

WIPO



WO/GA/24/6

ORIGINAL: English

DATE: August 4, 1999

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

WIPO GENERAL ASSEMBLY

Twenty-Fourth (14th Ordinary) Session Geneva, September 20 to 29, 1999

**POLICY ADVISORY COMMISSION (PAC)
AND INDUSTRY ADVISORY COMMISSION (IAC)**

Memorandum of the Director General

1. The Assemblies of the Member States of WIPO approved, in their thirty-second series of meetings, from March 25 to 27, 1998, the proposal contained in the 1998-1999 biennial Program and Budget to establish the Policy Advisory Commission (PAC) and the Industry Advisory Commission (IAC), comprised of eminent individuals from a wide range of policy backgrounds. It was noted that “the policy-making and medium-term planning processes of WIPO, its responsiveness to international trends and technological developments, and its capacity to anticipate and to meet the needs of the market sector and users of global protection systems, would benefit considerably from the availability of informed and objective advice from eminent international experts from a broad range of fields with bearing on intellectual property cooperation and WIPO’s operations” (see document A/32/2 - WO/BC/18/2, Sub-program 01.3).

2. The mandate of these two independent advisory bodies was defined in the same document (see Sub-program 01.3). The PAC was to “identify and comprehensively review issues that may need to be dealt with by WIPO, or that may have bearing on its operations, and formulate recommendations for policy development and enhancement of WIPO’s operations”; and the IAC was to “perform a complementary role from the specific perspective of industry and market sector, including users of the intellectual property system, and would also be instrumental in identifying new opportunities for enhanced support for

WIPO's activities from the enterprise sector, especially in cooperation for development, and human resource development.”

3. It should be noted that the role of the two Commissions is strictly advisory and consultative and shall “never replace or diminish the role of the Member States in the initiation and monitoring of the program of the Organization.”

4. The IAC held its inaugural meeting at the WIPO Headquarters in Geneva on February 4 and 5, 1999. Seventeen members attended the meeting. The report on the meeting by the IAC to the Director General of WIPO is contained in Annex I.

5. The second meeting of the IAC is scheduled for September 13, 1999, and it will, as suggested by the IAC members, focus on the subject of electronic commerce and intellectual property, because it is being held prior to the WIPO International Conference on Intellectual Property and Electronic Commerce, which is scheduled to take place from September 14 to 16, 1999.

6. The inaugural meeting of the PAC took place on April 15, 1999, at the WIPO Headquarters. Twenty-three members attended the meeting, and its report to the Director General of WIPO is contained in Annex II.

7. The General Assembly is invited to note and comment on the present document and the reports to the Director General of WIPO contained in Annex I and Annex II.

[Annexes follow]

ANNEX I

INDUSTRY ADVISORY COMMISSION

REPORT OF THE INAUGURAL MEETING
GENEVA, FEBRUARY 4 AND 5, 1999

1. The World Intellectual Property Organization (WIPO) Industry Advisory Commission (IAC) held its first meeting at WIPO Headquarters in Geneva on February 4 and 5, 1999. The list of participants is attached.
2. The Director General, Dr. Kamil Idris, opened the meeting. He drew attention to the two constituencies of WIPO—the Member States, on the one hand, and the market sector, on the other hand—and emphasized the importance that he placed on having the direct input of industry into the policy-making process in WIPO. While the Member States retained complete responsibility for making the policy of the Organization and the IAC's role was advisory, Dr. Idris stated that he considered it to be essential that industry's voice be heard in order for the Organization to be responsive to the needs of the market sector.
3. All members of the IAC welcomed the Director General's initiative in establishing the IAC and opening a direct and broad dialogue with industry, and expressed their willingness to contribute actively and constructively to the program of the Organization.
4. The discussions of the meeting focussed on the following matters:
 - (i) electronic commerce and intellectual property;
 - (ii) intellectual property and wealth creation;
 - (iii) the cost of obtaining patent protection;
 - (iv) change and policy-making at the international level;
 - (v) the working methods of the IAC.

