

Investigation Procedure Manual



Internal Audit and Oversight Division

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Foreword

This WIPO Investigation Procedure Manual is established in accordance with the provisions of the WIPO Internal Audit Charter (2007).

The preparation of this Manual has taken into account investigation standards applied by the United Nations, including practices reflected in the Uniform Guidelines for Investigation adopted by the annual Conference of International Investigators.

The Manual includes information on IAOD investigative techniques, methods and procedures followed by IAOD investigators. It will help ensure the delivery of investigation reports of a consistently high standard and assured quality.

This manual does not confer, impose or imply any new rights or obligations (other than those contained, for example, in WIPO Staff Rules and Staff Regulations) that would be actionable in a court of law or in administrative proceedings by or against WIPO or those employees responsible for conducting investigations. Further, this Manual does not limit staff members' rights and obligations as defined in WIPO Staff Rules and Staff Regulations and other relevant administrative issuances.

The Office of Internal Oversight Services Investigation Manual, World Health Organization Guidelines and recent UNDP material as a source of many of the provisions contained in this Manual are gratefully acknowledged as are the many helpful and valuable comments and practical suggestions from the Office of Legal Counsel, HRMD, the Staff Council and staff members.

Nick Treen
Director, IAOD
July 30, 2010

A. Introduction

1 This Investigation Procedure Manual has been prepared by the Internal Audit and Oversight Division (IAOD) of the World Intellectual Property Organization (WIPO) hereafter referred to as WIPO.¹ Investigations are carried out under the authority provided to the Director, IAOD by the Internal Audit Charter (2007).²

2 The Manual is intended for use by all members of the IAOD Investigation Section who are responsible for conducting investigations³; including investigators on secondment and external experts.⁴

3 The Manual is intended as a practical guide for the conduct of investigations at WIPO. It explains the purpose and establishes the methodology to be applied with respect to the initiation and conduct of investigations at WIPO. It is also intended to be a prime source of information for personnel⁵ of WIPO and Member States. It is written in accordance with the Staff Regulations and Staff Rules of the International Bureau of WIPO (SRSR)⁶ and the WIPO Internal Audit Charter.⁷

4 Notice has also been taken of the provisions of the Uniform Guidelines for Investigations and the Standards of Conduct for International Civil Servants.⁸ It does not have the effect of modifying the rights or obligations of the staff of WIPO as expressly set out in the SRSR.

¹ In case of doubt as to the interpretation of the Manual, the Director, IAOD or investigators acting on his behalf, shall be guided by the practice in other intergovernmental organizations of the United Nations common system

² The Internal Audit Charter is approved by the General Assembly (2007).

³ See Reference Document A Uniform Guidelines for Investigations para 2

⁴ Ibid para 40

⁵ Ibid re 'personnel'

⁶ See Reference Document B

⁷ See Reference Document C

⁸ See Reference Document D

B. Definitions

5 For the purposes of this Manual the following definitions apply:

Allegation of Misconduct

6 The reasonable belief based on factual information that misconduct has occurred.

Complainant

7 A staff member who makes a good faith communication that discloses or demonstrates an intention to disclose information that misconduct may have occurred.

Conflict of interest

8 A conflict of interest occurs when an individual or organization is involved in multiple interests, one of which could possibly corrupt the motivation for an act in the other.

Contemporaneous

9 Of the same time.

Disciplinary Action

10 The procedure initiated against a staff member pursuant to Staff Regulation 10.1, Chapter X of the Staff Rules.

Evidence

11 Any type of proof which tends to establish or disprove a fact material to the case. It includes, but is not limited to, oral testimony of witnesses, including experts on technical matters, documents, electronic, audio, video records and photographs.

Exculpate

12 To free from blame or accusation (exculpatory).

Inculcate

13 To accuse or to implicate (oneself or another) in a crime or other wrongdoing (inculpatory).

Inter alia

14 Among other things.

Investigation

15 A formal fact finding enquiry to examine allegations of misconduct and wrongdoing in order to determine whether they have occurred and if so, the person or persons responsible.

Investigator

16 A member of the Office of Internal Audit and Oversight Division (IAOD), or a person designated by IAOD to conduct an investigation related to cases of allegations of wrongdoing. An investigator may also be a person designated directly by the Director General in certain cases, to conduct an investigation into allegations of wrongdoing.

Misconduct

17 IAOD considers this to be, in general terms, the failure by a staff member to comply with his or her obligations under the WIPO Staff Regulations and the Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant. Such a failure could be deliberate (intentional, or wilful act), or result from an extreme or aggravated failure to exercise the standard of care that a reasonable person would have exercised with respect to a reasonably foreseeable risk (gross negligence) or from a complete disregard of a risk which is likely to cause harm (recklessness).

Mitigate

18 To make less severe or intense (mitigation).

Personnel

19 Any individual who is a staff member or holding another form of contract for service with WIPO including SSA, SLA and others.

Preliminary Evaluation

20 The process of collecting, preserving and securing basic evidence, and the evaluation of this evidence to determine whether an investigation into reported allegations of wrongdoing is warranted.

Standard Operating Procedure

21 A set of internal instructions covering those features of operations which lend themselves to a definite or standardized procedure without loss of effectiveness.

