

## Program and Budget Committee

**Eighteenth Session**  
**Geneva, September 12 to 16, 2011**

### WIPO GOVERNANCE STRUCTURE

*prepared by the Chairpersons of the Coordination Committee and the Program and Budget Committee*

#### I. INTRODUCTION

1. Following a request from the Program and Budget Committee (PBC) at its sixteenth session held on January 12 and 13, 2011, a document on WIPO Governance structure was prepared by the Secretariat, which provided an update of an earlier document on WIPO's governance structure<sup>1</sup> and included, as attachments, (i) an updated version of Appendix I of document WO/GA/38/2; (ii) the views received from WIPO Member States on WIPO's governance; and (iii) an updated version of the governance structures of the United Nations and other intergovernmental organizations. For ease of reference, the document on WIPO Governance Structure and its Annex containing the views received from WIPO Member States, is attached.

2. At its seventeenth session held from June 27 to July 1, 2011, the PBC agreed that:

“(i) The Chairpersons of the Coordination Committee and the Program and Budget Committee shall produce a chairperson's paper, incorporating the comments of Member States and reflecting requests for additional information;

(ii) The Chair will report to the membership at the September PBC session.”

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<sup>1</sup> See documents A/32/INF/2 (February 20, 1998) and WO/PBC/17/2.Rev (May 20, 2011).

## II. RESPONSES RECEIVED FROM MEMBER STATES

3. Input from Member States addressing their views on WIPO's governance were received from, in the order of receipt, Monaco, China, United Kingdom, Japan, Australia, the Development Agenda Group, the African Group, the United States of America, the Republic of Korea, Germany and France. The responses are contained in the Annex to this document, and a summary is provided below.
4. The responses first addressed the Audit Committee's (the predecessor of the IAOC) recommendation contained in paragraph 74 of document WO/GA/38/2 "to consider the establishment, within WIPO, of a new more functional governing body meeting more frequently than the PBC, with a possible membership of twelve to sixteen" to review among other things its recommendations. The responses also provided more global reflections on WIPO's governance structure and functioning and suggestions as to possible ways of improving it.
5. Some Member States clearly saw the need for the establishment of an executive body for WIPO comprising Member States, with a membership that should be small enough to facilitate effective functioning and large enough to be equitably representative of various geographical regions. For those Member States, the need for such a body was based on three main justifications: the inefficiency of the current governing bodies, the need to enhance and normalize WIPO to ensure transparency and predictability and the need to improve the governmental oversight in WIPO.
6. On the other hand, some Member States, while recognizing the need for improvement in the governance structure in WIPO and the systematic review by Member States of the reports made by oversight bodies, such as the IAOC, were in favor of keeping the present structure while focusing on improvements to the existing bodies, which, to some degree has already commenced. The Coordination Committee and the PBC were considered to be the bodies that perform executive functions and examine oversight issues, and should continue to do so, with some possible improvements. The creation of an additional layer of governance was not considered desirable as it would further complicate an already complicated governance structure.
7. As a common denominator, all the Member States considered as a possible option the redesign and efficiency improvements of the existing Coordination Committee and PBC, as means to fill the gaps of the existing governance structure, while avoiding having to amend the WIPO Convention. While some considered that the mandates and functioning of these bodies had to be drastically revised, others proposed very concrete actions, some of which are already being implemented to strengthen the efficiency of the concerned bodies. These included an extension of the duration of the PBC, an increase in the frequency of its meetings, the early submission of working documents to allow sufficient time for delegations to examine them, and an emphasis on punctuality, which was also often mentioned as an easy means to improve efficiency.
8. In various responses, additional improvements included, for example, the need to establish clear criteria and mechanisms for the selection of officers for the various Committees and meetings in WIPO (something which is being developed informally), the need for Member States to agree on the agendas of the meetings before they start, a more efficient use of time in WIPO meetings, limiting opening statements to Groups, and allocating time slots for speakers, and the rationalization of the existing WIPO bodies in order to reduce their number.
9. The need to further study all these issues, as well as other issues relating to governance, within an intergovernmental mechanism, was raised.

### III. THE EXISTING GOVERNANCE STRUCTURE: THE COORDINATION COMMITTEE AND THE PROGRAM AND BUDGET COMMITTEE

#### The Coordination Committee

10. When created, the Coordination Committee was intended to be both an advisory and an executive organ. As an advisory organ, the Coordination Committee was intended to provide “advice to the organs of the Unions, the General Assembly, the Conference, and the Director General, on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization, and in particular on the budget of expenses common to the Unions”<sup>2</sup> (Article 8(3)(i) of the WIPO Convention).

11. In its role of “executive organ of the General Assembly and the Conference”<sup>3</sup>, the Coordination Committee:

- (i) prepares the draft agenda of the General Assembly and the draft agenda and program and budget of the Conference (Article 8(3)(ii) and (iii), WIPO Convention);
- (ii) nominates a candidate for appointment to the post of Director General by the General Assembly (Article 8(3)(v), WIPO Convention);
- (iii) approves the appointment of the Deputy Directors General (Article 9(7), WIPO Convention);
- (iv) gives advice to the Director General regarding the appointment of Assistant Directors General (Regulation 4.8 of the WIPO Staff Regulations and Rules);
- (v) approves the staff regulations (Article 9(7), WIPO Convention);
- (vi) approves agreements and arrangements between the Organization and intergovernmental organizations and international non-governmental organizations (Article 13, WIPO Convention).

12. As an executive organ, the Coordination Committee was intended to be composed of a lesser number of members than the total number of members of the Paris Union, the Berne Union or the Organization (see Article 8(1)(a) of the WIPO Convention) and to meet more frequently (namely annually) than the Assemblies of the Organization and the various Unions, which meet in ordinary session once every two years. Since each of the Executive Committees of the Paris and Berne Union is composed of a fraction of the number of members of the corresponding Union, the overall number of members of the Coordination Committee rises with increases in the number of members of the Paris and Berne Unions. There are, therefore, currently 83 members of the Coordination Committee.

13. Article 8(6) of the WIPO Convention provides that the Coordination Committee shall meet once every year in ordinary session, upon convocation by the Director General and in extraordinary session, upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

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<sup>2</sup> “Report on the Work of Main Committee V (World Intellectual Property Organization), Records of the Intellectual Property Conference of Stockholm (1967), Volume II, 1233.

<sup>3</sup> Ibid

14. In conformity with the relevant provision of the WIPO Convention, the Coordination Committee has met between 1970 and 2011, 41 times in ordinary sessions and 23 in extraordinary sessions.

#### The Program and Budget Committee

15. The PBC was established in 1998, as a result of the merger between the Budget Committee and the Premises Committee to deal with program, budget, premises and finance. The WIPO Financial Regulations and Rules define the PBC as “the Committee constituted by the General Assembly to deal with program, budget, personnel resources, premises and finance” (see WO/PBC/17/2 Rev. attached).

16. By virtue of the mechanism to further involve Member States in the preparation and follow up of the Program and Budget of the Organization, adopted by the Member States in 2006, the PBC meets once or twice every year, depending on whether it is a budget or off-budget year (see Annex IV of WO/PBC/10/5 and document A/42/14 paragraph 187). There are currently 53 members of the PBC.

#### **IV. INFORMATION REGARDING CONSTITUTIONAL REFORM**

17. In the overall context of the governance structure of WIPO, it is recalled that the Member States have previously considered a number of constitutional reform measures aimed at simplifying and rationalizing the governance structure of WIPO. In fact, Member States concluded at the time that WIPO was a constitutionally complex organization as a result of the historical evolution of the Organization, which had seen the progressive addition of new treaties, each usually establishing a separate Union of States with its own Assembly. At the time of these discussions, there were 21 Assemblies and other bodies of the Member States of WIPO and of the Unions administered by WIPO, which complicated the administration of the Organization in several aspects (A/33/3, July 24, 1998).

18. Upon a recommendation by the General Assembly in 1999, the Director General established a Working Group on Constitutional Reform (document A/34/16 paragraph 159, September 1999).

19. Two options were considered by the Working Group as a means to simplify the WIPO governance structure. The first option would consist of streamlining the 21 bodies by abolishing those bodies that, in practice, were not functioning as originally intended insofar as they did not consider and decide upon any items of substantive business. The second option envisaged a more radical re-organization of the structure of governing bodies through the transfer of decision-making authority for all treaties to a single organ, the WIPO General Assembly, with the retention of the WIPO Coordination Committee as the only other organ of Member States established at the treaty level.

20. In the context of the first option, the possibility of abolishing the Executive Committees of the Paris Union and Berne Union was discussed, which entailed discussions regarding the existence, constitution and functions of the Coordination Committee, since its membership is drawn from the membership of these Executive Committees. The Working Group recognized the desirability of abolishing these Executive Committees in the interest of a more efficient governance structure for the Organization, but it also recognized that it would require a new method of deciding on the composition of the WIPO Coordination Committee. Discussion in the Working Group of possible options for constituting the Coordination Committee led in turn to

reflecting upon the need for the Coordination Committee itself and its optimal size and functions should its continuance be considered desirable (WO/GAWG-CR/3/4, February 12, 2001).

