

**Study Note:** This module should take around 3 hours to study

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## **Module 12: Intellectual Property and Development**

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### *Objectives*

After completing the study of this module you should be able to:

1. Explain in 100 words why development is more than just economic growth.
2. List those aspects of development that are in addition to economic growth.
3. Explain in about 500 words how IP laws can be framed to encourage development.
4. Give three examples of the use of IP regimes that encourage development.
5. Describe in about 100 words the role of WIPO in development.
6. Give the date of the start of the WIPO Development Agenda.
7. List the names of the Development Agenda clusters.
8. Identify the cluster most closely associated with a particular issue.
9. Give three specific examples of projects arising from the Development Agenda.
10. Give two examples of the way in which the Development Agenda has been “mainstreamed” into WIPO’s work.

### *What is Development?*

Development is a broad concept to define, but important to understand because it is among the key objectives of the global and many domestic intellectual property systems. Development used to be the same as modernization and economic growth. Indeed many experts in the past considered these two features to be both a primary aim and indicator of international development.

More recently, economic growth has been valued, not for its own sake, but for facilitating human freedom. Experts like the Nobel prize-winning economist Amartya Sen, renowned philosopher Martha Nussbaum and others have called this the “capabilities approach” to development. Economic growth can provide people with more money and as a result more freedom to make choices in their lives. However that freedom is meaningless without the capabilities to enjoy good health, food security, a clean environment, quality education, vibrant arts and culture and so on. Intellectual property is, in one way or another, linked to all of these essential things.

### ***Why Does Intellectual Property Matter for Development?***

A well balanced system of granting and exploiting intellectual property rights is a factor in economic growth as it encourages investment and trade, but if designed and used appropriately, it can also help cultural creativity to thrive, educate a population or workforce, drive technological innovation to improve health and nutrition and yield other social benefits as well.

Intellectual property by itself neither helps nor hinders development necessarily. It is how laws, policies and practices are designed and used in different countries that determine whether IP is effective for development purposes. Flexibilities in the international treaties and agreements that you learned about in earlier modules can facilitate development because countries can use them in a manner that enables them to pursue their own public policies, either in specific fields like access to pharmaceutical products (for instance, through compulsory licensing in some circumstances) or protection of their biodiversity (with patents or another unique system), or more generally, in establishing macro and microeconomic and institutional conditions that support development.

For example, some countries may want cultural works to be widely available in the public domain as early as possible, to allow others to freely use the material, so these countries maintain the term of copyright protection at the Berne Convention and TRIPS Agreement standard of 50 years after the author's death. Other countries may want to provide their cultural industries with more revenues for a longer time, so have extended the term of protection to the author's life plus 70 years.

Concerning patents, you learned in a previous module that the TRIPS Agreement standardizes the subject matter of protection: Patents must be available for any inventions in all fields of technology that meet the criteria of novelty, inventiveness and usefulness. But there is also some flexibility: WTO members *may* exclude some inventions from protection if that is necessary to, for example, preserve the structure of civil society or as it is expressed "to protect *ordre public*" or for reasons of protection of morality; human, plant or animal life or the environment. So while protecting 'essentially biological' inventions that resulted from only human intervention with patents is possible, there is worldwide debate, not only in developing countries but also in places like the United States, as to whether human or animal or plant genes, for instance, should be patentable. The TRIPS Agreement is also flexible about protecting higher life forms to the extent they satisfy the criteria of patentability, like plants and animals, but it also allows other avenues such as a system like plant breeders' rights. Which of these flexible options a country chooses will probably depend on a wide variety of social, cultural and economic considerations.

Furthermore, to guarantee access to some important inventions that are protected, like pharmaceuticals, countries are allowed to issue compulsory patent licenses in some circumstances. This procedure has been used, for example, to provide access to medicines in countries including Malaysia, Indonesia, Brazil, Thailand and Ghana.

Compulsory licensing is not normally the first choice for any country trying to provide access to medicines. The TRIPS Agreement indicates that certain steps should be taken before issuing a compulsory license, including an attempt at voluntary negotiations. That suggestion does not apply in all cases, such as national emergencies, extreme urgency or public non-commercial uses. For example, in 2006, Thailand issued a compulsory licence for one of its government organizations to produce generic anti-AIDS drugs, without first consulting the patent owner, Merck. In subsequent years, however, Thailand did try unsuccessfully to negotiate with anti-cancer drug patent owners *before* issuing compulsory licences. Brief voluntary negotiations also occurred in Canada before a compulsory licence was recently issued for a Canadian company to export generic anti-AIDS drugs to Rwanda, which lacked the capacity to produce the drugs itself.

