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EMERGENCY PREPAREDNESS MEASURES

Document prepared by the International Bureau

I. INTRODUCTION

1. In light of the threat of and concern expressed about an avian flu pandemic, the World Intellectual Property Organization (WIPO) is developing a preparedness plan which will take into account specific needs in the different sectors of the Organization. As part of that organization-wide plan, the International Bureau is in the process of analyzing measures it could take under various pandemic and other emergency scenarios to best assure continuity of essential services under the Madrid Agreement and Protocol and to best protect the rights of applicants and holders of international registrations. This document sets forth some of the ideas of the International Bureau related to these issues, and encourages Contracting Parties of the Madrid Agreement and/or the Madrid Protocol to provide their advice and recommendations as to necessary planning and appropriate actions to take¹.

¹ A similar document was presented to the Working Group on Reform of the Patent Cooperation Treaty (PCT), eight session, Geneva, May 8 to 12, 2006. See a working document "Emergency Preparedness Measures" (PCT/R/WG/8/8) and its Report PCT/R/WG/8/9 (http://www.wipo.int/meetings/en/details.jsp?meeting_id=10004).

II. AVIAN FLU ASSESSMENT AND CURRENT STATUS

2. The World Health Organization (WHO) uses a series of six “phases of pandemic alert” as a system for informing the world of the severity of the threat of a pandemic, and for the need to launch increasingly intense preparedness activities. The designation of phases, including decisions on when to move from one phase to another, is made by the Director-General of WHO. Each alert phase coincides with a series of recommended activities that are collectively undertaken by the WHO, the international community, governments and industry. Changes from one phase to another are triggered by several factors, including the epidemiological behavior of the disease and the characteristics of circulating viruses.

“Interpandemic period

“Phase 1. No new influenza virus subtypes have been detected in humans. An influenza virus subtype that has caused human infection may be present in animals. If present in animals, risk of human infection or disease is considered to be low.

“Phase 2. No new influenza virus subtypes have been detected in humans. However, a circulating animal influenza virus subtype poses a substantial risk of human disease.

“Pandemic alert period

“Phase 3. Human infection(s) with a new subtype, but no human-to-human spread, or at most rare instances of spread to a close contact.

“Phase 4. Small cluster(s) with limited human-to-human transmission but spread is highly localized, suggesting that the virus is not well adapted to humans.

“Phase 5. Larger cluster(s) but human-to-human spread still localized, suggesting that the virus is becoming increasingly better adapted to humans, but may not yet be fully transmissible (substantial pandemic risk).

“Pandemic period

“Phase 6. Pandemic: increased and sustained transmission in general population.”²

² WHO/CDS/CSR/GIP/2005.5; WHO global influenza preparedness plan: The role of WHO and recommendations for national measures before and during pandemics, page 2 (http://www.who.int/csr/resources/publications/influenza/WHO_CDS_CSR_GIP_2005_5.pdf).

3. According to the WHO, the world is presently at Phase 3 of the *Pandemic Alert Period*: a new influenza virus subtype is causing disease in humans but is not spreading efficiently and sustainably at the human level³. Nevertheless, an avian influenza pandemic threat remains great and represents a risk that requires the preparation of responses in case a pandemic emerges⁴.

4. To coordinate the United Nations' response worldwide, the United Nations system has created a coordination mechanism bringing together key program managers from all relevant parts of the United Nations family. The Secretary-General has appointed a United Nations System Senior Coordinator for Avian and Human Influenza, Dr. David Nabarro, seconded from the WHO⁵.

5. Given that the prime responsibility for the security of the personnel and assets of all international organizations rests with the host country (Switzerland), Geneva-based UN agencies are coordinating with representatives of the host country and of the Geneva authorities to complete their respective preparedness plans.

III. INTERNATIONAL BUREAU EMERGENCY PREPAREDNESS MEASURES

6. Consonant with United Nations and WHO concerns, the Director General has set up within WIPO an Avian Flu Management Team charged with developing a WIPO Preparedness Plan for the eventuality of an avian flu pandemic, which would take into account the specific needs in the different sectors of the Organization, including Recovery Plans, as well as the ways these specificities can be harmonized in a general approach to the emergency by the Organization.