21. Various options were discussed in the Working Group, the most radical being the abolition, which was considered by some delegations to be a natural consequence of the establishment of a unitary Assembly (in case this was decided). The existence of a single Assembly competent for all WIPO treaties would remove the need for the Coordination Committee to play an advisory or coordinating role between the various Unions, since those Unions would each share the same governing body. As for the role of the Coordination Committee as an executive organ, it was suggested that the Committee's functions in this capacity could either be attributed to a specific purpose non-statutory committee, such as the PBC, or to several such committees, which would be established by the unitary Assembly.

22. A second option that was considered was the retention of the Coordination Committee, with a modification of its composition as a consequence of the proposed abolition of the Executive Committees of the Paris and Berne Unions.

23. The various possibilities that exist for constituting the Coordination Committee were explored in a document presented to the Working Group (document WO/GAWG-CR/2/4). The pertinent paragraphs of that document are reproduced below:

"The first [possibility for constituting the Coordination Committee] would be to provide that [it] is to be composed of States that are members of the Organization and to establish a simple numerical or quantitative criterion, for example, 30 States or 25% of the total number of members of the Organization. This method of composing the Coordination Committee would respond to the function of that Committee as an executive organ, but not to its function as an advisory organ on matters of common interest to the Organization and the Unions administered by WIPO, since those Unions would not be formally reflected in the membership of the Committee. It is clear from the Records of the 1967 Stockholm Conference that the coordinating advisory function of the Coordination Committee was considered to be fundamental.

"An alternative option for constituting the Coordination Committee would be to provide for its membership to be composed of States which are representative of the membership of the various Unions administered by WIPO and of States that are members of the Organization but not members of any of those Unions. This was the intention of the drafters of Article 8 of the WIPO Convention in providing for the Coordination Committee to be constituted by the members of the Executive Committees of the Paris and Berne Unions (Article 8(1)(a)) and by *ad hoc* members drawn from those States members of WIPO but not of any of the Unions (Article 8(1)(c)).

"Since the Stockholm Diplomatic Conference of 1967, certain treaties have been concluded under the auspices of WIPO which are open to any State that is a member of WIPO, as opposed to being limited to States party to either the Paris Convention or the Berne Convention (for example, the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty and the Patent Law Treaty). It may be noted that, at the Stockholm Diplomatic Conference of 1967, the Report of Main Committee V (on the World Intellectual Property Organization) stated, with respect to the composition of the Coordination Committee, that "if the Organization subsequently agrees to administer international agreements unconnected with the Paris and Berne Unions, it will be necessary, where appropriate, to make special provision for the representation on the Coordination Committee of the countries party to those agreements.

“To reflect the view quoted in the preceding paragraph, a general principle might be devised whereby the membership of the Coordination Committee would be established by the WIPO General Assembly in such a way as to reflect fairly the membership of the Organization and of all Unions administered by the Organization. At the same time, to reflect the function of the Committee as an executive organ, a numerical or quantitative limitation on the membership could be established.”

24. Since no agreement was reached on the above-mentioned proposals, none of them was included in the final three recommendations on which agreement was reached by the members of the Working Group on Constitutional Reform and which were submitted to the Assemblies of the Member States in 2002<sup>4</sup>. Insofar as the Executive Committees and the Coordination Committee are concerned, the existing structure was maintained.

25. *The Program and Budget Committee is invited to take note of the information contained in this document and to consider what action, if any, they may wish to take.*

[Annexes follow]

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<sup>4</sup> The constitutional reform measures that were adopted by the WIPO General Assembly and the other concerned Assemblies of the Unions related to: (i) the abolition of the WIPO Conference; (ii) a change in the periodicity of the ordinary sessions of the WIPO General Assembly and the other Assemblies of the Unions, from once every two years to once every year; and (iii) in respect of the unitary contribution system and the changes in contribution classes, the formalization in the treaties of what is already in practice. These amendments have not entered into force yet, as the required number of notifications of acceptance has not been received.

## Program and Budget Committee

### Seventeenth Session (informal) Geneva, June 27 to July 1, 2011

#### WIPO GOVERNANCE STRUCTURE

*Document prepared by the Secretariat*

##### Introduction

1. At its sixteenth session held on January 12 and 13, 2011, the Program and Budget Committee (PBC) requested the Secretariat to prepare a document which should include:

- “(a) [an] update, based on Appendix I of document WO/GA38/2, on the governance structures of the United Nations and other intergovernmental organizations;
- (b) input from Member States, addressing their views on WIPO’s governance; and
- (c) a review of prior documentation on governance at WIPO”.

(see document WO/PBC/16/6/Prov., paragraph 359(v)).

2. The present document provides an update of an earlier document on WIPO’s governance structure prepared by the Secretariat<sup>1</sup>. It includes, as attachments, (i) an updated version of Appendix I of document WO/GA/38/2<sup>2</sup>; (ii) the views received from WIPO Member States on WIPO’s governance<sup>3</sup>; and an updated version of the governance structures of the United Nations and other intergovernmental organizations.

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<sup>1</sup> See document A/32/INF/2 (February 20, 1998).

<sup>2</sup> . The documents have been revised in a format that shows the changes made to the previous draft.

<sup>3</sup> The views are presented in the same format, without any editorial changes, as received from Member States.

## The Governance Structure of WIPO<sup>4</sup>

3. WIPO administers some 24 treaties, including six that establish global protection systems<sup>5</sup>, and four classification treaties<sup>6</sup>. Of those, 13 treaties establish international unions (“Unions”) that have an Assembly and in some cases an Executive Committee as well. Each Union can have both main organs, such as Assemblies and Executive Committees, as well as Working Groups, Committees, and *Ad hoc* groups pertaining to the execution of their respective treaties and related agreements. At present, the governance structure of WIPO can be conveniently grouped into the following five tiers of bodies:

### (a) The Main Organs

4. The three main organs of Member States established by the WIPO Convention are the WIPO General Assembly<sup>7</sup>, the WIPO Conference<sup>8</sup> and the WIPO Coordination Committee<sup>9</sup>.

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<sup>4</sup> The word “governance” is defined by Roget’s Thesaurus as “a system by which a political unit is controlled,” or “the continuous exercise of authority over a political unit.” In this paper, the reference to WIPO’s “governance structure” is to the system by which WIPO Member States exercise authority/control and perform functions according to the distribution of power within the Organization. The governance structure of WIPO therefore includes all the organs and bodies constituted by a WIPO-administered treaty, as well as all the subsidiary bodies established by those organs and bodies.

<sup>5</sup> The Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure; the Hague Agreement Concerning the International Registration of Industrial Designs; the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration; the Madrid Agreement Concerning the International Registration of Marks; the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks; and the Patent Cooperation Treaty.

<sup>6</sup> The Locarno Agreement Establishing an International Classification for Industrial Designs; the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks; the Strasbourg Agreement Concerning the International Patent Classification; and the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.

<sup>7</sup> The General Assembly consists of the States party to the WIPO Convention which are also party to the Paris or Berne Conventions. There are currently 177 Members of the General Assembly. The main tasks of the General Assembly are to:

- (i) appoint the Director General upon nomination by the Coordination Committee;
- (ii) review and approve reports of the Director General concerning the Organization and give him all necessary instructions;
- (iii) review and approve the reports and activities of the Coordination Committee and give instructions to such Committee;
- (iv) adopt the biennial budget of expenses common to the Unions;
- (v) approve the measures proposed by the Director General concerning the administration of the international agreements referred to in Article 4(iii);
- (vi) adopt the financial regulations of the Organization;
- (vii) determine the working languages of the Secretariat, taking into consideration the practice of the United Nations;
- (viii) invite States referred to under Article 5(2)(ii) to become party to [the WIPO] Convention;

5. In practice, the Conference never meets separately from the General Assembly. It meets during the same period and in the same room as the General Assembly, and the only ostensible difference in the proceedings is the difference in presiding officer. In practice also, the Conference hardly ever considers any separate items of business. In reality, the functional division of work originally envisaged between the General Assembly and the Conference never occurred.

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[Footnote continued from previous page]

- (ix) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- (x) exercise such other functions as are appropriate under this Convention.

See Article 6(2) of the WIPO Convention.

- <sup>8</sup> The WIPO Conference is made up of all the 184 States party to the WIPO Convention, whether or not they are also party to the Paris Convention or the Berne Convention. The tasks of the WIPO Conference are to:
- (i) discuss matters of general interest in the field of intellectual property and [may] adopt recommendations relating to such matters, having regard for the competence and autonomy of the Unions;
  - (ii) adopt the biennial budget of the Conference;
  - (iii) within the limits of the budget of the Conference, establish the biennial program of legal-technical assistance;
  - (iv) adopt amendments to [the WIPO] Convention as provided in Article 17;
  - (v) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
  - (vi) exercise such other functions as are appropriate under [the WIPO] Convention.