Subject

22 A staff member who is the focus of an investigation of alleged misconduct either by virtue of an allegation made, or evidence gathered during the course of an investigation.

Whistle-blower

23 Any staff member who reports a suspicion of alleged misconduct or wrongdoing within an organization to those in authority.

Witness

24 One who sees, knows or vouches for something.

Wrongdoing

25 The act or an instance of doing something immoral or illegal.

C. Principles of Investigation Activity

26 For Investigation, the Director, IAOD reports to the Director General of WIPO and is responsible for the management of all investigations and investigators employed within the Investigation Section of IAOD.

27 Investigators are empowered in the performance of their duty by the authority of the Director, IAOD.⁹

28 They must consistently demonstrate professionalism, integrity and ethical behaviour, objectivity and impartiality.

29 The Director, IAOD will manage the scope and process of each investigation and determine the role and responsibilities of each investigator.

Accountability

30 Each investigator is accountable to the Director, IAOD and is responsible for their proper performance and the quality of the casework allocated to them.

Professionalism

31 Each investigation will be conducted in accordance with the provisions of the Internal Audit Charter (2007), the Investigation Policy and this Manual.

32 Each investigation must be conducted efficiently and effectively to ensure that the relevant issues are examined thoroughly.

33 Key elements of alleged misconduct will be prioritised by the investigator for fact-

⁹ See Reference Document C section D para 4 & 7

finding activity bearing in mind the time-frames set by the Director, IAOD and resources available.

Integrity and Ethics

34 Investigators must maintain the highest standards of integrity and ethical conduct.¹⁰

35 They must declare any potential or real conflict of interest¹¹ as they occur to the Director, IAOD and he/she will take appropriate action to avoid or resolve the issue.¹²

Objectivity and Impartiality

36 Investigators have a duty of objectivity, thoroughness and observance of professional standards. The investigator's findings will be determined in an unbiased and independent process of information-gathering and analysis. This will include diligent and timely examination of both inculpatory¹³ and exculpatory¹⁴ facts which may be used to substantiate or rebut an allegation of misconduct.

Confidentiality

37 The confidentiality of an internal investigation is established by WIPO's Internal Audit Charter.¹⁵

38 There is an obligation of confidentiality relating to information and evidence

¹⁰ See Reference Document A para 3 & D

¹¹ See Definitions re 'conflict of interest'

¹² This includes any personal, professional or financial relationships; or internal or external interference with the conduct of the investigation; see A para 4.

¹³ See Definitions re 'inculpatory'

¹⁴ Ibid re 'exculpatory'

¹⁵ See Reference Document C

obtained during the course of an investigation. The confidentiality of an investigation shall be observed by the Director, IAOD, any investigator and anyone else involved in the investigation, including the complainant, the subject, witnesses and all other individuals required to assist IAOD in the conduct of the investigation (including without limitation, administrative staff members and other personnel, consultants, translators, interpreters).

39 All persons so involved shall not communicate to any person information or evidence, except to their legal representative, Human Resources Management Department (HRMD), the Ombudsman¹⁶, or the Office of the Legal Counsel. A person may inform his/her supervisor that s/he will be interviewed by IAOD so as to obtain permission for an absence related to an investigation, but may not give any information related to the investigation to his/her supervisor. However, information gathered in the course of the investigations may be transmitted by the Director, IAOD to officials with a need to know in the event that disciplinary action is being considered or has been initiated.

40 Any exceptions to the duty to observe confidentiality must be expressly authorized by the Director, IAOD.

41 If the assistance of external bodies (for example, United Nations Funds, Programs and Specialized Agencies or Permanent Missions etc.) or individuals is required in connection with an investigation, such request for assistance shall be approved by the Director, IAOD.

¹⁶ See Reference Document E

42 This obligation of confidentiality shall not cease upon separation from WIPO.

43 Each investigator is responsible for the confidentiality and security of their respective case investigation files and evidence collected and retained.¹⁷

44 Investigators will remind complainants,¹⁸ witnesses¹⁹ and subjects²⁰ during the course of and following an investigation, that they too are bound by the provision of confidentiality.

45 A person alleged to have engaged in misconduct²¹ is termed the 'subject' of an investigation and is entitled to being presumed not responsible for misconduct until such time as misconduct is determined in accordance with the procedures established within the SRSR.

46 The identity of a subject will only be disclosed to interviewees at the discretion of the investigator.

47 Unauthorised disclosure of information pertaining to an investigation or the identity of any person who is a complainant, witness or subject, may constitute misconduct liable to disciplinary measures under the SRSR.²²

Scope of investigation

48 The Director, IAOD will independently determine whether any alleged misconduct should be investigated.

¹⁷ See para 116 to 124 below & A para 5

¹⁸ See Definition re 'complainant'

¹⁹ Ibid re 'witness'

²⁰ Ibid re 'subject'

²¹ See Reference Document A para 11 and Definition re 'misconduct'

²² See Reference Document B para 1.5.