Electronic Commerce and Intellectual Property

5. Following a presentation on the current work program of WIPO in the area of electronic commerce and intellectual property by Dr. Francis Gurry, Legal Counsel, the IAC had a wide-ranging discussion on the impact of electronic commerce and the digital economy on intellectual property.
6. It was agreed that electronic commerce was a broad subject whose impact was being felt on all sectors of the economy. In view of the scale of the subject and the work being carried out in other organizations, it was considered important that WIPO should limit itself to the dimension of intellectual property.

7. The situation of developing countries with respect to electronic commerce was discussed at some length. It was pointed out that the advent of electronic commerce was a source of some anxiety for many developing countries, both because of the potential loss of tariff and taxation revenue and because of lack of infrastructure for, access to and information about developments in relation to electronic commerce. It was considered important not to underestimate the difficulty of the challenges presented for developing countries by electronic commerce. In order to take full advantage of the opportunities of electronic commerce, a careful strategy and plan was needed covering the technological, legal, political, educational and cultural fabric of society. On the other hand, it was emphasized that electronic commerce did not require a sophisticated industrial infrastructure and offered many opportunities for developing countries to take advantage of the direct marketing possibilities of digital networks and of openings for labor-intensive software development.

8. It was suggested that WIPO give consideration to the creation of a virtual market for intellectual property. In particular, consideration could be given to making available information about intellectual property rights for sale or licensing in such a market and facilitating transactions in such rights, as well as to the development or deployment of tools for tracking royalty streams in respect of digital works that were incorporated in other works or modified by other authors or inventors.

9. The effect on intellectual property of the disintermediation being brought about by digital networks was discussed from several perspectives. First, it was pointed out that the Internet was increasing the ease with which infringing goods could be distributed across borders and making the task of detection of infringing products more difficult. Secondly, the more radical effect of disintermediation on historic distribution and licensing channels was discussed, as well as the consequences for the territorial basis of intellectual property rights.

10. The IAC recommended that WIPO address rapidly the issues arising out of the impact on intellectual property of electronic commerce. In this respect, it was conscious that the rapid development of electronic commerce made it difficult not only to develop timely responses to those issues, but also, at a more preliminary stage, to describe and identify the issues themselves. The IAC considered that its members could endeavor collectively to establish a list of such issues. It was agreed that the members of the IAC would work to develop and refine that list over the time before its next meeting.

Intellectual Property and Wealth Creation

11. The discussions were introduced by a presentation by Mr. Roberto Castelo, Deputy Director General.

12. It was generally agreed that a positive relationship existed between the generation, exploitation and protection of intellectual property and the creation of wealth, which relationship was becoming more pronounced and more important as the economy became increasingly knowledge- or information based.

13. It was considered important that the benefits of intellectual property protection be emphasized by WIPO in promoting intellectual property protection, rather than merely the legal obligation of compliance with standards of intellectual property protection. In addition, it was considered that more emphasis should be placed on the exploitation of intellectual property than on mere protection.

14. The IAC recommended that WIPO strengthen its efforts to promote actively the benefits of intellectual property and the role that it plays in economic development to the widest possible audience in society. In particular, the IAC considered

(i) that it was important to demystify intellectual property, which could best be achieved through simple messages and a broad public education campaign;

(ii) that case studies should be developed, with the assistance of members of the IAC, that demonstrated the advantages of intellectual property protection on the level of the individual, the enterprise, the industry and the country;

(iii) that thought should be given to enlisting the support of famous personalities who were scientists, artists, musicians or actors, and who might be willing to lend their names and support to public education campaigns in favor of intellectual property protection.

The Cost of Obtaining Patent Protection

15. Great concern was expressed by members of the IAC at the high cost of obtaining and maintaining patent protection throughout the world and the potentially detrimental effect of that high cost on the efficient functioning of the patent system.

