only

event for selected countries that excluded civil society organizations and resulted in a statement adopting a limited “work plan” for the Patent Committee (SCP) and the Traditional Knowledge Committee (IGC). The statement did not reflect the concerns that had been repeatedly raised by developing countries in both committees. One participant, the representative of Brazil, chose to not associate himself with the statement. The Group of Friends of Development, with the support of India, issued a counter-statement recalling that inclusiveness and transparency were core elements for making WIPO more responsive to development needs and rejecting the outcome of the consultations. Nevertheless, the International Bureau submitted the results of the consultation to the Patent Committee (SCP), inviting it to adopt the proposed recommendations, objectives, and work program.

- *Providing technical assistance to developing countries.* WIPO provides significant technical assistance in the areas of legislative advice, human resource development and training, institutional development and automation, and enforcement, primarily to national and regional intellectual property authorities. Some of these activities have proved valuable for developing countries in their implementation of international obligations and the development of their national intellectual property policies. Others, however, particularly the legal advice and support, have come under severe criticism. Concerns raised include:
 - ❑ an over-emphasis on the benefits of higher intellectual property standards with little consideration of costs, limitations, and public interest goals;
 - ❑ the lack of attention paid to different levels of development and cultural differences; and
 - ❑ the limited group of beneficiaries (with minimal assistance to, or participation from, civil society organizations).

The complexity of WIPO's governance structure can be daunting, especially when it seems that important processes are taking place in almost all the bodies. Few organizations, or even member countries, have the resources to follow developments in all the bodies at WIPO. However, civil society organizations have been able to successfully engage with WIPO by focusing on areas of special relevance to their mission, and by sharing information with other organizations, as well as through strategic division of labor with partners.

C. Deliberation and Decision-making

An inclusive and transparent process of deliberation and decision-making is fundamental to a balanced and sustainable development-friendly international intellectual property system. That is why the effective participation of developing countries and civil society organizations in WIPO is so important. That is also why the rules of procedure and the dynamics of discussions and negotiations in WIPO play a crucial role in the outcomes of deliberations. Moreover, the WIPO rules and practices are often used strategically by Member States to advance their positions or interests, thus becoming the central point of contention on several occasions. This section outlines some of the issues surrounding these procedures and the role that civil society organizations can play.

1. General rules of procedure

The set of formal general guidelines that determine the way proceedings take place within WIPO bodies are called the General Rules of Procedure.²³ The General Rules do not apply, however, to the Coordination Committee or to Diplomatic Conferences, which establish their own rules of procedure. Subsidiary bodies are also entitled to develop their own rules of procedure, which override the General Rules, although in practice most WIPO bodies adopt the General Rules of Procedure with few changes. Notably, most WIPO subsidiary bodies have added a special rule of procedure allowing civil society organizations that are not permanent observers to WIPO to participate in meetings on an *ad hoc* basis.

The General Rules of Procedure are fundamental in shaping the deliberations that take place in WIPO. In addition to the rules establishing the International Bureau's role in the discussions of WIPO bodies (See Section IV.B.4), other important rules embodied in the General Rules of Procedure include those establishing the role of the chair and the right to speak in the proceedings,²⁴ to make proposals,²⁵ and to vote.²⁶ It is important to note that the rules in themselves are quite precise, even if their strategic use can sometimes be somewhat confusing for observers.²⁷ For example, Rule 15 (4) reads:

“The Director General, or a staff member of the International Bureau designated by him, may at any time, with the approval of the Chairman, make statements on any subject under discussion.”

This rule is clear in granting the Director General a particular right to speak during the proceedings of the sessions of WIPO bodies. More important, however, is how the right established by this rule is often used in practice to guide or influence the discussions taking place. For example, at the beginning of the General Assembly, the Director General generally expounds on events during the past year and the future direction he believes that WIPO should take. This intervention sets the tone for subsequent interventions made by Member States, who generally begin by reiterating their agreement with all that has been said by the Director General.

Similarly, it is not the functions foreseen for the elected chair that are in themselves controversial, but rather their utilization to influence the outcomes of particular meetings. The chair is a representative from a Member State that is elected by each WIPO body to preside over its sessions. He or she declares the opening and closing of the meetings, directs discussions, accords the right to speak, puts questions to the vote, and announces the decisions. Furthermore, the chair rules on points of order, establishes the time Member States and observers have to address the meeting, and closes the debate.²⁸ The use of this range of functions to lead discussions in a particular direction has frequently been questioned by developing countries and civil society organizations.