49 The Director, IAOD may investigate a complaint or information irrespective of its source concerning possible misconduct or wrongdoing, including fraud, abuse of authority, non-compliance with WIPO Regulations and Rules in administrative, personnel or financial matters, or other irregular activities relevant to the mandate of the Director, IAOD, unless the Director, IAOD determines that the matter is not appropriate for investigation because:

- (a) the information or evidence provided by the complainant provides no, or clearly insufficient, specific or credible grounds to indicate that an investigation is warranted;
- (b) there is available an obvious better remedy or other better source of action e.g. referral to the Ombudsman, the Joint Grievance Panel, or Ethics Officer for the matter stated in the complaint;
- (c) the complaint relates to a matter of which the complainant has had knowledge for an unreasonable length of time before the complaint was submitted, except in the case of allegations of harassment which may have occurred over a period of time, provided that the complaint is made within a reasonable period of time since the last of a series of acts or omissions;
- (d) the complaint is very minor or trivial;
- (e) the complaint is considered malicious or defamatory or is made with knowledge of its falsity, or with willful disregard of its truth or falsity.

50 In addition, the Director General may request that an investigation be conducted of any alleged misconduct. However, the Director, IAOD will exercise his/her

independence whether and when to take action or not in accordance with the mandate of the Internal Audit Charter.²³

51 The Director, IAOD may conduct an investigation of any personnel²⁴ of WIPO.

52 All personnel have the right to communicate confidentially and in good faith with the Director, IAOD at any time.²⁵ All personnel have a responsibility to report wrongdoing or misconduct, and to cooperate fully with an investigation.²⁶

53 Retaliation against personnel for reporting alleged misconduct or wrongdoing²⁷ or cooperating in an investigation shall constitute misconduct. The person responsible for any proven retaliation may be the subject of disciplinary measures under the SRSR.

54 Misconduct does not normally or necessarily include complaints concerning alleged non-observance of terms of appointment or allegations of unsatisfactory performance, which have their own dispute resolution mechanisms.

Process

55 The Director of IAOD has the authority to initiate and conduct an internal investigation within WIPO, pursuant to the provisions of the WIPO Internal Audit Charter (2007), the Investigation Policy and as elaborated upon in this manual.

56 An investigation is a fact-finding process, conducted by investigators employed within the Investigation Section of the IAOD. The investigator will set out the findings of the investigation in a report to the Director, IAOD containing the relevant supporting

²³ See Reference Document C section D para 4.

²⁴ See Definition re 'personnel'

²⁵ See Reference Document A para 27

²⁶ Investigation Policy para 13

²⁷ Reference Document A para 13

facts. As a general principle, the investigator should complete the report in a timely manner as directed by the Director, IAOD who will take into consideration the complexity of the case, IAOD workload and/ or other compelling reasons.

57 The Director, IAOD will review the report and submit a final report together with findings and recommendations to the Director General.²⁸

58 Recommendations of the Director, IAOD may include:

- recommendations for disciplinary action;
- no further action;
- recommendations to refer a case to competent national or international authorities;
- recommendations for the recovery of monies or other assets of WIPO lost as a result of the actions under investigation; and
- recommendations to improve systems, procedures and controls, or otherwise to prevent similar incidents from recurring.

²⁸ The Director General has established procedures to decide what actions, if any are needed following an investigation.

D. Alleged Misconduct

59 The Director, IAOD will ensure that each allegation of misconduct is recorded, evaluated and processed in a consistent, accountable and confidential secure system.²⁹

Receipt of information

60 IAOD will record any complaint or information of alleged misconduct, oral or written, from any source including:

- referral by the Director General
- discovery or detection by IAOD during the course of Audit and Oversight activity
- referral by the Head of Information Security Section (ISS)³⁰ upon discovery or detection during the course of IT incident handling activities, or during normal Information Security monitoring activities
- referral by line managers, programme managers, the Safety and Security Coordination Service (SSCS), HRMD or OLC
- complainants or witnesses of alleged misconduct including ‘whistle-blowers’³¹
- anonymous information received by the Director or investigators of IAOD
- referral by the Joint Grievance Panel³²
- referral by the Ombudsman within his/her terms of reference³³

²⁹ See Reference Document A para 20. The Investigation Section maintains a register of cases with a unique case reference.

³⁰ See para 131 below

³¹ See Definitions re ‘whistle-blowers’

³² See Reference Document F

61 The Director, IAOD will nominate an investigator to open a case file and make a preliminary evaluation of the alleged misconduct.³⁴

62 If the information is received from an individual who does not claim to have personal knowledge of the alleged misconduct, i.e., a 'third party', but is reporting information that he/she received from an individual who does have such personal knowledge, i.e., an 'original source', the original source should be identified and interviewed. If the latter cannot be identified or is unwilling to have their identity disclosed, the information should be regarded as 'hearsay from an anonymous source'.

63 Diligent effort should be made, by all means available, to reassure an anonymous source of WIPO's commitment to confidentiality and protection of staff from retaliation.³⁵ The anonymous source should be encouraged by an investigator to disclose his/her identity to ensure a full assessment of the facts within his/her knowledge to justify a formal internal investigation.