7. As part of the preparation of this WIPO Preparedness Plan, initial consideration has been given to *a scenario corresponding to Phase 5* in which most staff members would be instructed to stay at home until the pandemic wave has passed, as outlined in the UN Medical Services Staff Contingency Plan Guidelines. The following paragraphs set out the views of the International Bureau as to the measures to be taken in such a scenario, when neither a normal operation and functioning of the international registration system under the Madrid Agreement and Protocol nor Madrid-related services can be guaranteed. In addition, paragraph 19, below, briefly treats a Phase 6 scenario.

³ See http://www.who.int/csr/disease/avian_influenza/phase/en/index.html

⁴ WHO/CDS/CSR/GIP/2005.8; Responding to the avian influenza pandemic threat (http://www.who.int/entity/csr/resources/publications/influenza/WHO_CDS_CSR_GIP_05_8-EN.pdf)

⁵ More information can be found in *Pandemic Planning and Preparedness Guidelines for the United Nations System*, 15 March 2006 (http://www.humanitarianinfo.org/westafrica/3_themes/3.5_birdflu/Pandemic%20Planning%20and%20Preparedness%20Guidelines%20for%20the%20UN%20System.pdf). The UN Medical Services Staff Contingency Plan Guidelines for an Influenza Pandemic are contained in this document as Annex A.

Phase 5 Scenario

8. In the view of the International Bureau, where in a public health crisis under Phase 5, or any other emergency situation under which most staff members would be instructed to stay at home, the following emergency measures would need to be taken in order to preserve the rights of applicants and holders of international registrations:

(a) the International Bureau should be declared officially closed for business, as outlined in paragraph 9, below;

(b) the official closure should be declared and published by the International Bureau and notified to applicants and holders of international registrations as well as to the Offices of Contracting Parties of the Madrid Agreement and/or the Madrid Protocol, as indicated in paragraphs 10 and 11, below;

(c) the systems for communication by fax or electronic means should remain operational, as indicated in paragraph 12, below.

(d) during a period of official closure, any incoming mail items should be received and stored, as outlined in paragraphs 13 to 15, below;

(e) during a period of official closure, subject to the availability of a limited number of staff and means of communication, every effort would be made to maintain operations regarding the notification of any provisional refusals and final decisions received by the International Bureau as well as those regarding the communication with applicants that failed to submit any required declaration of intent to use, as outlined in paragraph 16, below;

(f) the information services on the Madrid website should remain available, as outlined in paragraph 17, below.

Declaring the International Bureau officially closed for business

9. The UN system and the host country have not completed the preparedness plan at the time of preparing this document. It is also uncertain how rapid it would be for a shift to Phase 5 to lead to such a disruption as a sudden and significant reduction in the number of staff members at work. However, on the basis of the UN documents, including the document entitled “Pandemic Planning and Preparedness Guidelines for the United Nations System”, issued on March 15 (an internal document shared among the UN agencies), it is prudent that, as soon as the entry into Phase 5 is confirmed by WHO, the International Bureau should consider and determine whether and when it should make the declaration of the closure for business.

Information about the emergency

10. In a Phase 5 scenario, the International Bureau should publish on the Madrid website:

(a) updated information about the closure of the International Bureau, and the availability of Madrid services and recommendations to applicants and holders of international registrations. The date on which the International Bureau plans to reopen for official business would also be announced via this means;

(b) information about emergency measures being implemented;

(c) information about human contact numbers.

It would be helpful if the content of this information could be managed by remote means.

11. For the information of applicants and holders of international registrations as well as the Offices of Contracting Parties of the Madrid Agreement and/or the Madrid Protocol, such data would also be published in the WIPO Gazette of International Marks, where possible (see paragraph 17, below).

Maintaining the fax machines and systems for electronic communication employed by the International Trademark Registry

12. This would be done as a joint effort between the International Trademark Registry and the WIPO administrative and IT services. It is important to note, however, that, while every effort would be made by the International Bureau to keep these communication means available in a *Phase 5 scenario*, applicants and holders of international registrations should not expect their applications and requests to be processed as usual during such a period.

