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Advisory Group on the Protection and Implementation of
Intellectual Property Rights for Promoting Investment

DRAFT MANDATE AND PROGRAMME OF WORK

Note by the secretariat

1. At the UN/ECE Forum on the Protection of Intellectual Property Rights in the Countries of central and eastern Europe and the CIS, held at the Palais des Nations, Geneva, 26 to 27 October 1998, the participants proposed the establishment of an advisory group to implement the recommendations of the Forum. These recommendations can be found in the final report from the Forum (see TRADE/1999/5). The Working Party on International Contract Practices in Industry (WP.5) discussed and supported this proposal.
2. This document contains a draft mandate and programme of work for the proposed Advisory Group on the Protection and Implementation of Intellectual Property Rights for Promoting Investment and will be submitted to the Committee for approval for a two year mandate.
3. The proposals in this document reflect discussions at a number of meetings and consultations involving representatives of the private and public sectors with the active participation of WIPO, WTO and the EU. The ICC and many industrial, scientific and cultural bodies have also been consulted and have offered advice. Meetings have been held in London, Brussels and Geneva, the last one at the Palais des Nations on 23 April 1999.

DRAFT MANDATE

Goal and Objectives

4. The overall goal of the Group is to improve the investment environment to attract investment in creative, innovative and high technology industries as well as the branded goods industries in the region.

5. To accomplish this goal, the group will undertake work in support of the following critical objectives :

- a. Improved implementation of intellectual property rights (IPRs) in countries in the region;
- b. The development of support frameworks covering, in a holistic manner, all aspects of intellectual property rights implementation, for those governments who request such assistance;
- c. Improved awareness by domestic private sectors of their intellectual property rights and the means available for implementing them;
- d. Better communication and co-operation between the holders of IPRs and the civil servants involved in their protection;
- e. Support to the private sector for the monitoring and implementation of intellectual property rights leading to better cooperation between the private sector and public authorities.

Working Principles

6. The Group's activities in support of the above objectives shall be based on the following principles:

- a. Public and private sector partnership, representing a unique forum and, therefore, a unique opportunity to bring about valuable improvements in the protection and exploitation of intellectual properties, to the benefit of economies of member states.
- b. A focus on assistance and recommendations rather than evaluation or judgement, when working with Governments to improve the implementation of intellectual property rights;
- c. Participation and co-operation between private sector representatives and representatives of individual member governments as the best way to proceed with the activities envisaged in the programme of work (see below);
- d. The paramount importance of building confidence and an understanding of the mutual and shared interest of the public and private sector contributors to the group;

e. Full cooperation and co-ordination in all the Group's activities with the major international programmes on intellectual property e.g. WIPO, WTO and the EU.

Benefits

7. During the discussions which led to the framing of the above goal, objectives and working principles, emphasis was placed on the various benefits which could accrue to ECE Member governments, these being:

- a. The development of confidence and consensus building amongst all contributors as a result of consultative meetings with individual governments. These will provide the opportunity to share ideas and to build a consensus as to the priorities to be addressed according to the needs of individual countries;
- b. The contribution, from the private sector of a very substantial body of experience and expertise covering all fields of intellectual property as well as a broad range of industry experience. This represents a unique resource which the private sector is willing to supply to issues of mutual interest within this initiative;
- c. Private sector assistance with the practical implementation of multilateral treaty obligations including, in particular, the WTO TRIPS Agreement. Based upon their direct experience and knowledge of successful working practices in a variety of countries, the private sector is often aware of opportunities for introducing practical, efficient and effective mechanisms and can make an important contribution to an exchange of experiences in this area;
- d. Assistance in identifying the key issues that the business community, both national and international, looks for in any national infrastructure in the area of protection and implementation of intellectual properties, in particular, when they are evaluating new or increased investment;
- e. Assistance in clearly identifying the benefits to be derived for both business and governments from the best use and exploitation of intellectual properties;
- f. Practical measures to encourage and support investments in innovation and the creation of new intellectual properties as well as their best use and exploitation, both nationally and internationally.

Organization

Membership

8. The Group itself will function as a joint public and private initiative. Members will be committed to ensuring that both governments and private sector representatives play a full part in the elaboration and implementation of the programme. The Group is particularly concerned to ensure participation from those countries that, because of budgetary limitations, are unable to send experts to meetings and will explore the possibility of obtaining funding for this purpose.

Structure and Reporting

9. The Advisory Group shall meet once a year and shall elect a chairman and other office bearers who will constitute the Steering Group. A balance shall be sought between private and public sector representation on the Steering Group. The Advisory Group shall also establish sub-groups to undertake specific tasks, as appropriate. It shall report to the Working Party on International Contract Practices in Industry (WP.5).

10. The agendas and dates for all consultations with governments as well sub-group meetings shall be circulated to all Advisory Group members. The Steering Group shall be responsible for implementing the work programme between meetings. It shall also ensure coordination and communications between the sub-groups. The Steering Group shall be directly responsible for organizing consultations with ECE member governments

11. Obtaining funding for the Advisory Group's activities will also be a responsibility of the Steering Group. In this context, it shall be responsible for ensuring that the collection and management of these funds conform with relevant UN rules.

