

**Library Copyright Alliance**  
**Issue Brief**  
**The WIPO Development Agenda**

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**September 1, 2009**

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The WIPO Development Agenda (<http://www.wipo.int/ip-development/en/agenda/>) is a set of 45 recommendations adopted on September 28, 2007 by the WIPO General Assembly, aimed to address the interests and needs of developing and least developed countries within the international intellectual property system. It originated in an effort to ensure that intellectual property law and policy continue to serve the public good by encouraging and rewarding innovation and creativity in a balanced and effective manner in all parts of the world, and that intellectual property serve all sectors of society. The WIPO Development Agenda is viewed by many as being a major historical shift in the direction of WIPO, because it will address the knowledge gap and the digital divide that separate wealthy nations from poor nations.

### **Developing nations and intellectual property**

The WIPO Development Agenda is part of a growing international effort that began nearly ten years ago to focus on economic and human development issues stemming from globalization, international trade, and the emergence of the global information society.

Within the current framework of globalization and within WIPO, intellectual property is viewed as a tool for economic growth. This principle is embodied in the Agreement of Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated during the Uruguay Round of General Agreement on Tariffs and Trade from 1986-1994, which led both to the formation of the World Trade Organization and to the global strategy of regulating trade in intellectual property. TRIPS was envisioned as a means for expanding markets for IP, and of reducing barriers to international trade in intellectual property, through the effective protection of intellectual property rights. Effective protection of intellectual property is associated with high standards of protection and enforcement.

Because most of the intellectual property created internationally is owned by rightholders in developed nations, high standards of protection primarily benefit intellectual property industries in wealthier nations, and often hinder developing nations from social, cultural and economic progress. In the area of copyright, high levels of protection create economic barriers to the use of works and unduly restrict access to copyrighted information. Today developing nations are pressured by developed nations to adopt higher and more rigid standards of protection than would best serve them domestically, and are urged not to take advantage of flexibilities available in the IP system that would ease their transition into the global information society. They often comply in order to keep their markets open for other types of trade.

The rise of digital information technology has placed additional economic and legal pressure on government and industry in developing nations. While digital technology makes possible new types of

uses of copyrighted works, it is only useful when there is national infrastructure and capacity to support it. It also creates a need for legislative development at the national level to clarify copyright in the digital environment and to remove legal barriers to use of works. Developing nations often need assistance in developing both a national information infrastructure and national copyright laws that embrace digital technology.

Globalization, rapid technological growth, and trends toward higher protection of intellectual property have led to a widening technology gap and a knowledge gap—the digital divide—and a flow of capital from developing to developed countries, creating a deeper rift between the developed world and developing nations. A repeated theme at Development Agenda discussions is that the “one-size-fits-all” approach to intellectual property protection is no longer viable, and that norm-setting must include the means for creating flexibility.

The international copyright system allows for considerable flexibility for developing nations to formulate national copyright laws that are in their best interest. In the area of copyright, flexibilities include minimum copyright terms, in order to maintain a substantial public domain; use of copyright limitations and exceptions to fulfill compelling public policy needs favoring education, research, learning, creativity, library and archival activity, access to information for disabled persons, personal and private uses, and other socially beneficial uses; defining the scope of protected works; and setting the scope of exclusive rights.

As the international organization primarily responsible for governance of international copyright norms, the World Intellectual Property Organization is now committed to addressing the needs of developing and least developed nations.

## **The WIPO Development Agenda and Libraries**

Against the idea that copyright protection is an economic end in itself, to serve the interests of rightholders, there is the idea that copyright should serve as a means and stimulus for knowledge, innovation, and creativity for people everywhere.

The library community offers a critical perspective on the possibilities of social, economic and cultural development through access to information and knowledge. Libraries have long served as the foundation for the preservation and broadest possible dissemination of knowledge in societies. Today librarians encounter the real needs of individuals who make use of copyrighted material for creative, educational, and informative purposes. Librarians recognize the importance of a balanced system of copyright protection that respects the rights of copyright holders and that also enables global and equitable participation in the information society. We support a system that is inherently balanced to serve all members of society in all parts of the world. The growth of knowledge is key to development.

In contributing to discussions that transform the 45 recommendations comprising the WIPO Development Agenda into concrete activities, the U.S. library community seeks to enable developing and least developed countries to fully benefit from the global IP system, and advocates for:

- a fair balance between intellectual property protections and the public interest
- minimizing levels of copyright protection in developing and least developed countries
- a robust public domain
- adequate limitations and exceptions for the purposes of education, research, learning, creativity, and preservation of information
- access to knowledge and technology to foster innovation, material progress, and social well-being

- the goals of information literacy
- bridging the digital divide
- library participation in local efforts at technical assistance and capacity building in developing and least developed countries
- balanced IP education in developing and least developed countries
- new approaches to the licensing of copyrighted works
- the social good that results from a true balance between intellectual property protections and the public interest.

