

**Review of Management and Administration in WIPO:
Budget, Oversight and Related Issues**

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Introduction

1. On the basis of a decision taken by the Joint Inspection Unit (JIU) and as part of its Management and Administration series, the Unit has prepared an abbreviated review of the management and administration of World Intellectual Property Organization (WIPO). This report, prepared for the consideration of the February 2005 informal session and the April 2005 formal session of the Program and Budget Committee (PBC), focuses on headquarters review, budget and financial issues, personnel practices, oversight and the proposed new WIPO building. The second part of this report will be presented at a later date.

Headquarters review

2. The main finding of the Inspectors is that WIPO faces problems today because of the way the budget has been approached in the past, that is, adjusting the fees to secure income to finance existing and projected levels of expenditures, rather than on a detailed human and financial resources needs assessment, which itself would be based on the deliverables that each unit in WIPO must produce to assist the organization in discharging its various mandates.

3. Therefore, the Inspectors believe a headquarters review and needs assessment should be undertaken urgently to rationalize existing processes and systems. Overall, the review should be designed to strengthen the Organization and address how WIPO can best position itself to deal with the short and longer-term challenges it faces. The assessment should include a desk-to-desk review of positions and functions, and a review of expenditure and income requirements. Currently, there are no comprehensive Information Technology (IT) or Human Resources strategies. In general, more can be done to automate basic administrative processes; there are duplications of functions in the IT and administrative areas, e.g., translation services, the archive functions. While there are differences required by the various Treaties in terms of confidentiality and others, this does not mean that consolidations cannot take place. Based on various interviews carried out by the Inspectors, the proposed headquarters review and desk-to-desk analysis could lead to savings in the budget requirements for 2006-2007. In order to expedite the process, independent external expertise should be selected through an international bidding process, based on detailed terms of reference, to conduct a wide-ranging human and financial resources review. The review should be funded from within existing resources and be completed as soon as possible.

4. Because of timing concerns and decisions that will result from General Assembly consideration of such a study, the Inspectors recommend that the 2006-2007 budget should be approved at the same level as the revised 2004-2005 budget, in the forthcoming September session. Once the needs assessment is finalized, and on the basis of its results, a revised 2006-2007 budget could be approved.

Recommendation 1:

The Director General should hire independent external expertise to perform a comprehensive desk-to-desk needs assessment of the human and financial resources of the Organization in accordance with para. 3 above.

Recommendation 2:

The General Assembly should approve an initial 2006-2007 budget at the revised 2004-2005 budget level, pending the outcome of the needs assessment. Any revision to the budget based on the needs assessment could be presented for approval to the Extraordinary Session of the General Assembly in September 2006.

The Budget and Financial Issues

5. For many years WIPO enjoyed a healthy financial situation with income growing significantly due to the high numbers of applications received under the Patent Cooperation Treaty (PCT) system.¹ Unused resources accumulated in the reserve reached a peak of 353 million Swiss francs² in 1998. As a result, the General Assembly in 1998 reduced PCT fees and approved using the reserve for the construction of new premises.³ Simultaneously, the Member States agreed to draw down the reserve to bring it to a more acceptable level by allowing budgetary deficits.

6. Since 1998, with the lowering of PCT fees, a number of converging issues have led to a gap between the projected and actual income of WIPO. The situation worsened in 2002-2003 with the number of actual and projected PCT filings less than estimated and the problem continued into 2004-2005.⁴ In September 2004, the Director General requested approval to raise the PCT fees as of January 2005 to remedy the problem. Member States requested the Secretariat to convene a session of the PBC as early as possible in order to analyse, inter alia, any readjustment of PCT fees.⁵ The latest 2004-2005 estimates project a gap between expenditure and income of 23 million Swiss francs and provide for drawing down the reserve to a level slightly less than the agreed 18 per cent of the overall budget.⁶

7. While realizing the need to bring the reserve down to an acceptable level, the Inspectors are concerned about deficit spending. In the opinion of the Inspectors, recourse to the reserve should only be made for emergency purposes. The Inspectors believe that there is room for further economies that will reduce the deficit (to less than the proposed 23 million Swiss francs) and recommend the reserve not be drawn down before September 2005. At that time, the financial picture will be much clearer with only three months left in the biennium and Member States could authorize its use if necessary then.

8. The Secretariat notes two developments in 2004 that resulted in a slight increase in income and decrease in expenditures from the September 2004 estimates: a major national receiving office cleared and transmitted a backlog of PCT applications and associated fees to the International Bureau (IB), and there was an overall reduction in operational costs due to a concerted and conscious effort by the Director General to pursue budget discipline and cut costs which is to be commended and should be continued.