64 Any record or data received or gathered during an investigation must be referenced within the case file and kept secure.³⁶

Notification to the complainant

65 Unless the initial information was received anonymously, an acknowledgement of receipt of the complaint will be sent to the complainant in writing. Bearing in mind the need for confidentiality for the investigation process the Director General may be informed of the existence of the investigation at the discretion of the Director, IAOD.

³³ See Reference Document E

³⁴ See Reference Document A para 20

³⁵ See Reference Document C section D para 9

³⁶ See para 116 to 124 below

66 No other person including the subject, supervisor or programme manager of the complainant is entitled to be informed of the allegations at this preliminary stage.³⁷

Preliminary evaluation of the information

The purpose of a preliminary evaluation shall be:

- (a) to record the complaint and establish the basic facts
- (b) to preserve or secure basic evidence whether written or electronic (such as cheques, invoices, written statements, or other relevant documents, records or data) that might otherwise be lost and that may be necessary for the determination as to whether an investigation is justified
- (c) to identify any inconsistencies or outstanding questions; and
- (d) to analyze the evidence to determine whether an investigation into reported allegations of wrongdoing is justified

67 The preliminary evaluation by the investigator should determine either the need for a formal internal investigation or for an alternative option, such as informal resolution by line management, referral to HRMD, the JGP or the Ombudsman; or no further action.

68 If there is any ongoing investigation of similar facts by either the ISS or the SSCS, the Director, IAOD will liaise appropriately and may appoint an investigator to liaise or coordinate investigation activity; or take control.³⁸

³⁷ See Reference Document C section D para 10

³⁸ See Reference Document O & P

69 If the alleged misconduct is the subject of an ongoing investigation by the national authorities, the Director, IAOD will liaise appropriately and consider the implication for WIPO of parallel inquiries into the same facts.

70 Initial inquiries will include establishing whether the alleged misconduct is ongoing and so serious as to merit interim measures or remedial action to protect staff and/or WIPO.³⁹ This may necessitate recommending to the appropriate authority the suspension of a staff member⁴⁰ and/or the preservation of critical electronic or hard copy data, without the knowledge or consent of a potential subject.⁴¹

71 When a subject is identified, HRMD will be consulted to establish the subject's current contractual status and any other relevant personnel issues.

72 Upon completion of the preliminary evaluation the investigator will submit a written, preliminary evaluation report of the relevant facts and recommend action for the consideration of the Director, IAOD.

73 The Director, IAOD may decide to:

- take no further action
- refer the information for resolution elsewhere within WIPO as described above⁴²
- defer further investigation for a specific time period pending further clarification of key facts

³⁹ See Reference Document B Chapter X

⁴⁰ See para 75 below

⁴¹ In cases which involve electronic data, the Director, IAOD will normally inform the Director IT in confidence of the need for this action and request the assistance of the Head of the Information Security Section to facilitate the process; para 131 to 135 below

⁴² See Reference Document C

- direct that a full investigation be conducted to establish the facts

74 The factors which determine this decision will include an assessment of potential risk to staff members and the property of WIPO; the prioritisation of other core activity within IAOD; having regard for available best practice drawn from 'lessons learned' from other internal investigations.⁴³

Suspension

75 The factors which determine a suspension will include an assessment of potential risk to staff members, the property and service of WIPO. The Director, IAOD may recommend to the Director General that the subject under investigation should be suspended from duty in accordance with the SRSR.⁴⁴

⁴³ See Reference Document A para 25 to 26

⁴⁴ Ibid para 36, Reference Document B section X and Reference Document H para 3.3

E. Conducting an Investigation

76 All investigation activity will be managed in accordance with the provisions of this Manual⁴⁵.

Investigation activity

77 This is a logical process of information-gathering in respect of alleged misconduct by interviewing complainants, witnesses and subjects; seeking corroboration or rebuttal of alleged facts discovered within relevant records of WIPO including document archives, electronic or other tangible records and obtaining such other evidence as may be relevant to the investigation.

78 The results of the investigation are analysed and evaluated in the context of the relevant SRSR or policy of WIPO to reach a determination known as ‘a finding’ of whether the allegation of misconduct appears to be substantiated or not.⁴⁶

Conduct of an interview

79 The investigators will identify themselves, explain in general terms the nature of the investigation and explain the allegations that have been made. The name, current post and brief summary of the interviewee’s career in WIPO (if applicable), will be obtained.

80 The interview should be flexibly adapted in response to the behaviour of the interviewee and the information provided. If the interview is lengthy, reasonable comfort breaks will be offered and their acceptance or rejection noted.

⁴⁵ The Investigation Section will develop SOPs as required (see Definitions)

⁴⁶ See para 142 to 144 below & figure 1

81 The investigator will ensure that relevant records will be available for production at the interview. Any records produced by the interviewee will be retained and stored securely with other evidence.⁴⁷

82 The investigators will make contemporaneous notes of the critical elements of the questions and answers sufficient to subsequently prepare a draft statement on a standard IAOD template.

83 The statement will be headed 'Confidential' and include details of the interviewee's name, job title, brief introductory resume of their career within WIPO (if applicable). It will include an endorsement signed by the interviewee to the effect that the content is true and written in the knowledge that it may be used in the context of disciplinary proceedings.