Within the six clusters of activity and the 45 recommendations that comprise the WIPO Development Agenda, the Library Copyright Alliance highlights the importance of the following recommendations.

**CLUSTER A: Technical assistance and capacity building.**

*This group of activities concerns training, education and advisory assistance that WIPO routinely provides to developing and least developed nations, to increase understanding of IP issues, to build and upgrade national IP offices, to introduce modern IP management systems, to develop national IP legislation, to build capacity for IP protection, to create public awareness, and to integrate IP in national development policies; and the means for providing this assistance.*

**Recommendation 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.”**

The library community supports balanced intellectual property education in developing and least developed countries. We have encouraged WIPO to make available the information and tools used in technical assistance activities. This ensures the transparency of the process and ensures that the goals of the Development Agenda are being met. WIPO assistance to developing nations is currently provided upon request and is regarded as confidential. This has led to questions regarding the content of the assistance. Particular questions have arisen concerning WIPO model copyright laws that do not provide sufficient balance between exclusive private rights and the rights of the public.

**Recommendation 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.”**

Libraries support a fair balance between intellectual property protections and the public interest. This goal can be accomplished through institutional support within Member States for flexibilities in national laws that support important public policy goals. This includes adequate limitations and exceptions and to ensure a durable and sustainable global information society. Copyright limitations and exceptions are important to libraries and to people everywhere, but they are of critical importance to developing countries whose capacity to access knowledge is defined primarily by these provisions. Participation of the library community in local efforts at technical assistance and capacity building in developing and least developed countries will contribute to this effort.

**CLUSTER B: Norm-setting, flexibilities, public policy and public domain.**

*This cluster refers to the effort to establish rules and standards for IP protection through international treaties, national laws, “soft law” approaches, and practices adopted by WIPO Member States. Norms establish standards and they include flexibilities, or optional approaches, to the implementation of treaties and laws that allow for relative freedom of nations to take into account their own interests and priorities, to meet public policy objectives. This cluster emphasizes the importance of the public domain as one of the most important areas in which nations have a choice in how they protect copyrighted works.*

**Recommendation 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.”**

The standard international term of protection for a literary work, as established in the Berne Convention, is life of the author plus 50 years. In many countries, the general term of protection has been extended to life of the author plus 70 years, or even longer. This means that information remains under private ownership for longer, benefiting rights holders at the expense of libraries, education, and individuals. The public domain is part of the common cultural and intellectual heritage of mankind and is a major source of inspiration for creators and researchers. Copyright terms should be kept at minimum levels in order to maintain a robust public domain. Studies to deepen understanding of the benefits of the public domain will further this objective.

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

From its origins in the Berne Convention, the international copyright system has recognized flexibilities allowing nations to adjust copyright protections to meet public policy needs. Copyright laws across the world, to varying degrees, contain flexibilities to facilitate the creation and use of knowledge for purposes considered socially beneficial like education, research, creativity, library preservation, interlibrary loan, document supply, and library lending; to maintain the public domain by limiting copyright terms and defining the scope of non-protectable works; and to limit exclusive private rights. The concept of flexibility is tied to the principle of national sovereignty and is a fundamental part of the copyright system.

**Recommendation 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.”**

Access to knowledge and technology to foster innovation, material progress and social well-being is at the heart of the WIPO Development Agenda. Increasing access to knowledge is an essential aspect in its success. Knowledge resources support innovation, development and social progress. Technological innovation, particularly the Internet, creates opportunities that make it possible for people everywhere to participate in the benefits of scientific, intellectual, and creative advancement.

**Recommendation 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.”**

The public domain is part of the common cultural and intellectual heritage of humanity. The library community strongly supports work that contributes to a better understanding of the public domain. We must be mindful that the purpose of this activity should be for facilitating access for the public and not for monetizing content to create new markets for the private sector. The public domain needs to be preserved from individual appropriation and allowed to flourish as a continued source of intellectual and creative inspiration.

**Recommendation 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.”**

The library community recognizes the importance of open and balanced consultation in the norm-setting process, and the need for expert knowledge and objectivity. In the last six years WIPO has initiated five expert studies highlighting the importance of copyright limitations and exceptions, four of which have been completed.<sup>1</sup> The *Study on Copyright Limitations and Exceptions for Libraries and Archives* (2008) conducted by Kenneth Crews provides the first comprehensive overview of statutory provisions in national copyright laws of WIPO Member States for the benefit of libraries and archives, and underlines the need for broadening the scope of copyright limitations and exceptions for libraries and archives worldwide.