Note from the secretariat

12. The proposed programme of work, as outlined below and the full potential of the Advisory Group cannot be realised without financial provisions being made for staff resources, the travel of delegates (particularly from transition countries) and the preparation of consultations between the Advisory Group and governments. It has been proposed that it would not be suitable to develop a longer term funding solution, such as a UN trust fund, until a period of time has elapsed which will allow an assessment of this initiative. Therefore, it has also been proposed that during an interim period of at least 18 months a financing solution be found as it will be critically important to raise funds and demonstrate the utility of this initiative to governments and the private sector. Accordingly, the International Chamber of Commerce has offered, on an interim basis, to manage the Advisory Group's funds provided that a mutually acceptable set of procedures can be agreed between the Advisory Group, the UN and the ICC.

DRAFT WORK PROGRAMME

13. Depending upon the nature of work and the expertise required, the work items outlined below may be undertaken by: the Advisory Group, its steering group, or a sub-group.

Note from the secretariat

14. Provisional programmes have already been formulated on a preliminary basis focusing on five areas. These programmes must be confirmed by the first meeting of the Advisory Group.

Consultations

15. Consultations between the Advisory Group and government officials will be held to assess needs, gauge progress and provide, if necessary, assistance in those areas where it is required. The steering group will be responsible for organising these consultations with the relevant counterparts within governments. It is proposed that Lithuania and Latvia should constitute a pilot for this project. These consultations will discuss reports on the conditions surrounding intellectual property protection that would be jointly prepared by the governments and group members. Governments are invited to host meetings of the proposed advisory group.

Provisional Programmes

(i) Education and training

16. Education and training programmes shall be designed to increase the awareness and effectiveness of the implementation of intellectual property rights among the legislative, judicial and enforcement authorities in transition economies. The education and training programme should also include programmes for raising the domestic private sector's awareness of the use of intellectual property rights, the means for implementing them and their protection. The proposed programmes will be tailored to the specific needs of a particular country or group of countries, after an appropriate education/training needs analysis has been conducted and reviewed, by the sub-group and respective government representatives. Full account will be taken of any existing training programmes in this area.

17. The style of delivery of these programmes needs to be defined, but there is an initial desire to emphasise interaction and case studies rather than lectures and "passive" learning.

18. The work will not, at this stage, cover the education of consumers in the transition economies.

(ii) "Sustainable implementation"

19. This work shall bring together elements from other groups and organizations to present a programme in two areas:

(a) National implementation infrastructure

20. The objective here is to collect implementation experiences drawing on the expertise of public and private sector members from ECE countries as well as from other parts of the world. The Group will look at strategic issues surrounding implementation of IPRs affecting specific industry sectors/products. It will report on trends and implementation initiatives in various countries. It will work to pinpoint structural weaknesses and imbalances that may distort perceptions among IPR owners and the international community as a whole on conditions prevailing in transition economies. Finally, it will present suggestions for the most effective use of resources in implementing IP strategies. This work can only be done successfully on the basis of a comprehensive understanding of the IPR implementation infrastructure of each particular member country and its dynamics. Hence active participation will be required from the representatives of each country requesting assistance in this area.

(b) Innovation development and marketing

21. It is imperative for sustaining the implementation of IPRs that the domestic private sector's access to IPRs be made easier and its awareness of the importance of IPRs raised. The objective of this programme is to use existing and new experiences to construct models for the creation of **national centres for innovation and creativity** (which could be located within existing institutions), which would provide the following services:

a. Expert advice and guidance on the selection and protection of new technologies and innovations. This would include advising inventors, research groups, producers and creators as well as universities on what may be a commercially valuable/viable approach and the best means of protection.

b. A shop-window for domestic innovation, creativity and technology. This would involve inviting tenders from technology brokers to promote innovations to investors willing to take them into commercial production, both domestically and/or in other markets and also to offer services to facilitate commercial negotiation

c. A market place for inbound technology that can be protected and matched to domestic needs.

Support and advice would also be provided to existing national centres for innovation and creativity.

(iii) International coordination and cooperation

22. The Advisory Group will promote the full integration of this initiative into the programmes of other international bodies dealing with this topic, namely WPO, WTO and the EU. This work will ensure full consultation and the avoidance of duplication. It will further ensure, on a regular basis, the development of programmes that are mutually supportive and in the interest of other relevant international organisations.

(iv) Databases

23. Databases will be identified, or designed to assist the competent authorities for enforcement in the following areas:

- a. Trade marks, copyright and other intellectual property rights.
- b. Evidence of the economic consequences to national economies of counterfeiting and copying.
- c. Laws and where to find laws dealing with the protection of intellectual property (including commentaries on the laws and on cases dealing with IP protection).

24. Many databases already exist (particularly at WIPO). However, they are not always complete and an efficient means of navigating these databases via links to a central IP Internet website would be of great value. Work for the development of any databases would require special funding.

25. Work in this area will also cover the development of an Internet World Wide Web site for the Advisory Group to provide information on its meetings and activities.

(v) Co-operation with Public servants and officials

26. This work will cover model guidelines and agreements that can be used to facilitate contacts between the private sector and public officials involved in the protection of intellectual property rights. It will investigate the framework of cooperation that has been developed under the auspices of the World Customs Organisation with individual companies, including a model Memorandum of Understanding. It will explore the utility of this model for other public agents whose services might be expanded to include the identification and/or seizure of infringed, copied and pirated goods. It will promote co-operation between the private sector and inspection and trading standards officials. This work will be carried out in cooperation with the UN/ECE Working Party on Technical Harmonization and Standardization Policies (WP.6).

27. These model guidelines and agreements will seek to share the burden of detection and implementation of infringements to IPRs to ensure that unfair burdens are not placed on public bodies. The rights and duties of the rights holders to co-operate with officials will be stressed.

28. Use of the services of other agencies, e.g. trade facilitation bodies, in the promotion and implementation of IPRs will also be explored.