See Article 7(2) of the WIPO Convention.

- <sup>9</sup> There are presently 83 Member States of the Coordination Committee. The number increases upwards each time there are additional accessions to the Paris and/or the Berne Conventions. The functions of the Coordination Committee are to:
- (i) give advice to the organs of the Unions, the General Assembly, the Conference, and the Director General, on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization, and in particular on the budget of expenses common to the Unions;
  - (ii) prepare the draft agenda of the General Assembly;
  - (iii) prepare the draft agenda and the draft program and budget of the Conference;
  - (iv) [deleted];
  - (v) when the term of office of the Director General is about to expire, or when there is a vacancy in the post of the Director General, nominate a candidate for appointment to such position by the General Assembly; if the General Assembly does not appoint its nominee, the Coordination Committee shall nominate another candidate; this procedure shall be repeated until the latest nominee is appointed by the General Assembly;
  - (vi) if the post of the Director General becomes vacant between two sessions of the General Assembly, appoint an Acting Director General for the term preceding the assuming of office by the new Director General;
  - (vii) perform such other functions as are allocated to it under [the WIPO] Convention.

See Article 8(3) of the WIPO Convention.

6. In addition to the three main organs, there are Assemblies of each Union constituted by a treaty administered by WIPO<sup>10</sup>, such as the Paris Union Assembly as well as an Executive Committee of the Paris Union and an Executive Committee of the Berne Union.

7. Certain governing bodies that were envisaged at the time the relevant treaties were adopted have not yet been constituted. An example is the Executive Committee of the PCT Union, as provided for in Articles 53 and 54 of the PCT. And in the case of treaties first concluded before the 1967 Stockholm Diplomatic Conference, where there are States party to an Act earlier than the Stockholm Act, but not yet party to the Stockholm Act, there are Conferences of Representatives under the earlier Act<sup>11</sup>.

8. In terms of the main organs of WIPO, there are a total of 20<sup>12</sup> such bodies, and they generally meet in ordinary or extraordinary sessions annually or bi-annually; this is generally referred to as the annual meeting of the Assemblies of Member States.<sup>13</sup>

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<sup>10</sup> 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 (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). For all practical purposes, these Assemblies can no longer be considered to be part of the governance structure of WIPO.

<sup>11</sup> Examples are the Conference of Representatives of the Paris Union, of which the Dominican Republic and Nigeria are the only members, and the Conference of Representatives of the Berne Union, of which Lebanon, Madagascar and New Zealand are the only members. The Conference of Representatives for the Paris Union, Berne Union, Nice Union, and the Hague Union met for the last time in 2000, along with the Lisbon Union Council. In practical terms, given the fact that the powers conferred on the Conferences of Representatives by their constituent instruments were extremely limited, that the bodies have never considered any item of substantive business, and that their convening has tended to be a formality only, all these bodies can no longer be considered part of the governance structure of WIPO.

<sup>12</sup> The WIPO General Assembly, the WIPO Conference, the WIPO Coordination Committee, the Paris Union Assembly, the Paris Union Executive Committee, the Berne Union Assembly, the Berne Union Executive Committee, the Madrid Union Assembly, the Hague Union Assembly, the Nice Union Assembly, the Lisbon Union Assembly, the Locarno Union Assembly, the IPC (International Patent Classification) Union Assembly, the PCT (Patent Cooperation Treaty) Union Assembly, the Budapest Union Assembly, the Vienna Union Assembly, The WCT (WIPO Copyright Treaty) Assembly, the WPPT (WIPO Performances and Phonograms Treaty) Assembly, the Singapore Treaty on the Law of Trademarks Assembly and the PLT (Patent Law Treaty) Assembly.

<sup>13</sup> The general rule is that they meet in ordinary session once every two years, and in extraordinary session once every two years. In effect, they meet every year, alternating between ordinary and extraordinary sessions. There are exceptions to the general rule, such as the Coordination Committee and the Paris and Berne Executive Committees which meet in ordinary session every year.

(b) Committees Established by Treaty Provisions

9. 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 classifications established by the treaties.

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

10. 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 Program and Budget Committee, the members of which are elected for two-year terms by the WIPO General Assembly<sup>14</sup>;
- (ii) Four Standing Committees, namely:
  - Standing Committee on Copyright and Related Rights (SCCR);
  - Standing Committee on the Law of Patents (SCP);
  - Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT); and
  - Committee on WIPO Standards (CWS).
- (iii) The Advisory Committee on Enforcement (ACE)<sup>15</sup>;

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<sup>14</sup> The PBC was established in 1998, as a result of the merger between the Budget Committee and the Premises Committee to deal with program, budget, premises and finance. The merger of the two Committees was premised on the increasing number of program issues with budgetary implications for consideration by Member States, the consideration that WIPO Member States could attend the meetings of both Committees, and the need to streamline WIPO’s governance structure in a more cost-effective and efficient manner (see documents WO/GA/23/4 (July 24, 1998) and WO/GA/23/7 (September 15, 1998)). There are currently 53 States that are members of the PBC.

While the mandate of the PBC is to deal with program, budget, premises and finance, it is recalled that the WIPO Financial Regulations and Rules define the PBC as “the Committee constituted by the General Assembly to deal with program, budget, *personnel resources*, premises and finance.” (emphasis supplied)

<sup>15</sup> The ACE was established in October 2002. The mandate of the Committee in the field of enforcement, “which excludes norm setting, was limited to technical assistance and coordination,” and it was tasked to focus on the following objectives: “coordinating with certain organizations and the private sector to combat counterfeiting and piracy activities;

(iv) The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)<sup>16</sup>; and

(v) The Committee on Development and Intellectual Property (CDIP)<sup>17</sup>.

(d) Working Groups

11. A fourth category of body within WIPO consists of working groups established by a Committee, a Committee of Experts or by one of the main organs. 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. 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 Standing Committee<sup>18</sup>.

(e) Others

12. Finally, in the governance structure of WIPO, is the WIPO Independent Advisory Oversight Committee (IAOC or former Audit Committee) as well as the External Auditor. The IAOC, whose terms of reference were reviewed by the PBC in January 2011 and will be submitted for approval to the General Assembly in September 2011, include “promoting internal control”; “focusing

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public education; assistance; coordination to undertake national and regional training programs for all relevant stakeholders and exchange of information on enforcement issues through the establishment of an Electronic Forum”. See document WO/GA/28/7, paragraphs 82-120 (October 1, 2002).

<sup>16</sup> The IGC was established in October 2000 for the purpose of discussions on genetic resources, traditional knowledge and folklore. See documents WO/GA/26/6 (August 25, 2000) and WO/GA/26/10 (October 3, 2000).

<sup>17</sup> The CDIP was established in October 2007 to: “(a) develop a work program for implementation of the adopted recommendations [in respect of a WIPO Development Agenda]; (b) monitor, assess, discuss and report on the implementation of all recommendations adopted, and for that purpose it shall coordinate with relevant WIPO bodies; and (c) discuss intellectual property and development related issues as agreed by the Committee, as well as those decided by the General Assembly”.

See document A/43/16, paragraph 334 (November 12, 2007).

<sup>18</sup> Some working groups over the past few years, including those established under treaties administered by WIPO, include the Working Group on the Review of Rule 3(4) to (6) of the Regulations Under the Singapore Treaty on the Law of Trademarks, Patent Cooperation Treaty Working Group, the Working Group on the Legal Development of the Madrid System for the International Registration of Marks, the Working Group on Audit Committee Related Matters and the Working Group on the Development of the Lisbon System.

assurance resources”; and “overseeing audit performance.” It makes such recommendations to the PBC on issues within its terms of reference as it considers appropriate<sup>19</sup>.

13. The External Auditor, designated by the General Assembly, is responsible for the auditing of the accounts and “may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Organization”<sup>20</sup>.

### Conclusion

14. In the overall context of the governance structure of WIPO, it is recalled that the Member States in 2003 adopted constitutional reform measures which are aimed at simplifying and rationalizing the governance structure of WIPO. These constitutional reform measures, which were adopted by the WIPO General Assembly and the other concerned Assemblies of the Unions in September 2003, related to: (i) the abolition of the WIPO Conference; (ii) a change in the periodicity of the ordinary sessions of the WIPO General Assembly and the other Assemblies of the Unions, from once every two years to once every year; and (iii) in respect of the unitary contribution system and the changes in contribution classes, the formalization in the treaties of what is already in practice<sup>21</sup>.

15. The Member States of WIPO have been invited to accept the amendments to the relevant treaties in accordance with their respective constitutional processes. The said amendments will enter into force one month after written notifications of acceptance have been received from three-fourths of the WIPO Member States<sup>22</sup>.

[Annexes follow]

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<sup>19</sup> See documents WO/GA/34/15 (September 18, 2007) and WO/GA/34/16 (November 12, 2007).

