

Questionario IFLA

1. What is your view on the question of balance in intellectual property and its role in promoting the public good, as recognized by the current Director-General of WIPO, and how would you support this balance if you are successful?

Member States have long held different opinions on how to strike a balance between the protection of intellectual property and the public good. These discussions are mainly materialized in issues related to patents and public health and exceptions and limitations to copyright.

As an IP International Organization, we must be concerned with promoting a fair and equitable international system that respects both the public interest and the rights of intellectual property owners.

For this, it is important to highlight the advantages of IP as a tool that enhances economic development and social and cultural well-being. The intellectual property system must foster an environment of creativity and invention that is promoted for the benefit of all and that stimulates the progress of humanity. However, we must also be careful not to allow abusive exercises of intellectual property that affect fundamental human rights.

In an eventual mandate, one of my commitments will be to encourage Member States to continue discussions and reach consensus on these matters. To do this, I will continue with the efforts that have been made to allocate WIPO's time and resources appropriately and efficiently. I will also propose a more active participation by the Member States, through the development of new questionnaires and technical reports that allow them to strengthen or update their positions.

I will also submit for consideration the possibility of holding Sessions of the different WIPO Committees more frequently. For this purpose, I will raise the possibility that some sessions are carried out virtually and with the support of technological tools that allow their correct development, using, for example, WIPO Speech-to-Text, which automatically generates text from the speeches through the use of AI technologies and, WIPO Translate, which allows texts to be translated into nine languages. By enhancing these tools, a simultaneous translation could be achieved that allows a fluid dialogue between Member States. Technology offers so many alternatives that it is our duty to know how to take advantage of it for the benefit of all.

It is important that we must not only seek to fit intellectual property into societies but customize it to the potential that a society has. In this context, it is also highly important for countries to design and develop their own IP national policies and strategies, considering that the isolated work of IP Offices is not enough to spread knowledge on this matter and to make people internalize that IP can have a beneficial role in their lives. In that sense, the only way to accomplish a balance is through a well-coordinated and permanent work of both public and private sector.

In this order of ideas, since last year the government of Peru, under Indecopi's lead and with WIPO'S technical support, has been carrying out the necessary steps to develop its own IP

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National Policy, which is expected to have an important impact in the Peruvian welfare. Based on this ongoing experience, I am firmly convinced about the necessity of providing support and technical assistance to all State Members, as well as to promote the design and development of national policies and strategies that will impact positively on their economic welfare.

2. What would you do to ensure that WIPO's Development Agenda makes a reality of the public benefit aspects implicit in the intellectual property system, notably in the optional provisions in the Berne Convention?

Bearing in mind that the adoption of the Development Agenda with a total of 45 recommendations constitutes a major milestone with direct impact on WIPO's work, it is of the utmost importance to guarantee, monitor and promote compliance. In that regard, Member States have shown their firm commitment to the development and promotion of the use of IP; In the same way, WIPO continues to be extremely committed in its mission for the future implementation of the Development Agenda.

In order to maintain and improve the outstanding and positive work that, to date, has been carried out by the joint and coordinated action of WIPO and the Member States, and taking into account the recommendations developed in the independent review (Document CDIP / 18/7), some of the measures considered would be, among others, the following:

- Promote and facilitate the exchange of strategies and best practices of Member States regarding their experience in addressing IP and development concerns. Therefore, one of my work proposals is the creation of a Virtual Catalog of Good Practices on Intellectual Property administered by WIPO, which will gather the best practices of IP agencies worldwide, to promote positive exchanges and improvements in policies and products.

Likewise, I consider useful that, together with the previously described initiative, spaces for exchanging experiences are also scheduled during the meetings of the Committee on Development and Intellectual Property (CDIP).

- Support and ensure coordination, supervision, reporting and effective evaluation of the implementation of the recommendations of the Development Agenda; this in order to monitor the optimal execution of the actions aimed at compliance with them.
- Support the efforts of the CDIP to respond as adequately as possible to rapidly changing circumstances and new development challenges to the IP system, in close coordination with other United Nations agencies.
- Promote better coordination with the various authorities of the Member States, as well as increase the presence of national experts in the work of the CDIP. Additionally, a more active role of IP offices in joint efforts in their respective countries would be encouraged.
- Ensure greater systematization of the existing information on the projects completed and integrated into the work of the CDIP, in order to consider the lessons learned and improve the practices identified in the execution of the Development Agenda projects. For this purpose, as indicated in the preceding paragraphs, within my work proposal the creation of

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a Virtual Catalog of Good Practices has been considered, which could collect information on the various projects worked within the framework of the CDIP, in order to facilitate the formulation of new and better projects for the consideration of the CDIP.