²³ The Assemblies and other bodies of the Unions administered by WIPO have separate rules of procedure that consist of provisions in the treaties establishing WIPO and the Unions. The WIPO General Rules of Procedure, Publication 399, Rev.3 are available at the WIPO bookshop and at www.wipo.int/edocs/pubdocs/en/2002/wipo_pub_399.pdf.

²⁴ See Rules 14 and 15 of the General Rules of Procedure.

²⁵ See Rule 21 of the General Rules of Procedure.

²⁶ See Rule 25 of the General Rules of Procedure.

²⁷ Another difficulty is that these rules are not available in electronic copy. A hard copy, however, may be request from WIPO.

²⁸ See Rule 13(1) of the General Rules of Procedure.

For example, in the November 2004 Session of the Copyright Committee (SCCR), questions regarding the accuracy and significance of the conclusions of the chair led to a heated debate and the meeting ending in confusion. At the end of the meeting, the chair verbally presented his conclusions to move forward discussions in the Copyright Committee (SCCR). Several developing countries questioned some of the chair's recommended actions, particularly the call for regional consultations, which had not been requested by regional groups. Nevertheless, the chair not only questioned the opposition to the consultations, but also declined to modify his conclusions to reflect other positions. As a result, a stricter interpretation of the rules of procedure became necessary, which not only put into doubt the legitimacy of the chair – who had been re-elected in back-to-back sessions – but also clearly made the chair's attempt at a majority vote to adopt the conclusions invalid. In their press release, WIPO referred to these conclusions as those of the chair, not the Committee, and as such they could not be considered actionable.²⁹

Specific rules of procedures relevant for civil society organizations are described in Section V, below, including the norms and practices governing oral and written interventions in deliberations. In this Section, it suffices to say that these rules are significant not only to ensure effective participation, but also to understand and successfully monitor substantive and political issues raised by deliberations in the different WIPO bodies.

2. Dynamics of deliberations and decision-making

Developing countries, although a majority among the WIPO Member States, still face several challenges in WIPO discussions and negotiations. This includes the vigorous and sometimes partial role of the International Bureau and the mounting number of issues and meetings they must engage in and monitor. Unlike at the World Trade Organization (WTO), non-governmental organizations are allowed to attend and actively participate in deliberations. Nevertheless, the limited time allotted to their contributions, and the number of decisions taken in informal and closed meetings also make effective civil society involvement difficult. The present Section highlights a peculiarity that has proved critical in deliberations and decision-making in WIPO, namely the role and impact of regional groups.

As in other United Nations bodies and agencies, the system of regional groups, although not mentioned or envisioned in the WIPO Convention, is an essential element of the dynamics of deliberations in the organization. Regional groups most active in WIPO include:

- the Group of Latin American and Caribbean Countries (GRULAC);
- the African Group;
- the Asian Group;
- Group B (which clusters the industrialized countries);
- Central Europe and Baltic States; and
- China (as the only one-country regional group).

Each group has a rotating coordinator that will call internal meetings before and during those of WIPO bodies, promote a common position, and speak on the behalf of the group in

²⁹ See WIPO Press Release, "SCCR Accelerates Work on the Protection of Broadcasting Organizations," (WIPO/PR/2004/400) 22 November 2004.

different WIPO discussions and negotiations. Regional groups are given the floor before individual Member States and the statements tend to carry quite a bit of weight, as they reflect the consensus of several Member States. Individual countries will generally refer back to the group statement in their own statements.

As a mechanism to mainstream sustainable development concerns, however, the system of regional groups tends to hinder rather than promote more balanced and comprehensive discussions in WIPO. The Group of 77 (G-77),³⁰ which provides the means for the developing world to articulate and promote its collective economic interests and enhance its joint negotiating capacity in the United Nations system, has not been active in WIPO over the last few years. Thus, sustainable development concerns are usually muted or diluted by the need to achieve consensus among the countries of the regional groups, which have distinct needs and interests, as well as political alliances. One trend resulting from this situation has been the emergence or increased activity of cross-regional groups, such as the Group of Friends of Development, which includes countries from Latin America, Africa, and Asia, and the Group of Least Developed Countries (LDCs).³¹ Another seems to be a renewed focus by the G-77 on WIPO, with the 2006 election of a G-77 coordinator for WIPO.

Box 8 – Other Multilateral Intergovernmental Discussions on Intellectual Property

International intellectual property policy-making is increasingly characterized by multiple fronts of discussions and negotiations. A broader perspective of the different intergovernmental discussions related to international intellectual property thus becomes essential during any negotiation or discussion.

