

WIPO



A/32/INF/2

ORIGINAL: English

DATE: February 20, 1998

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

ASSEMBLIES OF THE MEMBER STATES OF WIPO

Thirty-Second Series of Meetings Geneva, March 25 to 27, 1998

THE GOVERNANCE STRUCTURE OF WIPO

Memorandum of the International Bureau

WIPO is a constitutionally complex organization. Its complexity results from the relatively long history of the Organization (using that term to cover also the predecessors of the present Organization, WIPO) and from the fact that, since its origins in the last century, new treaties have been progressively concluded, each establishing a legally separate Union of States, usually with its own administrative organ of member States and budget. Those separate unions have been linked by the common subject matter of the treaties establishing them (intellectual property) and by a common secretariat (the International Bureau).

In order to appreciate the existing governance structure within WIPO, it is necessary to recapitulate briefly the historical development of the Organization.

I. Brief Historical Development

Prior to 1967, the Organization consisted of a common secretariat, called the United International Bureau for the Protection of Intellectual Property (BIRPI), that served the separate Unions of States constituted by several treaties, namely

- the Paris Convention for the Protection of Industrial Property of 1883 (“the Paris Convention”)

- the Berne Convention for the Protection of Literary and Artistic Works of 1886 (“the Berne Convention”)
- the Madrid Agreement Concerning the International Registration of Marks of 1891 (“the Madrid Agreement”)
- the Hague Agreement Concerning the International Deposit of Industrial Designs of 1925 (“the Hague Agreement”)
- the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 1957 (“the Nice Agreement”)
- the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 1958 (“the Lisbon Agreement”)¹.

The aforementioned treaties shared in common the following constitutional features:

1. Each established a Union of the contracting States.
2. Each established an administrative apparatus for the members of the Union to take decisions.²
3. Each provided for a common secretariat, BIRPI.
4. Each made provision for contributions by member States and for expenditure by BIRPI for the purposes of the administration of the treaty.

In addition to the foregoing common features, the treaties were linked by a common hierarchical design. Under that design, the Paris Convention was considered to be the general treaty for industrial property, while the Berne Convention was considered to be the general treaty for copyright. Each of those treaties made provision for specialized agreements to be

¹ The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891 has, for the sake of simplicity, been omitted from the enumeration of treaties because it did not establish an administrative organ of the member States or make provision for a program and budget. For similar reasons, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1961 (“the Rome Convention”) has been omitted from the list because the secretariat of the Intergovernmental Committee established by that Convention is constituted by officials of the International Labour Office (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Bureau of WIPO (see Article 32(5) of the Rome Convention).

² The type of administrative apparatus evolved with the successive Acts of the treaties in question. For example, a Conference of Representatives for the Paris Union was not established until the Act of Lisbon 1958 (Article 14(5)(a) of the Lisbon Act). Prior to that Act, revision conferences and, occasionally, technical meetings of the members of the Union were convened.

concluded between the members of their Unions relating to particular areas of industrial property (for Paris Union members) or copyright (for Berne Union members) (see, now, Article 19 of the Stockholm Act of the Paris Convention and Article 20 of the Paris Act of the Berne Convention). Thus the Madrid Agreement, the Hague Agreement, the Nice Agreement and the Lisbon Agreement were each concluded as special agreements within the meaning of the corresponding Article of the Paris Convention and are open for accession only to States that are members of the Paris Union. This hierarchical design served, amongst other things, the purpose of ensuring that certain basic principles (such as national treatment or the right of priority) that were laid down in the general treaty would be respected by contracting States to the special agreement without needing to repeat those principles in the special agreements.

II. The Reforms Introduced by the 1967 Stockholm Diplomatic Conference

The Diplomatic Conference convened in Stockholm in 1967 introduced a number of reforms in the governance structure of the Organization. Those reforms may be summarized as follows:

1. The Convention Establishing the World Intellectual Property Organization (“the WIPO Convention”) was concluded. It established WIPO as the umbrella organization to promote the protection of intellectual property and to ensure administrative cooperation between the various Unions constituted under the treaties for which BIRPI, formerly, and the International Bureau of WIPO, thenceforth, provided the secretariat.
2. New Acts (the Stockholm Acts) were concluded for each of the abovementioned treaties for which BIRPI had been providing the secretariat. The new Acts aimed at rationalizing and making uniform the administrative structure under the treaties by introducing, for each such treaty, an Assembly of member States of the Union established under the treaty and a uniform cycle of programs and budgets. Each Act also provided for the secretariat for the Union to be the International Bureau of WIPO.
3. In order to ensure coordination between the Assemblies of the various Unions on matters of common interest to the Unions, such as questions concerning the International Bureau, the WIPO Convention provided for the establishment of the WIPO Coordination Committee.
4. Various transitional provisions were established in the WIPO Convention for the transfer of rights and obligations of BIRPI to the International Bureau of WIPO.

