

# WIPO



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## **WIPO GENERAL ASSEMBLY**

### **Twenty-Third (10th Extraordinary) Session Geneva, September 7 to 15, 1998**

#### **POLICY ON BUDGET SURPLUS**

*Memorandum by the Director General*

1. The Assemblies of the Member States of WIPO, at their thirty-second series of meetings on March 25 to 27, 1998, approved the program and budget of the 1998-1999 biennium, and noted the Director General's announcement to make a strategic, long-term proposal on the utilization of the budget surplus and the reserve funds for consideration at their next session in September 1998 (A/32/7, paragraph 93 (ii)). This document contains, in the first part, the proposals on the utilization of the budget surplus of the 1998-1999 biennium (as summarized in the Annex), and, in the second part, the long-term strategy. The proposals on the policy on reserve funds are contained in document WO/GA/23/3.

#### **Part I: PROPOSALS ON THE UTILIZATION OF THE BUDGET SURPLUS OF THE 1998-1999 BIENNIUM**

2. The budget surplus of the 1998-1999 biennium, as approved by the Member States, amounts to a total of 16.4 million Swiss francs (A/32/2-WO/BC/18/2, Annex 7). This budget surplus was due to the sharp rise of 31 per cent in total budgeted income during the 1998-1999 biennium generated largely by the rapidly increasing demand for global protection services under the PCT system, and a reduction of program delivery costs (WO/BC/18/6-WO/PC/8/3, paragraph 54).

3. The proposed additional costs of 9.3 million francs are largely for program costs (8.4 million francs) while additional staff costs (0.9 million francs) have been kept proportionally lower. At the same time, further PCT fee reductions are proposed, effective January 1, 1999, totalling 7.0 million francs. The proposed additional activities and further PCT fee reductions, which are largely to the benefit of the users of the PCT system, will utilize the major part of the budget surplus (16.5 million francs) of the 1998-1999 biennium mainly for non-recurrent projects, resulting in a revised budget surplus of 0.2 million francs.

#### Nationally-Focused Action Plans in Support of Cooperation for Development

4. A large number of Member States emphasized the urgent need for the implementation of enhanced nationally-focused action plans aimed at developing and strengthening national enforcement mechanisms to facilitate the implementation of the TRIPS Agreement. It is important that cooperation for development and technical assistance continue to reinforce the national policies and national offices which are responsible for the application of legal norms and to protect the interests of the users. The objectives of these nationally-focused action plans are to put in place legislative, operational frameworks and enforcement systems and to enhance technology transfer. These projects require training of police, customs and other enforcement officials and special training for intellectual property officials in courses and workshops, in close cooperation and coordination with the WIPO-Worldwide Academy, strengthening the capabilities of law enforcement agencies through the creation of information networks and databases and modernizing national offices through modern management techniques and automation of their patent and trademark administration. The obligation of developing countries to become compliant with the provisions of the TRIPS Agreement by the year 2000 and the urgent need of these countries for more assistance to meet these requirements in time require the implementation of ten additional action plans in countries with a high potential for intellectual property activities and most urgent needs, at total non-recurrent costs of 1.5 million francs.

#### Assistance to Least Developed Countries (LDCs)

5. A number of Member States emphasized that least developed countries were facing serious constraints in infrastructure and financial resources in fully participating in WIPO activities and that LDCs would need special assistance. Some Member States requested that LDCs be introduced in the mainstream of WIPO's activities and that part of the budget surplus be directed towards the countries with the most urgent needs. At present, the Secretariat has no focal point for LDCs despite the large volume of development cooperation activities; 48 Member States of WIPO are LDCs and need special attention. In order to better respond to the particular needs of LDCs, and to facilitate their integration in WIPO's activities, thus advancing the protection and use of intellectual property world-wide, it is proposed to establish a focal point for LDCs, following the practice of many United Nations agencies and programs. This would also enhance inter-agency cooperation with other international organizations or institutions such as the United Nations, UNCTAD, UNCITRAL and WTO. This would require the establishment of one Professional post and secretarial assistance to formulate and implement a special LDC action plan until the end of this biennium. The total additional costs for this project, including equipment, furniture and supplies, are estimated at 360,000 francs.