Provisions dealing with compulsory licencing were a focus of the 2001 WTO's Doha Ministerial Declaration on TRIPS and Public Health. That Declaration later led to more flexibility, especially for countries (like Rwanda) that typically cannot manufacturer pharmaceuticals locally, so rely on exports from other countries. It also extended the deadline for least developed countries to provide patent protection for pharmaceuticals until at least 2016. So, if the least developed country does have manufacturing capacity, and the medicine is not patented in that country, a compulsory licence would not be needed.

To learn more about how compulsory licensing can work in the context of public health, you might review this website from the World Trade Organization, with which WIPO works closely on intellectual property matters:

[http://www.wto.org/english/tratop\\_e/trips\\_e/public\\_health\\_faq\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/public_health_faq_e.htm)

### SAQ 1

- a. **When was the flexibility to allow compulsory licencing first available in the TRIPs agreement?**
- b. **What did the two provisions coming out of the November 2001 Doha agreement concern?**

### SAQ 1 Answer

a Since the beginning of the TRIPS Agreement in 1995.

b The two provisions concerned least-developed countries and counties that do not have production capacity.

N.B In addition least developed countries do not need to make patents available for pharmaceuticals until 2016. And, under special circumstances, countries may now export pharmaceuticals produced under a compulsory licence to certain other countries that lack domestic production capacity.

It is not only countries that can take advantage of flexible approaches toward intellectual property protection; private companies and public institutions like universities can flexibly manage intellectual property as well. For instance, some companies or institutions might want to protect their products indefinitely as trade secrets, rather than disclosing the details of an invention to the public in exchange for 20 years of exclusive patent protection.

Those companies or institutions that choose patent protection might manufacture and sell a product themselves, which brings economic value to the organization and new products and services to the market. Or they could work with partners to cross-license their intellectual property rights together in order to gain the benefits of collaboration, such as access to complementary technologies or new markets. Collaborating through patent licensing could be an especially attractive option for government, universities and private sector firms in developing countries, which may not yet have the research and development capacity or access to the scientific and technical resources to commercialize innovations alone.

Take the case of access to medicine again as a concrete illustration. The most effective treatments for HIV/AIDS, for example, often involve a combination of many different products, the patents for which are owned by many different companies around the world. To address some of the competition and coordination issues involved with intellectual property licensing, a group of partners formed a “Medicines Patent Pool” that provides a “one-stop-shop” for patent licenses. This model of intellectual property management can help to create new revenue sources for the companies involved, lower the costs of providing these drugs and, most important, improve the health and lives of millions of people. You can learn more about this particular way that intellectual property policies and practices can facilitate development at

[www.medicinespatentpool.org](http://www.medicinespatentpool.org).

## **SAQ2**

**Take a look at the Frequently Asked Questions (FAQs) on the medicine patent pool site and answer the following question.**

**Why should for-profit companies join?**

SAQ2 Answer

FAQ 13 on the site gives the answer

The examples given raise important issues for public policy makers to consider. The private sector—including large companies, small or medium sized businesses and budding entrepreneurs—can also benefit from a development-oriented view of intellectual property rights. Using intellectual property rights to create shared value between companies and communities can grow markets and create new ones, especially globally.

Thinking about intellectual property and development is something that not only developing or least developed countries need to do. All countries face the same basic questions about striking the right balance among various related objectives. Similarly, all companies need to think about the role of intellectual property in their business plans so as to seize new commercial opportunities in the short and long terms.

Now take some time to think about the following question from your perspective.

**SAQ 3 Which aspects of intellectual property and development are most important for your country, or your organization?**

***Spend about 5 minutes thinking about this. You may already be knowledgeable about the main economic activity of your country or have experience inventing things that are useful in your country. Some of you might be active in the service industry or in arts, performances or businesses. Try and think of the things that you see to be important for your country. You may also like to record your ideas in the space below.***

Type your thoughts here:



*There is no right or wrong answer to this question. The key point is that intellectual property rights can provide different benefits in different contexts, depending on your objectives. The local laws, policies and practices that are appropriate for one country, or one company, may not be suitable for another. People must decide for themselves what they want an intellectual property system to do, and then strike the appropriate balance to achieve those goals.*

### *What is WIPO's Role?*

Development is at the core of WIPO's mandate. When the organization was first established, its role was to "promote the protection of intellectual property throughout the world." Upon becoming a specialized agency of the United Nations in the mid-1970s, this role was more specifically connected to development. Thereafter, WIPO has been tasked to promote creative intellectual activity and technology transfer to developing countries "in order to accelerate economic, social and cultural development."

Of course, as we have learned already, this can be done with flexible systems of intellectual property protection. WIPO promotes development through intellectual property policy in several ways. In addition to being a leading forum for negotiating new treaties and agreements (including their flexibilities), WIPO

- administers some of the most important processes for protecting intellectual property rights internationally,
- provides training and education,
- legislative and technical assistance
- serves as a reservoir of rich databases of intellectual property-related information.