III. Subsequent Simplifications

Subsequent to the Stockholm Diplomatic Conference, two further simplifications have been introduced into the governance structure of WIPO. The first was introduced to encourage more widespread adherences to the treaties administered by WIPO. It consisted of the introduction, from January 1994, of the unitary contribution system, whereby each State party to more than one of the WIPO Convention and the treaties administered by WIPO pays

only a single contribution, regardless of the number of such treaties to which it is party, instead of paying separate contributions in respect of each (contribution-funded) treaty to which it is party. The second was introduced to encourage more widespread participation in the process of concluding new treaties and more widespread adherences to those treaties once concluded. It consisted of severing the connection between new treaties and the general treaties (the Paris Convention and the Berne Convention) which resulted from defining new treaties as special agreements under the general treaties. Instead, the process of concluding new treaties has increasingly been opened to any State party to the WIPO Convention (rather than being limited to States party to either the Paris Convention or the Berne Convention), as has the possibility of adhering to the new treaties. Thus, for example, any State party to the WIPO Convention could participate as a member delegation in the diplomatic conferences at which the Trademark Law Treaty (the TLT), the WIPO Copyright Treaty (the WCT) and the WIPO Performances and Phonograms Treaty (the WPPT) were concluded, and those treaties are open to accession by any such State.

IV. The Present Structure

At present, the governance structure of WIPO can be conveniently grouped into the following four tiers of bodies:

(a) The Main Organs

These are the constituent organs of member States established by the WIPO Convention and the treaties administered by WIPO (“the Governing Bodies”). They consist of the WIPO General Assembly, the WIPO Conference and the WIPO Coordination Committee, established by the WIPO Convention, the Assemblies of each Union constituted by a treaty administered by WIPO, such as the Paris Union Assembly, as well as, where a treaty was first concluded before the 1967 Stockholm Diplomatic Conference and there are States which are party to an Act earlier than the Stockholm Act but not yet party to the Stockholm Act, the Conferences of Representatives established under the earlier Act.³ There are, in all, 21 such bodies,⁴ which, as

³ For example, the Conference of Representatives of the Paris Union, of which the Dominican Republic, Iran (Islamic Republic of), Nigeria and Syria are members. In the case of the Paris Convention and the Berne Convention, there are also Executive Committees which meet in each year in which the Assemblies of those Unions do not meet in ordinary session.

⁴ The WIPO General Assembly, the WIPO Conference, the WIPO Coordination Committee, the Paris Union Assembly, the Paris Union Conference of Representatives, the Paris Union Executive Committee, the Berne Union Assembly, the Berne Union Conference of Representatives, the Berne Union Executive Committee, the Madrid Union Assembly, the Hague Union Assembly, the Hague Union Conference of Representatives, the Nice Union Assembly, the Nice Union Conference of Representatives, the Lisbon Union Assembly, the Lisbon Union Council, the Locarno Union Assembly, the IPC (International Patent Classification) Assembly, the PCT (Patent Cooperation Treaty) Union Assembly, the Budapest Union Assembly and the Vienna Union Assembly.

In 1991, the Assembly of the Union for the International Registration of Marks (the TRT Union) decided to “freeze” the TRT and to suspend future ordinary sessions of the TRT Union Assembly

[Footnote continued on next page]

a general rule, meet in ordinary session once every two years.⁵

(b) Committees Established by Treaty Provisions

In the case of four treaties, in addition to the Assembly of the Union constituted under the treaty, committees called “Committees of Experts” are established directly by the treaty. These are the four treaties establishing international classification systems, namely, the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 1957, the Locarno Agreement Establishing an International Classification for Industrial Designs of 1968, the Strasbourg Agreement Concerning the International Patent Classification of 1971 and the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks of 1973. Under each of these treaties, a Committee of Experts is constituted for the purpose of adopting revisions to the classification systems established by the treaties.

(c) Committees Constituted Under One or More of the Main Organs

There are a large number of committees constituted for various purposes under one or more of the main organs established by the WIPO Convention or the treaties administered by WIPO. They may be divided, somewhat arbitrarily, into three categories:

(i) The Budget Committee and the Premises Committee, the members of which are elected for four-year terms by the WIPO General Assembly.

