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WIPO GENERAL ASSEMBLY

Twenty-Sixth (12th Extraordinary) Session Geneva, September 25 to October 3, 2000

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 second and third meetings at the WIPO Headquarters in Geneva on September 13, 1999, and May 4 and 5, 2000. Fifteen and fourteen members attended the meetings, respectively. The reports of the two meetings by the IAC to the Director General of WIPO are contained in Annexes I and II.
5. The fourth meeting of the IAC is expected to take place in the first part of 2001.
6. Two meetings of the Task Force of the PAC took place, in Amman on July 20, 1999, and in Washington, D.C., on March 1, 2000. The second meeting of the PAC took place on June 15, 2000, at the WIPO Headquarters. Seventeen members attended the meeting, as well as two representatives of members, and its report to the Director General of WIPO is contained in Annex III. At Annex IV is the World Intellectual Property Declaration (WIPD), initiated and elaborated by the PAC and intended to contribute to the further demystification of intellectual property issues among the general public. The WIPD was adopted by the PAC on June 26, 2000. At Annex V is the text of a paper, “The Role and Activities of WIPO in a Changing World,” presented by Mr. Henry Olsson, Special Government Advisor, Ministry of Justice, Sweden, at the second PAC meeting.

7. The General Assembly is invited to note and comment on the contents of this document and the attached Annexes.

[Annexes follow]

ANNEX I

WIPO INDUSTRY ADVISORY COMMISSION

REPORT OF THE SECOND MEETING
GENEVA, SEPTEMBER 13, 1999

1. The World Intellectual Property Organization (WIPO) Industry Advisory Commission (IAC) held its second meeting at WIPO Headquarters in Geneva on September 13, 1999. The list of participants is attached.
2. The Director General, Dr. Kamil Idris, opened the meeting. He welcomed the Members of the IAC and thanked them for their participation in the IAC and their support for the Organization. He observed that the discussions of the IAC in its first session had informed the work of WIPO in the field of electronic commerce. He also recalled that, at its first session, the IAC had recommended that WIPO strengthen its efforts to promote actively the benefits of intellectual property and the role that it played in economic development to the widest possible audience in society. In response to these suggestions, WIPO had developed and would shortly present to the IAC a proposal to enlist the support of famous personalities in pertinent professions, such as scientists, artists, musicians or actors, to lend their names and support to public education campaigns in favor of intellectual property protection.

Use of Famous Personalities in Public Education Campaigns

3. The discussion on the use of famous personalities in public education campaigns was opened by Mr. Geoffrey Yu, Assistant Director General of WIPO, and was followed by a presentation on the topic by Ms. Samar Shamoon, Head, Media Relations and Public Affairs Section, WIPO. The presentation described the use of celebrities by the United Nations, and by its specialized agencies and programs. It reviewed the purposes for which celebrities had been called upon to lend their names and images, including to draw attention to particular issues or situations, to raise funds, and to raise the profile of the agencies involved and their missions. It was in respect of the last category that celebrity support for WIPO and its activities would be solicited.
4. The members of the IAC expressed enthusiasm and support for the proposal to use famous persons to promote intellectual property and the mission of WIPO. The following points were made with respect to the specific implementation of the proposal:
 - (i) the members of the Commission agreed that it was important, in any public information campaign, to emphasize the *benefits* of intellectual property and its role in social, cultural and industrial development, as opposed to the *protection mechanisms* of intellectual property. The same positive approach ought to be adopted in any description of

the function of the Organization, which ought to be portrayed as an Organization concerned with development, through the use of intellectual property, rather than an Organization concerned simply with protection.

(ii) several members of the Commission considered that it was necessary to differentiate the message conveyed in public information campaigns according to the audience. They considered that it was unlikely that one comprehensive message could be successfully communicated to all sectors of the community in all countries. Rather, there was a need for customized campaigns.

(iii) several members of the Commission also emphasized the need to exercise care in the selection of both the content of the message and the identity of the messenger. In this respect, it was pointed out that the use of famous persons who had amassed considerable fortunes through the production and use of intellectual property might not encourage widespread sympathy for the role of intellectual property.

(iv) a number of members of the Commission considered that the Internet was a particularly important focus for the purposes of public information campaigns. On the one hand, the Internet, as an instrument of disintermediation where a movement for open source was prevalent, challenged many of the elements of the traditional intellectual property system. On the other hand, the power of the medium presented new opportunities for the widespread use of intellectual property, as well as for communicating effectively to a wide audience the role, function and benefits of intellectual property. Several members of the Commission considered that the Commission ought to return, on another occasion, to the question of the Internet specifically, outside the context of public information campaigns, in order to discuss the challenges and opportunities that it was presenting for intellectual property.

Internet Domain Names

5. The IAC considered the Report of the WIPO Internet Domain Name Process and discussed, at length, the recommendations of that Report and the need for WIPO to play an independent role in formulating solutions to the interface between identifiers in the physical and virtual worlds, as well as the need for WIPO to continue an active campaign of bringing to the attention of the Internet Cooperation for Assigned Names and Numbers (ICANN) the importance of respect for intellectual property.

6. Following its discussions, the IAC adopted the following advice on the role of WIPO in domain names:

“The Industry Advisory Commission

- 1) Recognizes the importance of the Internet as a critical communication and information access infrastructure of global importance to individuals, commercial and non-commercial stakeholders and entities, and for government at all levels.

- 2) Acknowledges the present and evolving challenges created by a global, high speed Internet.
- 3) Commends and thanks WIPO and the Member States for the valuable contribution of WIPO through the undertaking of the International process (WIPO process) on certain questions relating to the interface between Internet Domain Names and Intellectual Property, including the development of dispute resolution procedures.