WIPO has, in the past, heard suggestions from its Member States, non-governmental organizations and others to improve work in the area of intellectual property and development. Some of these suggestions date back several decades, since the issue of intellectual property and development surfaced in the 1960s. None, however, have had as much impact as a formal initiative, first advanced by Argentina and Brazil in 2004, for a new and specific "Development Agenda."



## The Development Agenda

The WIPO Development Agenda, sometimes called the “DA” for short, is part of a change in the ways that links between intellectual property and development are understood, and consequently in the way that development issues are prioritized. For example, this could be by emphasizing flexibilities in the intellectual property system that could help development. You will recall from earlier in this module that development is no longer viewed as solely about economic growth, and that it is increasingly appreciated how intellectual property alone can or cannot impact development. It must be emphasized again that nothing in the Development Agenda rejects the benefits of intellectual property rights. To the contrary, the Agenda confirms that intellectual property can and does facilitate development in many circumstances.

It is because an understanding of these circumstances in local and global contexts will help countries and organizations to better design, administer and use intellectual property systems that the WIPO Development Agenda seeks to further deepen appreciation of this topic. Recognizing both the benefits and costs of intellectual property in light of social, cultural and economic issues actually makes intellectual property a more important subject than if the focus were on protection alone.

For example, copyright protection is very important for many kinds of creators, including authors and book publishers. Without copyright protection, it would be much more difficult to set the price and conditions of access to books, which sustains the publishing industry. At the same time, however, copyright protection may not provide the right market incentives to guarantee that books are produced in a manner accessible to everyone, including speakers of local languages or persons with perceptual disabilities. So the international copyright system includes a mechanism – an appendix to the Berne Convention – to permit countries to issue compulsory licenses authorizing the translation of books into certain local languages. And negotiations are ongoing among WIPO, its Member States, non-governmental organizations and others about a groundbreaking new agreement for a system to provide the perceptually disabled with access to copyright-protected materials.

You can see the Berne Appendix: Special Provisions Regarding Developing Countries by following a link given in the resources for this module. Please look at the Appendix by clicking this link:

[http://www.wipo.int/treaties/en/ip/berne/trtdocs\\_wo001.html](http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html). WIPO has also created an entire website, [www.visionip.org](http://www.visionip.org), dedicated to information about access to copyright works for visually impaired persons.

Finding the right balance between intellectual property protections and flexibilities like these is key to facilitating access to knowledge and improving people’s lives throughout the world. It is an attempt to make the global intellectual property system work better for everyone involved.

The *WIPO* Development Agenda is part of a broader movement reforming and updating the entire international trade framework. You may also be aware of the so-called “*Doha* Development Agenda,” named after the city in Qatar where the World Trade Organization’s current round of negotiations began. Though these “agendas” are distinct from one another, cooperation with other organizations including, but not limited to, the WTO on IP-related issues is one of the specific recommendations adopted at the 2007 General Assembly of WIPO Member States.

WIPO Member States adopted 45 such recommendations in total, grouped into 6 clusters. These recommendations formally constitute the WIPO Development Agenda. They aim to ensure that development considerations form an integral part of the work of all sectors of the organization, in other words, to “mainstream” development. Mainstreaming would mean, for example, that all WIPO activities take account of the different potential impacts of intellectual property on economic, social *and* cultural development. It would be key to the design and delivery of technical assistance and education; it would influence discussions about new treaties and agreements; and it would be an important part of evaluating the successes or failures of organizations working on intellectual property issues.

After the 45 recommendations arranged in 6 clusters were adopted at WIPO’s 2007 General Assembly of Member States, much thought and discussion was put into implementing them into practice.

It was agreed that this would happen through particular activities, programs and “projects,” coordinated by a new division of WIPO: the Development Agenda Coordination Division (DACD). In fact, the creation of this learning module introducing the Development Agenda to you is one of the concrete outcomes of an implementation project. The DACD serves as the Secretariat for a new WIPO committee on development and intellectual property (CDIP), coordinates the implementation and mainstreaming (integration of the development agenda into all the activities of WIPO) of the Development Agenda recommendations within WIPO, is the interface with external stakeholders, and promotes better understanding of the Development Agenda and its benefits.

This introductory lesson does not delve into the technical specifics of all of the Development Agenda’s clusters, recommendations and implementation projects. But it will give you some examples of the issues and outcomes of this initiative. The 6 “clusters” of recommendations deal with the following general topics:

- Technical assistance and capacity building (Cluster A).
- Norm-setting, flexibilities, public policy and public domain (Cluster B).
- Technology transfer, information and communication technologies (ICT) and access to knowledge (Cluster C).
- Assessment, evaluation and impact studies (Cluster D).
- Institutional matters including mandate and governance (Cluster E).
- Other issues (Cluster F).

