

MAIN PROGRAM 03

Office of Legal and Organization Affairs

03.1 Legal and Constitutional Matters

03.2 Contracts Review Facility

03.3 WIPO Arbitration and Mediation Center

Main objectives:

- ◆ To advise the Director General on the exercise of his functions as depositary of multilateral conventions and agreements, on questions of privileges and immunities, on questions arising in connection with the Headquarters Agreement with the Host State and on other questions of international administrative and constitutional law.
- ◆ To provide, on request, advice to Member States on questions of international, administrative and constitutional law relating to the Organization and its activities.
- ◆ To ensure compliance by the Organization with its legal and constitutional obligations and responsibilities.
- ◆ To advise on, and to review the legal aspects of, commercial contracts proposed to be entered into by the Organization.
- ◆ To provide arbitration and mediation services for the resolution of international commercial disputes involving intellectual property, including the operation of an on-line dispute-resolution system.

Current Situation

The Office of Legal and Organization Affairs consolidates two existing units, the Office of the Legal Counsel (sub-program 03.1) and the WIPO Arbitration and Mediation Center (sub-program 03.3) and a new unit, the Contracts Review Section (sub-program 03.2). Its fundamental responsibilities in international and constitutional matters require this Office to work closely with all units of the Secretariat and the Member States of the Organization. On questions relating to the legality of actions undertaken, or proposed to be undertaken, by the Organization, the Legal Counsel is directly responsible to the WIPO General Assembly through its Chair.

In providing dispute-resolution services, the WIPO Arbitration and Mediation Center has:

- established state-of-the-art Rules for mediation, arbitration and expedited arbitration;
- developed a database of WIPO arbitrators and mediators, and made recommendations concerning appointments;
- provided information on the Center's dispute-resolution services;

- organized conferences, training workshops for arbitrators and mediators and other meetings directed at increasing the awareness of the suitability and advantages of alternative dispute-resolution for commercial disputes involving intellectual property, and of the WIPO Rules; and
- initiated preparations to establish a Web-based system for on-line resolution of disputes, including those arising from registration of Internet domain names.

Legal and Constitutional Matters

New program activities

- ◆ In collaboration with other elements of the Secretariat, reviewing and, where appropriate, establishing institutional mechanisms of transparency and accountability, such as an ethics code for staff and other internal rules.
- ◆ In coordination with Main Program 16 (Human Resources Management), establishing dispute-prevention and dispute-resolution alternatives, such as mediation, to supplement existing staff appeal procedures.
- ◆ In collaboration with program areas concerned with substantive law issues, examining proposed means, for the consideration of Member States, for advancing the development of international intellectual property law that could supplement the multilateral treaty-making process.
- ◆ Providing secretariat services and substantive support for the Industry Advisory Commission (budgeted under sub-program 01.3).

Contracts Review Facility Section

- ◆ Establishment and operation of a new mechanism to ensure that any contractual obligations undertaken by the Organization meet requisite legal standards and appropriate commercial policy considerations, and to act as a legal oversight mechanism to help ensure the accountability of the Organization.

WIPO Arbitration and Mediation Center

- ◆ Completing the Web-based system for on-line dispute-resolution, and administering Internet domain name and other intellectual property disputes submitted through this system.
- ◆ Introducing emergency relief Rules and the provision of services thereunder.
- ◆ Concluding cooperation agreements with arbitration institutions in different regions, and developing new arrangements with various organizations for the standard inclusion of WIPO dispute-resolution Rules.

Expected results

- ◆ Enhanced mechanisms for transparency and accountability, and for resolving staff grievances.
- ◆ Greater capacity to ensure the compliance of WIPO's contractual obligations with legal standards and commercial policy considerations.
- ◆ Wide acceptance of the arbitration and mediation services of WIPO, including the establishment of an on-line dispute resolution system.

Sub-program 03.1

Legal and Constitutional Matters

Objectives:

- ◆ To ensure the effective exercise by the Director General of his functions as depository of multilateral conventions and agreements.
- ◆ To advise Member States on legal questions relating to the Organization and its activities.
- ◆ To furnish secretariat services in relation to the international legal, administrative and constitutional elements of the meetings of the Assemblies and Conferences of the Member States and of diplomatic conferences.
- ◆ To facilitate the review or introduction of institutional mechanisms of transparency and accountability.
- ◆ To facilitate discussions on a possible mechanism for the resolution of intellectual property disputes between States.
- ◆ To ensure the effective functioning of the Industry Advisory Commission.
- ◆ To facilitate the prevention and resolution of staff grievances.