84 The investigator will provide the draft statement to the interviewee to correct or amend until satisfied that the document is an accurate account of the interview and the relevant facts within the knowledge of the interviewee.

85 The interviewee will be invited to sign and date the final version of the statement which will also be signed by the investigators. The original document will be retained by IAOD and the interviewee offered a personal copy which must be kept confidential.⁴⁸

86 If an interviewee refuses to review or sign a draft statement, the investigator will record the efforts made to achieve compliance and include the unsigned document together with any relevant audio transcript, within the report of the investigation.

⁴⁷ See para 116 to 124 below

⁴⁸ See para 37 to 47 above

87 If a pre-prepared statement is submitted at the outset or during an interview, this should be accepted by the investigators and the fact noted in addition to requesting the interviewee to comply with the procedure described above.

88 There may be circumstances which preclude a personal interview of a witness. In these circumstances an interview can be conducted by telephone or video link or exchange of correspondence by e-mail or postal service and a draft statement shall be prepared for review and signature as described above.

89 The investigator may re-interview any witness or subject to clarify significant facts or obtain additional facts as further information is established.

90 All personnel are required to cooperate with an investigation and to answer and comply with requests for information.⁴⁹

91 A refusal to cooperate and take part or any display of hostility during an interview will be noted at the time and recorded in the investigation report. Non-cooperation or refusal to provide assistance may be reported by the Director, IAOD to the General Assembly.⁵⁰

Interview participants

92 Interviewees are not permitted to have a third party or Legal Advisor present during an interview. Exceptionally, if the interviewee justifies a need for the presence of a suitable third party, it may be authorized at the discretion of the investigator.⁵¹

⁴⁹ See Reference Document A para 15

⁵⁰ See Reference Document C: para 7 and 23(g)

⁵¹ Common UN & Agency practice

Interpreters

93 Interviews will normally be conducted in the working languages of WIPO, i.e. either English or French, depending on the preference of the interviewee. If the latter requests to speak in an official language in which the investigator is not fluent, an interpreter designated by the investigator will be provided by WIPO.⁵²

Audio and visual recording

94 All subject interviews will be audio-recorded.⁵³

95 Normally witness interviews will not be audio or visually recorded.⁵⁴ However, in exceptional circumstances, the investigator may exercise his/her discretion to do so. The recording will be conducted openly with the knowledge of the witness.

96 Where interviews are recorded, a copy of the recording will always be provided to the interviewee.

97 The interviewee is not entitled to use personal recording equipment during the interview unless specifically authorised by the investigator.

98 The product of a recorded interview will be transcribed verbatim and if necessary translated. Recorded interviews with witnesses may be used to prepare a draft statement for review and signature by the interviewee.

Witnesses

99 Where possible witnesses will be interviewed before a subject.⁵⁴

⁵² See Reference Document A para 38

⁵³ Common UN & Agency practice reported in the Investigative procedures and practices, Comparative tables AC January 2009 at 16

100 Due diligence must be taken to research all potential witnesses to identify any reasonable suspicion of complicity in misconduct before an interview is actually undertaken. If a reasonable suspicion is so identified, the individual must be treated as a subject and put on notice of that fact before the interview.

101 Whether the initial information is received from a complainant, a witness including a 'whistle-blower' or a third party without direct knowledge of the alleged misconduct, the investigator will conduct an interview and record the facts in a detailed signed statement at the earliest opportunity to accurately record the relevant facts. Other witnesses identified should be prioritised for interview having regard for the potential significance of the information they possess, their availability and any logistical needs.

102 Witnesses will not be paid for information; however, IAOD will consider reimbursement of reasonable travel expenses.⁵⁵

Subjects

103 A subject will be treated to the same standard of respect and transparent fairness during interview as any other witness.

Notification to Subject

104 When a person is identified as a subject they will be notified in writing of the alleged misconduct and will be requested to attend an interview and provide any

⁵⁴ Common UN & Agency practice

⁵⁵ See Reference Document A para 39

information which may be exculpatory or mitigating.⁵⁶

105 Normally interviews with a subject will take place after available witnesses have been interviewed, to enable the subject to provide exculpatory or mitigating information on the gathered evidence⁵⁷.

106 A subject may identify further witnesses or indicate where further records can be found. The investigator must note full details of additional potential, exculpatory information and if necessary, seek the assistance of the subject to ensure reasonable access. The investigator will subsequently take appropriate action to interview all persons so named and to discover and secure the identified records.

⁵⁶ See Reference Document A para 19 & H para 4.2

⁵⁷ See para 99 above

F. Gathering Evidence

107 The prime purpose of an investigation is to establish whether misconduct has taken place or not.

108 The Internal Audit Charter provides the Director, IAOD with the authority to have unrestricted, unlimited, direct and prompt access to all of WIPO's records, officials and personnel holding any WIPO contractual status and to all the premises of WIPO.

109 It may be necessary to conduct a search for records or other physical evidence on the property of WIPO. If so required the procedure will be authorised by the Director, IAOD and conducted by two investigators and if appropriate, in the presence of the subject. Exceptionally in the absence of the subject, it will be conducted in the presence of an independent third party. This applies equally for hard copy or electronic records.