Further

- 4) Commends WIPO for its proactive contribution to the ICANN process to date, and
- 5) Advises WIPO to continue its global leadership with the Member States in ongoing communications, awareness, and building of global awareness of the benefits of a balanced approach to the recognition and respect of the rights and obligations of domain name holders and intellectual property owners and users.

And

- 6) Advises WIPO to continue, as an urgent priority, to develop solutions on the outstanding issues for adoption by ICANN and other appropriate bodies.”

Future Work

7. The following topics were suggested for consideration on the agenda of future meetings of the IAC:

(i) *Biotechnology*. One member expressed some hesitation about the relevance for developing countries of a discussion of the implications of biotechnology. In contrast, several other members of the Commission considered that the developments underway in respect of biotechnology were of fundamental and profound importance for the whole world including, in particular, developing countries.

(ii) *The Impact of the Global Economy on the Intellectual Property System*. Several members of the Commission mentioned specific manifestations of this impact that required further analysis and discussion, particularly parallel importation; enforcement; dispute resolution; and the dynamics of pricing and their consequences, in the context of a global economy, for intellectual property.

(iii) *The Patent System in the Twenty-First Century*. Several members of the Commission emphasized the importance of studying means of reducing the cost of obtaining and maintaining patent protection, as well as the need to consider the possibility of introducing a global patent.

(iv) *Issues of the Future.* Several members of the Commission emphasized the need for the IAC to be forward looking and, in this respect, counseled that the IAC should consider emerging issues of importance such as bioinformatics and the entertainment economy.

8. In formulating suggestions for the future work program of the Commission, a number of members expressed the desire to see a more active participation in the list server that had been established for the IAC and, in particular, in the use of that list server in formulating the future agenda and work program of the IAC.

9. The members of the Commission expressed the desire that their meeting should take place in the Northern Spring of the year 2000.

[List of Participants follows]

**INDUSTRY ADVISORY
COMMISSION (IAC)**

LIST OF PARTICIPANTS

**Second Session
September 13, 1999
Geneva**

- 1. Mr. Talal Abu-Ghazaleh**
President
Arab Society for the Protection of
Intellectual Property
Egypt
- 2. Mr. Heinz Bardehle**
European Patent Attorney
Bardehle Pagenberg Dost
Germany
- 3. Mr. Robert Bishop**
Chairman
Silicon Graphics World Trade Corporation
Switzerland
- 4. Ms. Marilyn S. Cade**
Director
AT&T
United States of America
- 5. Mr. James Cochrane**
Executive Director for Europe, Africa
and the Middle East
Glaxo Wellcome
United Kingdom
- 6. Mr. Michael K. Kirk**
Executive Director
American Intellectual Property
Law Association (AIPLA)
United States of America
- 7. Mr. François Lagrange**
Conseiller d'Etat
France

- 8. Mr. Ma Lianyuan**
Deputy Commissioner
State Intellectual Property Office of the
People's Republic of China
China
- 9. Mr. Frederick Mostert**
President
Intellectual Property Counsel
Richemont International Ltd.
United Kingdom
- 10. Mr. Michio Naruto**
Vice Chairman
Fujitsu
Japan
- 11. Mr. Katsuo Ogawa**
President
Patent Attorney
Nitto International Patent Office
Japan
- 12. Tan Sri Dato' Dr. Othman Yeop Abdullah**
Executive Chairman
Multimedia Development Corp
Malaysia
- 13. Mr. Joel Schoenfeld**
Senior VP and General Counsel
Bertelsmann Music Group (BMG) Entertainment
United States of America
- 14. Mr. Ashok Soota**
Chairman & Chief Executive Officer
MindTree Consulting
India
- 15. Mr. Herman P. Spruijt**
Halverhoogt
De Leersum
The Netherlands

[Annex II follows]

ANNEX II

WIPO INDUSTRY ADVISORY COMMISSION

REPORT OF THE THIRD MEETING
GENEVA, MAY 4 AND 5, 2000

1. The World Intellectual Property Organization (WIPO) Industry Advisory Commission (IAC) held its third meeting at WIPO Headquarters in Geneva on May 4 and 5, 2000. The list of participants is attached.
2. The meeting was opened on behalf of the Director General by Mr. Francis Gurry, Assistant Director General. He welcomed the Members of the IAC and thanked them for their participation in the IAC and their support for the Organization. He in particular welcomed a new member to the IAC—Mr. Achi Atsain, President of the West African Economic Association, Côte d'Ivoire. He observed that the discussions of the IAC in its first two sessions had helped the WIPO Secretariat gain a clearer understanding of ways in which industry could work with WIPO to best implement the program of activities of WIPO. The IAC was also thanked for having fulfilled its role in looking over the horizon and appraising WIPO of where industry is headed—both in terms of changing technology and changing business models.