(ii) Three Permanent Committees, namely

- the Permanent Committee for Development Cooperation Related to Industrial Property, established by the WIPO Conference;
- the Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights, established by the WIPO Conference;
- the Permanent Committee on Industrial Property Information, established by the Assemblies of the Paris, PCT (Patent Cooperation Treaty) and IPC (International Patent Classification) Unions and the WIPO Coordination Committee.

(iii) Ad Hoc Committees of Experts established for specific purposes. The Ad Hoc Committee of Experts has been the vehicle used traditionally within WIPO as the

[Footnote continued from previous page]

(see document TRT/A/VII/1, paragraphs 3 and 4, and document TRT/A/VII/2, paragraph 6). The Assembly of the Union for the International Registration of Audiovisual Works (the FRT Union) similarly suspended, in 1993, ordinary sessions of the FRT Union Assembly (see document FRT/A/III/2, paragraph 22, and document FRT/A/III/3, paragraph 19).

⁵ This is the general rule, but there are exceptions. For example, the WIPO Coordination Committee meets in ordinary session every year.

means for preparing the preliminary work for a new instrument establishing new norms in the area of intellectual property, usually in the form of a treaty. If and when the work of a Committee of Experts has reached a sufficiently mature stage, a diplomatic conference has been convened to conclude the treaty on the subject matter that has been considered by the Committee of Experts. The Committee of Experts has thus been an ad hoc body in the sense that its mission and life are intended to be of limited duration. Over recent years, within WIPO, there have been the following Committees of Experts:

- Committee of Experts on the Settlement of Disputes Between States in the Field of Intellectual Property
- Committee of Experts on the Patent Law Treaty
- Committee of Experts on the Development of the Hague Agreement Concerning the International Deposit of Industrial Designs
- Committee of Experts on Well-Known Marks
- Committee of Experts on Trademark Licenses
- Committee of Experts on a Protocol to the Berne Convention
- Committee of Experts on a Possible Instrument on the Protection of the Rights of Performers
- Committee of Experts on a Protocol Concerning Audiovisual Performances

(d) Working Groups

A fourth category of body within WIPO consists of working groups established by a Permanent Committee or a Committee of Experts. The WIPO General Rules of Procedure, which govern the meetings of all bodies convened under the auspices of WIPO to the extent that any such body does not adopt special rules of procedure (see Rule 1(1) of the WIPO General Rules of Procedure), make provision for the establishment of such working groups for specific purposes (see Rule 12 of those Rules). Similarly, certain special rules established for a particular body envisage that such working groups may be constituted. For example, Article 6 of the Organizational Rules of the Permanent Committee on Industrial Property Information provides for that Committee to establish working groups. In general, it may be said that working groups are intended to have limited missions and limited lives and to facilitate the discussion and resolution of particular questions that, because of the technical or confidential nature of the questions, are more appropriately dealt with in a small group than in the larger Committee of Experts or Permanent Committee.

V. The Changes Envisaged in the Draft 1998-99 Program and Budget

The draft Program and Budget presented by the Director General for the 1998-99 biennium envisages a number of changes in the governance structure of WIPO. Those changes, set out in accordance with the four tiers of bodies described in the preceding section (Section IV), are as follows:

(a) The Main Organs

The constituent organs of member States established by the WIPO Convention and the treaties administered by WIPO are constituted by treaties and cannot, accordingly, be modified

within the context of a program and budget. No changes are thus proposed to this category of organs in the draft Program and Budget for 1998-99. However, the Director General, conscious of the number of such organs and the consequent complexity of their operation, intends to initiate a review of the working procedures of these organs to see to what extent, if any, simplification might be achieved in those working procedures. It might be possible, for example, to simplify the process of election of officers of the various Assemblies and other organs of the Unions that, typically, occupies a considerable amount of the working time available at the ordinary sessions of the Governing Bodies. It might also be possible to envisage a division of the items on the agenda of the annual meetings of the Assemblies into two categories, one dealing with general policy questions affecting the Organization as a whole, and the other dealing with technical questions of special interest only to one particular Union. Such a division may facilitate a more efficient use of the time available during the meeting, as well as enable delegations to plan the timing of the participation of their various members in a more effective way.