Incoming mail

13. If the International Bureau is officially closed for business, under Rule 4(4) of the Common Regulations under the Madrid Agreement and Protocol, any time-limits which would expire during the period of the official closure shall expire on the first following working day. In addition, Rule 5 of the Common Regulations provides excuses for not meeting time-limits in case of “irregularities in postal and delivery services”, where a communication is addressed to the International Bureau⁶.

⁶ See Annex.

14. By the time the International Bureau declares the closure for business, it is most likely that, partly due to medical instructions and also as a result of measures adopted by the host country and the Geneva authority, *in a Phase 5 scenario*, only a limited number of staff members of the International Trademark Registry would be present to work on the WIPO premises. It would be important to have those staff members group together any incoming mail and courier items by date, so that the date of receipt can be clearly derived later⁷, and to store any incoming items in a manner that will permit their processing in the quickest and most well-organized manner when staff are able to return to work in significant numbers. Part of this limited work force could focus on scanning and indexing of incoming applications and other communications received. It would be important to study the possibility of teleworking allowing for data capture and examination of international applications and other communications as well as the continued publication of data concerning Madrid applications and registrations during the closure (see under “Publication”, below). Further work is, however, needed to make teleworking operational, both in the International Trademark Registry and the Finance Department.

15. Whenever an Office of a Contracting Party of the Madrid Agreement and/or the Madrid Protocol is also officially closed for business, any applicant for whom such an Office is the Office of origin, i.e., the Office where its international applications should be filed, and for whom a priority time-limit has not yet expired, will be protected, by virtue of Article 4(C)(3) of the Paris Convention⁸, in respect of such a priority claim, if they have not yet filed an international application with that Office of origin.

16. In respect of (a) any provisional refusals and final decisions received *during a Phase 5 closure*, as well as (b) international applications received during such a period and designating a Contracting Party in respect of which a declaration of intent to use is to be made on a separate official form annexed to the international application in question, it is important to ensure:

– in respect of (a), that the documents in question can be processed and notified to the holders of the international registrations concerned; and

– in respect of (b), that applicants that failed to annex the official form in question are notified of this omission by the International Bureau and offered the possibility to remedy it within a period of two months from the date of receipt of the application concerned by the Office of origin.

⁷ In a severe crisis situation, it can be assumed that mail and courier deliveries will either stop completely or significantly decrease.

⁸ Article 4(C)(3) of the Paris Convention reads: “If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day”.

As regards (a), in some Contracting Parties, holders of international registrations could lose rights to appeal under national legislations, if the International Bureau would not notify them timely, in particular where in some Contracting Parties the law does not provide any discretion in respect of the relevant time-limits. As regards (b), failure to submit a declaration of intent to use with respect to a designated Contracting Party requiring the form in question to be received by the International Bureau within a period of two months from the date of receipt of the application concerned, will have as a consequence that the application in question will be deemed not to contain the designation of the Contracting Party in question (Rule 11(6)(c) of the Common Regulations under the Madrid Agreement and Protocol). Emergency procedures would be set up to make every effort to ensure the necessary operations in respect of (a) and (b). However, applicants and holders of international registrations should not expect the communications in question to be processed as usual during a period of closure, due to the limited number of staff available and the possible disruption of the IT systems and means of electronic communication.

Publication

17. In order to keep the user community informed about new international applications and requests concerning international registrations, publication on the website of the International Bureau of the *Madrid Express* and ROMARIN databases as well as the WIPO Gazette of International Marks should continue where possible *in a Phase 5 scenario*. In the event that the publications in question should be made without use of the current bibliographic data management and publication preparation systems, consideration should be given to use of scanned applications and other communications for this purpose, for example, by posting the documents simply on a webpage.

Further legal provisions needed?

18. One question raised by *a Phase 5 scenario* is whether the Contracting Parties would like the International Bureau to possess special emergency powers beyond the provisions currently contained in the Common Regulations under the Madrid Agreement and Protocol, in order to better deal with such cases, for example, giving more flexibility to extend deadlines, etc. and otherwise protect applicants from consequences of emergencies.

Phase 6 Scenario

19. In a Phase 6 scenario as envisioned by the WIPO Avian Flu Management Team, WIPO premises will be placed in hibernation and secured with a minimal provision of security staff. Though the minimum remote access by the Internet will be available for the crisis management, it would appear difficult for the International Bureau to maintain fax machines and systems for electronic communication for the operation referred to in paragraph 8 above. All activities will then cease.