<sup>20</sup> See Article 11(10) of the WIPO Convention and Regulation 8.5 of the WIPO Financial Regulations and Rules.

<sup>21</sup> The proposals on constitutional reform which were studied by a Working Group on Constitutional Reform, established by the General Assembly at its meeting in September 1999, had also included: (i) an amendment of the WIPO Convention, the Paris Convention, the Berne Convention and the PCT by abolishing the Executive Committees of the Paris, Berne and (yet to be established) PCT Unions; (ii) an amendment of the relevant conventions and other documents in order to discontinue the Conferences of Representatives (referred to above); and (iii) an amendment of the relevant treaties and conventions in order to reduce the number of WIPO governing bodies to one single Assembly. All these other proposals were not included in the final three recommendations on which agreement was reached by the members of the Working Group on Constitutional Reform for submission to the General Assembly in September 2002.

<sup>22</sup> In respect of the WIPO Convention, the total number of Member States of WIPO when this amendment was adopted stood at 180. The total number of notifications of acceptance required from Member States for its entry into force is 135. As of April 15, 2011, a total of 13 such notifications had been received by the Director General.

MEMBER STATES' VIEW ON GOVERNANCE AT WIPO  
(reproduced in the order of receipt)

**MONACO**

[Translated from the French]

**Comments from the Principality of Monaco, with a view to the preparation, by the WIPO Secretariat, of an updated document on governance structures within the United Nations system and WIPO.**

1. On reading document WO/GA/38/2 containing the recommendations of the WIPO Audit Committee, which includes a comparative table on governance structures within the organizations, programs and funds of the United Nations system, it becomes apparent that, in cases where external and independent committees responsible for audit and oversight functions exist, these committees submit their recommendations directly to the body to which they are obliged to report, in accordance with the terms of reference of their mandates.

In most cases, the body examining the reports and recommendations of the oversight/audit committee is either a subsidiary organ responsible for issues linked to the program, budget and administration of the Organization (e.g. the Programme, Budget and Administration Committee of the Executive Board [PBAC] of the World Health Organization [WHO], the Programme, Financial and Administrative Committee [PFAC] of the International Labour Office [ILO]), a plenary policymaking body (e.g. the General Assembly of the United Nations) or an executive body (e.g. the Executive Board of the United Nations Educational, Scientific and Cultural Organization [UNESCO]). With regard to the Funds and Programs, such as the United Nations Children's Fund (UNICEF) or the United Nations Development Programme (UNDP), the reports of the audit and oversight bodies are submitted to the chief administrator (Executive Director). **In any event, the body which examines the recommendations and reports of the audit and oversight committee also carries out other tasks, such as the examination of the program, budget and financial issues.**

Therefore, subject to any updates that the Secretariat might introduce to its document, it seems **that none of the international organizations has an organ exclusively responsible for studying the reports and recommendations of the oversight/audit committee prior to their examination by the body which constitutes their main audience.**

The addition of a further level of governance to WIPO, with the creation of a body exclusively responsible, upstream of the Program and Budget Committee (PBC), for interaction with the Independent Advisory Oversight Committee (IAOC) **would give rise to an unprecedented situation within the United Nations system.**

2. With its Audit Committee, WIPO **conformed to the classic model of governance** as described in paragraph 1, given that its reports and recommendations were submitted to the PBC, a subsidiary organ responsible for issues linked to the program, budget, finances and administration (the equivalent of the PBAC of WHO, or the PFAC of ILO). As to the draft Terms of Reference (ToRs) of the IAOC, subject to their adoption by the General Assembly, **a similar arrangement will be introduced, with the PBC receiving the reports of the IAOC.** Furthermore, this text also provides for **the holding of information meetings between the IAOC and the Member States following each IAOC meeting.**

3. In light of the above information, the Principality of Monaco believes that the creation of a new intermediary body, whatever its composition might be, exclusively responsible for interaction with the

**IAOC, would contravene the current practices of the United Nations system and would only further complicate the structure of governance and procedures (already relatively complex) currently in place at WIPO.**

4. The Principality of Monaco is, however, aware of the concerns expressed by certain delegations with regard to the difficulties faced by the PBC in giving the recommendations of the IAOC all the necessary attention, in particular during a budget year, owing to a heavy agenda. In order to resolve this situation, Monaco considers that, above all, **it is necessary to improve the management of time and the procedures in force, even if this means introducing the necessary modifications.** Therefore, the Principality of Monaco would be grateful if the Secretariat would indicate, in its document, the possible changes aimed at streamlining the work of the PBC, as well as their practical and material repercussions.

## CHINA



中华人民共和国国家知识产权局  
State Intellectual Property Office of the People's Republic of China

6 Xituchengtu, Haidian District, Beijing 100088, P. R. China  
P.O.Box 8020. Tel: 008610-6208 3275/3268, Fax: 008610-6201 9915

March 4, 2011

Attn: Secretariat of the World Intellectual Property Office

Dear Sir/Madam,

According to the notification....C.N.3206..and following the decision of the 16<sup>th</sup> Program and Budget Committee Meeting, the State Intellectual Property Office (SIPO) of the People's Republic of China, on behalf of the Chinese government, would hereby provide its views on WIPO's governance as follows:

1. The Chinese side highly appreciates the achievements that WIPO has scored over years in governance by developing and keeping improvement of an efficient working and governance mechanism.
2. As the Program and Budget Committee (PBC) has been handling more and more important matters of WIPO, it is needed to further improve the efficiency and effectiveness of relevant governance in WIPO. Thus, the Chinese side puts forward the proposal that the existing mechanism should be sufficiently used to deal with WIPO matters, and that efforts should be made to avoid new and overlapping bodies. In order to give the PBC enough time for discussing important matters of WIPO, it is the view of the Chinese side that an increase of the frequency as well as the duration of the PBC session would be considered, for instance, from once a year to twice or three times a year, and each time the duration being extended from 3 days to 5 days.

State Intellectual Property Office  
Of the People's Republic of China



## UNITED KINGDOM

### VIEWS OF THE DELEGATION OF THE UNITED KINGDOM ON GOVERNANCE AT WIPO

“At its sixteenth session (January 12 and 13, 2011), the Program and Budget Committee (PBC) requested the Secretariat to prepare a document on governance at WIPO (by April 2011), with Member States’ input, for consideration by the PBC at its session in June 2011 (PBC decision on item 5, paragraph (v), document WO/PBC/16/5). In accordance with paragraph v(b) of this decision, the document is to include “input from Member States, addressing their views on WIPO’s governance.”

During the sixteenth session of the PBC, Member States discussed various aspects of governance that were felt needed further analysis, some of these specific, and others less so. A specific line of enquiry established was in regard to the Audit Committee's recommendation to create a smaller governing body at WIPO. Other less specific issues mentioned by delegates included “WIPO” s governance structure... and functioning, which went beyond the PBC itself... and any gaps that existed in their view, and proposals on how these gaps could be addressed and corrected.”

We would like to address our views in this order, primarily examining the audit committee recommendation on the creation of a smaller governing body, and then examine other organisation-level and committee-level issues that we feel need addressing.

#### 1) AUDIT COMMITTEE RECOMMENDATION

At the Sixteenth Session of the Program and Budget Committee, Member States gave consideration to a recommendation from the Audit Committee, as follows:

*EXTRACT FROM DOCUMENT WO/GA/38/2  
ASSESSMENT OF THE WORK AND OPERATIONS OF THE WIPO AUDIT COMMITTEE,  
AUGUST 18, 2009*

*“The WIPO AC is an advisory oversight mechanism for Member States. The interaction between the Audit Committee and Member States has been sporadic and not synchronized with the PBC, which meets once per year. In other UN organizations, there is a smaller and more functional layer of governing body **that meets more frequently to interact with oversight bodies, and act upon their reports.***

*74. It is recommended that Member States consider the establishment, within WIPO, of a new more functional governing body meeting more frequently than the PBC, with a possible membership of twelve to sixteen.”*

We very much agree that Member States should be acting upon the reports of oversight bodies, and that these reports have a sufficiently wide exposure to the membership. We feel that there might be an issue of sufficient WIPO membership representation if these reports were only examined by a small number of Member States. Therefore we are glad to see that a solution has been potentially found using existing architecture to try and rectify this governance gap, namely by extending the existing sessions of the PBC this year in order to give dedicate time to examining the reports of the oversight bodies.

Given that the Audit Committee itself has pointed to the need for Member States to increase their level of involvement in exercising their rights to oversee the work of the Audit Committee

and following up on its recommendations, we would be concerned that formally creating an additional layer of governance would not resolve this lack of attention. Rather, it is incumbent on delegations to exercise their rights in oversight.