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

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

On September 8, 2000 the United Nations General Assembly adopted the *United Nations Millennium Declaration* recognizing the uneven effects of globalization, the special difficulties of developing and least developed countries, and the need to make globalization fully inclusive and equitable. This event signaled a shift in global relations and it laid the foundation for the WIPO Development Agenda that would be adopted seven years later. Libraries acknowledge the responsibility that WIPO holds, as a body within the United Nations system, to support the development goals espoused by the United Nations.

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

Pro-competitive licensing is a key issue for libraries. Today libraries acquire most of their electronic content through licenses, and often experience difficulties when the exclusive rights to content are owned by a single entity that holds a monopoly, that precludes negotiation for favorable prices and contract terms. In countries with advanced anti-competition laws, libraries may have remedies, but in countries that do not, there are no alternatives. We support the study of competition policy in selected countries and regions, with a focus on IP licensing. We also support new approaches to the licensing of copyrighted works, in the form of open access licensing that facilitates broad lawful uses of copyright works.

**CLUSTER C: Technology transfer, information and communication technologies and access to knowledge.**

*This cluster concerns the transfer of technology involving universities, research institutions and governments, and from developed nations to developing nations to boost scientific and technological capacities. It also concerns the use of information and communications technologies for transmission of digital content. Technology transfer is an essential mechanism for bridging the digital divide and providing access to knowledge.*

**Recommendation 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).”**

The World Summit on the Information Society, in two phases of intergovernmental summit meetings within the United Nations in Geneva in 2003 and Tunis in 2005, declare a common desire and commitment to “build a people-centered, inclusive and development-oriented Information Society,” with the aim of addressing the digital divide and other development issues. The Digital Solidarity Fund was established to reduce the digital divide and to contribute to the creation of a fair, all-inclusive information society. Bridging the digital divide, in the context of WSIS, is to promote access to information and communication technologies (ICTs), create digital opportunities, and benefit from the potential offered by ICTs for development.

Libraries in developed countries are at the forefront of initiatives to reduce the digital divide. Libraries are the natural place in the community or in educational institutions for people to encounter the Internet and to experience the benefits of digital technology in information gathering. Librarians are skilled teachers in information literacy and able to train and provide users with the essential tools they need to navigate and evaluate content on the Internet. Librarians therefore fully support this recommendation and encourage developing countries to expand their initiatives for bridging the digital divide through public and academic libraries.

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

Innovative information technologies offer possibilities for providing people everywhere with access to the world’s knowledge. There is currently great uncertainty on the part both of information providers and

information users as to use of copyrighted material online. National copyright laws vary, and there are jurisdictional limits to national copyright laws. Copyright exceptions and limitations allowing for global uses are not harmonized internationally. Like national laws, copyright is territorial—but the Internet is not. Appropriate provisions are needed internationally to build accessible digital libraries and archives, and to make use of copyrighted works for education and creative purposes.

**Recommendation 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.”**

Libraries play a key role in the dissemination of research results, which is an essential and inseparable component of the research process. Opportunities for collaboration among research and scientific libraries and information centers include development of institutional, disciplinary, and governmental repositories for open access to important scientific data and research results. Libraries are at the forefront of efforts to develop the potential of technology to advance scholarly communication and that explicitly recognize the need for open access to the products of research.

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

New information and communication technologies enable digitization of the collections of the world's libraries. They enable networking of information resources and students and citizens to benefit from educational programs, lectures, and reading materials. They allow creators to access, and build upon the knowledge generated by others, and to participate in scientific and intellectual progress. In many developing nations, where print works are not available, access to works in the digital environment is an issue of critical concern. Information and communication technology can be used to overcome global disparities in access to knowledge, when it is guided by the principle that knowledge resources are created for the benefit of all.

#### **CLUSTER D: Assessment, evaluation and impact studies.**

*This cluster pertains to the need for empirical studies and assessment of IP protection, and of the economic, social, and cultural impact of IP in developing countries. It also concerns the need for evaluation of development-oriented programs, and the impact of WIPO activities on development.*

**Recommendation 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.”**

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

At the request of Member States, WIPO has commissioned expert studies on limitations and exceptions in the digital environment, for the visually impaired, for libraries and archives, and for educational activities including distance education. It is our hope that these studies will provide a multilateral framework to counteract the heightened standards of protection established in recent years, and to restore the balance necessary to maintain diffusion of knowledge. The library community welcomes new studies to assess the economic, social and cultural impact of intellectual property regimes in developing nations.

#### **CLUSTER E: Institutional matters including mandate and governance.**

*This cluster addresses the internal structure and governance of WIPO.*

**Recommendation 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.”**

Librarians welcome recognition of the valuable role and expertise that NGOs bring to WIPO on intellectual property issues. As an accredited NGO with observer status at WIPO, the Library Copyright Alliance plays an important role in articulating and clarifying issues that contribute to balanced intellectual property law and a well functioning global information society.