The Cost of Obtaining and Maintaining Patent Protection

3. The discussion on the cost of obtaining and maintaining patent protection was opened by Mr. François Curchod, Deputy Director General, Global Protection Systems. Mr. Curchod reviewed the complaints of users of the patent system in terms of costs and the various international fora in which the issue had been discussed in recent years. He discussed the internal costs to applicants, official fees, agent's fees and enforcement costs as being the principal elements of costs to users of the patent system. He then reviewed the work that had been done at the national and international levels to address the problem of costs. Mr. Curchod concluded by indicating what WIPO could do in this regard, including further reduction of fees under the Patent Cooperation Treaty (PCT) system, resumption of discussions on substantive harmonization of patent laws, and increasing automation of systems for the application, examination and grant of patents.
4. Following its discussions, the IAC adopted the following resolution:

"Recognizing that the effectiveness of intellectual property as a stimulant to social and economic development is dependent upon the availability of protection at reasonable cost, the Industry Advisory Commission of the World Intellectual Property Organization (WIPO)

URGES the Member States of WIPO to adopt a work program for the development of a more comprehensive approach to the reduction of the costs of obtaining and maintaining intellectual property protection in multiple countries, particularly through

- (i) work, in the medium term, on a treaty on the harmonization of substantive patent law, with a view to facilitating greater mutual recognition of search and examination results by patent offices;
- (ii) further exploratory work on the possible introduction of a PCT certificate of patentability and work, in the long term, on the development of the legal framework for a world patent;
- (iii) the adoption of a general principle against barriers, *inter alia*, through fees, unreasonable delays and burdensome procedures, to obtaining and maintaining intellectual property protection at a reasonable cost.

URGES the Member States of WIPO to develop a set of benchmarks for best practices for intellectual property fees for implementation, at the national and regional level, including

- (i) the principle that filing, maintenance and other fees derived by intellectual property offices should be used exclusively for purposes related to intellectual property;
- (ii) the principle that, in order to lower barriers to access to patent protection, the filing fee should not exceed a designated percentage of the total fees that would be payable if a patent were granted and maintained until expiration of the patent term.”

Globalization and Intellectual Property

5. Upon the invitation of the IAC, Dr. Tomas Philipson, Professor, Irving B. Harris Graduate School of Public Policy Studies, Department of Economics, University of Chicago, gave a presentation on intellectual property and globalization and introduced three concepts. First, he emphasized the market-size increasing effect of globalization. As the market size increases from national to global—and with it the possibility of global intellectual property protection—the incentives offered by intellectual property protection to conduct research and development increase concomitantly. Global markets and global protection were seen as important since research and development is a fixed cost that requires markup on the price of goods to support it. Second, Dr. Philipson equated the breadth of intellectual property protection to profit generated per year and length to the years of applicable intellectual property protection. Profits were seen in proportion to the present value of breadth and length. Third, Dr. Philipson drew a distinction between “creative destruction”—the destruction of market share by the introduction of new, competitive products into a market by competitors—and “uncreative destruction”—the destruction of market share by retaining the same products in a given market, but increasing the number of manufacturers. Dr. Philipson stated that “creative destruction” was more sensitive to the breadth of protection, while

“uncreative destruction” was more sensitive to length of protection. He concluded that the breadth of protection was more crucial than length.

6. The members of the IAC then discussed the presentation by Dr. Philipson and, broadly, the challenges to intellectual property brought about by globalization. A member of the IAC, Mr. Carlos Liboni, made a presentation on initiatives in Brazil to take advantage of the Internet to promote the idea of intellectual property—not just for the sake of protection but as a tool for development. Mr. Gurry made a presentation on electronic commerce, intellectual property and globalization, followed by a presentation by Mr. Richard Wilder, Director, Global Intellectual Property Issues Division, on biotechnology and globalization.

7. Following a discussion within the IAC on the presentation by Mr. Wilder, the IAC adopted the following resolution:

“WIPO should take a lead role in urgently suggesting the appropriate application of patentability standards in the field of biotechnology.”

Image Statement for WIPO

8. Mr. Talal Abu-Ghazaleh presented a proposed mission statement for WIPO which was welcomed as a valuable and useful expression of the image that WIPO ought to seek to project. The image statement adopted encouraged WIPO

“to promote the economic, social and cultural progress of mankind, through the development and monitoring of global disciplines and treaties of intellectual property rights that encourage innovation and knowledge creation.”

Future Work

9. An extensive discussion took place on the working methods of the IAC. Mr. Talal Abu-Ghazaleh expressed the view that presentations should be made by, rather than to, members of the IAC. A number of members of the IAC shared this view. For some, this objective could best be achieved by selecting a limited number of well-defined topics in advance, which could then form the basis of reflection and research on the part of members of the IAC in the lead up to a meeting. For others, the objective was best achieved by assigning specific topics to particular members of the IAC in order for them to prepare background policy briefings.

[List of Participants follows]

**INDUSTRY ADVISORY
COMMISSION (IAC)**

LIST OF PARTICIPANTS

**Third Session
May 4 and 5, 2000
Geneva**

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SPEAKER

- 16. Professor Thomas Philipson**
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University of Chicago
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[Annex III follows]

ANNEX III

POLICY ADVISORY COMMISSION

REPORT OF THE SECOND MEETING
GENEVA, JUNE 15, 2000

1. Upon the invitation of Dr. Kamil Idris, Director General of the World Intellectual Property Organization (WIPO), the Policy Advisory Commission (PAC) of WIPO held its second meeting on June 15, 2000, at WIPO headquarters in Geneva.
2. The list of PAC members is attached.
3. The meeting was opened by the Director General of WIPO, who welcomed the participants and invited them to observe a minute of silence in memory of Julius Nyerere, founding member of the PAC and friend of WIPO. Dr. Idris thanked all founding and new members for attending the second meeting.
4. In his opening remarks, Dr. Idris stressed that while not long ago “intellectual property” was not even in the vocabulary of Chief Executive Officers, strategists and policy makers in general, today the global value of intellectual property is recognized as a reality. It is a policy strategy and a business strategy today, as illustrated by the increasing proportion of intangible assets in the market value of enterprises, including small and medium-sized enterprises.
5. This trend was referred to as the context in which WIPO has moved from a solid legislative authority to one with a social and economic involvement and impact as well - crucial for foreign investment, transfer of technology, innovation culture, creation of new capital; that is, it has shifted towards a position of greater relevance to human development. This is in line with the thrust of the Vision of WIPO, and Dr. Idris thanked PAC members for supporting and encouraging this vision.
6. The morning session of the meeting was chaired by His Royal Highness Prince El-Hassan Bin Talal, Jordan. Former President Fidel Ramos, Philippines, chaired the afternoon session and closed the meeting.
7. The agenda for the meeting included three major issues, namely:
 - (i) the World Intellectual Property Declaration;
 - (ii) current intellectual property related events;
 - (iii) recent developments in some key areas of the work of WIPO.