Background An increase in adherences to the conventions and agreements administered by WIPO has naturally led to a rise in the Office's depository activities: 68 instruments of ratification or accession were deposited with the Director General over the last year (52% by developing countries, 35% by countries with economies in transition and 13% by industrialized countries). Adherences are notified to Member States and other relevant entities, and must also, in accordance with the Charter of the United Nations, be registered with the United Nations in New York. The Office has in the past 12 months established an audit of the state of such registrations and commenced discussions with the Treaty Section of the Secretariat of the United Nations on the electronic registration of such treaties and of actions in relation to treaties. During the 1998-99 biennium, the WIPO Secretariat is expected to register with the UN Treaty Section some 1,000 actions relating to past and projected adherences to WIPO-administered treaties.

Increases in the importance of intellectual property in public policy and in the number of WIPO-administered treaties have caused meetings of the *Assemblies and Conferences of the Member States* to become administratively more complex and their agendas to become increasingly charged. In September 1977, five Assemblies and Conferences of Unions administered by WIPO met and 10 items were on the agenda, whereas, in September 1997, 21 such Assemblies and Conferences met to consider 30 agenda items. Agenda items range from technical questions of concern to specialists within a particular branch of intellectual property administration to questions of more general importance to policy on the international level. There are currently 56 intergovernmental and 141 non-governmental organizations admitted to observer status with WIPO. These

figures are expected to increase to about 60 and 160 respectively over the next two years.

The main *institutional mechanisms* for transparency and accountability have been the Controller, whose functions are defined in the WIPO Financial Regulations and Rules, the Auditors, and the Legal Counsel's review of those contracts that were submitted to the Office of the Legal Counsel.

Discussions on a draft *Treaty on the Settlement of Intellectual Property Disputes Between States* commenced in 1989 and continued most recently in the September 1997 meeting of the Governing Bodies of WIPO and the Unions Administered by WIPO, where it was decided that further consultations were needed.

Increase in staff numbers has led to greater demand for assistance in resolving *staff disputes*. Such disputes concern, broadly, either complaints against the application of decisions of the International Civil Service Commission (ICSC), or complaints about individual personnel decisions within WIPO. The latter class of disputes may be more readily resolved by different, less formal procedures for their resolution than the former class, which usually require a quasi-judicial decision from an authority within the United Nations common system.

In his Acceptance Speech, the new Director General announced a proposal for a more active dialogue with the market sector, including the establishment of an Industry Advisory Commission. This Commission will advise the Director General directly, but will be serviced by the Office of Legal and Organization Affairs.

Main activities

- ◆ Continued provision of advice on the interpretation and application of the WIPO Convention as well as on the preparation, adoption and interpretation of the international conventions and agreements administered by the Organization.
- ◆ Continuation of tasks with respect to the functions of depository of international conventions and agreements administered by the Organization.
- ◆ Advising on questions concerning the legal status of the Organization, its privileges and immunities, and on questions concerning its staff.
- ◆ Participation in assuring the secretariat of diplomatic conferences and other meetings convened by the Organization and assisting in the preparation of documents submitted to such conferences and meetings and to the Assemblies and Conferences of the Organization and of the Unions administered by it.
- ◆ Keeping a record of all intergovernmental and non-governmental organizations admitted to observer status with WIPO, and preparing the necessary correspondence with those organizations and the documentation presented to the General Assembly concerning their admission to observer status.
- ◆ Servicing consultations to determine whether and, if so, in what form, WIPO should have a mechanism for the settlement of disputes between States in the field of intellectual property.
- ◆ Providing legal opinions on questions relating to the preparation and application of the WIPO Staff Regulations and Staff Rules and to disputes as to their application.

- ◆ Representing the Organization before the WIPO Appeal Board and the ILO Administrative Tribunal in all cases affecting the Organization and preparing briefs and other necessary documents submitted to the Appeal Board and the ILO Administrative Tribunal.
- ◆ Review and, where appropriate, establishment of institutional mechanisms of transparency and accountability, such as an ethics code for staff relating, in particular, to the receipt and donation of gifts by staff members; and internal rules concerning procurement, commitments relating to premises, and the use of e-mail and Internet facilities.
- ◆ Establishment of dispute-prevention and dispute-resolution alternatives, such as mediation, for staff grievances to supplement existing staff appeal procedures.
- ◆ Examining proposed means for advancing the development of international intellectual property law.

Expected results

- ◆ Efficient performance of depository functions by the Director General in respect of the multilateral conventions and agreements administered by WIPO.
- ◆ Workable proposals for new means of contributing to the establishment of international norms in intellectual property.
- ◆ Fewer formal staff appeals against individual administrative decisions.
- ◆ Enhanced relations with WIPO's constituents in the enterprise sector.
- ◆ Enhanced accountability and transparency in the activities of the Organization.