Convention on Biological Diversity (CBD) – www.cbd.int/default.shtml

The negotiation of an international regime on access and benefit sharing related to genetic resources and traditional knowledge, scheduled to be completed in 2010, has raised a number of issues concerning intellectual property. For example, the role of disclosure requirements in patent applications and certificates of origin have been among the most controversial elements of the negotiations.

Food and Agriculture Organization (FAO) – www.fao.org

The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), which entered into force in 2004 and is administered by the FAO, is directly related to intellectual property issues. In addition to issues relating to the enforcement of the Material Transfer Agreement (MTA) for access to the covered genetic resources, the ITPGRFA involves other topics relevant to IP issues, such as potential benefit sharing arrangements.

United Nations Conference on Trade and Development (UNCTAD) – www.unctad.org

UNCTAD has been an important forum on issues related to intellectual property. In 2004, the Sao Paulo Consensus called for UNCTAD to ensure that the framework of intellectual property contributes to technological development and to the protection of traditional knowledge and folklore.

³⁰ The Group of 77 (G-77) was established on 15 June, 1964, by seventy-seven developing countries signatories of the "Joint Declaration of the Seventy-Seven Countries" issued at the end of the first session of the United Nations Conference on Trade and Development (UNCTAD) in Geneva. At the present time, it has 133 Members.

³¹ Other groups that haven't traditionally been active on WIPO issues but are increasingly working together include the European Union (which has been invited by WIPO to participate as a Member with no voting rights); the South Asian Association for Regional Cooperation (SAARC); and the Association of South East Asian Nations (ASEAN).

Box 8 (cont'd): Other Multilateral Intergovernmental Discussions on Intellectual Property

United Nations Educational, Scientific and Cultural Organization (UNESCO) – www.unesco.org

UNESCO carries out standard-setting and other activities in the fields of education, culture, and communication and information. Several IP-relevant agreements have been adopted, including the Convention for the Protection and Promotion of the Diversity of Cultural Expressions (2005). UNESCO is also undertaking IP-related work in its follow up on the Plan of Action of the World Summit on the Information Society (WSIS).

United Nations Human Rights Bodies – www.ohchr.org

United Nations human rights bodies are increasingly addressing the relationship between intellectual property and human rights. Several of the Special Rapporteurs of the former Commission on Human Rights (CHR), for example, focused on the impact of intellectual property on health and other human rights. Human rights treaty monitoring bodies, such as the Committee on Economic, Social, and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC), have also addressed the impact of intellectual property on the protection of human rights.

United Nations Permanent Forum on Indigenous Issues (UNPFII) -

<http://www.un.org/esa/socdev/unpfii/>

The UNPFII has, for many years, debated and discussed a Declaration on the Rights of Indigenous Peoples, which was finally adopted in September 2007. A major issue of contention in the discussion was the role of intellectual property and sovereignty over traditional knowledge. The Forum continues to address the issue of traditional knowledge in its consultative and data collection work. A Special Rapporteur on Traditional Knowledge has produced an initial report on indigenous traditional Knowledge and the issue forms part of the official future work plan of the Forum.

World Health Organization (WHO) – www.who.int

The WHO has carried out work on promoting equitable and sustainable access to essential medicines, including traditional medicines, and has conducted work to promote access to the results of genomic research. In 2003, for example, the World Health Assembly (WHA) established a Commission on Intellectual Property, Innovation and Public Health (CIPIH), which released its report in 2006. The report formed the basis for WHA establishment of an intergovernmental working group on a global strategy and plan of action in order to provide a medium-term R&D framework for neglected diseases.

World Trade Organization (WTO) – www.wto.org

Due to the Agreement on Trade-related Aspects of Intellectual Property (TRIPS Agreement), WTO discussions on intellectual property have had perhaps the highest public profile. The 2001 Doha Declaration on the TRIPS Agreement and Public Health is recognized as a landmark instrument in the intellectual property and sustainable development debate. There are a number of ongoing discussions, including proposals to address concerns that the TRIPS Agreement allows the granting of patents for inventions that use genetic material and associated traditional knowledge without requiring compliance with the provisions of the CBD.

V. CIVIL SOCIETY PARTICIPATION IN WIPO – FREQUENTLY ASKED QUESTIONS (FAQ)

“If the UN’s global agenda is to be properly addressed,
a partnership with civil society at large is not an option: it is a necessity.”

