

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

WORKING GROUP OF THE PROGRAM AND BUDGET COMMITTEE

Geneva, December 14, 2006

REPORT

adopted by the Working Group

OPENING OF THE SESSION

1. A formal session of the open-ended Working Group of the Program and Budget Committee (PBC), hereinafter referred to as “the Working Group”, was held at the headquarters of WIPO on December 14, 2006. The list of participants is annexed to the present document (Annex I).

ELECTION OF A CHAIR

2. The Working Group elected Mr. Gilles Barrier (France) as *Ad hoc* Chair. Mrs. Carlotta Graffigna (Executive Director and Controller, WIPO) acted as Secretary.

ADOPTION OF THE AGENDA

3. The Agenda was adopted as annexed (Annex II).

REVIEW OF THE TERMS OF REFERENCE OF THE WIPO AUDIT COMMITTEE

4. The Secretariat recalled that the present session was a follow up to the September 2006 decision of the Assemblies to convene an open-ended Working Group of the PBC (paragraph 188(c) of document A/42/14) to review the terms of reference of the Audit Committee (AC) and prepare a proposal on adequate resources, including the possibility of an independent secretariat, to assess and review the Internal Audit Charter, and review the structure and resources required for effective internal audit and oversight in WIPO.

5. The statement of the Chair of the WIPO Audit Committee, Mr. Khalil Issa Othman, on the subject of this agenda item is annexed (Annex III).

6. The delegations of France, Germany, India, Japan, Netherlands, Russian Federation, Switzerland, United Kingdom and United States of America took the floor on this item of the agenda.

7. *The Working Group:*

(i) took note of the presentation made by the Chair of the Audit Committee and the comments made by a number of delegations on the present item of the agenda;

(ii) expressed its appreciation for the work carried out so far by the Audit Committee;

(iii) recalling that, in establishing the Audit Committee, the 2005 session of the General Assembly had decided to review its mandate, functioning and membership at the end of two years (document A/41/17, paragraph 194(ii)), and recalling the 2006 General Assembly decision that this open-ended Working Group of the Program and Budget Committee review the terms of reference of the Audit Committee and prepare a proposal on adequate resourcing, including the possibility of an independent secretariat (document A/42/14, paragraph 188(c));

(iv) recommended to revise, inter alia, the text of paragraph 2(b)(i) of the terms of reference of the Audit Committee;

(v) requested the Secretariat to convene a one-day session of the Working Group immediately following the spring 2007 Audit Committee meeting, and to provide to the Working Group a document presenting the terms of reference of the Audit Committee,

and, in “track changes”, any amendments that the Audit Committee may have recommended in its report. The document would also present any proposal that the Audit Committee may have made in respect of its resources, including the possibility of an independent secretariat;

(vi) the Working Group would consider the Audit Committee’s recommendations and recommend any further revision of the Audit Committee’s terms of reference.

REVIEW OF THE WIPO INTERNAL AUDIT CHARTER, AND STRUCTURE AND RESOURCES FOR INTERNAL AUDIT AND OVERSIGHT AT WIPO

8. The Chair proposed, and the Working Group agreed, to continue the discussion until the end of the afternoon and to resume it at the spring session of the Working Group.

9. The Acting Director of IAOD introduced this item of the agenda. He noted that the Audit Charter would, like the Terms of Reference of the Audit Committee, be reviewed and amended in 2007.

10. The statement of the Vice Chair of the Audit Committee, Pieter Zevenbergen, is annexed to this document (Annex IV).

11. The delegations of France, Netherlands, Switzerland and United Kingdom made preliminary comments on this item of the agenda.

ADJOURNMENT OF THE SESSION

12. The session was adjourned.

[Annexes follow]

ANNEXE I/ANNEX I

I. ÉTATS MEMBRES/MEMBER STATES

*(dans l'ordre alphabétique des noms français des États/
in the alphabetical order of the names in French of States)*

ALLEMAGNE/GERMANY

Li-Feng SCHROCK, Senior Ministerial Counsellor, Trade Marks and Unfair Competition,
Federal Ministry of Justice, Berlin

Udo FENCHEL, Financial Counsellor, Permanent Mission, Geneva

CANADA

Sara WILSHAW (Mrs.), First Secretary, Permanent Mission, Geneva

CHINE/CHINA

ZHAO Yangling (Mrs.) First Secretary, Permanent Mission, Geneva

COLOMBIE/COLOMBIA

Martha Irma ALARCÁN LÓPEZ (Sra.), Ministro Consejero, Misión Permanente, Ginebra

ÉGYPTE/EGYPT

Hosna Abd. El Whab ABAS (Mrs.), Head, Finance Department, Academy of Scientific Research
and Technology (ASRT), Cairo