#### **CLUSTER F: Other issues**

**Recommendation 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.”**

To achieve a well-respected intellectual property system, the system must be perceived by users as being fair and reasonable. The most permanent benefits to developing nations will be achieved when rights are protected and when access is also enforced, in keeping with the longstanding function of copyright law in the spirit of social progress. Broader societal interests will be achieved through a true balance between intellectual property protections and the public interest.

The digital environment has the potential to support access to information for all members of society, and to satisfy the interests of all stakeholders, but this can only happen if copyright laws remain balanced, and if the rights of the public—of users of copyrighted works—are recognized and reinforced through international instruments and effective national legislation.

## **The WIPO Development Agenda: Context and Timeline**

September 8,	The United Nations General Assembly adopts the <i>United Nations Millennium</i>
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2000	<p><i>Declaration</i> recognizing the uneven effects of globalization, the special difficulties of developing and least developed countries, and the need to make globalization fully inclusive and equitable.</p> <p>The <i>United Nations Millennium Declaration</i> is available at:  <a href="http://www.un.org/millennium/declaration/ares552e.htm">http://www.un.org/millennium/declaration/ares552e.htm</a>.</p>
November 14, 2001	<p>The World Trade Organization's Doha Round of trade negotiations adopts a "Doha Development Agenda" with a mandate to place the needs and interests of developing and least developed countries at the center of the work program within the multilateral trading system.</p> <p>The <i>Ministerial Declaration</i> of the Doha Development Round is available at:  <a href="http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm">http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm</a>.</p>
Geneva 2003 Tunis 2005	<p>The World Summit on the Information Society, in two phases of intergovernmental summit meetings within the United Nations, declares a common desire and commitment to "build a people-centered, inclusive and development-oriented Information Society," with the aim of addressing the digital divide and other development issues.</p> <p>The <i>Geneva Declaration of Principles</i> of WSIS is available at:  <a href="http://www.itu.int/wsis/docs/geneva/official/dop.html">http://www.itu.int/wsis/docs/geneva/official/dop.html</a>.</p>
August 26, 2004	<p>Argentina and Brazil submit a formal proposal to the WIPO Secretariat for the establishment of a development agenda, to integrate the development dimension into policy making on IP protection.</p> <p>The proposal is available at:  <a href="http://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_31/wo_ga_31_11.pdf">http://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_31/wo_ga_31_11.pdf</a>.</p>
September 22, 2004	<p>The global civil society movement issues the <i>Geneva Declaration on the Future of the World Intellectual Property Organization</i>, defining the global crisis in the governance of knowledge, technology and culture, the harmful effects of excessive IP protections, and the need for WIPO to take a more balanced view of IP rights as a tool for supporting creative intellectual activity.</p> <p>The <i>Geneva Declaration on the Future of WIPO</i> is available at:  <a href="http://www.cptech.org/ip/wipo/genevadeclaration.html">http://www.cptech.org/ip/wipo/genevadeclaration.html</a>.</p>
October 4, 2004	<p>The WIPO General Assembly adopts the proposal submitted by Brazil and Argentina to establish a WIPO development agenda.</p>
December 2004	<p>U.S and international library associations endorse <i>The Library-Related Principles for the International Development Agenda of WIPO</i>. The principles continue to serve as a foundation for library advocacy in WIPO discussions.</p> <p>The principles are available at:  <a href="http://www.arl.org/pp/ppcopyright/copyintl/wipoprin~print.shtml">http://www.arl.org/pp/ppcopyright/copyintl/wipoprin~print.shtml</a>.</p>
September 28, 2007	<p>The WIPO General Assembly adopts the WIPO Development Agenda, a set of 45 recommendations aimed at ensuring that development considerations become an integral part of WIPO's work. A Committee on Development and Intellectual Property (CDIP) is established to develop a work program for implementation of the 45 recommendations.</p> <p>The text is available at: <a href="http://www.wipo.int/ip-development/en/agenda/">http://www.wipo.int/ip-development/en/agenda/</a>.</p>

1. The WIPO studies include: Sam Ricketson, *WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment* (2003), at [http://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_9/sccr\\_9\\_7.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/sccr_9/sccr_9_7.pdf); Nic Garnett, *Study on Automated Rights Management Systems and Limitations and Exceptions* (2006), at [http://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_14/sccr\\_14\\_5.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/sccr_14/sccr_14_5.pdf); Judith Sullivan, *Study on Copyright Limitations and Exceptions for the Visually Impaired* (2007), at [http://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_15/sccr\\_15\\_7.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.pdf); and Kenneth Crews, *Study on Copyright Limitations and Exceptions for Libraries and Archives* (2008), at [http://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_17/sccr\\_17\\_2.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/sccr_17/sccr_17_2.pdf).