8. The Chairman of the Commission pointed out the increasing dynamism observed in the intellectual property domain and, before moving to the agenda for the meeting, invited His Excellency President Petar Stoyanov of Bulgaria to share his experience.

9. President Stoyanov stated that Bulgaria is proud of its strong tradition of prioritizing knowledge and education, which has resulted in great intellectual potential. This potential now needs to be harnessed into meaningful and profitable activities. In an age when ideas are of immense value, the President stressed, it is not surprising that the ownership rights to those ideas have become a matter of intense policy debate and legal argument. The concept of intellectual property offers a unique chance to reward creative individuals for translating ideas into tangible products and business, thus turning them into income and employment. The intellectual property system should therefore be an accessible, user-friendly tool, which should be extended to the protection of new areas such as traditional knowledge, geographical indications and biotechnology. It is for Governments and policy makers to create a business and economic environment favoring and promoting creativity and innovation. It is our task, the President affirmed, to encourage younger, more open-minded generations, to recognize the benefits of intellectual property rights, which have to be understood in their whole diversity and variety, and added to the set of values we all grow up with that serve as our basic reference for social behavior, that is, to foster a culture of respect for intellectual property rights.

10. In introducing the agenda for the meeting, the Chairman of the Commission requested members to take into account the lessons of Seattle; in particular the question of legitimacy and, therefore, the need to refer more to the human face of intellectual property issues and to take into account the specificity of countries and cultures. It was stressed that regardless of the existence of the “Net,” developing countries continue to operate without really knowing each other, and efforts should be made in terms of data base sharing, in order to overcome this situation. It was also pointed out that more emphasis should be given by the PAC to analyzing how to use intellectual property tools for poverty alleviation, for example in the field of medicines.

The World Intellectual Property Declaration

11. Vice Minister Hisamitsu Arai introduced a draft “World Intellectual Property Declaration” initiated by himself and further elaborated by a task force at the request of the PAC during its first meeting, with a view to adopting it as a Declaration of the Commission. The main purpose would be to spread among all sectors worldwide a message about the relevance of intellectual property and of WIPO to the welfare of humanity.

12. It was stressed that while there is global recognition of the value of intellectual property, there is also a diversity of opinion on how intellectual property rights affect our economy nationally and internationally. With the rapid progress of information technologies, it was said, intellectual property will become increasingly relevant and it becomes crucial that WIPO promote an international consensus in this field. The World Intellectual Property Declaration can be a very useful and appropriate means to promote common understanding thereon.

13. The draft text was intensively discussed by PAC members. Most comments sought to reinforce the developmental aspects and to ensure a balance in both the content and structure of the document. A large degree of consensus was achieved, and it was agreed to pursue

electronic consultations on a revised text with a view to adopting the Declaration in time for its presentation to the Assemblies of the Member States in September 2000.

14. The World Intellectual Property Declaration is a policy document. It stresses the universal value of intellectual property and the unique position of WIPO as the specialized international organization with primary responsibility for the promotion of intellectual property all over the world. The Declaration lays the foundations for a common understanding on the nature and scope of the basic notions related to intellectual property, as well as relevant guiding principles concerning the necessary equity within the intellectual property system. Using examples of some ancient and modern commonly known inventions, artistic creations and identification systems, the Declaration illustrates how intellectual property is native to all peoples, relevant in all times and cultures, and how it has marked the world's evolution and historically contributed to the progress of societies. The Declaration highlights the importance of enhancing global cooperation strategies for the implementation and further development of the intellectual property system for the benefit of all. It also recommends a wide range of activities in order to promote effective knowledge and use of intellectual property in traditional and newly emerging areas, including as a means of protection of cultural diversity and identity.

Current intellectual property-related events

15. On the basis of the paper "The Role and Activities of WIPO in a Changing World" presented by Mr. Olsson, the members of the Commission analyzed the current international controversy around the so-called negative effects of globalization, a controversy that is challenging important international organizations, notably the World Trade Organization (WTO), in terms of their legitimacy and decision-making process. The discussion took place in the context of a perceived increase in the influence of civil society.

16. The main purpose for the Commission in addressing this issues was to consider whether any special action is needed for WIPO to meet future political or other challenges that might flow from that growing sentiment against globalization, which takes place against the background of a need to ensure global protection for intellectual property rights. The inherent risk was perceived to be in the possibility of increasing resistance to high standards of intellectual property rights protection, in particular in controversial issues that can be seen, by some, as basically protecting certain economic interests rather than stimulating creative activity, and therefore harmful to societies that do not have the benefit of mitigating mechanisms such as effective competition law.

17. In addition to approaching the main fields of general concern, the Commission addressed issues identified as more specifically controversial, such as patent protection for pharmaceutical products and for the genome, long and strong protection in the high technology field, the so-called cultural exception, the use of public funds in the fight against piracy and for the protection of private interests.

18. PAC members congratulated WIPO for addressing in a transparent and serious manner both positive and negative attitudes towards intellectual property. It was recognized that the problem is not necessarily intellectual property protection but mainly intellectual property perception.