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Lisa CARLE (Ms.), Economic Counsellor, Permanent Mission, Geneva

David MORFESI, Attaché, Permanent Mission, Geneva,

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Elena KULIKOVA, Counsellor, Ministry of Foreign Affairs, Moscow

Natalia AGEENKO (Mrs.), Director, Financial Department, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow

Mikhail FALEEV, Director, International Cooperation Department, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow

Marina KORNAUKHOVA (Ms.), Principal Specialist, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow

Alexey SHVETSOV, Expert, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow

Dimitry GONCHAR, Counsellor, Permanent Mission, Geneva

FRANCE

Benjamine VIDAUD-ROUSSEAU (Mme), conseiller juridique aux Affaires juridique et internationales, Direction générale, Institut national de la propriété industrielle (INPI), Paris

Gilles BARRIER, premier secrétaire, Mission permanente, Genève

INDE/INDIA

Mohinder GROVER, Deputy Permanent Representative, Permanent Mission, Geneva

ITALIE/ITALY

Thomas MICARELLI, Attaché, Permanent Mission, Geneva

JAPON/JAPAN

Yuichiro NAKAYA, Deputy Director, International Affairs Division, General Affairs Department, Patent Office, Tokyo

Kenichiro NATSUME, First Secretary, Permanent Mission, Geneva

Kiyoshi SAITO, Second Secretary, Permanent Mission, Geneva

MAROC/MOROCCO

M'hamed SIDI EL KHIR, conseiller, Mission permanente, Genève

PAYS-BAS/NETHERLANDS

Irene KNOBEN (Ms.), First Secretary, Permanent Mission, Geneva

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

PARK Joo-ik, Counsellor, Permanent Mission, Geneva

REPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Karel ČADA, President, Industrial Property Office, Prague

Luděk CHURÁČEK, Director, Economic Department, Industrial Property Office, Prague

ROUMANIE/ROMANIA

Cristian-Nicolae FLORESCU, Legal Counselor, Foreign Affairs and Legislation Office,
Copyright Office, Bucharest

Sorin-Mircea SUCIU, Expert, International Relations, Copyright Office, Bucharest

Livia PUSCARAGIU (Ms.), Second Secretary, Permanent Mission, Geneva

ROYAUME-UNI/UNITED KINGDOM

Kevin WOODROW, Director of Finance, The Patent Office, Newport

Dave WOOLF, Policy Advisor, Intellectual Property and Innovation Directorate, The Patent
Office, Newport

Corinne KITSELL (Ms.), First Secretary, Permanent Mission, Geneva

Pamela TARIF (Ms.), Second Secretary, Permanent Mission, Geneva

SUISSE/SWITZERLAND

Alexandra GRAZIOLI (Mme), conseillère juridique, Division droit et affaires internationales,
Institut fédéral de la propriété intellectuelle, Berne

Roman KOLAKOVIC, deuxième secrétaire, Division multilatérale, Mission permanente,
Genève

Pauline MENTHONNEX (Ms.), stagiaire, Division multilatérale, Mission permanente,
Genève

II. OBSERVATEURS/OBSERVERS

LETTONIE/LATVIA

Ieva DREIMANE (Ms.), First Secretary, Permanent Mission, Geneva

MOLDOVA

Maria RATCOV (Mrs.), Director, Finance and Economic Department, State Agency on Intellectual Property (AGEPI), Kishinev

SLOVÉNIE/SLOVENIA

Janez KUKEC MEŽEK, Head, Information and Promotion Department, Slovenian Intellectual Property Office, Ljubljana

III. COMITÉ D'AUDIT DE L'OMPI/ WIPO AUDIT COMMITTEE/

Khalil Issa OTHMAN, Chairman

Pieter ZEVENBERGEN, Vice Chair

Geoffrey DRAGE

George HADDAD

Igor SHCHERBAK

IV. BUREAU/OFFICERS

Président *ad hoc*/Ad hoc Chairman: Gilles BARRIER (France)

Secrétaire/Secretary: Carlotta GRAFFIGNA (Mme/Mrs.) (OMPI/WIPO)

V. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA
PROPRIÉTÉ INTELLECTUELLE (OMPI)/INTERNATIONAL BUREAU
OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Carlotta GRAFFIGNA (Mme/Mrs.), directrice exécutive et contrôleur, Bureau du
contrôleur/Executive Director and Controller, Office of the Controller

Marco PAUTASSO, vérificateur interne principal des comptes et directeur par intérim,
Division de l'audit et de la supervision internes/Senior Internal Auditor and Acting Director,
Internal Audit and Oversight Division

[Annexe II suit/Annex II follows]

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

**WORKING GROUP OF THE
PROGRAM AND BUDGET COMMITTEE**

Geneva, December 14, 2006

AGENDA

prepared by the Secretariat

1. Opening of the session
2. Election of a Chair
3. Adoption of the agenda
4. Review of the terms of reference of the WIPO Audit Committee
5. Review of the WIPO Internal Audit Charter, and structure and resources for internal audit and oversight at WIPO
6. Closing of the session

[Annex III follows]

ANNEX III

STATEMENT OF MR. KHALIL ISSA OTHMAN,
CHAIRMAN OF THE WIPO AUDIT COMMITTEE:
REVIEW OF THE TERMS OF REFERENCE
OF THE WIPO AUDIT COMMITTEE

I. RESPONSIBILITIES AND FUNCTIONS OF THE WIPO AUDIT COMMITTEE

1. Allow me to describe the placement of the WIPO Audit Committee within the structure of the United Nations' system of oversight, where oversight is primarily the responsibility of Member States.
2. Member States delegate part of their oversight responsibilities to the Secretariat of an organization, especially the internal control mechanisms, as well as the external oversight bodies.
3. Oversight itself is part of the system of governance which provides Member States with assurances that (a) activities are carried out in accordance with legislative mandate; (b) funds are fully accounted for; (c) activities are conducted in the most efficient and effective manner, i.e., the most economical use of resources, both human and financial; and (d) staff, including high officials, adhere to the highest standards of professionalism, integrity and probity.

II. STRUCTURES OF OVERSIGHT

4. The structure of oversight within the UN system differentiates between internal and external oversight mechanisms.
5. An example of an internal oversight mechanism would be an internal audit and oversight division, as is the case in WIPO. An internal audit and oversight division's primary objective is to assist the executive head in fulfilling his managerial responsibilities and to provide advice on the adequacy of internal control and management practices based on the systematic and independent review of the operations of the organization. An internal audit and oversight division is part of an organization but is not part of its management. This is a very important distinction.
6. As to external oversight mechanisms, they are the oversight bodies of Member States and are accountable to Member States. External oversight mechanisms provide advice and recommendations on the operations and management of the organization; their coverage could be system wide or a single organization.
7. A further distinction between operational oversight mechanisms and the review oversight mechanism is that operational oversight mechanisms base their analyses and reports on primary data that they themselves collect. Examples of such bodies are: the Joint Inspection Unit (JIU), the UN Board of Auditors (BOA), the Panel of Auditors. On the other hand, review oversight mechanisms use data, reports and information which have been prepared for them but to which they add their own examination and analyses, followed by

advice and recommendations. Examples of review external oversight bodies are: the Advisory Committee on Administrative and Budgetary Questions in the United Nations (ACABQ) or the Committee for Program and Coordination (CPC) at the United Nations in New York.

III. A NEW CLASS OF OVERSIGHT BODIES

8. A recently established new class of oversight bodies is a group of external oversight bodies which cover a single UN organization, examples of which are the World Meteorological Organization (WMO) Audit Committee or the WIPO Audit Committee. The question arises as to why these bodies were created and the justification whether or not there is a need for them. From the WIPO Audit Committee's interaction with representatives of WIPO Member States, from the Committee's own findings, as well as from a reading the "Proposal on the Establishment of a WIPO Audit Committee" (document A/41/10), one detects that internal control and the WIPO Internal Audit and Oversight Division (IAOD) as it exists today, or as it has existed for some time, is deficient. Members of the WIPO Audit Committee hope that, with the recruitment of a new director, the IOAD will be strengthened as quickly as possible. Member States also have concerns about possible managerial deficiencies in the Organization, which is closely linked to Strategic Goal 5 (Greater Efficiency of Management and Administrative Support Process within WIPO).

