

<p style="text-align: center;">INTERNATIONAL POLICY MAKING: A DEVELOPMENT AGENDA FOR WIPO</p>
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WTO and WIPO

National copyright laws are usually based on international copyright treaties so being informed about international developments and policy making will lead to a better understanding of the way in which copyright laws are implemented nationally. The two main organisations involved in setting the international copyright agenda are both based in Geneva.

The **World Trade Organization (WTO)** administers and enforces **TRIPS** (Agreement on Trade Related Aspects of Intellectual Property Rights 1995), the multilateral trade agreement that brought copyright into the global trading system. There are currently 153 members of the WTO (and consequently also of TRIPS). Least Developed Countries have until July 2013 to accede to TRIPS. (See also the chapter on *Copyright and Trade Agreements*).

The **World Intellectual Property Organization (WIPO)** administers three key copyright treaties.

- **Berne Convention** for the Protection of Literary and Artistic Works 1886 (amended 1971) - 164 member states, October 2009
- **WIPO Copyright Treaty (WCT)** 1996 – 70 member states, October 2009
- **WIPO Performances and Phonograms Treaty (WPPT)** 1996 – 68 member states, October 2009.

In 1974, WIPO became a specialised agency of the United Nations with a mandate subject to a number of other UN organisations dealing with innovation, development and intellectual property. Its practice turned out rather differently and is illustrated by the strategic goal “to promote an IP culture” in its 2006-2007 programme. Unlike other UN agencies, WIPO does not depend upon contributions from member states for funding, but instead gets 90% of its income from the collection of fees under the patent registration scheme which it administers. It is thus largely funded by rightholders, who naturally have an interest in expanding IP protection. This is reflected in the involvement of business and industry groups at WIPO. Some have partnership agreements with WIPO to co-organise global training seminars and, until recently, their representatives dominated the non-governmental organisations at committee meetings.

In a co-operation agreement with the WTO, the WIPO Secretariat provides technical assistance and legislative advice to developing countries on national implementation of the TRIPS Agreement. The programme has been criticised for over-emphasising the benefits of IP for rightholders while paying little attention to the costs, and for encouraging developing countries to implement IP regimes that are in excess of the requirements under TRIPS, known as the “TRIPS plus” approach.

A Development Agenda for WIPO

Over the years, some WIPO member states came to the view that WIPO is failing to meet the needs of developing countries with regard to intellectual property. In their view, WIPO was out of step with current thinking in other organisations, such as the World Bank and

the WTO, which had undertaken evaluations to ensure that their actions achieve development-oriented results. WIPO was falling short of its original mandate, and should integrate the development dimension into all its activities, guided in particular by the UN Millennium Development Goals

At the WIPO General Assemblies in September 2004, Brazil and Argentina made a historic proposal to establish a “development agenda” within WIPO. Joined by Bolivia, Cuba, Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania and Venezuela, the “Group of Friends of Development” set in train a process that would reverberate, not only within the corridors of WIPO, but among civil society interest groups around the world. The Development Agenda aims to re-orient WIPO to its original goal to promote intellectual creativity, rather than intellectual property, i.e. IP as a means to an end, rather than an end in itself. The Group of Friends of Development stressed that the development dimension goes beyond the provision of technical assistance and is a cross-cutting issue for all WIPO activities. All countries will benefit from this more balanced approach, not only developing countries. The overall aim is to promote development and access to knowledge for all.

Key elements of the original proposal were to:

- Reform WIPO's governance structure to strengthen the role of member states in guiding WIPO's work and to establish an independent Research and Evaluation Office;
- ensure wider participation of civil society and public interest groups in WIPO's discussions and activities;
- introduce evidence-based Development Impact Assessments and greater public consultation for any proposed treaties;
- adopt technical assistance programmes that are development-focused, non-discriminatory and tailored to respond to the needs of a range of stakeholders;
- adopt a proposal for a Treaty on Access to Knowledge and Technology.

Recommendations for a Development Agenda

Over the next three years, member states discussed 111 proposals put forward by individual countries in specially convened committees - Inter-sessional Intergovernmental Meeting on a Development Agenda for WIPO (April, June, July 2005); Provisional Committee on Proposals Related to a WIPO Development Agenda (February, June 2006, February, June 2007). Following negotiations that were sometimes tense, 45 Recommendations for a Development Agenda were finally adopted at the WIPO General Assembly in 2007.