19. All members intervened in this discussion and concurred that WIPO should work towards mitigating any misperception. It was recommended to reinforce WIPO's extensive demystification and capacity building programs, with particular emphasis on the promotion of innovation and appropriate channels of communication and interaction with civil society.

20. The progress of WIPO's work in new intellectual property-related issues such as traditional knowledge, identity and cultural diversity, geographical indications, biodiversity and biotechnology, was considered to be important in mitigating the misperceptions about intellectual property protection.

21. It was also suggested that the organization of WIPO seminars targeted at experts who are involved in the new intellectual property fields could help in coming to a consensus.

22. Dr. Idris emphasized that when dealing with works of the mind, with regard to sharing the benefits of knowledge and of cultural and scientific advancement, globalization is desirable, and that is what is meant in WIPO by globalization without marginalization.

Recent developments in some key areas of the work of WIPO

23. During the discussion of both the draft Declaration and the effects of globalization, a number of references were made to the importance of spreading knowledge of intellectual property and of the need to simplify the intellectual property system and make it more accessible and easy to use, in order to effectively contribute to converting creative activity into wealth. PAC members also referred to the importance of developing "total communication" strategies to successfully face the increasing influence of public opinion including through the intensive and extensive use of information technologies in WIPO's work and within the International Bureau. In the light of these and other remarks, the Secretariat made various presentations to the members of the Commission on recent developments in some key areas of WIPO's work closely related to the simplification and development of the intellectual property system, the promotion of a lasting intellectual property culture and the incorporation of new information technologies in the activities of the Organization.

24. Five presentations were made by WIPO's senior officials. These were on:

- (i) the successful adoption of the Patent Law Treaty (PLT), its background and its significance in facilitating access to the patent system, as well as for future harmonization in the field of patent law;
- (ii) the Patent Cooperation Treaty (PCT), its simplification and future development;
- (iii) the work of the WIPO World Wide Academy, in particular the Distance Learning Program and its role in capacity building and extensive human resource development;
- (iv) guiding principles of WIPO's global communication program, namely demystification and depoliticization of the intellectual property debate;

- (v) progress concerning WIPONET, the global information network that will operationally link the world's intellectual property offices, both among themselves and with the WIPO Secretariat.

25. Following the presentations, all members of the PAC shared their views in an open dialogue. In addition to general remarks on the relevance of WIPO's work, particular comments were made regarding the need to bridge the space between the importance of intellectual property at the global level and the needs of people, which are specific and local. In fact, to the discussions of the first PAC meeting on how to convert creativity into wealth, was added the issue of how to assure the relevance of intellectual property to the people in the street.

26. General elements permeating the PAC members' approach thereon, were in the nature of the following:

27. In view of the increasing relevance of intellectual property, it becomes paramount for the empowerment of developing countries and countries in transition that they be equipped to make better use of the intellectual property system. Integral to this purpose are the tasks of:

- (i) spreading knowledge of the intellectual property system and the knowledge of successful experiences in the use of it for wealth creation;
- (ii) simplifying the protection systems and further harmonizing substantive intellectual property law in order to facilitate their use and accessibility;
- (iii) developing the intellectual property system so as to incorporate new issues that will result in new beneficiaries.

28. In view also of the increasing influence of civil society in the world's trends, it becomes crucial to ensure that all efforts in spreading knowledge of the system and facilitating its accessibility and further development count on the full involvement of civil society, in particular non-governmental organizations (NGOs), creators' associations, academic and research institutions and others playing significant roles in providing the mechanisms for reaching out at the grassroots levels.

29. In view of the increasing importance of new technologies in networking the international community, new strategies become indispensable for rebuilding or further enhancing existing channels of communication with all relevant sectors, with equal emphasis placed on the industrial property and copyright fields.

30. In view also of the complementary nature of all WIPO's activities, integration of the contributions of each program becomes indispensable to attain long-term policy objectives. The need to encourage new generations to be intellectual property-minded, was denoted as deserving utmost priority.

31. The PAC members recognized the complexity of the road to be traveled before the development gap is reduced. However, all members expressed optimism on the strategic direction of the Organization and the relevance of its work. They praised and encouraged the Secretariat and congratulated Dr. Idris on the number of important initiatives taken in so short a period of time.

Recommendations:

32. The Commission recommended:

- That once adopted by all members, the PAC World Intellectual Property Declaration should be presented to the Assemblies of the Member States of WIPO at their meetings in September 2000, as a contribution of the Commission on the occasion of WIPO's Thirtieth Anniversary and the United Nations millennium celebrations.
- That the paper "*The Role and Activities of WIPO in a Changing World*" by Mr. Henry Olsson should be presented to the Assemblies of the Member States of WIPO at their meetings in September 2000.
- That special attention should be given to all policy and practical aspects concerning the entry into force and successful implementation of the Patent Law Treaty.
- That efforts should be made towards further substantive harmonization in the field of industrial property law, in particular, patent law.
- That an independent advisory body concerned with international development of the patent system, composed of individuals selected by the Director General in their personal capacity, should be established. That body would advise the Director General on directions to propose to the Member States; the Member States would fully retain their decision-making authority.
- That a long-term comprehensive project for the promotion of a lasting intellectual property culture should be further developed, combining all appropriate elements of WIPO's programs and tools.
- That a policy on the use of WIPO medals should be further enhanced for encouraging creators in all intellectual property fields as well as institutions and personalities committed to the promotion of creative activity.
- That it was desirable that the agenda of the Commission include new global issues such as traditional knowledge, genetic resources and biotechnology.