9. Allow me to allay some misconceptions concerning the WIPO Audit Committee, its role and functions.

10. Members of the WIPO Audit Committee see the Committee as a *review* external oversight mechanism which, in dealing with an issue, receives reports or documents, analyzes them, reaches conclusions and makes recommendations. The Committee not only receives reports and documents: it also may initiate queries on certain topics for discussion and review. For instance, we might ask the Secretariat to prepare something on a specific issue which we would then review and submit our conclusions and recommendations to Member States. In addition to being a review oversight mechanism, the WIPO Audit Committee is an *advisory* oversight body. It does not make decisions: it advises and recommends, and it is up to Member States to take decisions. A third principle governing the WIPO Audit Committee is while that its members are elected by Member States we do not represent Member States: we function *independently* and in our personal capacities. These three elements — review, independence and advisory nature — are essential principles on which the WIPO Audit Committee should stand and function.

11. I would now like to refer to some of the specific points raised at the most recent session of the Audit Committee (document WO/AC/3/2, November 2, 2006) in which we flagged a number of issues.

12. First, with reference to the number and qualifications of the members of the WIPO Audit Committee, seven of us were elected by the Program and Budget Committee (PBC) based on our personal qualifications as well as geographical distribution, and two of us were then selected by the seven who had been elected by the Member States. We now number nine members. Whether or not that number is or will continue to be acceptable to Member States is a question which we put before you, taking into consideration the configurations that other audit committees have in the UN system. There is an on-going discussion in the UN, New York, about the newly-proposed audit committee, that is, an independent advisory audit

committee where the suggested number of members is 10 but where there is an ongoing discussion as to whether it should be lower.

13. Another point in this regard is the term of office. According to the present Terms of Reference we each serve for a two-year period: in other audit committees the term of office is longer. We leave it to the Member States to decide whether or not you wish this to be changed or not.

14. A third important point is turnover. We all took office on the same date (January 1, 2006). In December 2007, WIPO Member States may decide to retain half of the Audit Committee members, in order to assure continuity or to re-elect all Audit Committee members. This decision is an important one because of continuity but Member States may wish to establish an understanding that individuals who might stay for a second, consecutive term, would not be eligible for subsequent re-election.

15. With regard to Audit Committee members' qualifications, the Terms of Reference consider both individual and corporate qualifications. In terms of our individual and corporate qualifications, we have been working in harmony. We feel our experiences and qualifications complement each other.

16. With regard to the suggested periodicity of our meetings, while quarterly meetings are acceptable to us and have worked well, the duration of meetings has varied from one meeting to the next. It was foreseen that we would meet for two-and-a-half days on a quarterly basis and, when we inquired as to the reason for that duration we learned that it was mainly because of budgetary concerns for cost of interpretation. We would ask that Member States consider a duration of from three to five days, contingent upon (a) the kind of agenda for a specific meeting and (b) whether or not our meetings will need to be aligned with other meetings, for example the PBC, or others.

17. With reference to the resources for a secretariat to the Audit Committee, we have so far worked without our own secretariat. We have had very good assistance from the IAOD but the question arises as to whether or not we need our own, permanent secretariat. We have come to the conclusion that we do need our own secretariat, but only on a part-time basis. While the present Terms of Reference of our Committee foresee that this support be provided by WIPO's Internal Audit Oversight Division, we are of the opinion that this support may be better served by a secretariat that is not directly connected to that Division, so that we may be more independent, with no prejudice to our current or future relationship with the IAOD.

18. At our initiative, members of the WIPO Audit Committee met with the External Auditor and exchanged views. One of the clauses in the present Terms of Reference (paragraph 2(b)(i) of document A/41/10) stipulates that the WIPO Audit Committee shall, focus assurance resources by "agreeing and approving the audit plans and arrangements for internal and external audit;". After discussion with the External Auditor, we share the understanding that we are each an independent body and for that reason concur with the External Auditor that the Audit Committee cannot approve the External Auditor's plans. We can review them and, if we should have any comments or suggestions, we would of course forward them to the Member States and the Secretariat. It is therefore our opinion that a change to this clause should be considered.

19. As to our relationship with the Internal Auditor, we look forward to a continuing excellent relationship with the newly appointed Director, to the benefit of both the Secretariat

and the Member States, as well as to receiving, reviewing and overseeing his audit plan as soon as they can be prepared. We also look forward to the accelerated recruitment of additional staff to the IAOD.

20. To recapitulate, the WIPO Audit Committee is an independent, advisory review body. We intend to follow the basic principles I have presented to you in our activities. As today's discussion will continue later this spring, we will say more about the Committee's functions and possibly present a more detailed proposal on the other items to Member States at that time, with an eye to concluding and submitting a more detailed proposal to the Assemblies at their September 2007 session.