Intellectual Property and Global Electronic Commerce

6. Many Member States welcomed WIPO's policy initiative to study and coordinate the important intellectual property policy issues that arise in electronic commerce. Work on electronic commerce issues has already been under way in several international organizations, including the WTO, UNCITRAL, UNCTAD, ITU and OECD. Member States emphasized that WIPO has a leading role to play in this area and should take up work as a high priority so that it is not overtaken by events. WIPO was requested to work towards an overall intellectual property digital framework, including implementation of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, the domain names interface with trademarks on the Internet, protection of company names under Article 8 of the Paris Convention, protection of non-original databases, territorial conflict of laws, international dispute settlement alternatives, and liability of on-line service providers. Member States emphasized that WIPO should be the lead agency in establishing the rules governing the use of intellectual property in electronic commerce and recognized WIPO as a leading user of the tools developed for electronic commerce in the provision of intellectual property services. It was noted that there is a need in certain instances for a trusted third party to facilitate transactions and to provide a secure environment for electronic commerce. The Director General is of the view that, in providing services under the PCT, Madrid and Hague systems, dispute-resolution and cooperation for development, WIPO should demonstrate, in the provision of its services, leadership in the development tools for authentication, confidentiality and security in electronic commerce.

7. It is necessary to undertake a series of activities designed to raise the level of awareness of the intellectual property issues involved in global electronic commerce. While the benefits of global electronic commerce are potentially immense for the whole world, there is, at present, some unevenness in the practical use, and access to the benefits, of such commerce. In order to assist in ensuring that all countries may share in these potential benefits, it is proposed to hold three regional conferences with a view to bringing together Government policy makers and interested parties. In addition, it is proposed to hold an international conference in Geneva in 1999 to examine the intellectual property issues involved in global electronic commerce. The program would include both plenary and break-out working sessions on WIPO's activities related to electronic commerce, such as the development of the appropriate intellectual property legal framework, the use of tools of electronic commerce in the delivery of services under the PCT and the Madrid and the Hague systems and the administration of WIPO services in relation to private party dispute resolution.

8. It is hoped that the activities described in the foregoing paragraph would not only assist in raising awareness of the implications of global electronic commerce, but also enable the Member States to formulate a coherent plan for WIPO's future program in this area. In this regard, the possibility of a framework of principles or a framework for an action plan is envisaged, for possible adoption in an extraordinary session of the WIPO General Assembly in 1999.

9. In addition, as a specific exercise, WIPO has been requested to initiate an international process to develop recommendations on certain intellectual property questions related to the interface between Internet domain names and trademarks. In view of the urgency of the need to develop the recommendations, which are to be made to the not-for-profit corporation that is being formed to manage the Internet domain name system, preparations for this process have

been commenced. A first Request for Comments (WIPO RFC-1) has been published and circulated to Member States and all interested parties and a web site for the process has been developed (accessible through "Internet Domain Names" on the main WIPO web site, www.wipo.int).

10. It is planned that the WIPO Internet Domain Name Process be carried out with the widest possible participation from all interested parties and sectors. A combination of Internet-based consultations, paper-based mail consultations and physical consultations in the various regions will be used.

11. In order to carry out the proposed activities concerning intellectual property and electronic commerce and the WIPO Internet Domain Name Process, it will be necessary to appoint two consultants as a focal point. There is also a need for a small group of experts, constituted on a basis that provides geographical representation, as well as representation of the trademark, technical and public interest sectors of the Internet, to assist in the conduct of regional consultations and the formulation of recommendations for the WIPO Internet Domain Name Process. The total additional non-recurrent costs for this project in the current biennium, including advisory missions, are estimated at 2.0 million francs. Further information on the project is provided in document A/33/4 ("Intellectual Property and Electronic Commerce").