Future Work

33. The Chairman of the PAC will convene a follow-up meeting, at a date and location to be defined.

Conclusion

34. In a continued spirit of independence and integrity, the second meeting of the Policy Advisory Commission was closed with words of recognition of Dr. Idris' leadership in the strengthening of the Organization and satisfaction on the progress in the work of the

Commission. The more dynamic and integrated participation of all members in all issues discussed during this result-oriented second meeting was noted, and concrete achievements were registered concerning the recommendations made by the first meeting of the Policy Advisory Commission.

[List of PAC Members follows]

POLICY ADVISORY COMMISSION (PAC)

LIST OF MEMBERS

**Second Meeting
June 15, 2000
Geneva**

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

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

* Adhemar Gabriel BAHADIAN, Ambassador, former Deputy Permanent Representative, Permanent Mission of Brazil in Geneva

* Daniel BERNARD, Ambassador of France in the United Kingdom of Great Britain and Northern Ireland (*represented by Mr. Philippe PETIT, Ambassador, Permanent Mission of France in Geneva*)

* Boutros BOUTROS-GHALI, Secretary General, Organisation internationale de la francophonie, France

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

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

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

Walter GYGER, Ambassador of Switzerland in India

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

Abdelbaki HERMASSI, Minister for Culture, Ministry of Culture, Tunisia

Wilhelm HÖYNCK, former Ambassador, Permanent Mission of Germany in Geneva

* Sir Robert JENNINGS, former President, International Court of Justice, United Kingdom

Lakshman KADIRGAMAR, Minister for Foreign Affairs, Ministry of Foreign Affairs, Sri Lanka

* Members unable to attend the June 15, 2000, meeting

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

* Petru LUCINSCHI, President, Republic of Moldova

* Carlos MENEM, former President, Argentina

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

* Kamla PERSAD-BISSESSAR (Mrs.), Minister for Education, Ministry of Education, Trinidad and Tobago

Marino PORZIO, Attorney, Adviser to the Ministry of Foreign Affairs, Chile, and Chairman of the Assemblies of Member States of WIPO

Fidel RAMOS, former President, Philippines

* Salim Ahmed SALIM, Secretary General, Organization of African Unity, Ethiopia

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

* Mario SOARES, 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 (*represented by Mr. QIAO Zonghuai, Ambassador, Permanent Mission of the People's Republic of China in Geneva*)

Petar STOYANOV, President, Bulgaria

John WEEKES, Chairman, Global Trade Practice, APCO Worldwide, and former Ambassador, Permanent Mission of Canada in Geneva

[Annex IV follows]

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ANNEX IV

POLICY ADVISORY COMMISSION

WORLD INTELLECTUAL PROPERTY DECLARATION

June 27, 2000

1. Preamble

- (i) *Conscious* of the position of the World Intellectual Property Organization as the specialized agency of the United Nations with primary responsibility for the promotion of intellectual property all over the world;
- (ii) *Encouraging* the efforts of the World Intellectual Property Organization to increase openness, transparency and clarity in its work;
- (iii) *Aware* that the twenty-first century will see the acceleration of integration of the world's economies and the rise of knowledge-based societies, and that in such environments intellectual property will play a greater role in human endeavor than ever before in history;
- (iv) *Assured* of the universal relevance of intellectual property and intellectual property rights;
- (v) *Mindful* of the ongoing debate on many topically significant issues relating to intellectual property, including biotechnology, biodiversity, traditional knowledge, domain name cybersquatting and access to pharmaceuticals;
- (vi) *Reaffirming* the critical role of intellectual property in natural, economic and human resource development and in the protection of cultural diversity;
- (vii) *Convinced* of the need to ensure that developing countries and countries in transition are fully integrated into the international intellectual property system, so enabling them to fully benefit from the system; and
- (viii) *Determined* to reach outward to all peoples around the world and to inform them of the economic, social and cultural importance of intellectual property and intellectual property rights, and in particular of their potential to contribute to the creation of wealth for all peoples,

the Policy Advisory Commission of the World Intellectual Property Organization resolves in this millennium year and on the occasion of the thirtieth anniversary of the World Intellectual Property Organization, to express through this Declaration, for the benefit of all creators and users of intellectual property, its conviction of **the fundamental value to all humankind of intellectual property and intellectual property rights**.

2. Notions Used

- (i) In this Declaration, the term "intellectual property" is held to mean any property recognizable by common consent as both intellectual in nature and meritorious of protection, including but not limited to scientific and technological inventions, literary or artistic productions, trade marks and identifiers, industrial designs and geographical indications.

- (ii) In this Declaration, the term “intellectual property rights” is held to mean in essence those rights enshrined in Article 27 of the Universal Declaration of Human Rights, adopted by the United Nations in 1948, namely that:

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

and

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

- (iii) In this Declaration, the term “creator” is held to mean any person or group of persons, whether acting as an independent entity or under the auspices of a Governmental or non-governmental organization, whether for profit or for other motives, responsible for creativity in any field, including notably science and technology; the arts including the performing arts and the output of certain categories of producers such as phonogram producers and broadcasters; trade marks and identifiers; industrial designs; and the development of geographical indications.
- (iv) In this Declaration, the term “user” is held to mean any person or group of persons, whether acting as an independent entity or under the auspices of a Governmental or non-governmental organization, whether for profit or for other motives, responsible for the use or consumption of creativity in any field, including notably those mentioned in article 2. (iii) above.