¹ WIPO Revised draft program and budget 2002-2003, WO/PBC/4/2, 30 June 2001, para.485

² Ibid, Table 27, para.484

³ WIPO Report of the International Patent Cooperation Union Assembly, PCT/A/XXIV/IO, 1 October 1997, Annex ill, p.39, and WIPO General Assembly, "Premises: the new construction", WO/GA/27/4, 21 September 2001, Attachment, para. 1 (e)

⁴ WIPO Program performance report for the 2002-2003 biennium, A/40/2, 23 July 2004, para.8

⁵ WIPO Program and budget committee, "Options concerning the new construction", WO/PBC/IM/05/2, 10 January 2005

⁶ Ibid, footnote 1

Budget, Income and Reserves⁷
(thousands of Swiss francs)

	Revised 1998-1999	Initial 2000-2001	Revised 2000-2001	Initial 2002-2003	Revised 2002-2003	Initial 2004-2005	Estimates 2004-2005 (Dec 04)
Budget	378,939	525,205	565,868	678,400	668,800	638,800	528,200
Income	391,814	428,584	526,045	531,782	497,425	588,150	505,200
Surplus/ (deficit)	12,875	(96,621)	(39,823)	(146,618)	(171,375)	(50,650)	(23,000)
Reserve	302,011*	205,390	262,198	115,580	93,051	42,401	92,500

* Actual figure

Income Projection PCT

9. Since PCT represents three quarters of income, getting its projection right is essential to effective programme planning and delivery. WIPO sought to address this as of June 2004 by developing a methodology to estimate income and demand. The model is being tested for reliability; the Inspectors consider the model rational but recognize that fine tuning will be necessary as the system is implemented. However, WIPO has not developed a methodology to determine the cost of processing PCT applications and will be consulting in the near future with a number of organizations, *inter alia*, the European Patent Office, with a view to developing such a cost methodology as well as improved productivity indicators.

Recommendation 3:

The Director General is urged to complete on an urgent basis consultations with other relevant organizations, *inter alia*, the European Patent Office and submit to the General Assembly a proposed methodology to determine the cost of processing PCT applications.

Resource Transfers

10. WIPO Financial Regulations provide that the "Director General may make transfers from one heading of the budget to another for any given financial period up to a limit of five per cent of the total credited for that period, when such transfers are necessary to ensure the proper functioning of the services".⁸ The Inspectors were informed that with the introduction of programme budgeting, this rule was interpreted to mean that WIPO had the flexibility to redeploy up to five per cent of total budget to one or more programmes. The Inspectors believe this interpretation is too broad and could render the priorities and the programme budgeting concept meaningless.

Recommendation 4:

The General Assembly should limit transfers between programmes to five per cent of the smaller amount of the two biennial appropriations of the programmes concerned.

⁷ WIPO Revised proposal for program and budget 2004-2005, WO/PBC/7/2, 31 July 2003, p. 8

⁸ WIPO Financial Regulations, Rule 4.

Effect of Exchange Rates and Delays in Transferring pct Fees to WIPO

11. The budget of WIPO is denominated in Swiss francs but PCT and other fees are paid in other currencies. Currently national receiving offices receive two payments when an application is filed: one for services rendered by the national receiving office and the other for services to be provided by the IB. While national receiving offices are to transmit all applications to the IB promptly,⁹ some experience significant delays for various reasons. As a result, WIPO income decreases when the national receiving offices accumulate a backlog of applications and increases when the backlog is cleared. This introduces a major element of unpredictability in the receipt of income that affects planning and programme delivery. Moreover, significant exchange rate fluctuations can occur between the time when applications are filed with national receiving offices and the IB receives the corresponding fees. While WIPO has a mechanism to deal with exchange rate fluctuations¹⁰, it is quite complicated and inadequate to deal with major fluctuations and time delays. WIPO should look into a mechanism whereby fees could be paid on-line to an established WIPO account with a copy of the payment forwarded to the national receiving office.

Recommendation 5:

The PCT Assembly should consider taking the necessary steps to:

- a. Have users of WIPO services pay fees for services rendered in Swiss francs, the currency in which the budget is denominated and most expenditures incurred; and**
- b. Have PCT fees paid directly to the IB at the time of filing the application with the national receiving office and not at the time of its transmittal to the IB by the national receiving office.**

Recommendation 6:

The Director General should look into the feasibility of establishing a mechanism to allow fees to be paid through an on-line basis to an established WIPO account.