- Propose the elaboration of a work plan that allows measuring the effectiveness and impact of the means and mechanisms used to guarantee a better and greater dissemination of the information on the Development Agenda among the Member States.

Finally, regarding the optional provisions contained on the Bern Convention, it is important to bear in mind that they respond to a preferential treatment that usually has been granted to the least developed and developing economies, which is fully aligned with the UN Sustainable Development Goal (SDG) 10 “Reduced inequalities” that seeks to guarantee equal opportunities and reduce inequities between Member States. To this end, it is necessary to apply universal policies and adopt measures that take special consideration of the limitations and specific needs of less favored economies or that are in some disadvantageous situation compared to other Member States.

In that sense, an optimum global intellectual property system should always seek to achieve the necessary balance between the incentives for innovation and the necessity to provide access to knowledge. Therefore, it constitutes a fundamental task for WIPO to promote the necessary conditions to contribute to a sustainable global innovation ecosystem and to achieve the SDGs. In this regard, limitations and exceptions help to achieve the necessary balance that is sought. However, these should always be the result of a participative discussion process continuously and periodically encouraged by the Organization, in order to achieve consensus among State Members considering their different interests and priorities.

3. How will you ensure that WIPO’s work to support both discussion about and implementation of IP law reflects the interests of all actors, including the public, consumers and users of IP? In particular, how will you ensure the full participation of civil society and minimize discussions held behind closed doors?

I consider it very important that the IP legislative agenda reflects the interests of all Member States and not just some groups. Indeed, as I mentioned earlier, the intellectual property system must reach a fair balance that respects both the public interest and the rights of intellectual property owners.

In that sense, in order to achieve such a balance, in an eventual mandate I consider important to ensure full participation of all relevant actors that conforms an IP ecosystem. For that end, it is necessary to foster a more active participation by non-governmental entities, observer agencies, academia and the business sector, by continuously compiling their views on issues of interest and relevance, so that they are not only transmitted to Member States in a timely manner, but to be used as valuable inputs for working documents. Also, to continue encouraging the participation on WIPO Committees - in an observer capacity - of intergovernmental organizations and non-governmental organizations that have been accredited with observer status.

Moreover, to ensure the adoption of fully informed measures by Member States, it could be useful the dissemination of working documents on specific topics. For instance, in terms of IA and its relationship with IP, WIPO recently initiated a public consultation process where all

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interested parties were invited to submit suggestions in order to prepare a thematic document that reviews aspects related to patents, copyright, data, drawings and models, technological gap and capacity building and accountability about administrative decisions on IP.

These efforts are very important because they determine the active participation of all the actors of the intellectual property system and, also, promote their constant debate and participation. My commitment will be to continue with such initiatives and keep society informed about new developments and current issues in the field of intellectual property.

4. What will you do to ensure that WIPO's work is based on solid evidence rather than the product of influence of private sectors or other lobbies?

Due to the complexity of the related issues on IP, there are various actors who may have conflicting interests, such as rightsholders and users. Although their voices must be heard so that we may have a clear idea of what is going on in the world as well as the future challenges that we will face, it is of utmost importance that, as a specialized international organization, WIPO's work is based in solid evidence from its technical capacities and expertise.

In order to avoid the private sector to interfere on WIPO's work, its work agenda must be carried out by the solid consensus of the Member States. Also, it is necessary to strengthen, improve or prompt mechanisms in such a way that members can convey their interests and needs using questionnaires, technical reports, among others. Likewise, the use of statistical data can be a very useful tool to support the necessity of the members.

Moreover, it must be noted that WIPO policy has a strong commitment towards transparency, so we need to ensure that it not only continue but be strengthened. Currently, all meeting documents are available on the Internet, the discussions of WIPO Assemblies and Committees can be followed free of charge through the live internet broadcast service, and the videos of previous sessions can be access. These measures reflect WIPO's strong commitment to transparency, which I consider essential to be rescued and, in an eventual mandate, to seek to maintain through the adoption of the necessary additional measures.