H.E. Mr. Kofi Annan, UN Secretary-General

Civil society organizations engage in international intellectual property policy discussions and negotiations through a variety of formal and informal approaches. The varied and, in general, coordinated efforts of civil society on intellectual property and sustainable development have indeed been critical to achievements such as the Doha Declaration on the TRIPS Agreement and Public Health. In addition to formal interaction with Member States and the secretariat of the intergovernmental institution where discussions or negotiations are taking place, civil society organizations, for instance, engage in campaigns to raise public awareness, highlight concerns, or advance new ideas or approaches. In addition, civil society organizations generate or participate in dialogues among different stakeholders to promote a more balanced discourse on intellectual property issues. Other activities include:

- providing substantive input into ongoing discussions and negotiations through diverse publications and proposals made by friendly governments;
- lobbying both industrialized and developing countries; and
- disseminating information to stakeholders affected by intellectual property rules and policies at the regional, national, and local levels.

All of these approaches are relevant to the negotiations and other activities taking place in WIPO. In Box 2, a list of civil society organizations active on WIPO-related issues is provided, as well as contact information for further details regarding specific activities. The present Section focuses on the issue of formal civil society participation in WIPO, particularly as permanent observers to the organization. Such formal participation, however, will generally be complemented by other activities in order to ensure an effective contribution to the intellectual property and sustainable development debate. Moreover, it is worth noting that current arrangements for formal participation in WIPO, though more inclusive and transparent than those of other organizations dealing with intellectual property issues, remain insufficient. Both Member States and the International Bureau have taken initiatives to improve the input of civil society to WIPO documents and increase information exchange. However, there is significant room for improvement, particularly in regards to ensuring full and fair participation of civil society in activities at the regional and national levels.

- *What organizations can obtain observer status?* According to the WIPO Convention, international³² non-governmental organizations may be admitted by the General Assembly as permanent observers to WIPO. National non-governmental organizations may also be admitted as permanent observers, according to the rules established by the General Assembly, if:

³² International NGO’s are those whose membership and subject matter are cross-national or international in nature, in contrast to national NGOs which generally only have a domestic constituency and structure. The categories are the result of WIPO’s focus on rightsholder groups many of which can be characterized as purely national interest groups (national publishers associations, for example) in contrast to international lobbying associations (the International Publishers Associations) which represent several groups from different countries.

- ❑ They are “essentially concerned” with matters falling within the competence of WIPO and would, in the view of the Director General, be able to offer constructive, substantive contributions;
- ❑ Their aims and purposes are in conformity with the spirit, purposes and principles of WIPO and the United Nations;
- ❑ They have established headquarters and democratically adopted statutes;
- ❑ They have authority to speak for their members; and
- ❑ No objections are put forward in prior consultations between Member States and the WIPO Secretariat.

An organization with permanent observer status to WIPO, also known as a “WIPO accredited” organization, has the right to participate in all the meetings of WIPO governing and subsidiary bodies. In addition, WIPO subsidiary bodies may admit both international and national non-governmental organizations as *ad hoc* observers, that is, to participate only in the meetings of the specific body.

As mentioned in Section II, WIPO does not distinguish between rights-holder or business organizations, on the one hand, and public interest groups and other civil society organizations, on the other. As a result, there is no requirement for non-governmental organizations to operate in a not-for-profit manner or to seek to advance the public interest.

- *How can civil society organizations obtain observer status?* Because the admission of permanent observers lies within the competence of the General Assembly, decisions are taken only once a year (General Assembly meetings usually occur in late September-early October). In order to get the process for observer status started, what is required is an official request addressed to either the Director General or the Legal Counsel of WIPO (one of the officers of the organization accountable to the Director General). Then, to enable the International Bureau to formally present the request, organizations must provide the following information, preferably in English, French and Spanish:

- ❑ The text of its constitutive instrument (articles of incorporation, bylaws, etc.);
- ❑ An indication of the date and place where it was established;
- ❑ A list of its officers (in the case of international organizations, showing their nationality);
- ❑ A complete list of its national groups or members (in the case of international organizations, showing their country of origin);
- ❑ A description of the composition of the members of its governing body or bodies (in the case of international organizations, including their geographical distribution);
- ❑ A statement of its objectives; and
- ❑ An indication of the field or fields of intellectual property of interest to it.

For an application to be reviewed at the meeting of the General Assembly, it must be submitted two months in advance. While the application for observer status is pending, applicant organizations will generally be invited to attend the meetings of the committees of interest.

For *ad hoc* observer status, the request must be addressed to the sector of the International Bureau working on issues related to the specific committee. At its subsequent meeting, Member States participating in that committee will consider and respond to the request.