The Salary of the Director General

12. The JIU commends the Director General for his decision not to accept a salary for his duties with the International Union for the Protection of New Varieties of Plants (UPOV).¹¹ In the Inspectors' view, this personal decision ensures that the salary of the Director General is commensurate with his peers in the United Nations system.

Recommendation 7:

The General Assembly is invited to institutionalize the decision of the current Director General not to accept extra remuneration for his duties in relation to UPOV, as provided for in the relevant WIPO/UPOV Agreement. In the future, the

⁹ WIPO, Regulations Under the PCT, Rule 22.1

¹⁰ WIPO Report of the International Patent Cooperation Union Assembly, PCT/A/XXIV/10, 1 October 1997, Annex IV

¹¹ WIPO/UPOV Agreement, UPOV/INF/8, 26 November 1982, Article 4 (1) and 4 (5)

Director General should not receive any extra remuneration for additional tasks that may be entrusted to the post.

Personnel Practices

13. The Inspectors note the absence of a comprehensive human resources strategy and, while recognizing the specificities of WIPO and its various Treaties, are concerned with a number of long outstanding recruitment and promotion practices. Among the areas of concern are: the steady increase in staff, the significant number of short-term staff and consultants (and their longevity in many cases), and the practices of transferring staff with their posts, reclassifying posts, direct recruitment and personal promotions.

14. Between 1997 and 2002, approved posts increased by over 50 per cent. In addition, another 24 per cent of the total workforce was hired as consultants or on short-term contracts, which is of concern to the Inspectors. While realizing there was an increase in workload, the Inspectors could not ascertain whether the increase was proportional to the increase in staff. The proposed needs assessment referred to in para. 3 should determine whether this is so.

Short-term Staff and Consultants

15. The number of short-term staff and consultants increased from approximately 16 and 4 per cent respectively in 1997, to approximately 24 and 6 per cent respectively in 2003. A minor decrease occurred in 2004, to 22 and 5 per cent respectively. At the end of 2004 most consultants and short-term staff were from developed countries. The Inspectors were informed that many of the short-term staff and consultants have had their contracts renewed year after year with some on the payroll for more than seven years. Strict guidelines should be established similar to those of the United Nations.¹²

Transfers and reclassifications of posts

16. The Inspectors are concerned with the practice in WIPO whereby staff are transferred with their posts from programme to programme of the Organization. As a result, an office not only loses the staff member, but also cannot recruit a replacement, as there is no vacant post. The impact on the releasing office can be significant particularly if it is a highly technical or specialized unit. At the same time, the receiving office may become overstaffed. This practice should be discontinued, as it distorts the purpose of staffing tables as well as the priorities of the Organization.

17. The Inspectors were informed that 202 posts, or some 20 per cent of the approved posts, were reclassified in the 2002-2003 biennium (including some General Service posts reclassified to professional posts), with the incumbents being promoted into the reclassified job. These "reclassifications" were not approved by Member States who were simply notified

¹² The United Nations General Assembly adopted resolution 53/221, of 2 April 1999, and the Secretary-General implemented, through Administrative Instruction ST/AI/1999/7, that consultants and individual contractors should be highly qualified, and preferably from a roster of candidates; perform assignments of a temporary nature clearly related to the activities in the work programme; and undertake tasks capable of being completed in a specified limited period which due to their complexity cannot be met by existing staff (see also IIU/REP/2000/2, entitled "The use of consultants in the United Nations").

of this in the budget document for the subsequent biennium. This practice skews the notion of approved staffing tables and represents backdoor promotions and should be discontinued. Approval for reclassifications of Professional posts, and General Service to Professional posts, should be sought from Member States via the budget process before the fact. All reclassifications should be done in accordance with the guidelines of the International Civil Service Commission (ICSC).

Direct Recruitment

18. The practice of direct recruitment at WIPO began in 1976. Staff Regulation 4.8 (b) provides, *inter alia*, "... when certain services in the Professional category are urgently required for a limited period – particularly for current projects – the Director General may proceed by direct recruitment, without having recourse to a competition. Staff members recruited according to the latter procedure shall be granted fixed-term appointments not exceeding three years, which shall not be extended or converted to a permanent appointment." The Inspectors were informed that WIPO's interpretation of the rule is that individuals hired via direct recruitment may compete for vacancies in WIPO and that over the last three years, 99 per cent of direct hires were confirmed into regular posts. During the biennium 2002-2003, 43 per cent (38 out of a total of 88) of the Professional staff recruited were direct hires. This two-step process circumvents competition and equitable geographical representation and should be discontinued. While recognizing that in exceptional cases there may be a need to hire someone expeditiously, the Inspectors believe that other existing contractual modalities can be used to address these needs.