16. *The IAC*

(i) *recommended that WIPO should actively address the question of the cost of obtaining and maintaining patent protection as part of its program;*

(ii) *deplored the practice in some countries of diverting revenue from patent application and maintenance fees to non-intellectual property related areas;*

(iii) *recommended that WIPO initiate a process directed ultimately at establishing a system for a global patent or at revising the PCT system so as to facilitate the grant of a patent through the PCT procedure in a simple and timely manner.*

Change and Policy-Making at the International Level

17. Lack of time precluded a full discussion of this issue at the meeting. In the preliminary discussion on the question, however, it was noted that the length of time required for the negotiation, conclusion and subsequent entry into force of new international treaties was increasingly incompatible with the speed at which technological developments raised problems or issues that needed to be addressed at the international level. Two suggestions made to shorten the response time at the international level were, first, the establishment of deadlines for concluding negotiations on particular matters and, secondly, the use of small drafting committees or “Chair’s drafts” as a device to speed up the development of texts between formal meetings.

Working Methods of the IAC

18. At the suggestion of its members, a list-server would be established by WIPO for the IAC to facilitate communications and work between meetings.

19. It was suggested that WIPO should invite a leading person from business, industry or academia to address the IAC on a specific subject at each of its meetings.

20. It was also suggested that WIPO should invite representatives of organizations or groups that were opposed to intellectual property protection to speak at IAC meetings so that members of the IAC could better appreciate the positions espoused by such organizations or groups and be in a better position to counter arguments against intellectual property protection.

21. It was suggested that consideration be given to convening the next meeting of the IAC on the day preceding (September 13, 1999) the WIPO International Conference on Intellectual Property and Electronic Commerce (to be held from September 14 to 16, 1999), since many of the members of the IAC would in any case be attending that Conference. It was further suggested that the meeting could be devoted to the subject of electronic commerce and intellectual property.

[List of IAC Members follows]

ANNEX II

POLICY ADVISORY COMMISSION

REPORT OF THE INAUGURAL MEETING
GENEVA, APRIL 15, 1999

Upon the invitation of Dr. Kamil Idris, Director General of the World Intellectual Property Organization (WIPO), the Policy Advisory Commission of WIPO held its inaugural meeting on April 15, 1999, at WIPO headquarters in Geneva.

The list of participants is attached.

The meeting was opened by the Director General of WIPO, who welcomed the participants and thanked them for accepting his invitation to hold discussions and advise him in a free and frank manner on the future of both WIPO and international intellectual property protection.

The Policy Advisory Commission elected His Royal Highness, Prince El-Hassan Bin Talal, Jordan, as Chairman of the Policy Advisory Commission.

In his opening statement the Director General raised the fundamental question for the Commission, of how creative and inventive potential throughout the world can be released and channeled into tangible, sustainable development.

Under the broad theme of “*Intellectual Property in the 21st Century: Creating a Blueprint for WIPO,*” five members of the Commission made presentations, as follows:

Critical Topics for Intellectual Property in the 21st Century,
by Mr. Marino Porzio;

Intellectual Property as a Tool of Development,
by Mr. Bruce Lehman;

Historical Development and the Future Evolution of the International Legal Framework for Intellectual Property Protection,
by Dr. Bojan Pretnar;

The Future Role of WIPO within the International and United Nations Communities,
by Mr. Mayer Gabay; and

A Global Intellectual Property Charter,
by Mr. Hisamitsu Arai.

While differing in their scope and focus, all presentations noted that intellectual property has direct relevance to the majority of human activities, and also that intellectual resources are unlimited and can be found in every part of the world; the presentations also concurred on the importance of intellectual property as a universal tool for economic and social development for all, and agreed that WIPO is expected to play an increasingly important role as the leading international organization in the field.

Following the presentations, members offered their views and perspectives in an open discussion.

Towards an Intellectual Property-Based Society

In discussing the phenomenon of globalization and the rise of the information-oriented society, the Commission recognized the increasing value of intellectual property, its centrality as a tool for economic growth and wealth creation, and its potential to serve economic and social development.

The Commission stressed that intellectual property protection can be used and developed for the benefit of all, and therefore should not be perceived as a North-South, or otherwise divisive, issue. In this connection, particular emphasis was placed on the need to depoliticize the intellectual property debate. Confrontation and tension between concepts and approaches, it was felt, should be avoided.