- *How can permanent observers participate?* Permanent observers may attend and make oral statements to the meetings of the different WIPO bodies. They may make written statements to be included in the report of the committee. However, they may not make written or oral proposals or submissions to be adopted by the committee. Observers never have a vote.
 - ❑ *Invitation.* The International Bureau will generally send an invitation to permanent observers, asking for a confirmation of plans to attend the meeting. Although such confirmation is helpful for the International Bureau and ensures the nametags are ready on the day of the meeting, it is not necessary to have received the invitation or to have responded to be able to attend the meeting.
 - ❑ *Registration.* After a quick registration the first day of a particular meeting, involving simply the filling out of a form of contact details, representatives of permanent observer civil society organizations may proceed to the meeting.
 - ❑ *Size of delegations.* There is no official limit on the size of delegations. The number of seats available in the main room depends on the size of all the delegations. Usually no more than one or two delegates can sit in the main room, while others can follow discussions from an overflow room with audio and video equipment.
 - ❑ *Sitting arrangements.* Sitting in WIPO meetings is assigned. Observers are seated at the back, with flags placed in alphabetical order.
 - ❑ *Making an intervention.* Observers speak when instructed by the chair, who will generally allocate a limited period of time in one or two agenda items in the meeting, and after Member States and intergovernmental organizations have spoken. Observers are often asked to be brief and to the point. In general, coordinating interventions with those of other civil society organizations is crucial to effectively raising an issue or concern. Whether or not they are given an opportunity to speak, observers may submit written statements to be incorporated in the report. Even in the case of oral statements, observers will generally be asked for a written version to facilitate the drafting of the report.
 - ❑ *Coordination.* Box 2 contains a list of civil society organizations that are actively participating in WIPO.
 - ❑ *Access to documents and general information on meetings, conferences, and events.* The WIPO website is the main source through which to keep track of upcoming meetings and events. The list of WIPO Meetings can be found at <http://www.wipo.int/meetings/en/>. You can also subscribe to receive email alerts from WIPO on upcoming meetings and events at <http://www.wipo.int/meetings/en/subscribe.html>. The website also posts the submissions, proposals, reports and other documents relating to the meetings of most of WIPO bodies (i.e. Assemblies, Committees, Working Groups) and keeps a record of all past meetings and documents.
- *How can observers complement their formal participation?* Observers can complement their formal participation in WIPO meetings in several ways. For example, civil society organizations often request a room to put on a side event on issues relevant or related to the discussions taking place in the formal meeting. Indeed, oftentimes these meetings are more substantive and constructive than the formal negotiations. Observers are also entitled to make available their publications and other printed

material outside of the meeting room, although they must obtain prior authorization from the International Bureau. Furthermore, since Wi-Fi is available in the meeting rooms and lobby, civil society groups have also played an important role in the dissemination of developments, making collective and individual blogs on WIPO meetings instantly available on the web. Finally, as in all international meetings, coffee breaks, lunchtime, and receptions provide an important opportunity to meet and engage with representatives of other civil society organizations, Member States, and the International Bureau.

VI. CONCLUSION

“Humanity stands at a crossroads... Will we evaluate, learn and profit
from the best of these new ideas and opportunities,
Or will we respond to the most unimaginative pleas to suppress all of this
in favor of intellectually weak, ideologically rigid,
and sometimes brutally unfair and inefficient policies?”
Geneva Declaration on the Future of WIPO

The participation of civil society organizations in international intellectual property discussions has been essential to a progressively more profound and balanced debate on the proper role of intellectual property rules as an instrument of public policy. There are still significant substantive and political challenges, however, in advancing international intellectual property rules and institutions that support innovation and transfer of knowledge and technology, respond to the interests and needs of both producers and users of knowledge and technology, and ensure equity among industrialized and developing countries. More effective civil society participation in international intellectual property discussions will continue to be critical to meeting these challenges.

At the same time, multiple fronts of discussions and negotiations in intellectual property make civil society participation and influence increasingly difficult. Intellectual property issues arise in various international and bilateral fora, each with its own particular approach, difficulties, and opportunities. WIPO, with its complex governance structure and broad range of activities, has been particularly challenging. Nevertheless, the growing participation of civil society has already had a significant impact on negotiations. Civil society has been central to the WIPO Development Agenda discussions, for instance. As several key negotiations taking place in WIPO advance, including those related to the Broadcasting Treaty and the Substantive Patent Law Treaty, civil society participation will gain particular significance.