Personal Promotions

19. WIPO introduced the practice of personal promotions following a 1984 recommendation of ICSC.¹³ At the XIX session of the Coordination Committee in 1986, it was noted that "...the Director General would follow the practice of other Geneva-based organizations by the introduction of a system of personal promotions which would provide the necessary flexibility at his discretion to reward a limited number of worthy staff members." Guidelines formulated by WIPO¹⁴ provide criteria for promotion on merit that fit broadly into the exceptional situations outlined by the ICSC.¹⁵ However, in practice the purpose of the personal promotion scheme has been significantly eroded; it is almost exclusively based on seniority and does not conform to the 1984 criteria set by ICSC. The current practice at WIPO is that staff members who have been at their post for 10 years may receive a personal promotion without the need to demonstrate exceptional performance. Even the 10-year rule is flexible with some staff members receiving personal promotions before completing 10 years, and others just prior to retirement. In 2004 there were 45 staff members on personal grades; 23 or more than half were at the D-1 level; 7 at the P level and 15 at the OS levels. The 23 D-1s account for 45 per cent of the Director posts at WIPO. One official noted that some staff now view the practice as an acquired right.

20. In 1994 ICSC stated that it had earlier "reaffirmed the possible use of personal promotions in certain specific circumstances. It did not, however, in general advocate the use

¹³ International Civil Service Commission, A/39/30, 1984, para. 222

¹⁴ [Revised] Guidelines on promotion of staff, WIPO, March 2004

¹⁵ International Civil Service Commission, A/39/30, 1984, para. 222

of personal promotions, and felt that the introduction of reward and recognition programmes could reduce the need for personal promotions".¹⁶

21. The Inspectors are aware of at least four other United Nations specialized agencies that had at one point introduced the personal promotion scheme; the United Nations Educational, Scientific and Cultural Organization (UNESCO), International Labour Organization (ILO), International Telecommunication Union (ITU), and the International Atomic Energy Agency (IAEA). In its Review of the Administration and Management at UNESCO, the JIU recommended that the scheme be eliminated and it was.¹⁷ Since 1994, the policy in ILO has been implemented on a severely restricted basis. In the light of mounting financial constraints, ITU suspended the practice; a proposal to end the scheme may be put to the July 2005 ITU Council for decision.¹⁸

22. The JIU believes the practice should be eliminated for WIPO (and system-wide). The scheme is contrary to the standards of fairness and transparency in the system of recruitment and promotion. It distorts the principle that promotion is a reward for exceptional performance. It deviates from common system practices and allows unusual privileges to WIPO staff. Significant financial implications are involved that impact indirectly on programme delivery. It may also have a negative effect on staff morale.

23. Article 9, para. 7 of the Convention Establishing the World Intellectual Property Organization (1967, and, as amended, 1979), gives the Director General the ability to appoint staff. However, Staff Regulation 4.8 (a) requires him to seek the advice of the Coordination Committee prior to making "appointments to posts in the Special and Higher categories (grade D-1 and above)...". The Inspectors believe that when vacancies in the approved staffing table occur at this level the Director General should be able to fill the vacancy without Coordination Committee advice. This Article ties the Director General's hands unnecessarily and is inefficient for the effective running and management of the Organization. This is not the practice in other organizations; a legal interpretation can clarify the issue.

Recommendation 8:

The Coordination Committee should allow the Director General to recruit and promote against approved posts at the D-level without seeking their advice.

Recommendation 9:

The Director General should direct that:

- a. Employment of any contractual form be frozen at current levels until the headquarters review is completed;**
- b. The transfer of positions with posts be discontinued;**
- c. Any reclassifications of Professional level posts and General Service to Professional level posts be approved via the budget process, not after implementation;**

¹⁶ International Civil Service Commission, A/49/30, 1994, para. 338

¹⁷ UNESCO Report by the Director-General on the reform process, Part 1, Staff policy, 164/EX/5, 26 April 2002, para. 21

¹⁸ ITU service order No. 04/19, "Suspension of the personal promotion scheme", 22 December 2004

- d. The practice of personal promotions be discontinued;
- e. A comprehensive human resources strategy be established in one properly sanctioned document, which focuses on the identification, development, and appraisal of the human resources needed to meet the priorities of the Organization. This should include, in particular, policies on career development, gender balance, geographical distribution and administration of justice;

and report back, through the Coordination Committee, to the General Assembly at its next session, on the implementation of these measures.

