



Notes on the proceedings and on the outcome of the two sessions held in 2008 of the new WIPO permanent Committee on Development and Intellectual Property, CDIP

The present report endeavours to present the outcome of the two sessions held in 2008, March 3-7 and July 7-11, of the new WIPO permanent Committee on Development and Intellectual Property, CDIP.

A report from the first session is contained in the AIPPI eNewsletter No. 2, June 2008. Some parts of that report from the first CDIP meeting are repeated in the present report, in an effort to provide a full picture of the outcome now that the CDIP has concluded its first year.

For completeness, the present report includes some background information on the CDIP.

The report has been prepared by Ivan Hjertman, President of AIPPI Sweden, who attended both the CDIP meetings as an observer for the International Chamber of Commerce, ICC. As with the report from the first meeting, ICC has kindly agreed that IH shares his notes also from the second meeting with AIPPI.

A number of WIPO documents from the meetings, as indicated below in the report, are attached for quick reference. The WIPO documents from the meetings are as usual available on the WIPO website, www.wipo.int.

Background

The original proposal from Argentina and Brazil to set up a Development Agenda for WIPO was approved at the 2004 WIPO General Assembly. After six subsequent meetings during 2005, 2006, and 2007 in provisional WIPO Committees, agreement was reached on 45 proposals, divided into six “clusters”, out of originally 111 proposals, on elements for such Development Agenda.

The said clusters are

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

The 2007 WIPO General Assembly approved this outcome and decided to set a new permanent Committee for Development and Intellectual Property, CDIP. This Committee was mandated to

- i) develop a work-program for implementation of the adopted recommendations
- ii) monitor, assess, discuss and report on the implementation of all recommendations adopted, and for that purpose it shall coordinate with relevant WIPO bodies
- iii) discuss IP and development related issues as agreed by the Committee, as well as those decided by the General Assembly

The 2007 WIPO General Assembly also identified 19 of the 45 proposals – now termed recommendations - as not requiring additional financial or human resources and selected those 19 recommendations for immediate implementation by WIPO. CDIP was mandated to address “the financial and human budgetary resources” for the remaining 26 recommendations for inclusion in the WIPO budgetary planning process, and to report and make recommendations annually to the General Assembly.

The full list of the adopted 45 recommendations, the lists of 19 respectively 26, and the mandate for the CDIP are contained in document A/43/13 Rev. dated September 17, 2007, **see link** for quick reference.

http://www.wipo.int/edocs/mdocs/govbody/en/a_43/a_43_13_rev.pdf

Outcome of the CDIP meetings

Election at the March meeting of **Chair and Vice-Chairs**: While the Chair, Ambassador Trevor Clarke, Barbados, was elected unanimously, there were three candidates for the two posts as Vice Chairs: Kyrgyzstan, Spain, and Tunisia. A compromise solution was agreed, a "gentlemen's agreement": Kyrgyzstan and Spain would take the Vice Chair posts for the two CDIP meeting in 2008. For 2009, Kyrgyzstan would not seek re-election and Tunisia would then be elected along with Spain.

The main **working document** for the CDIP is CDIP/1/3 dated March 3, 2008 **see link** (http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_1/cdip_1_3.pdf), thus available just before the first meeting. There was also a second working document at the first meeting, although not separately listed, with suggestions made by the Friends of Development, the Group of Central European and Baltic States, and the Republic of Korea. The document CDIP/1/3 lists in separate annexes all agreed proposals divided in the said clusters:

- Annex III: the agreed 19 recommendations for immediate implementation by WIPO, together with the WIPO Secretariat's "Information on Activities for Implementation of Proposal" for each proposal

- Annex V: the 26 remaining agreed recommendations to be discussed and costed for implementation by the WIPO Secretariat in regard to financial and human resources, together with "Proposed Activities" for each recommendation.

The **working procedure**, agreed after much discussion at the March meeting, was essentially as follows. The agreed proposals would be taken up clusterwise, starting with the list of 26 recommendations and then continuing with the same cluster in the list of 19. The Secretariat would present the recommendations and highlight main points. Then those States which had made specific submissions would have the floor, then all other delegations would have the floor, and finally the Chair would summarise what had been arrived at. The Secretariat would comment on questions raised. For each concluded recommendation among the list of 26, the Secretariat would be tasked to assess the financial and human resources required, to be reported to the second Committee meeting to be held in July 2008.

Discussions on how to continue with the work program took much of the time of the first session. Should there be intersessional consultations? The final answer was yes. The importance that capitals be kept informed was stressed. Would decisions be made during the informal consultations? The answer was no. Decisions would be taken only at the next formal session. The Chair emphasized the importance that he had the trust of delegations to carry out these informal consultations. These informal consultations were held April 16 and 17, 2008.

A **Summary by the Chair** was adopted at the conclusion of each of the meetings. These summaries are also **see link** for quick reference.
(http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_2/cdip_2_summary.pdf)

Notes from the March session

There was an unusually slow pace at this meeting, with very late starts, long coffee breaks and lunches, and much waiting time for group meetings to finish. Probably a contributing factor here was that various meetings concerning the election of WIPO DG were ongoing at the same time.

The status of the meeting was unusual. It was decided early that the meeting would be held in "informal" mode, meaning that no record would be taken of what was said, thus encouraging an open discussion. But at the same time the meeting would be "formal" in order to permit the NGOs to remain in the room. The NGOs agreed not to link statements with particular delegations. Delegations could however request that their statements would be taken into the record of the meeting. That was also done in some instances.