#### Corporate Image of Intellectual Property

12. As issues of intellectual property come to the forefront of Government economic policies, business strategy and the public, it becomes evident that WIPO must assume a key international role in providing accurate and up-to-date information on intellectual property. The long-term solution to the problem of lack of respect for and protection of intellectual property is the development and implementation of an active strategy of sustained public information and communication at the national level. Many developing countries lack the resources and expertise to carry out such public communication strategies and campaigns. It is thus incumbent on WIPO today to support Member States by providing resources and expertise. The support would involve advice to Governments in developing policies and action plans for public information, the creation and distribution of information products, including audiovisual products, and providing facilities for the transmission of information products through new information technologies. In carrying out such a support program for Member States, WIPO must be provided with the requisite expertise and means. The experience gained in the first five months of 1998 has shown that it will be crucial first to strengthen the Secretariat with experts able to create the corporate image of the Organization itself, as the international symbol of respect for and protection of intellectual property, and to support the public education efforts of Member States through advisory missions, training of individuals in the media and non-governmental organizations, and provision of suitable audio-visual, aural and multi-media products adapted to particular interest groups. The medium and message to be transmitted have to be carefully selected and prepared, particularly in certain areas of public policy and concern. Such a program calls for additional expertise that is not available in the Secretariat.

13. It is therefore proposed to undertake ten advisory missions as well as to engage one consultancy for ten months to develop new written, visual and audio-visual products for use in Member States. The consultant will also provide training in communication techniques and

skills for nationals of developing countries in respect of intellectual property issues. It is further planned to hold a first regional seminar/training course, in a developing country. It will be necessary to create special visual, audio-visual and aural products in different languages, suitable for transmission via the media. In order to develop the corporate image of WIPO and intellectual property, a graphic designer will have to be appointed as a consultant. The total additional non-recurrent costs of this project are estimated at 605,000 francs.

### Biological Diversity and Biotechnology

14. Biological diversity and biotechnology has become an important emerging global issue because of increased interest in linkages between intellectual property aspects of biotechnology and the conservation, use and benefit-sharing of biological resources as provided for in the Convention on Biological Diversity. This new focus, which was welcomed by Member States during the March 1998 session of the Assemblies, is distinct from previous WIPO activities in the field, which dealt with biotechnology as an issue primarily related to the transfer of technology. Experience gained this year has revealed a need for technical and legal expertise in the area of biotechnology that is not available at WIPO. Some issues, such as the patent aspects of genetic sequencing, require in-depth research and analysis. If WIPO is to contribute to developments in this area, a post of Senior Legal Officer, with combined biotechnology and industrial property expertise, is urgently needed.

15. WIPO is at present preparing a study on the use of intellectual property rights (IPRs) in the transfer of technology under multilateral environmental agreements (MEAs). The issues which must be examined vary widely according to the industry, technology, legal and regulatory framework, and the particular MEA involved. Member States pointed out that there is a need for establishing the linkage between IPRs and the objectives of MEAs. A deeper level of analysis of applications of IPRs in the promotion of transfer of technology under MEAs would require a six-months' consultancy. The estimated additional non-recurrent costs for implementation of this project and completion of this one-time study until the end of the 1998-1999 biennium for one Professional post, six months of consultancy, secretarial assistance, equipment, furniture and supplies amount to 429,000 francs.

### Protection of Folklore

16. A large number of Member States, in particular from developing countries, have requested WIPO to study the role of intellectual property in the documentation, conservation and dissemination of documentation on folklore, prior to the development of possible new forms of protection. This work would involve studying the creation of databases at existing institutions working in this field and assistance in the establishment of national offices in the regions, providing infrastructure, assistance and intellectual property advice for recording, storage and compilation of data on folklore as well as facilitating the exchange of the data through various means, including the use of information technologies and digital networks. The development of this infrastructure and databases would allow improved identification and documentation of folkloric works at the regional, national and local levels; improved conservation of these works; their wider dissemination and protection through application of existing legal frameworks, including possible linkage with geographical indications. Specific requests include initiatives to study and establish a framework for folklore, expansion, computerization and networking systems, assistance in the development of specialized documentation software, training of local officials of these institutions in using information

technologies, as well as additional fact-finding missions. In order to conduct these activities and to complete this important study in the 1998-1999 biennium, a post of Program Officer is needed in 1999 with combined information technology, anthropology and intellectual property expertise. The additional non-recurrent costs of this project are estimated at 488,000 francs.