Recommendation 10:

The Director General should suspend the current practice of direct recruitment and identify and submit to the General Assembly through the Coordination Committee appropriate contractual modalities that would meet the purpose of Staff Regulation 4.8 (b) while preserving the competitive nature of the recruitment process.

Oversight

External Audit

24. Selected by Member States, the Federal Audit Office of the Swiss Confederation has always been WIPO's External Auditor. They perform excellent financial audits that are well received by Member States, and do not charge for their services.¹⁹ However, the terms of reference for the External Auditor are limited to financial audits,²⁰ and as a result, no management audits have been carried out for WIPO. The Inspectors believe Member States should consider expanding the terms of reference for the external audit function, taking into consideration current best practices of other United Nations system organizations.

Internal Audit and Oversight Division

25. The Internal Audit and Oversight Division consists of an Acting Director, two evaluation officers and one G-5 secretary. None have an audit background. The Inspectors believe the staffing is very inadequate and needs strengthening, both in qualitative and quantitative terms, to include, specifically, staff with an audit background. The Division itself has advised this concern to the Director General. The Inspectors would expect that no one in this office should be on a personal promotion.

26. The internal audit function was created in 2000 while the evaluation function was established in 1998. Few programme evaluations have been undertaken (four in six years, plus two done by external consultants); only one of these involved technical cooperation projects. As for internal audits, only seven have been carried out since 2000; the Inspectors were informed they were conducted by an "external" consultant, a former member of WIPO's finance staff. The internal audit division itself did not undertake any audits and no audit plans

¹⁹ The Inspectors were informed that the external auditors are only reimbursed for their travel costs and per diem.

²⁰ Annex to the WIPO Financial Regulations, Terms of reference governing audit, 1992 and 1998

have ever been developed. There is no annual reporting mechanism to Member States and no procedure to follow-up on the implementation of recommendations of the Audit and Oversight Division.

27. An 'Internal Audit Charter' has been drafted, which will be presented to Member States for approval, and ultimately will be annexed to WIPO's Financial Regulations. Prior to its approval, the Charter needs, in the Inspectors' view, some additional fine-tuning as regards its definition, to include evaluation, and exclude the consulting function, which would be better placed elsewhere in the Organization. This should be completed as soon as possible for General Assembly approval.

Member States Role in Oversight

28. While not in favour of micro-management and aware that WIPO is primarily a fee-for-services based organization, Member States should exercise their "Board of Directors" function by taking an active and robust role not only in the programme process but in the budget process as well. Substantively the budget is of equal importance as the programme.

Recommendation 11:

The General Assembly should take steps to strengthen the effectiveness and independence of oversight at WIPO by:

- a. Requesting the External Auditor to review and submit for its consideration his/her terms of engagement with a view to bringing them in line with best practices of other United Nations organizations;**
- b. Requesting the Director General to submit concrete proposals with a view to creating a D-level post and determining the qualifications required for the head of the Internal Audit and Oversight Division; and**
- c. Enhancing the staffing of the Division with the necessary professionals qualified to carry out its mandate.**

Recommendation 12:

The Director General should ensure that the Internal Audit and Oversight Division:

- a. Expands and fine tunes an Oversight Charter for approval by the Member States;**
- b. Elaborates audit and evaluation plans based on risks and opportunities for the Organization;**
- c. Establishes a follow-up system to ensure compliance by managers with oversight recommendations;**

and report back to the General Assembly at its forthcoming session on all the measures taken.

The New WIPO Building

29. The Inspectors did not review issues related to the remodelling of the "old WMO building", or issues related to the contract awarded to the consortium selected for carrying out the construction of the "new building". They limited themselves to reviewing the paper prepared by the WIPO secretariat and submitted to Member States on January 13th 2005.²¹

30. The WIPO Secretariat is proposing to finance a less expensive project²² for the new building of 139.1 million Swiss francs with a bank loan of 113.6 million Swiss francs.²³

31. Having reviewed the proposals, the Inspectors are of the view that the project should be initiated without delay since the cost of the loan, estimated at 6.315 million Swiss francs per year,²⁴ is lower than the current annual cost of renting premises of some 8.7 million Swiss francs. Moreover, WIPO already owns the land and it would be able to relocate staff in one building.

²¹ WIPO, Program and Budget Committee, "Options concerning the new construction", WO/PBC/IMJ05/3, 10 January 2005

²² Without the conference hall, with one floor less and including the purchasing of the land plus additional parking space.

²³ WIPO, Program and Budget Committee, "Options concerning the new construction", WO/PBC/IM/05/3, 10 January 2005, para. 11

²⁴ Yearly interest rate of 3.56 per cent plus capital amortization