This delegation has yet to hear any inherent rationale for the creation of a new layer of governance which would resolve any of the current issues which we feel need addressing. In principle we would be against any arrangement which could lead to duplication of existing arrangements and responsibilities, and potentially create confusion. Rather, we would look to improve the existing governance structure, and there certainly are ways we can do this without having to redesign the organisation. Primarily, as mentioned earlier, the PBC membership should more explicitly exercise its right of WIPO oversight, like an executive board of shareholders, in particular on significant financial issues. For example, in order to limit the continuous accumulation of reserves, WIPO might think about services fees reductions.

The two bodies within which Member States examine oversight issues currently are the Program and Budget Committee and the Coordination Committee. We note Article 8 of the WIPO Convention states that

*(3) The Coordination Committee shall:*

*(i) give advice to the organs of the Unions, the General Assembly, the Conference, and the Director General, **on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization, and in particular on the budget of expenses common to the Unions;***

*(ii) prepare the draft agenda of the General Assembly;*

*(vii) perform such **other functions as are allocated to it under this Convention.***

From this we read that if Member States want to allocate additional responsibility to the Coordination Committee, that this would require amendment to the Convention in order to do so. However, as long as Member States agree a clear division of responsibility between the two bodies, we would see no need to amend the convention since “matters of common interest” should encompass all of the governance work which Member States should be engaging in. This clear division of responsibility is, in our delegation’s view, a key priority. Human resource issues, for example, in our view should sit within the PBC.

(We also note (3)(i) here, given that there appears to be confusion sometimes about adding future items to the agenda of the General Assembly. It is clear that the preparation of the draft agenda of the General Assembly is the Coordination Committee’s role, and therefore that any proposal for the agenda of the General Assembly can only be directed to the Coordination Committee to decide.)

It would also be appropriate here to highlight our agreement with a point made by a number of delegations regarding the usefulness of informal DG-leg consultations with Member States. We have welcomed these consultations across a range of issues, including budgetary matters, the Strategic Reform Program and external offices policy. We welcome this level of Member State involvement and would want to see it continue in a fair and representative manner.

There are other organisational-level issues where we feel useful changes can be made, which are discussed next.

## **2) OTHER ORGANISATION-LEVEL ISSUES**

### **Audit**

Regular meetings of IAOC with IAOD and the External Auditor will strengthen mutual support and trust through exchanging experiences and views, which will help to reduce any potential misunderstanding. These need to become a standard item on the agenda of the IAOC, particularly because in cases of gaps of cooperation between external and internal control, IAOC can act as an important intermediary.

In particular we would also recommend that:

- External Auditors and IAOC should discuss audit planning at the outset of an audit and review audit observations before approval of the annual accounts.
- IAOC assesses the objectivity and balance of management's external reporting.
- IAOC keeps informed on the implementation of the recommendations of IAOD and the External Auditors.
- IAOC keeps informed of the deliberations of the United Nations Panel of External Auditors.

We note that the term of office for the existing Director of IAOD finishes in January 2012. Given the importance of this role, the new appointee should commence their role at such a time in 2011 that ensures sufficient overlap and proper transition between the departing and incoming Director, and reduces the likelihood of any material gaps in oversight.

### **Statement of Internal Control (SIC)**

High quality internal control systems help organisations achieve their aims. We feel therefore that it would be highly advantageous for WIPO to adopt an annual Statement of Control. This is a public accountability document that describes the effectiveness of internal controls in an organisation and is personally signed by the Accounting Officer. To help Audit Committees add value to their organisations in this area, the guide identifies good practice in corporate governance, risk management and internal controls, as well as the disclosure of these within the SIC.

### **Risk register**

We also feel it would be advantageous for WIPO to adopt an organisation-wide risk register, building on the success it has had with its application to the new building. Risk registers are widely used within risk management for identifying, analysing and managing risks. In this context a project risk is essentially an uncertain event that, should it occur, will have an impact on the project (this could be positive or negative). Identification and mitigation of important risks, risks are often given a ranking with the highest priority risks clearly identified to all involved.

An understanding of the risks faced by WIPO at a strategic level is essential. The lack of an Enterprise Risk Management system is a risk because, as a consequence, staff and Member States might not be able to fully appreciate the strategic risks faced by the Organization. Typically a risk register contains: a description of the risk; the impact should this event actually occur; the probability of its occurrence; a summary of the planned response should the event occur; a summary of the mitigation (the actions taken in advance to reduce the probability and/or impact of the event).

## **Strategic Realignment Program (SRP)**

Given that the SRP is a major part of reform in WIPO, and one that we have welcomed enthusiastically, we would want to ensure that progress on SRP implementation is a fixed agenda item in Audit Committee meetings and that Member States are presented with appropriate progress reports.

The Audit Committee has highlighted that *“the main risks to successful SRP completion related to the involvement and support of the staff at large and in the availability of skilled resources to manage and implement the Program”* (WO/IOAC/19/2 REV), therefore we would want to ensure that this concern was being alleviated.

The Committee also recommended that, *“relating to the implementation of the recommendations contained in the “Review of Internal Control Review and Gap Assessment at WIPO” (IA/01/2010, dated June 20, 2010) that “The SRP Project Management Office should regularly use the WIPO Entity-level Control Gap and Analysis Tool contained in the report, to provide the SMT (in particular the SMT champions) with a tool to monitor progress made in overcoming internal control gaps identified.”* Again, we would want to ensure that this recommendation was being implemented.

## **Investigations**

According to the Audit Committee, there is a *“lack of checks and balances in the investigation process concerning the accountability of investigators and the exercise of authority in this field by the IAOD Director. While preserving the independence of the function of the IAOD Director, the Committee considered that provisions concerning the accountability of the IAOD Director and investigators in the conduct of investigations and the review process of their operations by an independent oversight body need to be specified.”* (WO/IAOC/19/2)

We would like to know if these provisions have now been specified.

## **Services fees**

Appropriate services fee (e.g. PCT) discounts should be available for users in developing countries. The criteria used to calculate which countries are eligible for these discounts should be based on ability to pay, and take into consideration country levels of growth. This also incentivises Member States, who have more „ownership“ of the systems, to therefore strive for further service efficiencies.

## **3) COMMITTEE-LEVEL ISSUES**

### **Committee meeting agendas**

We think WIPO and the Member States should aim to have agendas agreed, as much as possible, prior to committee sessions. On occasions when this has not been the case, valuable plenary time is then spent unproductively to agree these.

### **Working days**

On average, delegates lose around 10-20% of the working day through late morning and afternoon starts to plenary sessions. We would therefore prefer to see the chairperson commencing committee sessions at 10:00 and 15:00 sharp unless there are quorum requirements.

### **Submission of working documents**

Proposals or documents submitted by Member States for consideration in WIPO meetings should be submitted to the Secretariat within the set period of time to allow for translation and for proper consideration by other Member States. Delegations require time for their capitals to analyse documentation sufficiently – this is not possible if Member States submit new documents during meetings and expect decisions to be taken on them.

### **Opening Statements**

We feel that plenary sessions would be more time-efficient if opening statements were only made by official regional groups. Should individual Member States wish to make opening statements, these would then be submitted in writing for the record. Substantive points could then be made as and when Agenda items are discussed. Currently, a significant amount of plenary time is taken up with opening statements, the substantive points are which are then repeated when substantive agenda items are reached.

### **Interventions**

Too often debates in plenary sessions have been unconstructive in helping Member States make progress in their work. We would note that Chairpersons should bear in mind that they have recourse to Rule 13(3) of the WIPO General Rules of Procedure:

*“He may propose limiting the time to be allowed to each speaker, limiting the number of times each delegation may speak on any occasion, closing the list of speakers, and closing the debate.”*

We would suggest that speakers in committee sessions have allocated time slots, as is the case with other UN bodies with good results for efficient time-keeping.

### **Legal adviser**

Given the potential legal ramifications and questions around much of the work delegates perform in committee sessions, we would want to continue to ensure that a legal adviser is always available to consult at these times if necessary.

## JAPAN

Responding to C.N.3206, the delegation of Japan submits its view on the recommendation from the Audit Committee contained in paragraph 74 of document WO/GA/38/2 to “*consider the establishment, within WIPO, of a new more functional governing body meeting more frequently than the PBC, with a possible membership of twelve to sixteen*” as follows:

This delegation believes that members should seek possibilities to use existing bodies in more effective manner to the extent possible rather than rush to create new body for the following reasons.

It is necessary to bear in mind that the budget of WIPO consists mostly of the income from fees of international systems (especially PCT) and greater percentage of WIPO’s budget should be used to enhance the convenience of such international systems and the related existing services for the benefit of users. In general, creation of new body needs additional cost and human resources. Taking account of the aforementioned situation about income, additional cost should be avoided without sufficient justification from various viewpoints including contribution to users’ benefit from the international systems. In this regard, this delegation doesn’t feel that concrete and rational reasons have been shown so far to establish a new governing body. Although we share the view that interaction between a governing body and oversight bodies is important for effective and appropriate reflection of inputs from oversight bodies, appropriate solution should be sought by using the existing bodies.