### Technical assistance and capacity building (Cluster A).

Recommendations in this cluster try to ensure, among other things, that WIPO's help with IP and development issues is transparent and responsive to local requests. Of the cluster's 14 recommendations, some suggest more funding for development-oriented technical assistance, some offer guidelines for hiring and reporting on the activities of staff and consultants, and some address WIPO's relationships with Member States and other organizations. There are specific recommendations about topics of special importance, such as the interface between intellectual property and competition policy, or groups in particular need of help with IP issues, such as small and medium sized enterprises. Recommendation 1 provides a good example of the themes covered in this cluster:

1. WIPO technical assistance shall be, *inter alia* (among other things), 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 ...

This and other recommendations in Cluster A are being implemented, among other ways, through projects such as increasing transparency by creating a searchable database of WIPO's technical assistance activities, <http://www.wipo.int/tad/en/>. WIPO is also creating new nodes of the Global Academy in developing countries, and supporting the development of national IP strategies. The pilot project to set up "Start-Up" National IP Academies, for example, will help developing countries and LDCs to establish IP training institutions with minimum resources to meet their increasing demand for IP specialists, professionals, government officials and other stakeholders.

Another project is to create a framework to assist all countries in developing national IP strategies for innovation. For example it will directly reference and support their development needs and priorities, and take into account their specific economic circumstances and aspirations. The framework, which will provide a conceptual basis for the design of IP strategies, has strong links with others projects that aim to develop a practical methodology, validated by a piloting process in selected countries, using a series of practical tools. The framework will be developed by a cluster of expert working groups comprised of eminent development economists from around the world, IP experts and advisors from international organizations, in the fields of trade, environment, culture and education, industry, health, agriculture, and science and technology. The resulting framework, together with the methodology and practical tools, will be made available to WIPO's Member States. WIPO will then provide its services to assist countries to develop national IP strategies upon demand.

### **Norm-setting, flexibilities, public policy and public domain (Cluster B).**

These eight recommendations are about making the process and outcomes of negotiations over new intellectual property rules fairly balanced and inclusive of various different perspectives. Very importantly, WIPO's activities in this respect shall take into account different levels of development in different countries, as well as a balance between the costs and benefits of intellectual property protection. The value of a robust public domain of knowledge not protected by intellectual property rights is alluded to in several recommendations. Issues that are especially important for some developing countries, like the protection of genetic resources, traditional knowledge and folklore, and access to knowledge and technology to foster creativity and innovation, receive specific mention in recommendations within this cluster. Many of these principles are captured well in Recommendation 15:

#### 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 (IGOs) and NGOs; and
- be in line with the principle of neutrality of the WIPO Secretariat.

In the context of this cluster of recommendations for one of the implementation projects WIPO has engaged an independent expert to prepare studies on Intellectual Property and Public Domain.

Recognizing the importance of the public domain, the project will comprise a series of surveys and studies that will analyze good practices and the currently available tools for identifying content that is in the public domain and to preserve such content from individual appropriation. The surveys and studies should facilitate the subsequent possible steps in preparation of guidelines and/or possible development of tools to facilitate the identification of and access to public domain subject matter. The project is divided into three components that will address the issue from the perspective of copyright, trademarks and patents. A study about copyright and the public domain was one of the first outcomes of this initiative. Linking what you learned about Public Domain and Copyright in this course you will find relevant information at [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=147012](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=147012). A link to this document is also given in the resources section of this module.

WIPO has also done work to study and promote flexibilities in the intellectual property system, and to align its own activities embracing the United Nations Millennium Development Goals. In the Millennium Declaration, all 189 member states of the United Nations set out within a single framework the key challenges facing humanity at the threshold of the new millennium, outlined a

response to these challenges, and established concrete measures for judging performance through a set of inter-related commitments, goals and targets.

You can learn more about WIPO's work related to the MDGs at:

[http://www.wipo.int/ip-development/en/agenda/millennium\\_goals/](http://www.wipo.int/ip-development/en/agenda/millennium_goals/).

**Technology transfer, information and communication technologies (ICT) and access to knowledge (Cluster C).**

Distributing the benefits of innovation and information as widely as possible is a central aim of linking IP and development, so this cluster of eight recommendations suggests several ways that may happen. Among those are recommendations to encourage research collaborations and scientific cooperation that might facilitate technology transfer to less developed countries, and to expand the use of databases of intellectual property related information, for example, of publicly available patent information. Recommendation 25 is one of several that capture the essence of Cluster C:

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.

To implement this recommendation, along with several others, the Development Agenda Coordination Division is working on a project called, “Intellectual Property and Technology Transfer: Common Challenges – Building Solutions,” which includes meetings, studies and a high-level expert forum. This project involves preparation or updating and improving a series of modules and materials relating to managing IP rights by academic and research institutions, including on the setting up and running of technology transfer offices at public research organizations, exploring technology transfer mechanisms (in particular, licensing agreements) and enhancing the capacity to draft patents.