Legal and Constitutional Matters (in thousands of Swiss francs)											
Sub-program 03.1	Official Travel and Fellowships			Contractual Services				Operating Exp.		Equipment and Supplies	
	Staff Missions	Part. Govt Officials	Fellowships	Conferences	Consultants	Publishing	Other	Premises & Maint.	Comm & Other	Supplies & Materials	Furniture & Equipment
Total	641	93	238	-	154	100	4	5	6	-	41

Sub-program 03.2

Contracts Review Facility

Objective:

- ◆ To provide a mechanism that ensures that any contractual obligations undertaken by the Organization meet requisite legal standards and appropriate commercial policy considerations, and to provide an oversight mechanism that helps ensure the accountability

of the Organization and facilitates compliance by the Organization with its contractual obligations.

Background The general functions of this sub-program so far have been carried out by the Office of the Legal Counsel. The capacity to carry out this function will be strengthened and extended by forming a Contracts Review Facility, as proposed by the new Director General in his acceptance speech to the WIPO General Assembly.

Main activities ♦ Providing legal advice in the course of the negotiation and preparation of contracts proposed to be entered into by the Organization and reviewing such contracts before they are entered into by the Organization.

Expected results ♦ Enhanced accountability of the Organization and more commercially favorable contract terms.

Contracts Review Facility (in thousands of Swiss francs)											
Sub-program 03.2	Official Travel and Fellowships			Contractual Services				Operating Exp.		Equipment and Supplies	
	Staff Missions	Part. Govt Officials	Fellowships	Conferences	Consultants	Publishing	Other	Premises & Maint.	Comm & Other	Supplies & Materials	Furniture & Equipment
Total	152	33	-	-	-	50	-	5	-	-	64

Sub-program 03.3

WIPO Arbitration and Mediation Center

Objectives:

- ♦ To provide high quality and cost-effective services, by traditional and electronic means, in relation to disputes referred to the Center for settlement, through state-of-the-art Rules and a comprehensive database of neutrals (mediators or arbitrators) with relevant expertise.
- ♦ To promote awareness, through electronic and other means, of intellectual property dispute-resolution and the WIPO services in particular.

Background Established in October 1994, the Center initially focused on establishing a basic legal and administrative infrastructure for the settlement of disputes. An important part of this work was the development, in collaboration with a group of arbitration experts, of the WIPO Mediation, Arbitration and Expedited Arbitration Rules. Concurrently, efforts were initiated through conferences and other contacts to promote the advantages of the WIPO Rules and recommended dispute-settlement clauses. In this start-up activity, the

Center benefited from the important network established through the WIPO Arbitration and Mediation Council and the WIPO Arbitration Consultative Commission.

Reflecting its nascent character in this phase, the Center operated with a minimum staff, permitting it to find its place among international arbitration centers while limiting expense to the Organization. At the same time, the Center undertook a number of initiatives that formed the basis for new and specialized services in the field of dispute-resolution. For example, working with outside experts, the Center created a series of training workshops for which the demand exceeded the capacity to service.

On-line dispute resolution: Technological advances have now opened up possibilities for more expeditious and cost-effective dispute resolution to be conducted by electronic means, through digital communications such as the Internet. The Center has been requested to administer on-line procedures for resolution of disputes arising from registration of Internet domain names, a role envisaged for the Organization in the gTLD-MoU. Based on estimates from those involved in this plan, a demanding case load of disputes is expected to arise. The new international system for the registration of domain names is still in a formative stage and subject to further public review. Even so, during its Twenty-First Session, the WIPO General Assembly noted with approval that the Center is undertaking preparations for its proposed role. Since there is still some uncertainty about this system, however, the proposed allocation of resources takes a conservative approach while planning for further resources to be available when the anticipated future substantial demand is realized. In any event, the on-line approach has attracted considerable interest within the dispute resolution community as it may usefully be applied to all other types of intellectual property disputes.