The Recommendations are grouped in six clusters:

- Cluster A: Technical Assistance and Capacity Building
- Cluster B: Norm-setting, flexibilities, public policy and public domain
- Cluster C: Technology Transfer, Information and Communication Technologies (ICT) and Access to Knowledge
- Cluster D: Assessment, Evaluation and Impact Studies
- Cluster E: Institutional Matters including Mandate and Governance
- Cluster F: Other Issues (promoting technological innovation “to the mutual advantage of producers and users ... and to a balance of rights and obligations”).

Nineteen proposals were identified by the General Assembly for immediate implementation. Implementation of the Recommendations is overseen by a new Committee on Development and Intellectual Property (CDIP) that meets twice a year in Geneva. The first session took place in March 2008 attended by 99 member states, 7 intergovernmental organisations and 31 non-governmental organizations (including eIFL). In 2008, rules of procedure were agreed, a work program was discussed for the 45 proposals, including human and financial resources, as well as proposals on how to transform the Recommendations into concrete activities. In 2009, the Secretariat proposed a methodology for implementation of the Recommendations, and a set of thematic projects that address specific Recommendations. Meanwhile, the Secretariat established the Development Agenda Coordination Division (DACD) to maintain a central coordination structure, to act as the interface with external stakeholders and with the aim to mainstream the implementation of the Development Agenda recommendations within WIPO.

Libraries and the WIPO Development Agenda

The international library community has, since the start, actively supported WIPO member states who belong to Group of Friends of Development. eIFL.net and IFLA were early signatories to the **Geneva Declaration on the Future of WIPO (2004)**, adopted by leading academics, Nobel prize winning scientists, access to medicine advocates and free software developers. The Declaration was the first public statement setting out concerns and goals, and called for a moratorium on the creation of new treaties that expand and strengthen monopolies and further restrict access to knowledge; on WIPO to address the substantive concerns of civil society groups, such as the protection of consumer rights and to give priority to long-neglected concerns of blind and visually impaired people, libraries and education. The international library community is part of the broad coalition known as the **Access to Knowledge (A2K)** movement.

Since 2004 eIFL.net, IFLA, and subsequently, the U.S. Library Copyright Alliance (LCA) have invested considerable resources to ensure regular attendance at some 25 WIPO committee and general assembly meetings covering the Development Agenda, copyright and traditional knowledge, plus additional information meetings and seminars. Librarians from developing and transition countries have been part of the library delegations, including in 2005 the first librarian from Africa to make an intervention. Over 30 formal statements and interventions have been made to inform member state delegations about the role of libraries in the information society and in economic and social development, the role of copyright in the provision of library services, how over-restrictive copyright laws can erode access to knowledge and can impede development, and why the current “one size fits all” approach is unjust and inequitable. A Development Agenda that takes into account the needs and stage of development of a country is crucial to libraries and their users, because access to learning and knowledge is a vital tool for economic, social and intellectual development.

During negotiations, libraries stressed that technical assistance to national policy makers and capacity building should be development oriented and involve all stakeholders, including libraries, and should promote the use of options and flexibilities; that WIPO has a role in nurturing the public domain, part of our global cultural and intellectual heritage; that WIPO should consider alternative models that support creativity and innovation such as open access to research material, and a treaty on access to knowledge. The particularly contentious issues that arose between developing countries and the industrialised, rich

countries were the inclusion of access to knowledge, copyright exceptions and limitations and whether the preservation of the public domain within the scope of WIPO – all the issues that affect libraries.

Recommendations for a Development Agenda, of particular interest to libraries are:

- Cluster A: Technical Assistance and Capacity Building (Recommendations 5, 8, 10)
- Cluster B: Norm-setting, flexibilities, public policy and public domain (Recommendations 16, 19, 20, 21, 22, 23)
- Cluster C: Technology Transfer, Information and Communication Technologies (ICT) and Access to Knowledge (Recommendations 24, 25, 26)
- Cluster D: Assessment, Evaluation and Impact Studies (Recommendations 33, 35)
- Cluster E: Institutional Matters including Mandate and Governance (Recommendation 42)
- Cluster F: Other Issues (Recommendation 45).