110 In addition it may be necessary to use assistance of internal specialists such as the Head of ISS to search data bases and recover relevant electronic records⁵⁸.

111 All seized records may become important evidence and exhibits in subsequent disciplinary proceedings; and exceptionally, in national criminal or civil proceedings.⁵⁹

112 Accountability in respect of the seizure, handling and storage of this evidence is a vital element of an investigation.

Evidence

113 Evidence is any type of proof which tends to establish or disprove a fact material

⁵⁸ See para 131 below

⁵⁹ See para 151

to the case. The investigatory ‘Standard of Proof’ of an internal investigation is a ‘balance of probability’ in accordance with the Uniform Guidelines for Investigations,⁶⁰ and current practices applied at WIPO. However, there are some matters, such as fraud, which may require proof according to a higher standard.

114 An internal investigation may provide evidence in subsequent disciplinary proceedings. This may include (but is not limited to):

- testimonial evidence, which includes direct and / or hearsay accounts of individuals who witnessed some event or issue relevant to the investigation
- documentary evidence which includes any written information created or received by WIPO
- electronic evidence which includes any computer data base of written, audio or visual memory, electronic access control systems and any other physical security system data base
- evidence gathered or obtained from WIPO premises and outside sources for the purposes of the investigation, including video surveillance and photographic evidence
- physical evidence which includes tangible and intangible material relevant to the investigation, such as goods, equipment or services rendered
- forensic evidence which includes examination of electronic data, physical objects such as disputed documents for fingerprints, DNA, indentations or identification

⁶⁰ See Reference Document A para 12

of printing equipment

115 Facts established during the course of an investigation may or may not be relevant at the time of information-gathering. It is essential for an investigator to accurately record all new information within the case file, evaluate its relevance as it occurs; and routinely subject that judgement to review as further information is discovered.

Evidence handling and secure storage

116 When records or other items of property are seized by an investigator, they must be secured in suitable containers which are normally purpose-made plastic bags sealed with a unique number, to preserve the 'chain of continuity' for subsequent specialist forensic examination; and possibly for later production during disciplinary proceedings or exceptionally in any national criminal or civil proceedings.

117 The label on the property storage bag must include details of the date, location, and description of the evidence seized and the unique number of any seal used to secure the bag. In addition the name of the investigator(s) responsible for the seizure and subsequent handling must be recorded.

118 All seized property, must be stored securely within IAOD by the investigator at all times throughout the course of the investigation, unless in transit or undergoing specialist examination; or in subsequent legal proceedings whether inside or outside WIPO.

119 Bulky items or large quantities of records or other property will necessitate special containers and may require storage in alternative secure premises.

120 The act of seizure and custody of a WIPO record by an investigator must be recorded in a unique property register maintained within IAOD which accurately describes the case reference number, date, reason and those concerned in the subsequent handling and examination of the item.

121 If the item is subjected to forensic analysis, the date, location and name of the analyst who takes custody of the item must be recorded; and a similar entry made when it is returned.

122 The IAOD property register should provide direct evidence of an unbroken 'chain of custody' from seizure to disposal of the property.

123 Medical information generally is normally privileged and unavailable to an investigator's information-gathering. However dates of medical evacuation, re-location and financial entitlement are not privileged.

Original or copy documents

124 Normally relevant original documents should be seized to provide the best evidence if required for forensic examination or production at a subsequent disciplinary procedure.

125 If a copy is seized the investigator must ensure that it is a perfect reproduction of the original, and store it in secure conditions as if it were the original document, preserving the 'chain of custody' within the property register.

126 Investigators must consider the risk that an original document or other original evidence could be altered, damaged, lost or destroyed and be able to justify why it was

not seized when available.

Electronic evidence

127 The gathering of information from electronic records will normally be conducted with the assistance of the Head of ISS.

128 Policies applicable to staff in the area of information technology include the E-mail Guidelines⁶¹, an Information Security Policies Manual⁶², an Information Security Standards Manual⁶³, an Office Circular entitled WIPO Information Security Policy⁶⁴, WIPO Organizational Information Security Policy⁶⁵ and an Information Security Incident Handling Modalities.⁶⁶

129 The ISS is primarily tasked to identify, evaluate, record and rectify information security incidents. Exceptionally in the case of alleged misconduct, they may be tasked directly by the Director, IAOD.

130 If it is suspected that an information security incident has been caused by misconduct rather than technical failure or an external event, the facts will be reported immediately by the Head of ISS to the Director, IAOD and the Director IT. It is the role of the Director, IAOD to determine whether and when an internal investigation is required.⁶⁷

131 If the Director, IAOD decides that an investigation of alleged misconduct is

⁶¹ See Reference Document J

⁶² See Reference Document K

⁶³ See Reference Document L

⁶⁴ See Reference Document M

⁶⁵ See Reference Document N

⁶⁶ See Reference Document O

⁶⁷ See Reference Document C section E para 14

necessary he/she will inform Head of ISS and the Director IT in writing that IAOD is assuming responsibility for the investigation.

132 ISS will provide technical advice to IAOD, if so requested to assist an investigator in the course of an investigation, including seizure of hard drives and forensic examination of the data contained therein.