5. What measures will you take to ensure that WIPO and its staff are impartial sources of evidence-based information and expertise?

Human resource constitutes the most important asset within any organization, as they are the ones that enable and make possible the achievement of the aims and goals set by each organization or institution. Therefore, guaranteeing the best conditions and ensuring an optimal working environment is a priority under my work proposal.

Based on my experience leading a public institution made up of more than 1,700 employees and 26 offices throughout Peru, in which a Gender Equity Policy has been implemented with concrete actions, I can affirm with conviction that it is essential to guarantee equal opportunities among all workers in order to ensure better results in achieving the institutional objectives set.

Therefore, one of the main goals for an eventual mandate will be to position WIPO as an organization that promotes equal opportunities for all people, both in access to the organization

and during their professional development. In that sense, the main objective will be to promote a culture of diversity and equity among employees and radiate it towards the different partners and stakeholders of the organization.

Although it is a priority to promote a culture of diversity and equity among employees, it is also necessary to urge Member States to adopt rigorous criteria to be applied in the recruitment process. In an eventual mandate, I will seek to generate discussion spaces to improve existing policies, encouraging meritocracy and professional career to be the main hiring criteria, considering the requirements of the professional profile and the functions entrusted.

This is in line with the provisions of the WIPO Convention, which in its article 9.7 states that: *“The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible”*.

It should be noted that it is not only important to guarantee the suitability of the candidate at the time of making the selection process, but also its performance must be evaluated periodically based on indicators previously established and communicated in a timely manner, which must be directly related to the institutional objectives set by the Organization.

In that sense, it is necessary to promote rigorous criteria not only for employment, but also for periodic performance evaluation, in order to guarantee professional and complete performance by all the employees. Moreover, real mechanisms must be developed and implemented in order to expose and sanction those who are unwilling to fulfill their responsibilities provided there is proof thereof.

6. What will you do to advance towards universal application of the Marrakesh Treaty as the leading example of a WIPO international instrument focused on users' rights?

The Marrakech Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled (Marrakech Treaty) was adopted on June 27, 2013, and has 64 Contracting Parties that, to date, have signed and ratified it.

Although the Marrakech Treaty forms part of the body of international copyright treaties administered by WIPO, it is a very particular and distinctive copyright treaty, which is evidenced by its high humanitarian and social content. Its main purpose is to create a legal framework for the creation of a set of mandatory exceptions and limitations for the benefit of persons who are blind, visually impaired or have other difficulties in accessing printed text because of physical disabilities.

In that sense, it constitutes an additional task for WIPO to promote the necessary conditions in Member States to ensure the inclusion and equally access to culture for people suffering from any type of disability, which is fully aligned with the principles non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society, proclaimed

in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities.

Even though the Marrakech Treaty is already in force for 64 State Members, this in any way necessarily guarantees its effective implementation. Indeed, it is necessary that modifications be made in the national legislation of each Member State, in order to achieve compliance with the provisions set forth in the treaty and that imply incorporating: (i) a set of exceptions and limitations to copyright in favor of visually impaired persons, and (ii) provisions ensuring the cross-border exchange of copies of works in accessible format.

Therefore, WIPO must be a strategic ally as it has the technical capacity and expertise to support State Members on the effective implementation of the Marrakesh Treaty, through cooperation activities and technical assistance (preferably focused on the training of competent authorities in copyright matters, as well as customs authorities).

Moreover, it is important that WIPO constantly monitors the correct implementation of the treaty in the Member States, since positive experiences could encourage other Member States that have not yet done so to adhere or ratify it, which will benefit the strengthening of the international IP system managed by the Organization.

7. What measures will you put in place to guarantee that WIPO's technical assistance activities are development-oriented, evidence-based and suitable to national capacities and level of development?

I believe that it is essential that WIPO focuses its efforts in the development of least developed and developing economies, which is fully aligned with the SDG 10 "Reduced inequalities", which, as noted above, seeks to guarantee equal opportunities and reduce inequities between Member States. To this end, it is necessary to apply universal policies that pay special attention to the needs of disadvantaged and marginalized populations.

In that sense, in a possible mandate, one of the priority roles of WIPO must be to help maximize the benefits of the development of these countries by promoting the universalization of intellectual property.