CIEL's *Citizen's Guide to WIPO* aims to provide individuals and civil society organizations with the practical information and guidance not only to increase and enhance their involvement in these negotiations, but also to advance the effective reflection of their concerns in all WIPO rules and activities. CIEL looks forward to building discussion and action on sustainable development in collaboration with you.

ANNEXES

Annex A: Treaties Administered by WIPO

Further information concerning all WIPO administered treaties can be found at <http://www.wipo.int/treaties/en/index.jsp>

IP Protection (Substantive) Treaties

- Berne Convention (Berne Convention for the Protection of Literary and Artistic Works)
- Brussels Convention (Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite)
- Film Register Treaty (Treaty on the International Registration of Audiovisual Works)
- Madrid Agreement (Indications of Source) (Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods)
- Nairobi Treaty (Nairobi Treaty on the Protection of the Olympic Symbol)
- Paris Convention (Paris Convention for the Protection of Industrial Property)
- Patent Law Treaty
- Phonograms Convention (Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms)
- Rome Convention (Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations)
- Singapore Treaty on the Law of Trademarks (Not yet in force)
- Trademark Law Treaty
- Washington Treaty (Washington Treaty on Intellectual Property in Respect of Integrated Circuits)
- WCT (WIPO Copyright Treaty)
- WPPT (WIPO Performances and Phonograms Treaty)

Global Protection System (Coordination Treaties)

- Budapest Treaty (Budapest Treaty on the International Recognition of the Deposit of Microorganism for the Purposes of Patent Procedure)
- Hague Agreement (Hague Agreement Concerning the International Registration of Industrial Designs)
- Lisbon Agreement (Lisbon Agreement for the Protection of Appellations of Origin and their International Registration)
- Madrid Agreement (Marks) (Madrid Agreement Concerning the International Registration of Marks)
- Madrid Protocol (Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks)
- PCT (Patent Cooperation Treaty)

Classification Treaties

- Locarno Agreement (Locarno Agreement Establishing an International Classification for Industrial Designs)

- Nice Agreement (Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks)
- Strasbourg Agreement (Strasbourg Agreement Concerning the International Patent Classification)
- Vienna Agreement (Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks)

Annex B: Criteria for Admission as Permanent Observer in WIPO

Requests for admission as permanent observers in WIPO must be presented to the International Bureau, addressed to the WIPO Director General or to the WIPO Legal Counsel. The admission of NGOs to observer status lies within the competence of the WIPO General Assembly, which takes decisions on that matter at its sessions held every year. Requests must include the following information, preferably in English, French, and Spanish:

- **International Non-Governmental Organization (NGO)**
 - Text of its constituent instrument (articles of incorporation, bylaws, etc.);
 - Indication of the date and place where it was established;
 - List of its officers (showing their nationality);
 - Complete list of its national groups or members (showing their country of origin);
 - Description of the composition of the members of its governing body or bodies (including their geographical distribution);
 - Statement of its objectives; and
 - Indication of the field or fields of intellectual property (*e.g.*, copyright and related rights) of interest to it.
- **National Non-Governmental Organization (NGO)**
 - Text of its constituent instrument (articles of incorporation, bylaws, etc.);
 - Indication of the date and place where it was established;
 - List of its officers;
 - Complete list of its national groups or members;
 - Description of the composition of the members of its governing body or bodies;
 - Statement of its objectives; and
 - Indication of the field or fields of intellectual property (*e.g.*, copyright and related rights) of interest to it.

In addition, the following principles are observed in extending invitations to national NGOs, as observers:

- (a) The organization shall be essentially concerned with intellectual property matters falling within the competence of WIPO and shall, in the view of the Director General, be able to offer constructive, substantive contributions to the deliberations of the Assemblies of WIPO;
- (b) The aims and purposes of the organization shall be in conformity with the spirit, purposes and principles of WIPO and the United Nations;

- (c) The organization shall have an established headquarters. It shall have democratically adopted statutes, adopted in conformity with the legislation of the Member State from which the NGO originates. One copy of the statutes shall be submitted to WIPO;
- (d) The organization shall have authority to speak for its members through its authorized representatives and in accordance with the rules governing observer status; and
- (e) The admission of national NGOs to observer status shall be the subject of prior consultations between Member States and the Secretariat.