133 Strict handling is required for all electronic evidence seizures to avoid compromising the 'chain of custody' of the potential evidence. This activity is normally conducted by the Head of ISS personally upon the written request of the Director, IAOD or appointed investigator.

134 ISS does not conduct formal interviews of staff members suspected of information security incidents caused by misconduct.⁶⁸ However, the Director, IAOD may request ISS to provide technical input to investigators planning a subject interview.

Forensic evidence

135 Generally fingerprints and DNA evidence are not sought during an internal investigation; however, the alleged misconduct may be so serious as to justify forensic analysis, especially if the internal investigation is being conducted in parallel with an external criminal investigation by national authorities.

136 In these exceptional circumstances the Director, IAOD may seek the authorization of the Director General to request the national authorities to provide technical assistance to an internal investigation.

⁶⁸ See Reference Document C & para 7 above

137 The Director General may lift a staff member's functional or full diplomatic immunity to allow the national authorities to take forensic samples and / or conduct a forensic analysis.

138 In relation to an investigation by IAOD the Director General may authorize the taking of fingerprint and DNA samples from a subject with their express consent. Samples will be taken by a qualified person for comparison with marks found on incriminating evidence.

139 It may also be necessary to take elimination samples from persons that may have innocently handled the evidence. Similarly, such samples can only be taken with the express authorization of the Director General and the individual concerned.

140 Forensic analysis of hard drives or other electronic data bases will normally be conducted by the Head of ISS or a designated member of the ISS team unless the task is too complex technically. In these exceptional circumstances, with the authority of the Director, IAOD, the Head of ISS may use an external specialised company to undertake the task.

G. Reporting Findings

141 Investigation reports will contain a finding, conclusions, recommendations and a summary of the facts established during the investigation, fully supported by available evidence. The report will make detailed reference to all records seized and their relevance to the facts. A draft report will be submitted by the investigator to the Director, IAOD.

142 The Director, IAOD will review and submit a final report to the Director General with comments and recommendations for action to be taken.

143 The report will remain a confidential document with no further circulation to any staff without the express authorization of the Director, IAOD, or the Director General.

Report structure

144 The investigator may also make reference to any other apparent misconduct discovered during the course of the investigation outside the terms of reference of the specific investigation.

145 The Director, IAOD will consider what appropriate action should be taken and can authorise a separate investigation of the newly disclosed facts.

146 When the investigator determines that a false complaint was made intentionally, IAOD may recommend that the complainant be subjected to disciplinary measures under the SRSR.⁶⁹

⁶⁹ See Reference Document A para 43, B section X & C section D para 9

Reports into WIPO Senior Managers

147 For final investigation reports involving WIPO personnel at the Deputy Director General and Assistant Director General levels, the Director, IAOD may also send a copy to the Chair of the General Assemblies, to the Chair of the Audit Committee and to the External Auditors. Should the investigation concern the Director General, the final report shall be submitted by the Director, IAOD, to the Chairman of the WIPO Assemblies, for any action deemed appropriate, and copied to the Chair of the Audit Committee and the External Auditors.

Fairness

148 A subject of an investigation does not have the right to access or receive a copy of the report unless subsequently charged with misconduct⁷⁰. If other administration or management action is taken as a result of the report the subject will be given a copy of the report together with relevant supporting documentation.⁷¹

149 Witnesses including the complainant are not entitled to see or be given a copy of the report.

Notification of conclusion

150 The complainant will be given a brief confidential summary of the conclusion of the investigation without breaching witness confidentiality, or the presumption of innocence in respect of any subject. Subjects of investigation not subsequently charged will be informed as appropriate.⁷²

⁷⁰ See Reference Document A para 41 to 44 & C section E para 14

⁷¹ For example, see Reference Document H para 4.2

⁷² See Reference Document A para 41

H. Referral

151 The Director IOAD has been authorised by the Director General to establish a beneficial, working relationship with the Host country authorities to enable and develop a productive relationship of liaison between the two entities, especially when internal and external investigations of the same allegations are conducted simultaneously.⁷³

152 Notwithstanding this practical operational relationship, all Host country authority requests for information or access to IAOD investigation reports are sent formally to the Director General for authorization.

153 IAOD investigators may be requested to provide statements to national authorities. All such requests will be referred to the Director General for authorization.

154 Nothing in this Manual derogates from the privileges and immunities enjoyed by WIPO as a result of the Headquarters Agreement with Switzerland dated December 9, 1970.