#### Increased Participation in Standing Committees

17. The establishment of the Standing Committees on the Law of Patents, the Law of Trademarks, Industrial Designs and Geographical Indications, Copyright and Related Rights and Information Technologies and the Advisory Committee on Protection of Industrial Property Rights in Global Electronic Commerce was a major policy initiative of the Secretariat to facilitate the progressive development and harmonization of international intellectual property law in giving Member States a more effective mechanism for setting priorities, allocating resources and ensuring better coordination. The expertise and wide representation of Member States enable these Committees to advance discussion on the substance of the issues until agreed solutions are found and to make recommendations to the Assemblies of the Member States of WIPO. It is, therefore, necessary that a representative number of countries from each region have the means to attend the sessions of the Standing Committees and to make contributions to the Assemblies of the Member States in finding solutions. A number of Member States have requested the Director General, at the recent session of the Assemblies of the Member States of WIPO, to facilitate their participation at the planned sessions of the Standing Committees. It is proposed to increase WIPO's financial assistance in facilitating attendance to these important meetings to 26 participants - five for Africa, five for the Arab States, five for Asia and the Pacific plus one for China, five for Latin America and the Caribbean and five for former CIS countries - to ensure adequate representation of Member States from all regions. It should be noted that the sessions of the Standing Committees are open to all Member States of WIPO. Sufficient funds have already been allocated for the Standing Committees on the Law of Patents and on Copyright and Related Rights in the 1998-1999 program and budget. The additional costs are estimated at 492,000 francs.

#### Increased Use of Working Languages

18. A large number of Member States emphasized, at the sessions of the Budget and Premises Committees and the Assemblies of the Member States in March 1998, the importance of providing interpretation and translation of documents in all working languages at the important meetings of WIPO in order to facilitate larger participation in the work of expert bodies, in particular in the new Standing Committees. It has become the practice to provide simultaneous interpretation and translation of main documents in all six working languages for the Assemblies of the Member States of WIPO, the Coordination Committee and the Budget and Premises Committees. In view of the estimated high costs of interpretation and translation of documents at WIPO meetings into six languages, the related increase in administrative support services and significantly higher needs for office premises and conference facilities which are not available at WIPO at present, the Secretariat is at present studying possibilities of cost savings through computer-assisted translation and outsourcing of these activities. It is, therefore, recommended that the Secretariat complete its current assessment of the various alternatives of enhanced and more cost-effective language services and determine the long-term financial and operational implications of this proposal before providing large-scale interpretation and translation in all working languages at WIPO meetings. In the meantime, the language services at WIPO will be further improved and additional interpretation and

translation will be provided, as necessary, to the Standing Committees at additional costs of 463,000 francs for interpretation and 290,000 francs for translation which will be financed from the existing resources of the 1998-1999 budget.

#### Conversion of PCT Pamphlets into Character Coded Format

19. There is an urgent need to make the full text of published international applications also available in character coded form in order to make the full text searchable. For search purposes, patent applications and/or patents from a large number of countries are already available in full text searchable form. However, published international applications do not exist in such format. In the context of the automation of the PCT system during the next three to four years, it is foreseen to publish international applications in full text searchable format. Until then, it is necessary, in order to meet the needs of those searching patent information, to convert the full text of published international applications into a searchable format. It is proposed, as a preliminary measure, that the Secretariat provide, after international publication, for the conversion of international applications published in Latin characters and in Japanese into full text searchable format and make this text available to the interested Offices and other interested parties as from January 1999. As regards the conversion of international applications published in Chinese and Russian, the Secretariat does not yet have the necessary information on the technical details and on the cost, and it will engage in consultations with the interested Offices; subject to the availability of the necessary information, proposals in that respect will be made to the March 1999 session of the Budget Committee.

20. The estimated annual costs for the conversion of the text of international applications published in Latin characters and in Japanese amount to 2.1 million francs for 1999 and will thereafter be included in the draft program and budget for the 2000-2001 biennium. Those costs consist of the following:

- Latin characters: approximately 1,190,000 Swiss francs, on the basis of a price of 0.72 Swiss francs per page for some 1,650,000 pages to be converted in 1999;

- Japanese characters: approximately 590,000 Swiss francs, on the basis of a price of 3.75 Swiss francs per page for some 157,000 pages to be converted in 1999;

- Approximately 320,000 Swiss francs for initial expenses for developing a system for the electronic delivery of the converted text and weekly creation of the media containing the machine readable data.