Furthermore, we believe that unnecessarily complex structure of organization could be some kind of obstacle for efficient and effective work. One of core-value of WIPO Strategic Realignment Program, which this delegation attaches a great importance on, is “Working as one – we work as an integrated, responsive and efficient entity that is fit for purpose and delivers value for money.” This spirit should also be respected when we seek appropriate way to responding the recommendation by Audit Committee. Unnecessary complexity of organization doesn’t fit such spirit and appropriate balance of efficiency and inclusiveness is essential to embody such spirit. Therefore, this delegation is not persuaded to create a new governing body which might cause such complexity without concrete and rational substantiation that existing bodies could not be further utilized and improved for that purpose.

WIPO has already had two governing bodies, the Program and Budget Committee and the Coordination Committee. Both of these could be further utilized and improved depending on governance-related issues, taking account of respective mandate. This delegation strongly believes that the coming PBC should focus on discussion on how to deal with recommendations by the Audit Committee in these bodies on the premise that a further governing body is not created. We are open to extend the term or increase the frequency of the sessions

of these bodies, not regular but issue-by-issue basis to discuss necessary issues such as the recommendations by Audit committee. This could be a possible option we can adopt on a trial basis. After some fixed term, the situation could be reviewed and, if any, remaining issues which should have to be discussed but are spilled out from these bodies will be identified concretely. Such actual identification of the remaining issues to be discussed could contribute to further consideration of appropriate structure.

## AUSTRALIA

### **Input from Australia Addressing its Views on WIPO's Governance**

#### ***Introduction***

At its sixteenth session, the Program and Budget Committee (PBC) requested the Secretariat to prepare a document on governance at WIPO for consideration by the PBC at its session in June 2011. Australia has the pleasure to provide its views to the Secretariat on WIPO's governance as requested in the PBC decision on item 5, paragraph (v), document WO/PBC/16/5. In accordance with paragraph v (b) of the decision, Australia provides this input addressing its views on WIPO's governance.

#### ***WIPO Governance***

WIPO is in an important period of transition. WIPO is now fully engaged in major reforms aimed at strengthening its position at the centre of the international intellectual property arena. This task has started with an appropriate and timely restructuring of the Organization itself.

Australia welcomes the steps that have been taken towards realisation of the Strategic Realignment Program. This program will make WIPO a more flexible and professional organization that is better placed to adapt to changing circumstances. Australia looks forward to the continuation of the implementation of the Strategic Realignment Program. This will result in a wide range of significant changes to the Organization to improve service delivery and accountability. In particular, Australia welcomes initiatives to improve human resource management, including the strengthening of WIPO's internal communications and launching of the performance management and staff development systems.

Australia is pleased by recent WIPO initiatives, including the extensive personal engagement of the Director General, to increase transparency and consultation with Member states. These initiatives contribute significantly to more constructive engagement and play a crucial role in building relationships between the International Bureau and Members and among Member states.

#### ***Governance Structure***

Australia's view is that the current governance structure of WIPO is sufficient and appropriate. Rather than creating a new formal level of governance within WIPO, such as an "Executive Body" or similar, Australia advocates that Member States should focus on improvements to existing bodies, as has already been commenced. In particular improvements in the responsiveness of the Program and Budget Committee are welcome. In addition, Australia welcomes regular increased consultation with Member states at all levels. We view this as a useful way to focus on improved governance arrangements.

While Australia is happy to engage in further discussions on ways to improve governance within WIPO, any new formal level of governance proposals would need to be the subject of extended and in depth consideration. Australia has identified previously a number of issues that would need to be discussed and considered in detail including, how to ensure inclusiveness for all Member States, cost to the

Organization, selection process for members of any new formal governance body, and clarity of roles of the Coordination Committee, the WIPO Management Team and the body itself.

Further, consideration would need to be given to whether such a formal level of governance would require amendments to the WIPO Convention. To be clear, Australia is not advocating any amendments to the WIPO Convention, but any proposals for a formal level of governance body would need to consider amendments depending on the role of any such body.

Australia is willing to continue discussing this issue, but believes current arrangements are satisfactory and focus should be on progressing the normative work of the Organization.

#### ***Possible Improvements***

Australia would like to offer some suggestions for areas where WIPO governance could be improved within existing structures.

In terms of Chair selection mechanisms, Australia would like to see a clear and consistent selection process for Chairs of WIPO committees. This would ensure certainty as to the qualities and expertise of individual chairs and a clear process for their selection.

Regarding the work of the Program and Budget Committee (PBC), efficiencies could be found in extending the time the Committee sits and considers its agenda and work. In addition, more regular meetings of the PBC could be scheduled to assist it to complete its tasks. Alternately or in addition, a small working group of the PBC could be established, on an ad hoc basis, to consider the reports of the oversight bodies and make recommendations to the PBC. These suggestions, of course, would need to be considered in light of budgetary implications.

At the operational level of committees, Australia is of the view that agendas should be agreed, where possible, before the committees meet. This would lead to greater efficiencies whereby the committee focuses on its work rather than procedural discussions to agree on the agenda. Committee meeting times should be better adhered to. Australia supports moves where the chair commences sessions of committees punctually. Efficiencies could also be found with Member States submitting meeting documents on time prior to meetings, and submitting any opening statements in writing where possible and appropriate.

Australia stands ready to cooperate with Member States and the Organization to develop more flexible, efficient and effective systems within existing structures. We appreciate being given the opportunity to submit our views on WIPO governance.

## DEVELOPMENT AGENDA GROUP

### VIEWS OF THE DEVELOPMENT AGENDA GROUP (DAG) ON WIPO'S GOVERNANCE

The Program and Budget Committee (PBC) at its sixteenth session (January 12 and 13, 2011) "requested the Secretariat, following up on the Roadmap set out in document WO/GA/39/13 and the recommendation contained in paragraph 74 of document WO/GA/38/2, to prepare a document, with Member States' input, by April 2011, for consideration by the Program and Budget Committee at its session in June 2011. This document is to include: (a) update, based on Appendix I of document WO/GA/38/2, on the governance structures of the United Nations and other intergovernmental organizations; (b) input from Member States, addressing their views on WIPO's governance; and (c) a review of prior documentation on governance at WIPO". This submission is in response to the Secretariat's call for "inputs from Member States, addressing their views on WIPO's governance", as mandated above, by the 16<sup>th</sup> session of the PBC.

It presents DAG's views on the establishment of "a more functional governing body meeting more frequently than the PBC, with a possible membership of twelve to sixteen", as recommended by the Audit Committee (WO/GA/38/2), but also includes considerations and suggestions on other aspects of WIPO governance that deserve attention.

The following proposals are made with a view to contributing to a more effective realization of WIPO's goals. DAG believes that a member-driven WIPO whose working procedures and decision-making processes are transparent, democratic and inclusive will enhance trust among Member States as well as the quality of service provided by the Secretariat.

#### (A) EXECUTIVE BOARD/COMMITTEE

As observed at the Audit Committee Report, there seems to be a need for a more functional governing body meeting more frequently than the PBC and with a reduced membership. This would allow for, among other things, a greater participation of Member States in (i) the preparation of WIPO's draft Program and Budget, (ii) the allocation, expenditure and investment of resources; (iii) staff recruitments; and iv) exercising meaningful and effective oversight of the management of the Organization.

To address this, an Executive body comprising Member States, should be established. The membership of such a body should be small enough to facilitate effective functioning and large enough to be equitably representative of various geographical regions. The Executive Board/Committee should be mandated to oversee program, budget and human resource issues and also facilitate institutional processes such as appointment of Chairs and Bureaus of various Committees, on the basis of accepted guidelines. This would facilitate greater participation and ownership of Member States in key decisions and processes of the Organization, while also ensuring accountability of the Secretariat to WIPO's membership.

#### (A.1) REFORM OF THE COCO



One way of setting up such a body without fundamentally revising the WIPO Convention or WIPO's governance structure would be to suitably redesign the existing Coordination Committee (COCO) to fulfill its Executive Committee functions, as originally foreseen in the Convention, by making the following changes:

- (i) The large membership of COCO, as it currently stands, does not allow it to discharge its functions as an Executive body, assisting the Secretariat. One option would be to reduce its current membership, while ensuring equitable representation of all geographical regions.
- (ii) The mandate of COCO would need to be reviewed to include Program, Budgetary and Oversight issues, in addition to staffing issues.
- (iii) The periodicity of meetings would also need to be suitably revised.

Under this proposed model, the Program and Budget Committee (PBC) would continue its mandated task of approving the biennial Program and Budget and retain its current composition.

Reducing COCO's membership would probably entail a review of the process of election of the Director-General. Currently, only the 83 Member States that are members of COCO have a say in the Director-General's selection, which is submitted for endorsement by all Member States in the General Assembly. Were the membership of the COCO to be reduced, Member States would have reasons to be concerned about the legitimacy of such a small group of countries exercising the right to select/elect the Director-General. A possible solution would be to have the General Assembly elect the Director-General. This would also respond to the broad objective that the key decisions of the Organization be open to participation of all Member States in an inclusive, transparent and democratic manner.