### **Assessment, evaluation and impact studies (Cluster D).**

Before IP laws, policies and practices can be best used or improved, their impact must be better assessed and understood. That is the focus of 5 recommendations in Cluster D. In addition to recommending a yearly review and evaluation mechanism to assess all of WIPO's development-oriented activities against appropriate benchmarks, this cluster proposes some specific topics to be studied, including open collaborative projects, intellectual property in the informal economy, and economic, social and cultural impacts of intellectual property. Recommendation 38, the last in this cluster, nicely captures the overarching objective:

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.

In pursuit of this objective, WIPO has engaged in projects on Intellectual Property and Economic and Social Development, and on Open Collaborative Projects.

The project on economic and social development consists of a series of studies on the relationship between IP protection and various aspects of economic performance in developing countries. They would seek to narrow the knowledge gap faced by policymakers in those countries in designing and implementing a development-promoting intellectual property (IP) regime. The envisaged studies would focus on three broad themes:

- domestic innovation,
- the international and national diffusion of knowledge,
- and institutional features of the IP system and its economic implications.

The benefits will be to promote better understanding of the socio-economic effects of IP protection in developing countries, and create analytical capacity in countries where little economic work on IP has been undertaken so far.

The separate project on open collaboration models will initiate and explore a range of activities for exchanging experiences on open innovation environments (including user-centric environments where users co-create innovations through open collaborative agreements) in developed and developing countries..

### **Institutional matters including mandate and governance(Cluster E).**

Here is where WIPO's own processes and activities, and its relationships with other important inter- and non-governmental organizations, are specifically considered. Some of the matters covered by these 6 recommendations are also addressed in other clusters, such as suggesting a review of current technical assistance activities, cooperating with other United Nations agencies, and enhancing the ability of stakeholders to participate in decision-making processes. Take Recommendation 40, for example, which is important because it emphasizes that intellectual property is only one part of a comprehensive strategy for development. It must be related to issues like trade, health, the environment, education, science and culture, which within the purview of other United Nations bodies or multilateral organizations.

40. To request WIPO to intensify its cooperation on IP related issues with United Nations agencies, according to Member States' orientation, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially the WTO in order to strengthen the coordination for maximum efficiency in undertaking development programs.

To implement some of the recommendations in this cluster, WIPO has worked to involve more non-governmental organizations in its activities, and is working more closely with other United Nations agencies. Moreover, WIPO is working with independent experts to conduct a large-scale evaluation of its technical assistance activities in the area of cooperation for development. Expected benefits from this project include:

- adapting and strengthening WIPO's existing management framework to ensure that there is a strong focus across all relevant programs on the impact of the Organization's activities on development, including technical assistance.
- a contribution to the monitoring and evaluation culture within the Organization, and
- assistance to the systematic collection and use of performance information to ensure accountability, and support informed decision-making by the Organization and its stakeholders. This will also increase the capacity and ability for independent and objective evaluations of the development impact of WIPO's activities.



**Cluster F: Other issues.**

There is only one recommendation in this cluster, Recommendation 45, and it goes to the heart of the Development Agenda: IP protection and enforcement should mutually benefit of knowledge producers *and* users, in a broad, social context. This idea underpins many recommendations in other clusters, such as those which emphasize the need to consider both the costs and benefits of intellectual property protection, the links between intellectual property and competition policy, the importance of recognizing different levels of economic, social and cultural development, and so on. It is why language and principles are shifting from “enforcement” of IP to instead focus on “respect” for IP.

None of the implementation projects so far reference Recommendation 45 specifically. But this is because this recommendation, more than many other recommendations, is fundamentally about making sure that the spirit of the Development Agenda – balancing intellectual property protection and wider societal interests – infuses general attitudes and activities at WIPO and beyond. This is partly what “mainstreaming” development means.

As a practical example, during a recent meeting of WIPO’s Advisory Committee on Intellectual Property Enforcement (ACE), the principles behind Recommendation 45 had a clear impact. The ACE’s work includes a review of methodologies applied in existing studies to measure the economic impact of counterfeiting and piracy; research to identify different types of infractions and motivations for IPR infringements, taking into account social, economic and technological variables and different levels of development; targeted studies with an aim to developing analytical methodologies that measure the social, economic and commercial impact of counterfeiting and piracy on societies, taking into account the diversity of economic and social realities as well as different stages of development; and an analysis of various efforts, alternate models and other possible options from a socio-economic welfare perspective to address counterfeiting and piracy challenges.