The purpose of the Development Agenda is to effect change, so adoption of the Recommendations for a Development Agenda is the start of a process. The Development Agenda needs to be implemented in all WIPO committees and activities, and should result in a greater understanding of the importance of flexibilities, especially for developing and least-developed countries, and balanced IP education to include copyright exceptions and limitations, library copyright issues, the public domain, fair model laws and pro-competitive licensing regimes.

The library role is to monitor progress to help ensure that the Recommendations are implemented in a meaningful way, and in the spirit intended by member states. While the thematic project approach transforms specific Recommendations into concrete actions, it is important that the Development Agenda does not break down into a series of discrete projects and that the overarching original aim, to re-orient and re-balance WIPO, is kept at the fore.

A related concern is that proposed activities should genuinely reflect a change in direction, rather than an enhanced emphasis on objectives that WIPO has traditionally promoted. Activities focused primarily on IP protections and IP culture, for example, are not necessarily development-oriented. Also, there is little evidence that the placement of the adjective “development” in project descriptions will result in the kind of change needed, and envisaged by member states who adopted the Development Agenda.

The change of atmosphere brought about by the Development Agenda has influenced the work of other WIPO committees, including the Standing Committee on Copyright and Related Rights (SCCR). SCCR has a new agenda item “Exceptions and Limitations” and is undertaking substantive work including the publication of detailed studies on exceptions and limitations, and consideration of a proposal for a WIPO Treaty for Blind, Visually Impaired and other Reading Disabled Persons. The library community will attend SCCR and meetings of the Committee on Development and Intellectual Property (CDIP) to monitor progress of the Development Agenda, highlight concerns and put forward constructive suggestions and ideas to member states and the WIPO Secretariat. We believe that libraries everywhere will benefit from a Development Agenda for WIPO, because access to knowledge is not just an issue for developing countries, but also for developed countries since knowledge is a universal tool and equal access is important for all.

Library position statements

eIFL.net Issues and campaigns. <http://www.eifl.net/cps/sections/services/eifl-ip/issues>

IFLA Committee on Copyright and other Legal Matters (CLM) See Statements or Publications for various statements made at WIPO) <http://www.ifla.org/en/clm>

Library Copyright Alliance (USA) <http://www.librarycopyrightalliance.org/>

A development agenda for WIPO. Why libraries care
http://www.eifl.net/cps/sections/docs/ip_docs/pcda-4-development

The Public Domain Why WIPO should care
<http://archive.ifla.org/III/clm/p1/CLM-pr08032007.htm>

References

Access to Knowledge mailing list and public archive
<http://lists.essential.org/mailman/listinfo/a2k>

Geneva Declaration on the future of the World Intellectual Property Organization, 2004.
<http://www.cptech.org/ip/wipo/genevadeclaration.html>

Negotiating a 'Development Agenda' for the World Intellectual Property Organisation (WIPO) (2009) Edited by Martin Khor and Sangeeta Shashikant
<http://www.twinside.org.sg/title2/books/negotiating.a.development.htm>

Third World Network. Humanising intellectual property: developing countries launch new initiative (All articles originally published in *Third World Resurgence* magazine, Issue No. 171-172 (Nov-Dec 2004)) <http://www.twinside.org.sg/focus.htm>

WIPO administered Treaties <http://www.wipo.int/treaties/en/>

- Berne Convention for the Protection of Literary and Artistic Works
<http://www.wipo.int/treaties/en/ip/berne/>
- WIPO Copyright Treaty <http://www.wipo.int/treaties/en/ip/wct/>
- WIPO Performances and Phonograms Treaty
<http://www.wipo.int/treaties/en/ip/wppt/>

WIPO Intellectual property for development <http://www.wipo.int/ip-development/en/>

- Proposal by Argentina and Brazil for the Establishment of a Development Agenda for WIPO. WO/GA/31/12 September 24, 2004
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=32266
- Development Agenda for WIPO pages <http://www.wipo.int/ip-development/en/agenda/>
- 45 adopted recommendations of the WIPO Development Agenda
<http://www.wipo.int/ip-development/en/agenda/recommendations.html>

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