[Annex IV follows]

ANNEX IV

STATEMENT OF MR. PIETER ZEVENBERGEN,
VICE-CHAIRMAN OF THE WIPO AUDIT COMMITTEE

WIPO has three functioning audit bodies: the External Auditor, the Internal Auditor and the Audit Committee. Independence and complementarity are of primary importance among these three audit institutions, comparable to the delicate balance of an equilateral triangle, so that these oversight bodies can provide assurance to Member States on both the regularity and effectiveness of the Organization's operations. In the report of its October-November 2006 session (document WO/AC/3/2), the Audit Committee had flagged eight issues:

1. Paragraph 4 of Annex II ("WIPO Internal Audit Charter") to document A/41/11 ("Proposal on the Adoption of A WIPO Internal Audit Charter") states,

"The Internal Auditor has to accept requests for his/her services from the Director General, but he/she should be free to carry out any action within the purview of his/her mandate. The workplan of the Internal Auditor shall be based on a risk assessment, to be carried out at least annually, on which basis work would be prioritized. In this process, the Internal Auditor shall take into account the comments of the Director General and Member States."

The Committee is of the opinion that this wording should be reworked as it could be possible for a Director General to make so many requests of the Internal Auditor that the latter would not be in a position to work on his own program based on his risk analysis.

2. Paragraph 5 of that same document states,

"The Internal Auditor shall conduct internal audits in a professional, impartial and unbiased manner; conflicts of interest should be avoided. He/she will perform all audit work with due professional care and in accordance with best practice recommended by the Institute of Internal Auditors, which is accepted and applied by the UN system organizations."

The Committee is of the opinion that a mechanism should be developed to handle conflicts of interest if they should arise.

3. Paragraph 8 states,

"The Internal Auditor shall be available to receive directly from individual staff members complaints or information concerning the possible existence of fraud, waste, abuse of authority, non-compliance with rules and regulations of WIPO in administrative, personnel and other matters or other irregular activities relevant to the mandate of the Internal Auditor. Relevant internal whistle-blowing policies and procedures shall be developed, established and applied in conjunction with this Charter."

The Committee is of the opinion that this is a situation in which the WIPO Ombudsman also potentially had a right to act and that the responsibilities of both bodies should be clarified in order to avoid each institution's working on the same issue.

4. Paragraph 13(d) of WIPO's Internal Audit Charter states,

“To effectively implement WIPO's Internal Audit function, the Internal Auditor shall ... Liaise and coordinate with the External Auditor and monitor the follow-up of their recommendations.”

The Committee is of the opinion that the Internal Auditor should liaise and coordinate with the External Auditor, as illustrated in the earlier example of the equilateral triangle.

5. The Committee is of the view that the Internal Auditor should support the WIPO Audit Committee, as part of the equilateral triangle to which he had referred earlier.

6. Paragraph 13(f) stated that the Internal Auditor shall

“Develop and maintain a quality assurance/improvement program covering all aspects of Internal Audit, including periodic internal and external review and ongoing self-assessment, such as tracking time taken to produce reports.”

The Committee is of the opinion that reporting lines should be streamlined as there is a contradiction between paragraph 18:

“The Internal Auditor shall submit the final internal audit reports to the Director General, copied to the Audit Committee. The External Auditor shall also receive a copy, along with any supporting documentation. Permanent Representatives of Member States to WIPO or their designates can read final internal audit reports in the Internal Auditor's office.”

and paragraph 21:

“The Internal Auditor shall present, on an annual basis, a report to the Director General, regarding the implementation of recommendations made by the External Auditor.”

Since the Committee has a responsibility to communicate on the yearly plan it is logical that it should also discuss the annual report.

7. Paragraph 27 of WIPO's Internal Audit Charter states:

“The appointment, replacement or dismissal of the Internal Auditor shall be formally made by the Director General, taking into account the advice of the Audit Committee and the Coordination Committee. The Internal Auditor will have a fixed term of four years, renewable on the recommendation of the Audit Committee, for an additional term of four years. He/she would not be eligible for any further employment in WIPO.”

The Committee would prefer to be “informed” instead of playing an advisory role.

8. The issue of the revision clause (“This Charter shall be subject to revision two years after its adoption.”) had already been discussed earlier in the session of the Working Group. The Committee suggests that Member States reconsider the periodicity of the Charter’s revision since information which might lead to changes in the Charter could be received on an annual basis.

[End of Annex IV and of document]