#### **(A.2) ESTABLISHMENT OF A NEW BODY**

Other option would be to create a new body with a broad mandate and a reduced number of members to perform the Executive Committee's functions and maintain the current structures of the COCO and of the PBC. However, this would probably entail a revision of WIPO's Convention or WIPO's governance structure.

#### **(B) OTHER GOVERNANCE ISSUES**

As stated previously, DAG believes that other aspects of WIPO's governance deserve Member States' attention. To allow time for discussion of these other governance issues, an inter-governmental working group could be set up under the PBC with the mandate to discuss and present suggestions within a pre-determined deadline. The following issues, among others, could form part of the agenda of this Working Group:

- 1) Establishment of a Bureau for each WIPO Committee and Working Group, responsible for all matters relating to organization and procedure, with rotation of Chairmanships among various geographical regions.
- 2) Review of WIPO's rules of procedure, as necessary, to ensure well-defined, streamlined and clear rules of procedure for all WIPO bodies in order to facilitate predictability, transparency and consensus-building.



3) Extension of the sessions of the PBC to enable more meaningful oversight of WIPO's Programme and Budget by Member States and allow adequate time to address the several important issues with medium and long-term implications for the Organisation, on its agenda.

4) Review of the calendar of meetings to allow for predictability and sufficient time for delegations to prepare between meetings.

5) Review of WIPO bodies and their meeting schedules, with a view to analysing whether the existing Committees and Working Groups are addressing all the relevant areas of WIPO's mandate in an optimal manner, in terms of time and resources.

6) Review of WIPO's oversight system of triangular evaluation, as advised by the IAOC to the 39th General Assemblies held in September 2010.

7) Review of WIPO's personnel issues, with more attention being paid to the processes of appointments and recruitments and avenues for interaction of Member States with the Staff Council, so as to address and resolve problems in a timely manner, without allowing them to fester. The possibility of establishing of a minimum "cooling off" period for personnel from Geneva-based Missions and officials from capitals would also be considered.



## THE AFRICAN GROUP

### THE VIEWS OF THE AFRICAN GROUP ON WIPO GOVERNANCE 21 MARCH 2011

#### I EXECUTIVE BOARD<sup>1</sup>

##### **i) Rationale for the Executive Board**

The African Group is of the view that there should be a functioning Executive Body for WIPO as it is the practice for most of the United Nations (UN) specialised agencies. The issue of governance is not new in WIPO as it was discussed in the past. For the African Group, the need for a new Executive Body is premised mainly on three broad aspects namely: 1) the inefficiency of the current governing bodies; 2) enhancing and normalising WIPO to ensure transparency and predictability; and 3) the need to improve the governmental oversight in WIPO.

##### *The inefficiency of the current governing bodies*

The need to have a new body is based, to a large extent, on the assessment of the current structures, dealing with governance. The Coordination Committee (CoCo) meets in an irregular manner (average 1 meeting a year) and upon convocation by the Director General. Given the importance of the advisory role of the CoCo, it is inadequate for such a body to only meet once a year and Member States ought to be consulted on its scheduling. Similarly, the Program and Budget Committee (PBC) meets once a year and only for 3 days. There have been numerous, albeit, unsuccessful attempts to extend the duration of the PBC for it to cover all issues on its agenda effectively. The inadequacy of these two bodies inevitably calls for urgent structural adjustments within WIPO.

##### *Enhancing and normalising WIPO to ensure transparency and predictability*

The creation of an Executive Body would enhance confidence and trust building and enable Member States to play a central role in directing the affairs of WIPO. The Executive Board should enhance the role of Member States in WIPO not only on substantive issues but in the overall governance of the organisation. The Executive Board would enable Member States to discharge their usual theoretical responsibility of overseeing the Director General and the Senior Management Team, in practice.

The Executive Body will discuss and approve the WIPO calendar of meetings and events as it is the case in other UN fora. Currently, the Secretariat assumes the responsibility of drafting the

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<sup>1</sup> The concept Executive Board is used interchangeably with Executive Body.

calendar of events without consulting Member States. The current system is oblivious to the challenges Member States face regarding participation in WIPO substantive meetings. For instance, the 2011 calendar of meetings is not balanced. This is illustrated by the asymmetrical allocation of meetings in the year, with only a few allocated to the first semester and a lot to the second semester. This schedule makes planning and preparations for the meetings challenging especially for small delegations.

*The need to improve the governmental oversight in WIPO*

The PBC is the only body that discusses reports of the WIPO Independent Oversight Advisory Committee. As such, it is inadequate to discuss the findings regarding the overall work of the organisation. It is only logical that there be an overarching Executive Body to discuss and follow-up on the implementation of the recommendations made by all oversight bodies including the UN Joint Inspection Unit.

The staff matters are currently discussed in the PBC within the context of budget implications. Staff matters have not been discussed in-depth beyond that because the CoCo is held once in two years to endorse the decisions of the PBC. The PBC discusses programme and financial matters so it is not a platform to discuss other issues pertaining to staff. The new Executive Body would also receive and discuss reports on non-financial personnel matters. This will also allow a more regular and institutional interface between Member States and the Staff Council.

## **ii) Options for the creation of the Executive Board**

To improve governance in WIPO three options could be offered:

***Option 1: to review the mandate of the existing governance structures, the PBC and the CoCo.***

***Option 2: to create a new Executive Board to discuss and address the dysfunctions that Member States have been facing in governance issues. It should combine the functions of the Coordination Committee and the PBC.***

***Option 3: Empower the CoCo with executive functions and limit the PBC to issues pertaining to programme and budget only. Naturally this would entail more meetings of the CoCo.***

All the options could lead to the same objective which is reinforcing the role of Member States and improving the governance of WIPO.

The composition of the Executive Body is important. The new Executive Body should be highly representative taking into account geographical representation. This particular issue would be discussed further once there is agreement on the creation of an Executive Board.

Other details pertaining to the modalities of the Executive Board such as the frequency and duration of meetings and its full powers and functions will be discussed once there is an agreement on the creation of the Executive Board.

## **II OVERALL GOVERNANCE IN WIPO**

The African Group's view on the overall WIPO governance is as follows:

### **i) Election of the Director-General**

The DG should be nominated and elected by the GA, which involves all the Member States. The duration of its term should be limited to 4 or 5 years (as it is the practice mostly in the UN Agencies), renewable once. There should be the geographic rotation for the DG position as it is the case for the UN and some UN agencies.

### **ii) Balanced geographical representation of the Staff:**

According to the statistics given by the Secretariat, 50% of the staff of the Secretariat is from one country of Group B. This unbalanced situation is a source of deep concern and should be addressed by all possible means (for example, positive discrimination, and annual quotas for developing countries). The recruitment process should be made clear and the principle of geographic representation must be implemented.

### **iii) Designation of Officials participating in the WIPO meetings**

Member States have the authority to designate officials that should take part in the WIPO meetings in Geneva and/or outside Geneva and the Secretariat should be neutral and not interfere in that designation. The Secretariat should also not interfere in the nomination of Chairs of WIPO Committees/bodies.

### **iv) Calendar of the meetings**

Member States should be consulted on the drafting of the WIPO calendar of meetings simply because the current system is oblivious to the challenges Member States face regarding participation in WIPO substantive meetings. For instance, the 2011 schedule of meetings is not balanced. This is illustrated by the asymmetrical allocation of meetings in the year, with only a few allocated to the first semester and a lot to the second semester. This schedule makes planning and preparations for the meetings challenging especially for small delegations.

### **v) WIPO notifications**

WIPO notifications should be transmitted to Member States through the diplomatic channel, which is through the Missions. Currently, notifications are dispatched late with a limited time provided for reply. Notifications requiring reply should be dispatched to the Mission providing at least a month for submitting response.

**vi) Publication of the working documents**

WIPO working documents should be made available in all six languages and posted in the website sufficiently in advance (2 months before the meeting, as it is mentioned in the General rules of procedures).

**vii) WIPO Official languages**

All WIPO official languages should be treated on equal footing.

**viii) Rationalisation of the existing WIPO bodies**

There are currently too many bodies in WIPO that most Member States are even aware of. It is therefore necessary to take stock of their functions and relevance. It is proposed that there should be an intergovernmental mechanism created to review and assess the relevance of these bodies. Some of these bodies should be rationalised to reduce their number.

## UNITED STATES OF AMERICA

### VIEWS OF THE UNITED STATES ON WIPO GOVERNANCE

The delegation of the United States submits its views below on WIPO Governance issues, pursuant to C.N.3206, on the recommendation from the Audit Committee contained in paragraph 74 of document WO/GA/38/2 to “*consider the establishment, within WIPO, of a new more functional governing body meeting more frequently than the PBC, with a possible membership of twelve to sixteen*”

The United States supports the notion articulated by the Audit Committee in WO/GA/38/2 (now the IAOC—Independent Advisory and Oversight Committee) of the need for Member States to improve their interaction with the Audit Committee and to review the contents of its quarterly reports.

