

WIPO



PCDA/1/2

ORIGINAL: Spanish

DATE: January 12, 2006

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

E

PROVISIONAL COMMITTEE ON PROPOSALS RELATED TO A WIPO DEVELOPMENT AGENDA

First Session
Geneva, February 20 to 24, 2006

PROPOSAL BY CHILE

Document prepared by the Secretariat

1. In a communication dated January 9, 2006, the International Bureau received a proposal from Chile for consideration by Member States at the Provisional Committee on Proposals Related to a WIPO Development Agenda, to be held in Geneva from February 20 to 24, 2006.
2. The said proposal is annexed to this document.
3. *The PCDA is invited to note the contents of the attached proposal from Chile.*

[Annex follows]

ANNEX

Translation of a Note Verbale dated January 9, 2006 (ref.no. 08/06)

From: The Chilean Mission to the World Trade Organization, Geneva

To: The World Intellectual Property Organization

The Permanent Mission of Chile to the World Trade Organization presents its compliments to the International Bureau of the World Intellectual Property Organization (WIPO) and, in relation to the First Meeting of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), has the honor to enclose the following three proposals:

- appraisal of the public domain;
- the importance of complementary systems to and in intellectual property;
- study for assessing what are the appropriate levels of intellectual property, considering the particular situation in each country, specifically its degree of development and institutional capacity.

The Permanent Mission of Chile to the World Trade Organization hereby requests the International Bureau to distribute the attached paper as an official document of the First Meeting of the PCDA, under item 4 (proposals submitted by Member States) of the Draft Agenda (PCDA/1/1Prov.).

The Permanent Mission of Chile to the World Trade Organization takes this opportunity to reiterate to the World Intellectual Property Organization the assurances of its highest consideration.

(signed and stamped)

**Provisional Committee on Proposals Related to a
WIPO Development Agenda (PCDA)**

Proposal by Chile

Proposal 1: Appraisal of the public domain

The public domain can be seen as a resource freely available to all members of society without the need for authorization or payment of a license, in contrast to the property subject to intellectual property rights, regulated by one or more holders of those rights.

The public domain is of crucial importance for researchers, academics, teachers, artists, authors and enterprises, which require a rich base of content for their new creations, as well as for those institutions, the function of which is to preserve or disseminate knowledge, such as universities, research centers, libraries, information services, archives and museums.

Thus, teachers may prepare materials for their classes, educational institutions may publish texts which are richer in content, researchers may build on existing works, journalists have access to information to enrich knowledge and public discourse, and training industries adapt and recreate works for new audiences.

The capacity of the public domain to increase the availability and dissemination of knowledge has been recognized by the international community, through different declarations and recommendations, especially within the sphere of the United Nations which recognizes the importance of the public domain, especially in the light of digital technologies and the Internet which facilitate the dissemination and distribution of knowledge for all.

The following should be mentioned:

- (a) Resolution 29 C/28 of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1997, which calls for what needs to be done in order to “facilitate access to information in the public domain with the ultimate aim of building up a general electronic repository of all the information of a public nature relevant to UNESCO’s fields of competence”;
- (b) The UNESCO Universal Declaration on Cultural Diversity, adopted by the thirty-first session of the UNESCO General Conference, on November 2, 2001, which in its main lines asserts that States agree with the aim of “encouraging universal access through the global network to all information in the public domain”.
- (c) The “Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace”, adopted by the UNESCO General Conference in November 2003;
- (d) The Declaration of Principles of the First World Summit on the Information Society, Article 26 of which States: “a rich public domain is an essential element for the growth of the Information Society, creating multiple benefits such as an educated public, new jobs, innovation, business opportunities, and the advancement of

sciences. Information in the public domain should be easily accessible to support the Information Society, and protected from misappropriation [...]”, and;

- (e) the Action Plan of the 2003 World Summit on the Information Society (WSIS), which states the need to “develop policy guidelines for the development and promotion of public domain information as an important international instrument promoting public access to information”.¹

In this context, and recognizing that the public domain is fundamental for ensuring access to knowledge and promoting the creative processes of innovation, we consider that WIPO should (i) deepen the analysis of the implications and benefits of a rich and accessible public domain, (ii) draw up proposals and models for the protection and identification of, and access to, the contents of the public domain, and (iii) consider the protection of the public domain within WIPO’s normative processes.

Proposal 2: Importance of complementary systems to and in intellectual property

Creative activity is the result of human effort in the context of a multiple structure of economic, personal and social incentives. In relation to economic incentives, intellectual property rights are undoubtedly of the greatest relevance. However, it should be stated that other policy instruments also exist, which are available to member countries for this purpose. These economic policy instruments have proven to be of great use in the success and enrichment of creative and inventive activity, as well as for the dissemination and transfer of technology. They include competitions, tax benefits, direct contributions, work commissions and public procurement.

In addition, it should be considered that the specific intellectual property system enables creators and innovators, and also rightsholders in general, to implement various models for the dissemination or exploitation of creations or innovations, such as open licensing systems. Within such creations or innovations, the expansion of free software and other open licenses such as Creative Commons suggests the need to identify, study and disseminate the licensing options which co-exist within the intellectual property system.

Consequently, we propose that WIPO should set up a permanent area for analysis and discussion of incentives promoting creative activity, innovation and technology transfer in addition to the intellectual property system and, within this system, emerging exploitation models.

Proposal 3: Study for assessing what are the appropriate levels of intellectual property, considering the particular situation in each country, specifically its degree of development and institutional capacity

Most of the proposals relating to the implementation of studies submitted to the Third Inter-Sessional Intergovernmental Meeting on a Development Agenda for WIPO have referred to particular and specific aspects of intellectual property². Although those proposals are valuable, we believe that any study conducted in relation to the development dimension

¹ Action Plan of the World Summit on the Information Society. Document WSIS-03/GENEVA/DOC/5-E, paragraph 10(a), of May 12, 2004.

² Documents WO/GA31/11; IIM/1/4; IIM/1/5; IIM/2/2.

should be such that its ultimate aim is not only to demonstrate the benefits and impact of intellectual property systems. It should also identify what the costs are and, in turn, the most recommendable or appropriate levels of protection of intellectual property rights, taking into account the degree of development and particular social and cultural situation in a country, based on the minimum standard established by the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

The study should consider (1) the relationship between intellectual property policies and competition policies; (2) exceptions and limitations to the intellectual property system, which facilitate the implementation of innovation promotion and creation policies, based on the comparison of national models; and (3) the economic and social effects of changes on protection levels.

Furthermore, we are aware that conducting a study of this scope would not be without its difficulty, especially as relates to the terms of reference, for which reason Chile considers that for the study to be effective and achieve its aims it should have the following characteristics:

- (a) the terms of reference should be discussed by the Member States of WIPO as part of a process that must be open, transparent, based on participation and informed.
- (b) It should be entrusted to an independent body, selected by means of an international public bidding process that is open and transparent.
- (c) The study should consider the contribution of multilateral bodies such as the World Health Organization, UNESCO, the United Nations Food and Agriculture Organization, the World Bank, etc.
- (d) The study should be open so as to take account of comments from civil society.
- (e) The results of the study should be made known to the WIPO General Assembly.

Thus, we propose the preparation of a study to assess what the appropriate levels of intellectual property are, taking into account the particular situation in each country, specifically its degree of development and institutional capacity. We believe that the value of this proposal lies in the fact that it considers the open participation of each of the Member States for its definition and that it guarantees the impartiality of the study since it is entrusted to an independent body.

[End of Annex and of document]