The final cost will depend on the exact number of pages to be scanned in 1999 and the final price per page, which will be known only after an international tender for the text conversion. A Request for Proposal is planned to be issued promptly after the approval of the proposed budget.

#### Promotion of the PCT System in Developing Countries and Countries in Transition

21. A number of Member States requested the Secretariat to make concerted efforts in promoting the accession of developing countries to the PCT and to provide more training and information services to new PCT Contracting States with a view to enhancing the use and increasing awareness of the benefits of the PCT system, especially in developing countries and

countries in transition. Delegations noted that a large number of developing countries do not have sufficient information on the use and benefits of the PCT system, or do not have the necessary infrastructure and are not yet in a position to accede to and to apply the PCT system. In order to promote the PCT system more forcefully towards its universal use in the near future, more promotion, information and training activities have to be carried out in developing countries and countries in transition in the course of the current biennium. It is, therefore, proposed to organize in developing countries and in certain countries in Europe and Asia additional missions, information meetings and training courses in the current biennium, to be undertaken by the existing staff of the Developing Countries Division of the Office of the PCT in cooperation with the staff of the Cooperation for Development Sector. The additional non-recurrent costs are estimated at 800,000 francs for the current biennium.

#### Promotion of the Madrid System in Developing Countries and Countries in Transition

22. The Director General indicated, at the sessions of the Budget Committee and the Assemblies in March 1998, that he intended to take new initiatives to promote wider application of the Madrid system and the universal use of this global protection system and service. Special attention in that regard should be paid to the particular circumstances and requirements of developing countries and certain countries in Europe and Asia, with a view to promoting awareness of the advantages of the international registration system, assisting those countries in the drafting of legislation, and training staff to facilitate their access to the Madrid system. It is, therefore, proposed to provide additional promotional, training and advisory activities and to organize in developing countries and countries in transition, in the remainder of the 1998-1999 biennium, regional meetings, advisory/training missions and study visits by officials of the countries concerned. It is further proposed to establish a facility for financing language courses for staff of the Trademark Offices of the countries concerned and a facility to meet urgent equipment requirements of such countries. In addition, secretarial assistance will be required. The additional non-recurrent costs amount to 500,000 francs for the current biennium. The Secretariat expects that the additional promotion activities will further increase the use of the Madrid system, thus increasing the estimated fee income from the expected larger number of registrations and renewals of trademarks and eventually reducing the budgeted deficit of 1.7 million francs of the Madrid Union for the 1998-1999 biennium and for future years.

#### Further PCT Fee Reductions

23. A number of Member States reiterated, at the sessions of the Budget Committee and the Assemblies of the Member States of WIPO in March 1998, the need to reduce excess revenues of WIPO and to use part of the budget surplus of the 1998-1999 biennium in further reducing PCT fees. The Director General noted in this respect that the PCT fee reduction by 15 per cent, effective January 1998, was not a single event; the question of further PCT fee reductions was an ongoing process and WIPO was very open to any proposals that delegations wished to make in the future in this respect (WO/BC/18/6-WO/PC/8/3, paragraph 58). The Director General emphasized that the use of the budget surplus should be in the best interests of the users of the intellectual property system. It is now proposed to further reduce the PCT fees within the limits of the budget surplus of the 1998-1999 biennium as from January 1, 1999, by adopting the following two measures:

- (i) the *first measure* consists in reducing the maximum number of designation fees payable from 11 to 10, thereby reducing the maximum amount payable as designation fees from 1,650 francs to 1,500 francs;
- (ii) the *second measure* consists in granting to all PCT applicants who make use of electronic filing software a discount of 200 Swiss francs, as an incentive, to be deducted from the total amount of PCT fees payable to the receiving Office for the benefit of the International Bureau. This measure is intended to promote the electronic filing of PCT international applications which will greatly facilitate and expedite the PCT operation and ultimately result in further cost savings.

24. The combination of these two measures would result, for an applicant designating all PCT Contracting States and using electronic filing software, in a reduction in fees payable for the benefit of the International Bureau from 2,300 francs to 1,950 francs, or savings of 15 per cent. The total saving for applicants under the first measure (reduction of the maximum number of designation fees) is estimated to amount to about 5.7 million francs. The second measure, based on expected 10 per cent of PCT applications using electronic filing software in 1999, is estimated to be about 1.3 million francs, giving a total reduction of PCT fee income of 7.0 million francs, or 5 per cent reduction of the PCT fees and budgeted PCT fee income for 1999 (see Annex). Further explanations on the proposal are provided in document PCT/A/26/1.