3. Value of Intellectual Property

- (i) Intellectual property has historically been, and continues to be, a major and indispensable element in the progress and development of all humankind.
- (ii) From the earliest tools of prehistory, through the wheel, the Chinese abacus, the printing press, the Syrian astrolabe, the telescope, the harnessing of electricity, the internal combustion engine, penicillin, the computer and countless other innovations, it has been the inventiveness of the world’s creators that has enabled humanity to advance to today’s levels of technological progress.
- (iii) From the earliest rituals of prehistory, through the beginnings of music and dance, burial rites, cave paintings, the written word, folklore and theatrical representation, to the use of modern technologies such as the phonogram, celluloid film, wireless broadcast, software and digital recording, humankind has identified and defined itself through cultural creativity and expressions thereof in the form of artistic creations and performances, which may be described as intellectual property.

- (iv) From the first markings on pottery which indicated the authorship and reputation of the earliest Mesopotamian potter, through to the modern trademarks we know today, including those identifiers which are known as domain names on the Internet and those which are recognized as geographical indications, humankind has relied on systems of credible and incorruptible identification.
- (v) From the first industrial designs of the weaver and potter to those of the modern manufacturer, designer-creators have enriched and enhanced the daily lives of all humankind by their ingenuity.
- (vi) In general, and in particular in the context of development, intellectual property is relevant to any plan to provide education for all, with particular reference to the exceptional opportunity for human resources training evidenced in the Internet.
- (vii) Intellectual property is also relevant to efforts to protect the environment, to address shortages of food, water and energy, and to combat disease.
- (viii) Intellectual property can play a useful role in providing an additional financial incentive to scholars and research institutions, including universities, and can thus contribute to a virtuous circle of knowledge creation and sharing.

4. Value of Intellectual Property Rights

- (i) Intellectual property rights provide incentives to creators, and ensure that users have access to the benefits of creativity on an equitable basis.
- (ii) Intellectual property rights are an essential and integral part of any legal framework that intends to regulate on an equitable basis the civil behavior of creators and users, and so provide universal protection for the interests of all.
- (iii) Intellectual property rights are a key and integral tool in efforts to address the fundamental challenge of development for all, which at the end of the twentieth century stands as the most universally important responsibility facing humankind.
- (iv) Also in the context of development, efficient intellectual property systems are indispensable elements in securing investment in crucial sectors of national economies, particularly in developing countries and countries in transition.

5. Guiding Principles

- (i) The great contributions made by creators in the history of humankind, both in the past and today, as well as the achievements of those who have disseminated the benefits of those creations and inventions, are recognized, commended and supported.

- (ii) Recalling Article 29 of the Universal Declaration of Human Rights, which recognizes that everyone has duties to the community in which he or she lives, it is held that intellectual property rights should be developed to provide an appropriate balance between the protection of creators and the interests of users of intellectual property.
- (iii) Intellectual property issues are recognized as especially critical to development activities, and it is held that special efforts must be made to assure the capacity of developing countries and countries in transition to benefit from fully-functioning and efficient intellectual property systems, including by provision of relevant jurisprudence, modernization of intellectual property offices, enhanced human resources training, and improvement of enforcement mechanisms.
- (iv) It is held that intellectual property rights apply equally to all creators and users of intellectual property without distinction or discrimination of any kind towards the holders of rights with regard to race, color, sex, language, religious orientation or any other status.

6. Recommended Activities

- (i) Encouragement should be given to all those who create or who wish to be creators.
- (ii) Efforts to ensure that all creators and users, in all parts of the world, are provided with adequate intellectual property rights, should be strengthened.
- (iii) Full support should be accorded to the efforts of developing countries and countries in transition to liberate and exploit for their own benefit their inventive and creative capacity, and to establish and develop effective national intellectual property systems; to this end adequate resources should be sought, so as to ensure equal opportunity among nations to enjoy the fruits of the knowledge-based society.
- (iv) Efforts should be made, making full use of information technology, to ensure that all creators and users, in all parts of the world, are knowledgeable about their rights, through ongoing efforts to enhance public awareness of intellectual property rights and to demystify intellectual property issues.
- (v) Efforts should be made, making full use of information technology, to disseminate and enhance public knowledge of intellectual property and intellectual property rights, so that interest in intellectual creations can be encouraged.
- (vi) Efforts should be made, making full use of information technology, to depoliticize intellectual property issues through ongoing efforts to enhance public awareness of the benefits to all of intellectual property and intellectual property rights.

- (vii) The great impact on intellectual property rights of the integration of the world's economies, and of the rapid development of information technology, should be recognized and acted upon.
- (viii) International services, such as the Patent Cooperation Treaty and the registration systems for trade marks and industrial designs, should be developed and enhanced.
- (ix) Appropriate policies should be formulated to develop a market for intellectual property rights, so as to increase their effective utilization.
- (x) Intellectual property rights should be developed to ensure the protection of cultural diversity.

7. International Cooperation

- (i) The harmonization of national policies on the establishment of intellectual property rights should be sought, with the aim of protection at the global level.
- (ii) International cooperation on intellectual property issues has the potential to contribute significantly to the international development agenda, and should consequently be encouraged by all means possible.
- (iii) Governments should be encouraged to cooperate on the worldwide protection and use of intellectual property in both conventional and newly emerging areas.
- (iv) Cooperation between national and international intellectual property organizations and among intergovernmental organizations including United Nations agencies and departments and non-governmental entities, as well as with civil society, for the purposes of enhancing intellectual property rights across the world and of increasing universal understanding of these rights and their functions, should be encouraged.

8. Circulation of the World Intellectual Property Declaration

This Declaration should be made readily available to the peoples of the earth, including by print and electronic means, in order that all persons without exception may be informed of the value to humanity of intellectual property and intellectual property rights.