WIPO must be seen as a strategic partner to access to global tools that will accelerate the inclusion of intellectual property in the local development agenda, as well as to transform intellectual property into a powerful tool that contributes to the reduction of gaps (and inequities), not only within a country but also between different countries.

Therefore, it is necessary that WIPO actively promotes the exchange of knowledge at regional and international level, and most important develops concrete cooperation programs that encourage the implementation of previous successful initiatives, good practices, projects, among others, preferably where northern and southern hemispheres were or seek to be involved.

In this order of ideas, one of my work proposals is the creation of the Virtual Catalog of Good Practices in Intellectual Property administered by WIPO. Likewise, it is important to schedule additional forums during the meetings of the Committee on Development and Intellectual Property (CDIP) so Member States can exchange experiences and information.

8. What steps will you take to curb abuses of the patent system, in particular the practice of “patent evergreening” in the pharmaceutical sector which adversely impacts access to affordable medicines?

Although as a specialized IP International Organization, it is one of the main duties of WIPO to foster innovation, abuses of law that undermine fundamental human rights such as public health and access to medicines, must be avoided. As I have previously mentioned, WIPO must seek to achieve a fair and balanced international IP system that respects both the rights of the owners and the public good.

Several concerns have been raised regarding patent evergreening and its negative effects in the availability of affordable medicines. According to the Commission on Intellectual Property Rights, Innovation and Public Health (CIPRH) of the World Health Organization (WHO), *evergreening* is used to describe patenting strategies when, in the absence of any apparent additional therapeutic benefits, patent holders use various strategies to extend the length of their exclusivity beyond the 20-year patent term.

Taking into account the above definition, much has been said on patent evergreening, but innovation also resides in improvements (cumulative innovation) and it applies to the pharmaceutical field too, where research is developed for obtaining medicines with improved properties, such as bioavailability, rheology, stability and many more.

Therefore, work has to be done, not for the limitation of patent protection but for ensuring an adequate assessment in order to identify properly authentic innovative contributions to the state of the art.

In this sense, the agenda in this aspect must be focused on designing programs to strengthen the capacity-buildings of patent offices, in order to ensure high quality patent examination. Moreover, in order to achieve a broader scope, the development of updated guidelines should be promoted to ensure the adequate application of the patentability criterion (novelty, inventive step and industrial application). In that way, the improper granting of patents and the unnecessary extension of the term of protection could be avoided.

9. How will you support countries that have used or intend to use TRIPS flexibilities such as the compulsory license, parallel importation and other limitations and exceptions to advance public interests and national development?

In general terms, although the decision to apply or implement a flexibility corresponds exclusively to the Member State concerned, as I have stated previously, is its WIPO's duty to ensure an adequate and fair balance between the IP system and the public good.

In that sense, WIPO must focus efforts in providing technical assistance to Member States that intend to use TRIPS flexibilities for an adequate implementation, as well as monitor and ensure that they act within the limits permitted by TRIPS, so that no type of abuse is generated.

Moreover, transparency is crucial when it comes to the use of these measures, both in the field of the grounds for adoption and the corresponding procedural mechanisms. Therefore, in order

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to ensure an adequate and fair use of these flexibilities, I would promote the issuance of guidelines on these matters, aiming to provide enough clarity on when the TRIPS flexibilities may be issued and what the best practices associated with the granting processes are. As a matter of fact, a similar initiative has already been executed under my lead at Indecopi, so based on my experience I am firmly convinced that is of the utmost importance to provide with enough legal certainty to government officers and stakeholders in order to avoid any misuse of flexibilities and ensure its correct implementation.

10. What measures will you take to avoid conflicts of interest at the organizational level between WIPO's IP Services and norm – and standard – setting and technical assistance activities?

In order to avoid conflicts of interest at the organizational level between WIPO's intellectual property services and technical assistance and norm setting activities, I believe that, first of all, the transparency policy governing all the procedures of the organization must be maintained and reinforced.

Indeed, a strong WIPO policy in this regard could contribute to ensure that all the organizational decisions within WIPO's administration are consistent with the particular needs of the Member States and not responding to particular interests of third parties.

It must be noted that WIPO is an organization that is at the service of the Member States and all cooperation activities, as well as the normative agenda, must meet their specific needs. In an eventual mandate, one of my main goals will be for the Organization to be characterized by remaining at the service of all members, by addressing in a timely manner their concerns and needs in the most effective way.