**SAQ 4:** Match the activities in the table below to the appropriate clusters in the Development Agenda

Answer here:

| <b>Name of the Development Agenda cluster</b>   | <b><i>Activities</i></b>  |
|---|---|
| - Cluster A: Technical assistance and capacity building.  | preservation of the public domain   |
| - Cluster B: Norm-setting, flexibilities, public policy and public domain                                   | initiatives agreed by Member States, which contribute to transfer of technology to developing countries,  |
| - Cluster C: Technology transfer, information and communication technologies (ICT) and access to knowledge. | access to knowledge and technology for developing countries and LDCs to foster creativity and innovation and to strengthen such existing activities within WIPO.  |
| - Cluster D: Assessment, evaluation and impact studies.   | studies to assess the economic, social and cultural impact of the use of intellectual property systems in participating Member States.  |
| - Cluster E: Institutional matters including mandate and governance   | assistance to Member States to develop and improve national intellectual property institutional capacity through further development of infrastructure and other facilities with a view to making national intellectual property institutions more efficient and promote fair balance between intellectual property protection and the public interest. ... |
| - Cluster F: Other issues.  | measures that ensure wide participation of civil society at large in WIPO activities  |

## SAQ 4-Answer

| <b>Name of the Development Agenda cluster</b>   | <b>Activities</b>   |
|---|---|
| - Cluster A: Technical assistance and capacity building.  | assistance to Member States to develop and improve national intellectual property institutional capacity through further development of infrastructure and other facilities with a view to making national intellectual property institutions more efficient and promote fair balance between intellectual property protection and the public interest.<br><b>A</b> |
| - Cluster B: Norm-setting, flexibilities, public policy and public domain                                   | preservation of the public domain<br><b>B</b>   |
| - Cluster C: Technology transfer, information and communication technologies (ICT) and access to knowledge. | initiatives agreed by Member States, which contribute to transfer of technology to developing countries, <b>C</b> access to knowledge and technology for developing countries and LDCs to foster creativity and innovation and to strengthen such existing activities within WIPO.<br><b>C</b>  |
| - Cluster D: Assessment, evaluation and impact studies.   | studies to assess the economic, social and cultural impact of the use of intellectual property systems in participating Member States.<br><b>D</b>  |
| - Cluster E: Institutional matters including mandate and governance   | measures that ensure wide participation of civil society at large in WIPO activities. <b>E</b>  |
| - Cluster F: Other issues.  | <i>All Recommendations</i>  |

What does the future hold for issues of intellectual property and development? The Development Agenda is not exactly like most of the treaties and agreements administered by WIPO because it is more policy than typical international law, but it will have an ongoing impact on the organization, its Member States and, indeed, all of those who are interested in the global intellectual property system.

For one thing, more people now appreciate that intellectual property must be understood as part of a carefully balanced system of laws, policies and practices that recognize and encourage creativity and innovation, to the benefit of society as a whole. In that context, the Development Agenda is not about promoting *stronger* or *weaker* intellectual property systems: it is about promoting *better* intellectual property systems. That requires great sensitivity to local social, cultural and economic circumstances, which WIPO and its Member States are increasingly demonstrating.

This task is not for WIPO alone. Implementation of the principles underpinning the Development Agenda must take place at regional, national and local levels too. Everyone who holds a stake in the intellectual property system needs to think critically about the outcomes they want to achieve, and how intellectual property can be leveraged appropriately to those ends.

## ***Summary***

A well balanced system of granting and exploiting intellectual property rights is a factor in economic growth as it encourages investment and trade, but if designed and used appropriately, it can also help cultural creativity to thrive, educate a population or workforce, drive technological innovation to improve health and nutrition and yield other social benefits as well. In other words help development in its broadest sense.

It is how laws, policies and practices are designed and used in different countries that determine whether IP is effective for development purposes. Flexibilities in treaties and agreement are key to this. Such flexibilities are inherent in the TRIPs agreement and may concern patents copyrights or other forms of Intellectual Property.

Development is at the core of WIPO's mandate and in 2004 a formal initiative, first advanced by Argentina and Brazil , lead into what became called a new and specific "Development Agenda." At the 2007 General Assembly the Member States of WIPO adopted 45 such recommendations relating to IP and development, grouped into 6 clusters. These recommendations formally constitute the WIPO Development Agenda. They aim to ensure that development considerations form an integral part of the work of all sectors of the organization, in other words, to "mainstream" development. Mainstreaming became to mean that all WIPO activities take account of the different potential impacts of intellectual property on economic, social *and* cultural development.

The 6 "clusters" of recommendations deal with the following general topics:

- Technical assistance and capacity building (Cluster A).
- Norm-setting, flexibilities, public policy and public domain (Cluster B).
- Technology transfer, information and communication technologies (ICT) and access to knowledge (Cluster C).
- Assessment, evaluation and impact studies (Cluster D).
- Institutional matters including mandate and governance (Cluster E).
- Other issues (Cluster F).

The Development Agenda is not exactly like most of the treaties and agreements administered by WIPO because it is more policy than typical international law, but it will have an ongoing impact on the organization, its Member States and, indeed, all of those who are interested in the global intellectual property system.