[Annex V follows]

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ANNEX V

POLICY ADVISORY COMMISSION

GENEVA, THURSDAY, JUNE 15, 2000

AGENDA ITEM 3

The Role and Activities of WIPO in a Changing World
Presented by Mr. Henry Olsson

April 17, 2000

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Background

1. In recent times, the issue of globalisation and its effects, as well as the influence of “civil society” in national and international decision-making, are concerns which have risen to the forefront. Also implicated are intellectual property law and its effects, and the role of intergovernmental organisations, among them the World Intellectual Property Organisation (WIPO). Discussion of these issues has tended to be concerned with two major elements: one is the role of and relationship with civil society, and the other is the decision-making process in international organisations and, in that context, the influence or lack of influence thereon of important groups of countries.

2. It has been said, for instance, that the controversies which have recently affected the World Trade Organization (WTO) and other intergovernmental organizations could form challenges to the “legitimacy” of their decision-making. The opinions expressed and the developments which have occurred merit serious attention, even if one does not agree with the criticism. As broad political issues are concerned, it seems appropriate that they are addressed by the Policy Advisory Commission (PAC) to see whether any special action is needed for WIPO to meet future political or other challenges that might flow from the developments described.

3. Globalisation, even if it is inevitable, is being challenged. Consequently, so are the effects of globalisation in the intellectual property field. The present negative feelings against globalisation have even been compared with the movement for environmental protection in the 1950s - which incidentally no one took very seriously at that time. The inherent risk is that there might be more and more resistance to high standards of protection of intellectual property rights. The question is how to deal with this growing sentiment and how to identify any action that should be taken to counter it.

4. It would seem that there are two main fields of concern. One consists of certain areas which are particularly controversial, the other of the ways in which intergovernmental organisations, and more specifically WIPO, approach the general issue of the development of intellectual property law.

The “controversial issues”

5. **The general concerns** are as follows:

- (i) that intellectual property protection is, as a consequence of globalisation and of technological developments, being ever further strengthened (for example: copyright terms extended, patents available in new areas and for both processes and end products, strong protection in crucial technological areas such as computer programs and non-original data bases). In some quarters, this is seen as counterproductive and harmful to society;
- (ii) that intellectual property protection is seen by some more and more as a means of protecting right-owners economic interests rather than (as is its original purpose) to stimulate creativity through time-limited exclusive rights in return for making the results of intellectual creativity available to society;

- (iii) that intellectual property protection is being seen by some as more and more protecting producers rather than creative people.

6. The **more specific controversial issues** seem for the time being to be mainly the following:

- (i) patent protection for pharmaceutical products (the consequences of this for some developing countries have even been referred to as the creation of “apartheid sanitaire”);
- (ii) plant variety protection, which is seen as harmful for farmers in developing countries;
- (iii) patent protection for the genome (human and other);
- (iv) the long and strong protection in the high-technology field;
- (v) the protection for geographical indications (important for some countries and less so for others);
- (vi) the so-called cultural exception;
- (vii) the fact that public funds are being used in the fight against piracy and for protection of private interests;
- (viii) the investments required for setting up efficient enforcement systems in, for example, developing countries, for the benefit of right-owners who may be in other parts of the world.

7. The possibly counterproductive effects of a particularly strong protection in the intellectual property field, at least in most industrialised countries, are being mitigated by competition law. Such measures do not always exist to the same extent in other countries.

8. In view of the complexity of the issues and the difficulty of handling the economic and political effects of the developments described, it would seem that the main remedies available would consist of:

- (i) improving information dissemination efforts relating to intellectual property and its effects;
- (ii) providing practical advice in order to assist countries to handle intellectual property matters in the international context (existing examples are the centre set up within WTO to assist developing countries in disputes and the fact that a private law firm has devoted specialised lawyers to assist countries in need with advice on WTO matters).

9. It should be considered what contributions WIPO could make in this context.

The approach of WIPO to the issues at hand

10. Quite naturally and inevitably, certain critical views have emerged on the approach taken to intellectual property matters by, among others, WIPO. Those views seem to focus on the following main points.

11. Attention must be given to **competition law and policy** and, in a broader perspective, to the **economic effects and justification of increased intellectual property protection** (by way of example, reference can be made to the European Union compilation/disassembly provisions in the field of computer software, which are being disputed by the major software industries but which were introduced in order to promote competition). An argument which is sometimes made is that there must be an economic analysis of the effects of the intellectual property legal framework and the effects of changes therein.

12. There is a need for **a good technological analysis** as a basis for proposals for an appropriate legal framework (for example, note the intense debate - and confusion - within the European Union concerning the nature and legal treatment of incidental copies made in the course of transmissions over the Internet or in other information networks).

13. Attention should be given to the need for **an analysis of the extent to which existing intellectual property frameworks can properly “absorb” new phenomena**, in particular in the fields of high technology and biotechnology. The present patent and copyright systems can be stretched to a certain extent to cover such new phenomena and the law on trade secrets can take care of some problems but there are limits to this (consider, for example, the application within WTO of what are called “non-violation complaints” in the context of intellectual property, and the effects that may have). The situation may eventually lead to a consideration of the need for specific protection systems outside the traditional ones.

14. There is a need to **see intellectual property in the broad context of the structural organisation of a country or a region** and to adapt intellectual property to the prevailing circumstances. This body of law exists and operates in the specific existing environment. In this context the positive and negative effects of “non-violation complaints” again come to mind.

15. As mentioned above, these are some of the critical remarks made. One does not necessarily share the concerns and views expressed in the international discussion. The discussion is, however, taking place, and it is important for the Policy Advisory Commission to be aware of these views, to discuss them, and to consider what action could be appropriate.

[End of Annexes and of document]