Annex C: Geneva Declaration on the Future of WIPO³³

On October 4, 2004, the WIPO General Assembly adopted the "Proposal for the Establishment of a Development Agenda for WIPO." This process was the first step of the long Development Agenda process that culminated in the new IP and Development Committee and a new direction for WIPO. The agenda was supported by many NGOs, scientists, academics and other citizens who met before the crucial Assembly and adopted as a manifesto and guiding set of principles the "Geneva Declaration on the Future of WIPO." The declaration remains a crucial touchstone and statement of principle for many of the civil society organizations working at WIPO. The Declaration follows below:

Humanity faces a global crisis in the governance of knowledge, technology, and culture. The crisis is manifest in many ways.

- Without access to essential medicines, millions suffer and die;
- Morally repugnant inequality of access to education, knowledge and technology undermines development and social cohesion;
- Anticompetitive practices in the knowledge economy impose enormous costs on consumers and retard innovation;
- Authors, artists and inventors face mounting barriers to follow-on innovation;
- Concentrated ownership and control of knowledge, technology, biological resources, and culture harm development, diversity, and democratic institutions;
- Technological measures designed to enforce intellectual property rights in digital environments threaten core exceptions in copyright laws for disabled persons, libraries, educators, authors, and consumers, and undermine privacy and freedom;
- Key mechanisms to compensate and support creative individuals and communities are unfair to both creative persons and consumers;
- Private interests misappropriate social and public goods, and lock up the public domain.

At the same time, there are astoundingly promising innovations in information, medical, and other essential technologies, as well as in social movements and business models. We are witnessing highly successful campaigns for access to drugs for AIDS, scientific journals, genomic information, and other databases, and hundreds of innovative collaborative efforts to create public goods, including the Internet, the World Wide Web, Wikipedia, the Creative Commons, GNU Linux, and other free and open software projects, as well as distance education tools and medical research tools. Technologies such as Google now provide tens of millions with powerful tools to find information. Alternative compensation systems have been proposed to expand access and interest in cultural works, while providing both artists and consumers with efficient and fair systems for compensation. There is renewed interest in compensatory liability rules, innovation prizes, or competitive intermediators, as models for economic incentives for science and technology that can facilitate sequential follow-on innovation and avoid monopolist abuses. In 2001, the World Trade Organization (WTO) declared that member countries should "promote access to medicines for all."

Humanity stands at a crossroads – a fork in our moral code and a test of our ability to adapt and grow. Will we evaluate, learn and profit from the best of these new ideas and

³³ Available at <http://www.futureofwipo.org/>.

opportunities, or will we respond to the most unimaginative pleas to suppress all of this in favor of intellectually weak, ideologically rigid, and sometimes brutally unfair and inefficient policies? Much will depend upon the future direction of the World Intellectual Property Organization (WIPO), a global body setting standards that regulate the production, distribution, and use of knowledge.

A 1967 Convention sought to encourage creative activity by establishing WIPO to *promote* the protection of intellectual property. The mission was expanded in 1974, when WIPO became part of the United Nations, under an agreement that asked WIPO to take “appropriate action to promote creative intellectual activity,” and facilitate the transfer of technology to developing countries, “in order to accelerate economic, social and cultural development.”

As an intergovernmental organization, however, WIPO embraced a culture of creating and expanding monopoly privileges, often without regard to consequences. The continuous expansion of these privileges and their enforcement mechanisms has led to grave social and economic costs, and has hampered and threatened other important systems of creativity and innovation. WIPO needs to enable its members to understand the real economic and social consequences of excessive intellectual property protections, and the importance of striking a balance between the public domain and competition on the one hand, and the realm of property rights on the other. The mantras that “more is better” or “that less is never good” are disingenuous and dangerous -- and have greatly compromised the standing of WIPO, especially among experts in intellectual property policy. WIPO must change.

We do not ask that WIPO abandon efforts to promote the appropriate protection of intellectual property, or abandon all efforts to harmonize or improve these laws. But we insist that WIPO work from the broader framework described in the 1974 agreement with the UN, and take a more balanced and realistic view of the social benefits and costs of intellectual property rights as a tool, but not the only tool, for supporting creative intellectual activity.

WIPO must also express a more balanced view of the relative benefits of harmonization and diversity, and seek to impose global conformity only when it truly benefits all of humanity. A “one size fits all” approach that embraces the highest levels of intellectual property protection for everyone leads to unjust and burdensome outcomes for countries that are struggling to meet the most basic needs of their citizens.