At the September 1997 session of the General Assembly, it was agreed that the International Bureau should prepare for the 1999 ordinary session of the General Assembly a paper outlining options or principles which could be used to re-establish overall seat allocations on the Coordination Committee. In this regard, it might be possible, for example, to re-define the membership of the Coordination Committee by eliminating the Executive Committees of the Paris and the Berne Unions through the special procedure envisaged in Articles 17, 17 and 26 respectively of the WIPO Convention, the Paris Convention and the Berne Convention. This would be an efficient way of eliminating Committees which no longer serve a useful purpose under the governance structure of WIPO.

(b) Committees Established by Treaty Provisions

Since these committees are governed by treaty provisions, no changes are proposed in respect of them in the draft Program and Budget for 1998-99.

(c) Committees Constituted Under One or More of the Main Organs

Several changes in the constitution and operation of these Committees are proposed in the draft Program and Budget for 1998-99. They are as follows:

(i) For the purposes of streamlining procedures and avoiding duplication, the Director General intends to propose the merging of the Budget Committee and the Premises Committee into one committee dealing with program, budget, premises and finance. The Budget Committee and the Premises Committee were established by the WIPO General Assembly and their present composition was determined by that Assembly at its September 1997 meeting (the present memberships were elected for a term of four years—see document AB/XXXI/12, paragraphs 169 and 170). The proposal to merge the two Committees will be presented by the Director General to the WIPO General Assembly at an intended extraordinary session in September 1998.

(ii) In respect of the three Permanent Committees, it is proposed

- that the structure and functions of the Permanent Committee for Development Cooperation Related to Industrial Property and the Permanent

Committee for Development Cooperation Related to Copyright and Neighboring Rights be reviewed and that their possible merger into a single body, the Permanent Committee on Intellectual Property Development, be examined (see Sub-program 06.3, page 64, of the draft Program and Budget, 1998-99, document A/32/2);

– that the Permanent Committee on Industrial Property Information be re-constituted with an enhanced and re-focused mandate in the form of a Standing Committee on Information Technologies (SCIT) (see Sub-program 12.3, page 119 of the draft Program and Budget, 1998-99, document A/32/2). This change is the subject of a separate item on the draft agenda of the meetings of the Assemblies and Conferences of WIPO and the Unions administered by WIPO that are to be held from March 25 to 27, 1998 (see documents A/32/1 Prov.1 and A/32/3).

(iii) It is proposed that the system of Committees of Experts be replaced by the following Standing Committees:

- Standing Committee on the Law of Patents
- Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications
- Standing Committee on Copyright and Related Rights
(see Sub-programs 09.1, 09.2 and Program 10 of the draft Program and Budget, 1998-99, document A/32/2).

In addition, it is proposed that two Advisory Committees be established, namely, an Advisory Committee on Enforcement of Industrial Property Rights in Global Electronic Commerce (see Sub-program 09.3, page 91, of the draft Program and Budget, 1998-99, document A/32/2) and an Advisory Committee on Management of Copyright and Related Rights in Global Information Networks (see Sub-program 10.5, page 101, of the draft Program and Budget, 1998-99, document A/32/2).

The abovementioned Standing Committees are intended to constitute the vehicles by which discussions can proceed for the progressive development of international intellectual property law (that is, the establishment of norms). It is intended that the Standing Committees be open to all member States of WIPO. Each Standing Committee would determine, within its respective sphere of competence, and in accordance with the program and budget, its own agenda of items on which work should proceed. It would also determine the priority to be accorded to those various items. When work on a particular area reaches a sufficiently mature stage, the Standing Committee would recommend to the WIPO General Assembly and the Assembly of any concerned Union the further action that it considered appropriate in respect of that area, such as, for example, the convening of a diplomatic conference for the purpose of concluding a treaty or the adoption of a resolution or guidelines by the WIPO General Assembly or other Assembly.

The two Advisory Committees are proposed (in lieu of Standing Committees) because it is considered that the subject matter to which they are addressed requires further exploration before work can be undertaken towards the establishment of norms.

It is considered that the system of Standing Committees, as opposed to Committees of Experts, has the following advantages:

1. It may be easier, both for member States and for interested intergovernmental and non-governmental organizations, to follow the work within WIPO on the progressive development of international intellectual property law than through a series of Committees of Experts, each bearing different names.
2. The Standing Committees, being open to membership by any member State of WIPO, better reflect the move in recent years away from the conclusion of special agreements open for accession only to States party to the Paris or Berne Conventions. In the past, Committees of Experts have generally tended to be established by either the Paris Union Assembly or the Berne Union Assembly and to be open for membership only by members of those corresponding Unions.
3. The administration of the Standing Committees would be marginally simpler for the International Bureau, as would participation in them by non-governmental organizations. At present, non-governmental organizations that are not accredited with observer status at WIPO (such as national non-governmental organizations) have to obtain separate ad hoc accreditation for each Committee of Experts in which they wish to participate as observers. With the Standing Committees, it would be possible for such organizations to obtain observer status with a particular Standing Committee in its sphere of interest once, without having to repeat the exercise for each Committee of Experts that is formed.
4. It may be easier for member States to determine their priorities within particular areas of intellectual property in the Standing Committees than in a system of separate and distinct Committees of Experts.