However, the creation of a smaller governing body would limit the access all Member States currently enjoy. This delegation is concerned over the optics and the implementation of a twelve to sixteen member body for an Organization that is: (a) membership-driven by all 184 Member States; and (b) has a recent and limited experience with an external oversight mechanism responsible for reviewing the managerial, administrative and financial aspects of WIPO. The creation of a small governing body would move us in the wrong direction in addressing issues/concerns of Member States’ access to one of the important pillars of WIPO’s oversight and audit measures.

The United States is not convinced that the creation of a limited group, with the mandate to take decisions on broad oversight and financial issues, will ensure improved, increased, or better interaction with the Audit Committee. In addition, an argument can be made that the functioning of WIPO also involves an assessment of progress in the normative area of work. While very little movement has occurred in the substantive committees for many years, the United States does not support the notion of utilizing a static, small governing body to negotiate issues that have failed to reach consensus among the Member States.

The creation of a new governing body could potentially require an amendment to the WIPO Convention, which is unprecedented and should not be considered lightly. There would need to be clear, justifiable reasons for creating another layer in the governance structure. This amendment would have to be viewed as an imperative step for WIPO to address governance gaps. The United States fails to see this as the case, as the Member States through the Program and Budget Committee, Coordination Committee, and General Assemblies undertake their governing role without question. Instead of creating an additional layer of management, Member States should focus on improving the current governance bodies, as well as engaging more actively on governance issues. Furthermore, we fear the political climate among Member States, as noted previously regarding the normative work would taint an amendment exercise. Finally, given budget constraints, we do not believe that resources should be spent on negotiating the creation of a new oversight body.

As stated above, the United States strongly urges Member States to actively engage in reviewing and assessing the reports of the Audit Committee, and to interact more frequently with the IAOC members on the issues presented. This can easily be accomplished through the existing structure. The Committee’s terms of reference specifically state that “*The Audit Committee shall keep Member States informed of its work on a regular basis. In particular, following each of its formal meetings the Committee shall prepare a report for circulation to the Program and Budget Committee*”. To improve the current structure so as to ensure that there is more attention provided from Member States to IAOC reports, the upcoming Program and Budget Committee meetings in June and September 2011 will be extended by two days

each to examine the reports of the oversight bodies. To further enhance Member State attention to the reports, the PBC should consider the following measures:

- The quarterly meetings of the IAOC should include regional chairs and interested delegations during a portion of the meeting.
- The quarterly reports of the IAOC should also include comments/interventions of regional chairs and other delegations.
- The reports for the quarterly meetings should be widely circulated after the meetings and included in the PBC documentation, including on-line.
- The IAOC should continue to produce a summary report to the PBC each year, recording regional group and Member State views on issues raised.

## REPUBLIC OF KOREA

### Views of the Delegation of the Republic of Korea on Governance at WIPO

At the sixteenth session of the Program and Budget Committee (PBC), the Member States considered the following recommendation of the Audit Committee (AC) (WO/GA/38/2: Assessment of the work and operation of the WIPO AC, August 18, 2009):

*73. The WIPO AC is an advisory oversight mechanism for Member States. The interaction between the Audit Committee and Member States has been sporadic and not synchronized with the PBC, which meets once per year. In other UN organizations, there is a smaller and more functional layer of governing body that meets more frequently to interact with oversight bodies, and act upon their reports.*

*74. It is recommended that Member States consider the establishment, within WIPO, of a new more functional governing body meeting more frequently than the PBC, with a possible membership of twelve to sixteen.*

The Republic of Korea (ROK) fully agrees that the present frequency and duration of PBC meetings are inadequate for handling the mountain of pending issues at the PBC. And we believe there is a need for a more synchronized mechanism of interaction between the advisory body and Member States.

However, for the reasons indicated below, we doubt that establishing an additional governing body and imposing a limitation on the membership of the body is a suitable way to redress these problems.

1. The mission or mandate of the new governing body is likely to lead to a duplication of the work of the PBC and the Coordination Committee.
2. Moreover, the establishment of a new layer of governing body might create controversy and lead to a huge waste of administrative resources. The different interests and position of each Member State may complicate the task of achieving a consensus on the mandate and participation criteria of the governing body.
3. Although the research of the WIPO AC on the governance structure of other UN organizations (WO/GA/38/2) reveals that many organizations have small committees (of 12–16 members) to deal with issues of finance, administration and various programs, some organizations such as the IMO and the WHO don't have committees of this type. Furthermore, some organizations' subsidiary organs which deal with administration and budgetary issues have a larger membership than the PBC (54 members). Others even allow all the member states of the organization to participate; for example the Program, Budget and Administration Committee of the ILO; the Budget Control Committee and Administration/Management Committee of the ITU; and the Financial Advisory Committee of the WMO. These cases indicate that limited membership of groups that discuss administration and budgetary issues is not an universal practice within the UN system; in addition, other organizations don't consider the practice to be an effective mechanism.

In conclusion, the ROK believes that a more effective and efficient solution to the above-mentioned problems would be to extend the existing sessions of the PBC. Having said that, if another delegation were to propose a better alternative, the ROK would gladly consider the idea and participate in further discussions on the matter.

## **GERMANY**

### **Input from Germany on Governance at WIPO**

Germany considers that the issue of WIPO governance is important. We fully support all efforts and reforms that serve to strengthen the role of WIPO as the central international organization for intellectual property. In this context, we welcome WIPO's efforts to increase transparency and the consultation with Member States.

#### **Governance Structure**

Germany believes that the current structure of WIPO is appropriate and provides the necessary basis for a well-functioning organization. The number of bodies involved in WIPO governance should not be further increased. The creation of new bodies, such as an "Executive Committee", would render the existing structure still more complex but not necessarily more efficient. In addition, the creation of new bodies will not automatically eliminate potential deficiencies in the functioning of existing bodies. Rather, it seems preferable that potential deficiencies be remedied by improving the functioning of the existing structures and bodies.

#### **Improvements within the existing Structure**

On a preliminary basis we would like to highlight the following issues:

##### **1. Audit structure**

An effective audit structure is a key element of good governance. An important aspect of such a structure is regular and immediate information of the recipients of the audit activities. In order to get there, Germany suggests the following:

- The interaction between auditors and the member states should be improved;
- The chair of the IAOC should give his / her statements at the General Assembly not only when the decisions are already taken but – by the latest – at the beginning of each agenda point.

## 2. Effective Chair Designation Mechanism

With regard to the work of the committees we support establishing a simple but effective chair designation mechanism.

## 3. Committee Agendas

In order to render the work of the committees more efficient, agendas should be agreed upon before the committees meet.

## 4. Transparency and Information Flow

We would also like to see further improvements on transparency and external information flow. Documents should be available in due time before the meeting in order to allow delegations to analyse and consult on them.

**FRANCE**

[Translated from the French]

**Consultation on the governance of WIPO**

*Comments from France, with a view to the preparation, by the WIPO Secretariat, of an updated document on governance structures at WIPO.*

During its Sixteenth Session (January 12 and 13, 2011), the Program and Budget Committee (PBC) requested the Secretariat to prepare an updated document on the governance of WIPO. Consultations with the Member States are ongoing with regard to that task.

France welcomes the reforms undertaken at WIPO with the aim of modernizing the Organization's tools of governance, in particular the Strategic Realignment Program and the reform of human resources management. These initiatives contribute to the maintenance of good practices in terms of management and the flow of information.

France is therefore open to a more broad-ranging discussion on the governance of WIPO. For all that, clarification is required concerning the advisability and the modalities for creating a new body of an executive and intermediary nature.

The institutional structure of WIPO is made up of several bodies: the General Assembly, the Coordination Committee, the Assemblies of the Special Unions and the Executive Committees. The number of bodies and the partial overlapping of their respective mandates led the competent administrative bodies to create a Budget Committee in 1976. In 1998, this Committee was merged with the Premises Committee and its mandate broadened, the result being the Program and Budget Committee (PBC). The PBC now has powers across the board to deal with all administrative and financial issues. The role of the Coordination Committee and the PBC as filters for and advisory bodies to the General Assembly and the Assemblies seems to be satisfactory.

At the beginning of the new millennium, a similar proposal to transform the Coordination Committee into an executive committee was examined and then abandoned, in particular because of the need to amend the Stockholm Convention establishing WIPO.

Moreover, although several organizations within the United Nations system have executive boards, none of them possesses a body combining the Coordination Committee with the PBC. The creation of an intermediary body at WIPO therefore seems redundant.

France encourages WIPO to continue the work to improve the functioning of the PBC already undertaken with the creation of a timetable, the reorganization of the Audit Committee and the extension of sessions. The "spring session" of the PBC, which from now on takes place in June, should be held earlier on in the year, thus leaving time for the consultations and changes to be presented at the following session in September.

[End of document]