IV. REPOSITORY FOR NATIONAL/REGIONAL OFFICE PREPAREDNESS MEASURES

20. Member States may wish to consider whether the International Bureau should facilitate access to information by national offices on their emergency preparedness measures (if any) by setting up an online repository for this kind of information on WIPO's website, similar to what it does in WIPO's online Directory of Intellectual Property Offices (<http://www.wipo.int/directory/en/>) and the Country Profiles from the WIPO Guide to Intellectual Property Worldwide(<http://www.wipo.int/about-ip/en/ipworldwide/>).

21. The Members of the Working Group are invited to consider the contents of this document and possible other solutions to the issues raised in this document.

[Annex follows]

ANNEX

Rule 4
Calculation of Time Limits

(1) *[Periods Expressed in Years]* Any period expressed in years shall expire, in the relevant subsequent year, in the month having the same name and on the day having the same number as the month and the day of the event from which the period starts to run, except that, where the event occurred on February 29 and in the relevant subsequent year February ends on the 28th, the period shall expire on February 28.

(2) *[Periods Expressed in Months]* Any period expressed in months shall expire, in the relevant subsequent month, on the day which has the same number as the day of the event from which the period starts to run, except that, where the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month.

(3) *[Periods Expressed in Days]* The calculation of any period expressed in days shall start with the day following the day on which the relevant event occurred and shall expire accordingly.

(4) *[Expiry on a Day on Which the International Bureau or an Office Is Not Open to the Public]* If a period expires on a day on which the International Bureau or the Office concerned is not open to the public, the period shall, notwithstanding paragraphs (1) to (3), expire on the first subsequent day on which the International Bureau or the Office concerned is open to the public.

(5) *[Indication of the Date of Expiry]* The International Bureau shall, in all cases in which it communicates a time limit, indicate the date of the expiry, according to paragraphs (1) to (3), of the said time limit.

Rule 5
Irregularities in Postal and Delivery Services

(1) *[Communications Sent Through a Postal Service]* Failure by an interested party to meet a time limit for a communication addressed to the International Bureau and mailed through a postal service shall be excused if the interested party submits evidence showing, to the satisfaction of the International Bureau,

(i) that the communication was mailed at least five days prior to the expiry of the time limit, or, where the postal service was, on any of the ten days preceding the day of expiry of the time limit, interrupted on account of war, revolution, civil disorder, strike, natural calamity, or other like reason, that the communication was mailed not later than five days after postal service was resumed,

(ii) that the mailing of the communication was registered, or details of the mailing were recorded, by the postal service at the time of mailing, and

(iii) in cases where all classes of mail do not normally reach the International Bureau within two days of mailing, that the communication was mailed by a class of mail which normally reaches the International Bureau within two days of mailing or by airmail.

(2) [*Communications Sent Through a Delivery Service*] Failure by an interested party to meet a time limit for a communication addressed to the International Bureau and sent through a delivery service shall be excused if the interested party submits evidence showing, to the satisfaction of the International Bureau,

(i) that the communication was sent at least five days prior to the expiry of the time limit, or, where the delivery service was, on any of the ten days preceding the day of expiry of the time limit, interrupted on account of war, revolution, civil disorder, strike, natural calamity, or other like reason, that the communication was sent not later than five days after the delivery service was resumed, and

(ii) that details of the sending of the communication were recorded by the delivery service at the time of sending.

(3) [*Limitation on Excuse*] Failure to meet a time limit shall be excused under this Rule only if the evidence referred to in paragraph (1) or (2) and the communication or a duplicate thereof are received by the International Bureau not later than six months after the expiry of the time limit.

(4) [*International Application and Subsequent Designation*] Where the International Bureau receives an international application or a subsequent designation beyond the two-month period referred to in Article 3(4) of the Agreement, in Article 3(4) of the Protocol and in Rule 24(6)(b), and the Office concerned indicates that the late receipt resulted from circumstances referred to in paragraph (1) or (2), paragraph (1) or (2) and paragraph (3) shall apply.

[End of Annex and of document]