## Part II: LONG-TERM STRATEGY ON BUDGET SURPLUS

25. Some Member States expressed the view, at the last session of the Assemblies in March 1998, that if there were any surplus, it should be kept to a minimum, and in case of a large budget surplus, the fees for the use of the global protection systems should be reduced in the interest of the users of these systems. Other Member States noted at the seventeenth session of the Budget Committee in April 1997 that, in view of the continued large demand in the use of the PCT system and the significant increase in PCT fee income, it was not justifiable to propose a budget with a large deficit for any financial period and that a proposed deficit was inconsistent with WIPO's projected higher revenues than expenditures (WO/BC/XVII/5, paragraph 33).

26. The Director General reiterates his view that a budget surplus with an excess of income over expenditure reflects a conservative and prudent approach, ensuring that all budgeted expenses are covered by the estimated income and that economies are being made. The budget surplus of 16.4 million francs for the 1998-1999 biennium is the result of the fiscal stringency and tightness exercised in WIPO's program planning and budget for the 1998-1999 biennium (WO/BC/18/6-WO/PC/8/3, paragraph 54). The Director General notes that the Member States and the users of the intellectual property system should fully benefit from the increased use of WIPO's global protection systems, through increased program activities and enhanced services provided by the Secretariat, in response to growing demands, and in further reductions of Member States contributions and fees for the use of the global protection systems. A small budget surplus ensures that program activities and costs are covered by the budgeted income in case of a downturn in demand and lower fee income, thus avoiding a possible deficit. It also provides Member States the possibility to authorize the Director General, during the biennium, to utilize a small budget surplus, in meeting new, specific demands of Member States or responding to emerging needs. It should also be noted that a budget surplus is the result of

higher efficiency, productivity and cost savings while a zero-budget surplus is not necessarily more cost-effective and could imply lower budgeted income than projected and higher budgeted expenditure than necessary.

27. Bearing in mind the operational and financial needs of the Organization, as well as the principles of fiscal stringency and the need for greater efficiency, the Director General intends in future *to balance budgeted income and expenditure to the extent possible, and to limit any budget surplus to an appropriate level of about one per cent of budgeted income for a biennium*. Such a budget surplus is very small compared to the average budget surplus of 5.7 per cent per biennium over the last twelve years, including a maximum of 13 per cent in one biennium. This level is considered appropriate in view of the uncertainty in the demand for global protection services and related fee income and ensures at the same time that the level of the fees is not too high while providing Member States some flexibility during the biennium, if necessary.

28. The Secretariat will in future propose adjustments to the level of fees of the PCT, Madrid and Hague systems with a view to bringing the estimated income and expenditure of each system in future draft programs and budgets into balance. The Director General will keep Member States informed of demands for new activities or emerging needs during the biennium and may propose to utilize part of a budget surplus, up to one per cent of budgeted income for a biennium, to finance additional activities or fee reductions, if justified. In this connection, it is recalled that the Director General may only utilize a budget surplus following authorization by the Budget Committee and/or the Assemblies of the Member States. The Director General will keep Member States also informed on the actual program implementation and financial situation of the Organization in the context of the mid-term review based on the annual program implementation report. In case of a significantly higher demand for WIPO's global protection services during a biennium, and related higher income and expenditure, the Director General intends to submit proposals for additional activities and further fee reductions in the interest of Member States and to the benefit of the users of the global protection services.

29. The WIPO General Assembly is invited to decide:

*(i) to approve the utilization of the budget surplus of the 1998-1999 biennium as proposed in the present document;*

*(ii) to request the Director General, in presenting future draft program and budget documents, to maintain a policy balancing estimated income and expenditure to the extent possible and limiting any budget surplus at an appropriate level of about one per cent of budgeted income for a biennium (paragraph 27, above);*

*(iii) to request the Director General to propose during the biennium appropriate measures for adjustment of the budget and the actual surplus, including additional activities and fee reductions (paragraph 28, above).*

[Annex follows]