Stressing also the need to demystify intellectual property so that it can be clearly seen as deserving of respect and support in the same manner as other traditional forms of property, all PAC members emphasized the critical importance of implementing extensive public awareness campaigns.

It was pointed out that intellectual property protection, if widely understood, can release the genius of people and generate an increasing consensus for developing the system with a social and sustainable dimension. The need for more common knowledge of the universality of interests inherent in intellectual property protection was considered essential to reach that consensus.

In this regard, the necessity to engage and integrate all interested parties, including the private sector and civil society, was emphasized.

Depoliticizing the debate and creating awareness to demystify intellectual property protection were identified as key inter-related aspects in establishing a balance between economic and development necessities in the future of the intellectual property field.

The Globality of Intellectual Property

The Commission remarked that intellectual property issues are presently being discussed in various international fora, as well as at national, sub-regional and regional levels. It was also remarked that intellectual property is not a departmental issue. Therefore, the need to develop a broader global approach for closer cooperation and coordination at the various levels was stressed. WIPO's contribution to, and cooperation with, the World Trade Organization (WTO) was considered essential in developing such a global approach.

The need for strong leadership in coordinating efforts was stressed by members, who considered that WIPO has a central role to play in ensuring the harmonious development of the international intellectual property protection system. It was noted that WIPO, while cooperating with other organizations, should preserve its specific identity and leadership role.

Members pointed out that critical issues and challenges for the international intellectual property protection system in the next century, and WIPO's role therein, should not be seen as independent topics, but as complementary and inter-related; such an approach would encourage an effective response to the demands imposed by the global situation.

A major challenge identified by members was how to approach intellectual property matters so that the protection of inventions and other creations should not be only an end in itself, but could also serve a wider social and economic interest. Emphasis was placed on the importance of ensuring that the developing countries which have built infrastructures designed to ensure respect and protection for intellectual property rights can share in the benefits of such protection.

Among the critical issues identified as following from the current emphasis on globalization and technological changes, the following were discussed generally: digital technology; the internet; well-known marks; domain names; electronic commerce; and biotechnology.

Since technological development relates to the private sector, its importance was fully recognized. It was also noted that while inventors and creators may be designing the dynamics of the new century, it must be the duty of WIPO to design the legal global framework and to develop adequate strategies for an ever more global approach, including the consideration of a global patent.

Other particular concerns were raised on questions relating to competition law, licensing, transfer of technology and the need to improve access and exchange of information.

The enforcement of intellectual property rights was recognized as an immediate critical issue, in particular with reference to the process related to the effective implementation of the TRIPS Agreement. How to avoid or diminish any potential for conflict should be carefully considered.

The need to explore how to improve technical protection, and not only legal protection, was also raised.

It was felt that WIPO has an important global proactive role to play in respect of all these critical issues.

The Role of the World Intellectual Property Organization

It was noted that WIPO's mandate derives from a broad concept of intellectual property, and that this concept embodies not only the notion of protection but also that of promotion of innovation and artistic creativity. This was considered an important reason why, in developing the international intellectual property protection system, WIPO should ensure a sensitive approach to the needs of all countries and make every effort to mobilize both national and international machinery in order to encourage invention and creativity in developing countries.

In view of the challenges ahead, members stressed that WIPO should reinforce its mandate as well as its unity and integrity as an Organization with wide competence and universal vocation. The balance among WIPO's three major areas of activity, and within its

agenda, must be assured; but at the same time, WIPO should also explore beyond traditional activities and aspects of intellectual property regimes, and look into new possibilities, including that of supporting, with the help of communication networks, information systems and sophisticated automation procedures, the replacement of old structures by corporate intellectual property offices. The creation of an International Intellectual Property Institute in Geneva was also suggested.

The initiative to prepare a Global Intellectual Property Charter or Declaration was warmly welcomed and unanimously embraced by members. A draft for a Charter or Declaration, consisting of three parts (preamble, contributions and guiding principles) was offered for consideration and was considered a good basis for further discussion and elaboration.