## *Frequently Asked Questions (FAQs)*

### *1. Is the WIPO development agenda an alternative to existing intellectual property rights regime?*

Well not quite. It is a new more modern way of thinking about the intellectual property regime globally, and especially, but not only, in developing countries. Rather than promoting intellectual property protection as an end in itself, the development agenda suggests that we consider how intellectual property can or cannot be used as a means to broader ends, including economic growth and also population health, food security, environmental sustainability, cultural diversity and so on. The development agenda recognises that achieving those goals requires an appropriately balanced intellectual property system, and that could involve making changes to existing intellectual property rules but it could also mean using existing intellectual property rules in new ways, like the creative commons licensing model which uses the existing copyright system to facilitate sharing and collaboration.

### *2. Is the implementation of the WIPO development agenda going to lead to an increase in infringements of patent rights?*

No. There are aspects of the development agenda that will make it easier for the citizens and businesses of developing countries to use the patent system. For example the development agenda has led to projects that will build capacity in local IP offices, or make it easier to access information about patents and patented technologies. These projects will not undermine the patent system; they will improve it.

*In what way?*

By making it easier for everyone, including people in developing countries, to use that patent system as it is, so it will not lead to more patent infringement, it will lead to better use of the patent system.

### *3. Isn't it true that the technology transfer mentioned in the development agenda is only related to patents, there is no role in other IP such as trademarks?*

No that is not true. For example, trademarks generally protect companies branding and goodwill associated with that branding, so this is one of several intellectual property tools that helps to facilitate the transfer of technology from developed to developing countries for example. Or from the public sector to the private sector, from universities to companies for instance. In fact developing countries themselves are now home to some of the worlds most valuable brands. Elsewhere in this course, we mention examples of TATA, the Indian company which, amongst many other things, manufactures automobiles and M-PESA, the mobile banking service that started in Kenya and has since spread to many other countries. So these are very valuable brands that can be protected by trademarks and these examples show

that trademarks are not just a tool used by developed countries but in fact can be used by countries at any stage of development to protect brands and associated goodwill.

It is common that when you are talking about technology transfer you are talking about a patent issue because patents are a type of intellectual property right that protects technology. Copyrights operate, usually in the cultural industries. Trademarks protect consumer recognition of valuable brands and companies goodwill. Patents protect technology but if you are looking at technology transfer you have got to look at the entire enterprise or the entire package of intangible assets, and so the brand and the trademark is clearly an important part of the process of technology transfer, patents are not the only issue

#### *4. Isn't the development agenda just about giving technical assistance to developing and the least developed countries?*

Not entirely, no. People in developed countries also have much to gain from the development agenda. The development agenda is about making the intellectual property system work better for everyone and it does that by recognising that the right approach toward intellectual property might be different, depending on local economics, social or cultural circumstances. The key is to use the flexibilities that exist in the international system to create policies and practices that best suit the particular situation in your country.

*Could you give an example of a flexibility?*

The TRIPS agreement makes it possible for countries to use compulsory licensing of patents in certain circumstances. Where there is a health emergency, for example, if it is necessary to treat a pandemic like the Avian Flu. The patent in that circumstance can sometimes be a challenge for making and providing access to medicines in a timely and cost effective manner. So the TRIPS agreement has a system of flexibility built in, that countries can use what we call compulsory licensing, to compensate a patent owner for the fact that a government may be using a patented invention of technology or medicine without the patentees' permission - It is important to note that the patentee still receives compensation in these circumstances, but the licence is compulsory or mandatory.

*And that is what would be termed flexibility in the patent regime?*

The international patent system is flexible enough to balance the protection of intellectual property with global or national population and health concerns.

*Is that actually the TRIPS rules that allow that or is it the patent rules in a country?*

It is a sequential process, so the TRIPS sets up the global framework. Rather than requiring a one size fits all model of global intellectual property protection, the international agreements set out the basic general framework and each country can apply that framework in its local environments as appropriate.

The key point is that the general provisions of the TRIPS agreement are flexible enough to allow any country to implement it in a way that is most appropriate for its local economic or social or cultural circumstances. An important part of the development agenda is informing developing countries about the existence of these flexibilities and helping developing countries, through technical assistance and capacity building for example, to understand how they can use these flexibilities most appropriately.

### *5. The development agenda does not concern copyright does it?*

Oh yes it does, all kinds of intellectual property rights play a role in development. Now, copyright is more relevant to the cultural industries of music and publishing and film, but it is also very important in the context of other important development issues like universal education. Think, the production, distribution and accessibility of text books, or on-line learning materials, which are copyright protected. So the rules of copyright can't be ignored when it comes to promoting development for the development agenda.

### *6. Is bio-piracy outside the remit of the development agenda?*

The development agenda does not mention the issue of bio piracy formally or specifically, but bio piracy is part of the broader context behind the development agenda. Many developing countries are very rich in terms of biological resources so they want to guarantee a fair system for providing access to these resources and for sharing the benefits when these resources are exploited, so the development agenda does include specific recommendations for WIPO to co-operate with other organisations addressing these kinds of challenges. So for example there is significant overlap between the work of WIPO and the work of the convention and biological diversity, in creating and international agreement on access and benefit sharing for traditional knowledge and genetic resources.