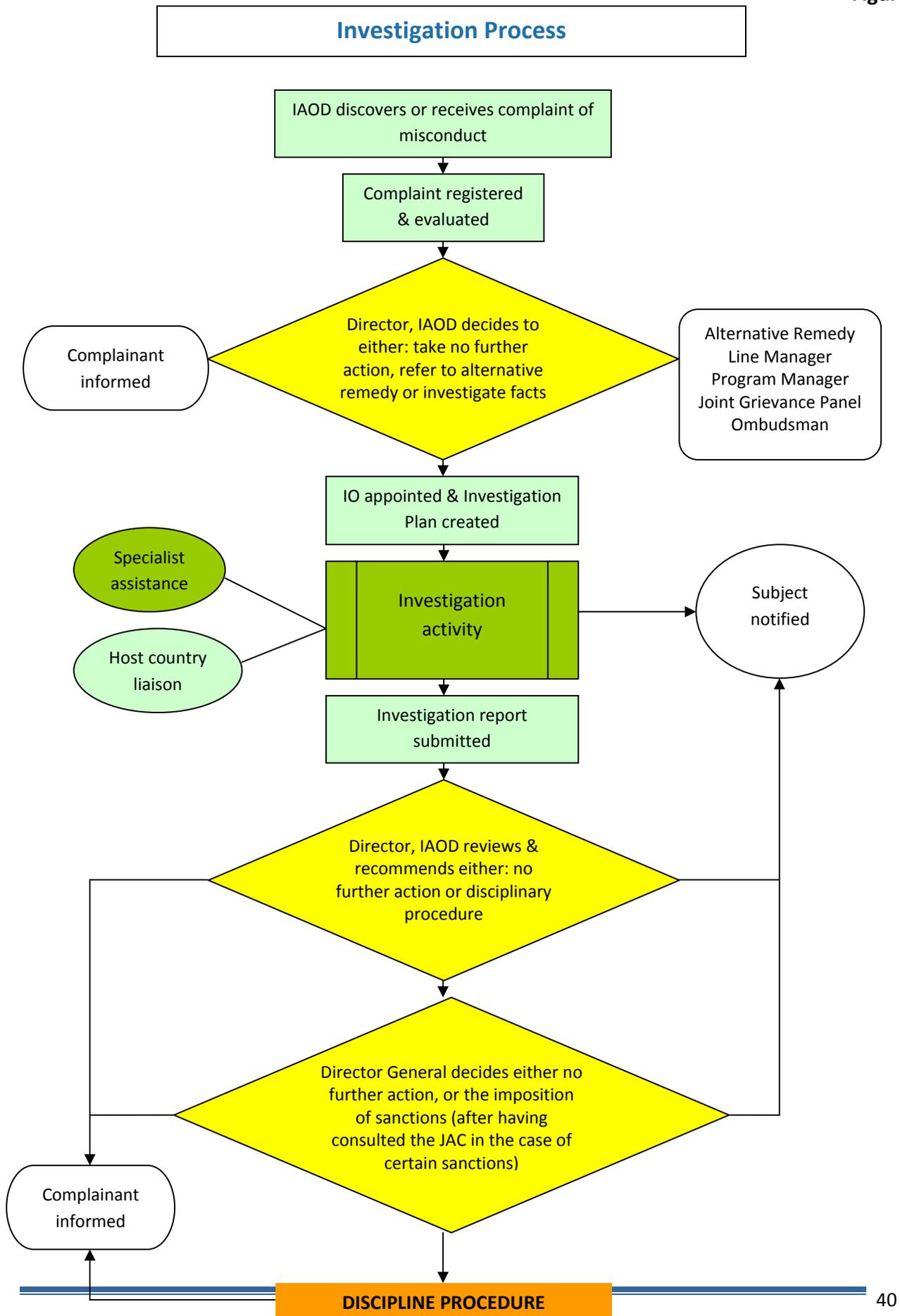
⁷³ See Reference Document A para 45

I. Revision

155 This manual will be reviewed and revised periodically.

Nick Treen
Director, IAOD
July 30, 2010

Figure 1



Reference Documents

(Titles hyper-linked to the WIPO Intranet)

- A. [Uniform Guidelines for Investigations revised 2009](#)
- B. [Staff Regulations and Staff Rules revised 2009](#)
- C. [WIPO Internal Audit Charter revised 2007](#)
- D. [Standards of Conduct for International Civil Servants revised 2001](#)
- E. [Ombudsman Office Instruction 2006](#)
- F. [Joint Grievance Panel Office Instruction 2009](#)
- G. Joint Advisory Committee Office Instruction 2009
- H. [Personal Accountability and Financial Liability Office Instruction 2008](#)
- I. [Terms of Reference of the Audit Committee revised 2008](#)
- J. [E-mail Guidelines 1999](#)
- K. [Information Security Policies Manual 2001](#)
- L. [Information Security Standards Manual 2001](#)
- M. [WIPO Information Security Policy IC 2002](#)
- N. [WIPO Organizational Information Security Policy 2004](#)
- O. [Information Security Incident Handling Modalities 2004](#)
- P. [Safety and Security Coordination Service SOP re initial investigations 2008](#)
- Q. WIPO Investigation Policy

ABBREVIATIONS

IAOD	Internal Audit and Oversight Division
HRMD	Human Resources Management Division
JGP	Joint Grievance Panel
SRSR	Staff Regulations and Staff Rules
OLC	Office of Legal Counsel
ISS	Information Security Section
IT	Information Technology
SSCS	Security and Safety Coordination Service
SOP	Standard Operating Procedure
CCTV	Closed Circuit Television
DNA	Deoxyribonucleic Acid
LAN	Local Area Network
SMS	Short Message Service
ICS	International Civil Service
IO	Investigating Officer
JAC	Joint Advisory Committee