The NGOs were given opportunity to speak once, on the first day. No more opportunity for the NGOs to speak was given, although that had been promised by the Chair. He apologised on Friday afternoon for this lack of an additional opportunity.

For the second CDIP session, July 7-11, 2008, working documents would be available two weeks before the meeting, in the required languages.

Among **specific items which came up at the March meeting** can be mentioned:

Should a special "code of ethics" for WIPO personnel and consultants be taken into WIPO rules and regulations, such as the staff regulations? Where would such then be taken in? Would not the UN general rules of ethics be sufficient? Should there be a separate code of ethics for WIPO staff and consultants working with the Development Agenda? This item took much time. The Secretariat would come with suggestions at the next meeting.

Are TRIPS-plus elements to be considered as a kind of flexibilities under TRIPS? There were very different opinions on that issue.

Does the concept in proposal 8 of the list of 26 of "national offices" only mean national IP offices? Or also other IP institutions, be they public or private, national or regional?

A key concept which was constantly emphasized for WIPO activities and advice was that such would be "member driven".

In the list of 19, Annex III p. 2 item 5), the wording "taking into account their level of development of IP" was amended by deleting "of IP".

Notes from the July session

The Chair raised a question whether the traditional introductory statements could be limited to the Group coordinators, if the statements could be shortened, or perhaps dispensed with altogether. These statements took much time, and there were hardly ever any reference to these in the subsequent discussion. No decision was taken, the Chair said that was outside his competence, but the question was left to the delegations for possible (in)action at coming meetings.

Generally, there were few disputes between delegations. The activities suggested by WIPO for the list of 19 recommendations, and also the suggested activities and costs suggested for the activities discussed in the list of 26 were for the most part accepted without much discussion, subject to various requests for clarification provided by Secretariat staff.

There was a dispute on one suggested activity under agreed recommendation 12, to “further mainstream development considerations into WIPO’s substantive and technical assistance activities...”. One suggested activity here was “Legislative assistance on the use of flexibilities to implement public policies...” The US and other delegations emphasized that such assistance must be neutral and take up also rights and obligations in a more general sense.

There was much discussion on how to understand and implement the mandate of the CDIP to “monitor”, “assess” and “report” the outcome of its work, and how the Committee would “coordinate” with other WIPO bodies. The independence of different WIPO Committees and bodies was cited, which might conflict with the overarching aims of the CDIP. Could the CDIP tell other Committees what to do? The outcome of this discussion is in paragraph 10 of the Summary by the Chair, to take this up at the first CDIP session in 2009, and in paragraph 12(e), where the General Assembly is “urged “ to “encourage “...the Secretariat and other WIPO bodies to effectively implement the adopted recommendations.” The Chair noted in the discussion on this point that such admonitions could be made, but that it eventually was up to the Delegations to make sure that implementation was in fact also done.

There was much discussion on the budgetary issues. How would decisions on budget for proposed activities be handled for 2009? It was eventually agreed that the CDIP could not decide on a budget for the activities it agreed would be undertaken. That was for the Program and Budget Committee, PBC. One source of concern was that the next meeting of the PBC is scheduled to take place after the 2008 General Assembly, which was feared to mean that decisions on the budget might not be made until at the 2009 General Assembly. The outcome of this was the wording in item 12(d), where the General Assembly is “urged” to make sufficient resources available for the CDIP work program. That might mean an extraordinary session of the General Assembly after the PBC meeting, to enable decision on the CDIP budget.

In substance on the agreed activities and costing for human and financial resources, the following technical notes are intended to be read together with the Annexes to the Summary of the Chair from the July session. In these Annexes, the agreed activities and the agreed need for additional financial and human resources are listed for the items concluded in the lists of 26 respectively 19 Recommendations.

The CDIP after these two first sessions has reviewed the following:

Cluster A: recommendations 2, 5, 8, 9, and 10 in the list of 26, and 1, 3, 4, 6, 7, 11, and 12 in the list of 19.

Cluster B: Recommendations 20, 22, and 23 in the list of 26.

This means that in Cluster A, recommendations 13 and 14 in the list of 19 remain to be discussed. And also remaining are the recommendations in the list of 19 for Cluster B, and all of the recommendations in both lists in Clusters C, D, E, and F.

Annexes I and II of the Summary of the Chair for the July session provide, except for recommendations 12, 13, and 14, what was agreed in terms of activities and requirements of additional financial and human resources for Cluster A recommendations. The proposed activities under recommendation 12 in the list of 19 were discussed but not concluded in terms of revised text.

In Cluster B, the suggested activities of recommendations 20, 22, and 23 were sent to the Secretariat for costing in terms of required human and financial resources. This will be taken up at the next session of the CDIP.

In practical terms, the agreed activities include hiring of consultants to carry out studies and practical IT work under a number of recommendations, and funding for WIPO for new activities as well as for expansion of some of its already ongoing activities. Two conferences/public fora will be arranged during 2009: a donor conference, and a conference on IP and public policies.

The CDIP will report its work during its two 2008 sessions to the 2008 WIPO General Assembly.

So, **in summary** the CDIP has been able to agree on activities and required costs for 11 of 14 agreed recommendations in the cluster A, Technical Assistance and Capacity Building. However, there is an in-built issue for the CDIP in how to “enforce” its decisions on implementation on other WIPO bodies.

Future AIPPI work

It obviously remains important to follow the outcome of the different studies and activities to come out of the agreed implementation activities. Especially, the conference to be arranged on IP and public policy is apparently particularly important to follow up, in view of the current debate on the IP system.

July 28, 2008
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