The WIPO General Assembly has now been asked to establish a development agenda. The initial proposal, first put forth by the governments of Argentina and Brazil, would profoundly refashion the WIPO agenda toward development and new approaches to support innovation and creativity. This is a long overdue and much needed first step toward a new WIPO mission and work program. It is not perfect. The WIPO Convention should formally recognize the need to take into account the “development needs of its Member States, particularly developing countries and least-developed countries,” as has been proposed, but this does not go far enough. Some have argued that the WIPO should only “promote the protection of intellectual property,” and not consider any policies that roll back intellectual property claims or protect and enhance the public domain. This limiting view stifles critical thinking. Better expressions of the mission can be found, including the requirement in the 1974 UN/WIPO agreement that WIPO “promote creative intellectual activity and facilitate the transfer of technology related to industrial property.” The functions of WIPO should not only

be to promote “efficient protection” and “harmonization” of intellectual property laws, but to formally embrace the notions of balance, appropriateness, and the stimulation of both competitive and collaborative models of creative activity within national, regional, and transnational systems of innovation.

The proposal for a development agenda has created the first real opportunity to debate the future of WIPO. It is not only an agenda for developing countries. It is an agenda for everyone, North and South. It must move forward. All nations and people must join and expand the debate on the future of WIPO.

There must be a moratorium on new treaties and harmonization of standards that expand and strengthen monopolies and further restrict access to knowledge. For generations WIPO has responded primarily to the narrow concerns of powerful publishers, pharmaceutical manufacturers, plant breeders and other commercial interests. Recently, WIPO has become more open to civil society and public interest groups, and this openness is welcome. But WIPO must now address the substantive concerns of these groups, such as the protection of consumer rights and human rights. Long-neglected concerns of the poor, the sick, the visually impaired, and others must be given priority.

The proposed development agenda points in the right direction. By stopping efforts to adopt new treaties on substantive patent law, broadcasters' rights, and databases, WIPO will create space to address far more urgent needs.

The proposals for the creation of standing committees and working groups on technology transfer and development are welcome. WIPO should also consider the creation of one or more bodies to systematically address the control of anticompetitive practices and the protection of consumer rights.

We support the call for a Treaty on Access to Knowledge and Technology. The Standing Committee on Patents and the Standing Committee on Copyright and Related Rights should solicit views from member countries and the public on elements of such a treaty.

The WIPO technical assistance programs must be fundamentally reformed. Developing countries must have the tools to implement the WTO Doha Declaration on TRIPS and Public Health, and “use, to the full” the flexibilities in the TRIPS to “promote access to medicines for all.” WIPO must help developing countries address the limitations and exceptions in patent and copyright laws that are essential for fairness, development, and innovation. If the WIPO Secretariat cannot understand the concerns and represent the interests of the poor, the entire technical assistance program should be moved to an independent body that is accountable to developing countries.

Enormous differences in bargaining power lead to unfair outcomes between creative individuals and communities (both modern and traditional) and the commercial entities that sell culture and knowledge goods. WIPO must honor and support creative individuals and communities by investigating the nature of relevant unfair business practices, and promote best practice models and reforms that protect creative individuals and communities in these situations, consistent with norms of the relevant communities.

Delegations representing the WIPO Member States and the WIPO Secretariat have been asked to choose a future. We want a change of direction, new priorities, and better outcomes for humanity. We cannot wait for another generation. It is time to seize the moment and move forward.

Annex D: Final List of Agreed Proposals from the Development Agenda Committee (PCDA) Fourth Session, June 11-15, 2007

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 IP culture, with an emphasis on introducing intellectual property at different academic levels and on generating greater public awareness on IP.
4. Place particular emphasis on the needs of 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 IP.
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 IP related anti-competitive practices, by providing technical cooperation to developing countries, especially LDCs, at their request, in order to better understand the interface between intellectual property rights 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 IP 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 IP-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 IP institutional capacity through further development of infrastructure and other facilities with a view to making national IP institutions more efficient and promote fair balance between IP protection and the public interest. This technical assistance should also be extended to sub-regional and regional organizations dealing with IP.
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 and non-governmental organizations; 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 IP 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 UN 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 IP and competition c) IP-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 IP 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 IP-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 IP-related aspects of ICT for growth and development: Provide for, in an appropriate WIPO body, discussions 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 IP-related strategies to use ICT for economic, social and cultural development.
28. To explore supportive IP-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 IP-related technology transfer issues within the mandate of an appropriate WIPO body.
30. WIPO should cooperate with other intergovernmental organizations to provide to developing countries, including LDCs, upon request, advice on how to gain access to and make use of IP-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 IP rights 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 IP 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 IP 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 IP 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 UN agencies, according to Member States' orientation, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially 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 IP-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 International Bureau, 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.

Annex E: Selected bibliography and additional resources on WIPO and Sustainable Development

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