Main activities

- ◆ Internet domain name and other on-line dispute-resolution services:
 - technology development, including re-design of the Website and establishment of on-line electronic infrastructure for dispute-resolution procedures;
 - legal development, including adoption of WIPO Rules for Administrative Challenge Panel Procedures, on-line mediation and expedited arbitration Rules;
 - operation and maintenance of on-line system, including reception and tracking of cases, neutrals appointments and fee administration;
 - training of neutrals in on-line techniques;
 - administration for domain name disputes.
- ◆ Administration of regular dispute-resolution procedures for cases submitted to the Center.
- ◆ Development and maintenance of WIPO dispute-resolution Rules, including adoption of emergency relief Rules
- ◆ Promotion and development of cost-effective means of dispute-resolution for international and, especially, multi-jurisdictional disputes:
 - organization of an annual conference for the advancement of methods for dispute-resolution, in particular the Center's services (including one conference focusing on the needs of private users of intellectual property);

- organization of two mediation training programs and one arbitration workshop per year;
 - representation at appropriate external conferences;
 - contribution of papers and articles on topics of interest in the field.
- ◆ Provision of information:
- exploitation of the potential of a Web-based approach for information dissemination, including the design and implementation of a new Website for the Center;
 - answering of specific and general information requests;
 - publication in various languages of guides and brochures on the Center's procedures.
- ◆ Neutrals references:
- continued development and maintenance of neutrals database, and expansion to include additional trademark and domain name expertise;
 - referral services.

**Expected
results**

- ◆ A fully functional, neutral, internationally based and cost-effective on-line dispute resolution system, in particular for the resolution of Internet domain name disputes with consequent enhanced effectiveness of the domain name space.
- ◆ Adoption of emergency relief rules and provision of services thereunder.
- ◆ Developing case load, in particular with respect to domain name disputes.
- ◆ Increased exposure of Center's services, including establishing Center's Website as a principal tool for information dissemination.
- ◆ Achievement of market acceptance of WIPO Rules and procedures.
- ◆ Extension of the Center's involvement with developing countries and other arbitration institutions.

The following indicators, recorded by the Arbitration and Mediation Center, will allow objective monitoring of the attainment of program objectives:

- status of cases
- list of neutrals and number of referrals requested
- information requests
- status of legal developments
- domain name system developments
- user-paid conferences and training programs
- cooperation agreements

WIPO Arbitration and Mediation Center (in thousands of Swiss francs)											
Sub-program 03.3	<u>Official Travel and Fellowships</u>			<u>Contractual Services</u>				<u>Operating Exp.</u>		<u>Equipment and Supplies</u>	
	Staff Missions	Part. Govt Officials	Fellowships	Conferences	Consultants	Publishing	Other	Premises & Maint.	Comm & Other	Supplies & Materials	Furniture & Equipment
Total	1,825	164	229	-	40	827	157	100	201	-	107

Program Budget Summary

Office of Legal and Organization Affairs (in thousands of Swiss francs)											
	<u>Official Travel and Fellowships</u>			<u>Contractual Services</u>				<u>Operating Exp.</u>		<u>Equipment and Supplies</u>	
	Staff Missions	Part. Govt Officials	Fellowships	Conferences	Consultants	Publishing	Other	Premises & Maint.	Comm & Other	Supplies & Materials	Furniture & Equipment
Sub-program 03.1 641	93	238	-	154	100	4	5	6	-	-	41
Sub-program 03.2 152	33	-	-	-	-	50	-	5	-	-	64
Sub-program 03.3 1,825	164	229	-	40	827	157	100	201	-	-	107
Total	2,618	290	467	-	194	927	211	105	212	-	212

Note: If the WIPO Arbitration and Mediation Center receives more than the budgeted number of 1,500 requests for dispute settlement in the biennium, both its expenses, including staff costs, and the corresponding income will be higher than budgeted.

Staff needs and costs

Four new Professional posts are required for new program activities, namely one Professional for the Contracts Review Facility and one for coordination of arbitration of domain name disputes, and two additional posts to strengthen Legal and Constitutional Matters. One more General Service staff will be required to help in providing them with secretarial and administrative support.

Posts	1996-97	1998-99	Variation
Directors	2	2	0
Professionals	2	6	4
General Service	4	5	1
Total	8	13	5

Staff costs (in thousands of Swiss francs)	Budget 1996-97	Budget 1998-99	Variation
Salaries of regular staff	1,995	3,389	
Salaries of short-term staff	71	360	
Social charges + other personnel costs	654	1,112	
Total staff costs	2,720	4,861	78.7%

Comparative Budget Summary

MAIN PROGRAM 03: Office of Legal and Organization Affairs	(In thousands of Swiss francs)					
	Budget 1996-97	Budget 1998-99	Variation			
			Program		Cost	
			Amount	%	Amount	%
Program Activities	414	2,618	2,187	528%	17	4.1%
Staff Costs	2,720	4,861	2,138	78.6%	3	0.1%
TOTAL	3,134	7,479	4,325	138.0%	20	0.6%