And in fact if you view bio piracy as part of a broader issue related to traditional knowledge and genetic resources of indigenous and local communities then that can't be divorced from the background of the development agenda and the reality in which the agenda has been implemented through practical projects.

### *7. Can you give some more examples of flexibilities in the TRIPS agreement?*

The TRIPS agreement contains some flexibilities which enable countries to create domestic IP regime that suits their local circumstances. I mentioned compulsory licensing as one example. There are other examples. Under the TRIPS agreement it is not mandatory to provide patent protection for plants. This can be done through a 'sui generis' or unique system for protecting plant breeders' rights for instance, instead of patenting plants countries have gone for protecting plant breeder's rights. The TRIPS agreement sets out minimum terms for copyright protection. It has to last through the life of the author plus fifty years, but it doesn't require countries to go



beyond that, so while some countries, or some places like the United States and the European Union have gone beyond the minimum requirements, that is not an obligation in the TRIPS agreement. Now there is considerable debate in the international community about whether the TRIPS agreement strikes precisely the right balance and where improvements in the international system might be made, but in general there are a lot of opportunities to use flexibilities. The key is sharing information about what those flexibilities are and helping the countries to determine when it is appropriate to use them.

*8. Can you explain in more detail what mainstreaming the development agenda means?*

Mainstreaming the development agenda means thinking about the implications of intellectual property for all aspects of development. So that means not only economic growth but also other key indicators of human freedom and capabilities like a healthy population or a sustainable environment or food security or universal education or cultural diversity for example. What mainstreaming requires is to think about these broad important issues related to development in all of the activities of WIPO and all the activities of WIPOs stakeholders. So that includes not only the organisation itself but also member states. In their intellectual property office it includes the academic research community; it includes intellectual property practitioners, businesses that use intellectual property and non-governmental organisations and civil society. Together the stakeholders need to think about ways in which intellectual property can be used to create shared value, and that idea of creating value through intellectual property has to, any implications for these broad public policy issues related to development, must inform all of their activities.

*9. How is the development agenda adopted in 2007 related to previous development initiatives at WIPO?*

When WIPO was first created its mandate was to promote the protection of intellectual property around the world. When it became a specialised agency of the United Nations, that mandate changed a little bit and it became necessary to think about intellectual property as a tool for facilitating development. That means not protecting intellectual property simply as an end in itself but promoting intellectual property as a means to work broader public policy objectives. WIPO worked on this for many years and in 2007 it was proposed formally that there be a reorientation or realignment of the way in which WIPO was conducting these activities relating to development and its activities in that regard. So the development agenda adopted in 2007 is really a realignment of WIPOs activities with its fundamental mandate as the specialised agency of the United Nations responsible for intellectual property and development.

*10. Is the development agenda a treaty or an agreement like the others already studied on the course?*

No. The development agenda is different from the TRIPS agreement or the Berne convention or the WIPO internet treaties that you have heard about elsewhere in the course, or the patent cooperation treaty that you have heard about elsewhere in the course. The development agenda is a set of 45 recommendations. Those recommendations were debated and proposed by a WIPO committee of member states and unanimously adopted by the general assembly but it is not a treaty that must be complied with or must be implemented into domestic law. It is more of a policy instrument that guides the activities of WIPO and its member's states, globally and domestically, in their activities, including implementing other treaties, designing policies, administering intellectual property systems and so on. It is not a treaty in itself.

### Web Resources

You can see the Berne Appendix: Special Provisions Regarding Developing Countries by following a link given in the resources for this module. clicking this link: [http://www.wipo.int/treaties/en/ip/berne/trtdocs\\_wo001.html](http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html)

. WIPO has also created an entire website, [www.visionip.org](http://www.visionip.org), dedicated to information about access to copyright works for visually impaired persons

A study about copyright and the public domain was one of the first outcomes of this initiative.

[http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=147012](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=147012).

You can learn more about WIPO's work related to the MDGs at: [http://www.wipo.int/ip-development/en/agenda/millennium\\_goals/](http://www.wipo.int/ip-development/en/agenda/millennium_goals/)

Cluster C "Intellectual Property and Technology Transfer: Common Challenges – Building Solutions," You could learn more about the project, if you wish to, at [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=156582](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=156582).

## Relevant Documents

*The 45 Recommendations Adopted under the WIPO Development Agenda*,  
World Intellectual Property Organisation, <http://www.wipo.int/ip-development/en/agenda/recommendations.html>

If you have a smart phone here are some resources that you can access on the move



Development agenda concise description



Misconceptions concerning the development agenda



Agenda and his role in the project

Interview with Glyn Martin discussing the Development