Each Standing Committee would need to decide, at its first meeting, the arrangements that it wishes to follow with respect to at least two procedural questions.

First, the Standing Committee would need to decide the rules of procedure that it wishes to adopt. It is proposed here that, insofar as possible, the WIPO General Rules of Procedure (Publication 399 Rev.3) ought to apply. It would, however, be appropriate to envisage a review of those General Rules of Procedure at the September 1999 session of the General Assembly with a view towards making explicit reference to the Standing Committees. The WIPO General Rules of Procedure apply to all bodies convened under the auspices of WIPO to the extent that any such body does not adopt special rules of procedure (see Rules 1(1)). It is suggested that any special rules of procedure should be limited to specific questions which necessarily require a deviation from the General Rules of Procedure (such as, for example, the question of the membership of the Standing Committee, if it is intended to make any special provision in this regard).

Secondly, each Standing Committee would need to decide whether it wishes to elect a new Chair for each session, or whether it wishes to elect a Chair for a given term, such as one or two years, to ensure a continuity in the direction of discussions, it being recalled that it is expected that each Standing Committee will meet twice yearly. Practice in this respect in the

Ad Hoc Committees of Experts has varied. In some Committees, new Chairs have been elected at each new session, while in others there has been a continuity in the chair.

(d) Working Groups

Since working groups are, by definition, transient in nature and both the creation of, and subsidiary to, the Committee or other body which establishes them, the draft Program and Budget for 1998-99, in general, leaves the question of the establishment of working groups to the various Permanent Committees or Standing Committees that will function throughout the biennium. An exception is made in the case of the proposed Standing Committee on Information Technology (SCIT). In view of the novelty of the work of SCIT, the draft Program and Budget suggests that certain (“the minimum possible number”) working groups be established by SCIT, such as an Information Infrastructure Working Group, a Standards and Documentation Working Group and a Security Working Group (see Sub-program 12.3, page 119, of the draft Program and Budget, 1998-99, document A/32/2; as well as document A/32/3).

(e) Advisory Commissions

A new category of body is proposed in the draft program and budget, directed at giving a direct voice to the private sector or non-State actors. It is proposed that two Advisory Commissions, the Policy Advisory Commission and the Industry Advisory Commission, be established to play independent advisory roles in relation to the Director General’s policy making and medium-term planning (see Sub-program 01.3, page 7, of the draft Program and Budget, 1998-99, document A/32/2). As stated in the draft Program and Budget, it is not intended that the Advisory Commissions replace the role of member States in the determination of the policy and program of the Organization. Their role is advisory and their reports or recommendations will be submitted to the member States for the consideration and evaluation of the member States.

VI. Summary

The Annex contains a summary of the existing and proposed governance structure outlined in this document.

[Annex follows]

PRESENT STRUCTURE	PROPOSED NEW STRUCTURE
1. <u>Main Organs</u>	
The Assemblies and Conferences of member States	No change
2. <u>Committees Established by Treaty Provisions</u>	
Committees of Experts under the Nice Agreement, the Locarno Agreement, the Strasbourg Agreement and the Vienna Agreement	No change
3. <u>Committees Constituted Under One or More of the Main Organs</u>	
(i) Budget Committee Premises Committee	To be merged into one Committee
(ii) Permanent Committee for Development Cooperation Related to Industrial Property	Permanent Committee on Intellectual Property Development
Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights	
Permanent Committee on Industrial Property Information	Standing Committee on Information Technology
(iii) Ad Hoc Committees of Experts (eight)	Standing Committee on the Law of Patents Standing Committee on the Laws of Trademarks, Industrial Designs and Geographical Indications Standing Committee on Copyright and Related Rights Advisory Committee on Enforcement of Industrial Property Rights in Global Electronic Commerce Advisory Committee on Management of Copyright and Related Rights in Global Information Networks (five)

4. Working Groups

No change

Various

5. —

Advisory Commissions

Policy Advisory Commission
Industry Advisory Commission

[End of Annex and of document]