Recommendations

The Commission recommended:

- That the PAC should contribute to a shared Global Intellectual Property Charter or Declaration.
- That a Task Force of PAC members should be set up with the objective of considering and making recommendations concerning the elaboration of the proposed World Intellectual Property Charter or Declaration.
- That a study on the use of the international intellectual property protection system for economic growth and wealth creation be commissioned, for discussion within the Task Force.
- That all specific and important issues raised during the inaugural meeting be further developed in the context of the PAC Task Force.

Future Work

The Chairman of the Commission offered Jordan as the host country for the next meeting of the PAC.

The PAC will convene a follow-up meeting, to be held in Amman, Jordan, at a date and time to be notified to the PAC.

Conclusion

In a spirit of independence and integrity, His Royal Highness, Prince El-Hassan Bin Talal in his capacity as Chairman of the Commission, paid tribute to the owners of WIPO and, in particular, to their intellectual generosity in allowing the Policy Advisory Commission to participate in the discussion of policies pertaining to intellectual property.

[List of PAC Members follows]

ANNEX II

AMIGO CASTAÑEDA Jorge, Director General, Mexican Industrial Property Institute, Mexico

ARAI Hisamitsu, Vice-Minister for International Affairs, Ministry of International Trade and Industry, Japan

BAHADIAN Adhemar Gabriel, Ambassador, Deputy Permanent Representative of Brazil, Geneva

BANGEMANN Martin, Member of the European Commission for Industrial Affairs and Information and Telecommunications Technologies, Germany

BATCHELOR Sheila (Ms.), Chief Executive Officer, Canadian Intellectual Property Office, Canada (*Member ex-officio*)

BERNARD Daniel, Ambassador of France, United Kingdom of Great Britain and Northern Ireland

ESSY Amara, State Minister and Minister for Foreign Affairs, Côte d'Ivoire*

GABAY Mayer, First Vice President, United Nations Administrative Tribunal, Chairman, Patent and Copyright Laws Revision Committees, Ministry of Justice, Israel

GHOSE Arundhati (Ms.), Member, Union Public Service Commission, former Ambassador and Permanent Representative of India, Geneva

GYGER Walter, Ambassador and Permanent Representative of Switzerland, Geneva

His Royal Highness, Prince El-HASSAN Bin Talal, Hashemite Kingdom of Jordan

HERMASSI Abdelbaki, Minister for Culture, Tunisia

HÖYNCK Wilhelm, former Ambassador and Permanent Representative of Germany in Geneva*

JENNINGS Sir Robert, former President, International Court of Justice, United Kingdom of Great Britain and Northern Ireland

KADIRGAMAR Lakshman, Minister for Foreign Affairs, Democratic Socialist Republic of Sri Lanka

LEHMAN Bruce, President, International Intellectual Property Institute, former Assistant Secretary for Commerce and Commissioner of Patents and Trademarks, United States of America

* Unable to participate in the April 15, 1999 meeting

LUCINSCHI, President, Republic of Moldova*

MENEM Carlos, President, Republic of Argentina*

NYERERE Julius, former President, United Republic of Tanzania

OLSSON Henry, Special Government Advisor, Ministry of Justice, Sweden and former Director of Copyright Department, WIPO

PERSAD-BISSESSAR Kamla (Mrs.), Minister for Legal Affairs, Republic of Trinidad and Tobago

PORZIO Marino, attorney, Adviser to the Ministry of Foreign Affairs, Chile, and former Deputy Director General, WIPO

PRETNAR Bojan, Director, Slovenian Intellectual Property Office and Permanent Representative of Slovenia to WIPO

RAMOS Fidel, former President, Philippines

SIDOROV Vasily, Ambassador and Permanent Representative of the Russian Federation, Geneva

SOARES Mario, former President, Portugal*

SONG Jian, Vice-Chairman of the People's Political Consultative Conference of China and former State Councilor in charge of science and technology development, People's Republic of China

WEEKES John, Ambassador and Permanent Representative of Canada, Geneva

[End of Annex II and of document]