



WO/PBC/8/INF/2
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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

PROGRAM AND BUDGET COMMITTEE

Eighth Session Geneva, April 27 to 29, 2005

WIPO'S PRELIMINARY COMMENTS ON JIU/REP/2005/1 ENTITLED "REVIEW OF MANAGEMENT AND ADMINISTRATION IN WIPO: BUDGET, OVERSIGHT AND RELATED ISSUES"

Document prepared by the Secretariat

I. BACKGROUND

- 1. In early December 2004, the Chair of the Joint Inspection Unit (JIU), informed the World Intellectual Property Organization (WIPO) that the JIU was considering a review of the Organization and set out a tentative timetable targeted on issuing a preliminary report in time for the February 2005 session of the Program and Budget Committee (PBC) (please see Annex I). WIPO offered full cooperation in the exercise. A set of background documents was sent by WIPO on December 1, 2004 (please see Annex II), and WIPO assisted the JIU in organizing all the interviews requested (please see Annex III).
- 2. On February 1, 2005, the Executive Secretary shared a preliminary draft of the report with WIPO. On February 2, 2005, WIPO met with the Inspectors in charge of the review and the Executive Secretary to provide factual corrections and comments. This was done by WIPO in a spirit of collective wisdom aiming, constructively, at a set of realistic and implementable recommendations to which WIPO would be able to subscribe (United Nations General Assembly resolution 50/233 of June 7, 1996).
- 3. Only a few of those comments were taken into consideration in the report transmitted to WIPO on February 10, 2005, by a letter of Inspector Wynes (not by the Chairman, as is

customary; see Annex IV.) An acknowledgement letter was sent by WIPO on February 15, 2005 (see Annex V).

II. PROCEDURE

- 4. While the procedure followed by the JIU could be perceived as a derogation from the JIU's own Statute (the review on WIPO was carried out before it could be officially included in the JIU workplan for 2005), WIPO was happy to cooperate fully and unconditionally with the JIU.
- 5. Normally, the Organization undergoing the JIU review has three months to transmit to its competent organs the report of the JIU and its comments thereon, in all working languages (Article 11 of the JIU's Statute). Since the report was received only on February 10, 2005, for consideration at the informal session of the WIPO Program and Budget Committee to be held from February 16 to 18, 2005, obviously the JIU did not intend to allow WIPO to benefit from that provision. At the request of Member States, the Secretariat of WIPO distributed the report in English, together with the present preliminary comments (also only in English), to the informal session of the WIPO Program and Budget Committee.
- 6. The report and WIPO's comments thereon have now been translated into the working languages of the Organization. The Secretariat, however, reserves the right to submit additional comments in due course.
- 7. Under Article 11 of the JIU's Statute, the Unit's reports are finalized "after consultation among the Inspectors so as to test recommendations being made against the collective wisdom of the Unit". As the Report submitted to WIPO was sent by letter of Inspector Wynes, and not in the name of the Chairman of the Unit, as it is customary, there is no indication if the report on WIPO was in fact the collective wisdom of the Unit, as required by the Unit's Statute.

III. GENERAL COMMENT

- 8. The Secretariat is aware that it was no simple task to grasp the complexity of an organization like WIPO in such a brief period of time. Unlike the other UN agencies reviewed in the JIU's management and administration series, WIPO has two main constituencies and, in addition to the activities traditionally carried out by other UN agencies, it is mandated to provide commercial services to end-users. The unique nature of WIPO has long been acknowledged by its Member States. The Secretariat of WIPO believes that this complexity and uniqueness of functioning may not have been fully reflected in the analysis of the Inspectors.
- 9. The Secretariat also stresses that numerous areas of the Organization (the Madrid and Hague systems, Cooperation for Development, the WIPO Worldwide Academy, the Arbitration and Mediation Center, Copyright, Normative Activities, Traditional Knowledge and Genetic Resources, Enforcement, Small and Medium Enterprises (SMEs), etc.) were not included in the review.

IV. WIPO'S RESPONSE TO THE RECOMMENDATIONS OF THE JIU

10. **JIU Recommendation 1:**

"The Director General should hire independent external expertise to perform a comprehensive desk-to-desk needs assessment of the human and financial resources of the Organization in accordance with para. 3 above."

This recommendation has cost implications; although this cost has not yet been defined, it may be very high. Every effort will be made to accommodate these costs within existing resource levels.

11. JIU Recommendation 2:

"The General Assembly should approve an initial 2006-2007 budget at the revised 2004-2005 budget level, pending the outcome of the needs assessment. Any revision to the budget based on the needs assessment could be presented for approval to the Extraordinary Session of the General Assembly in September 2006."

The Secretariat agrees, subject to Member States' approval, to take the level of the revised 2004-2005 budget as a basis for the level of the proposed level of the 2006/07 budget, provided due account is taken of the flexibility rule established by Member States in respect of registration activities (PCT, Madrid, Hague). The report of the JIU points to internal redeployment as the solution to absorb new needs. The Secretariat wishes to emphasize that internal redeployment may not always be adequate to respond to new and/or emerging technical needs in these areas. (For instance, the need created by the adoption, in 2004, of the Spanish language as an additional official language of the Madrid system; or in the PCT, needs in respect of, for instance, languages such as Chinese, Korean and Japanese.)

12. **JIU Recommendation 3:**

"The Director General is urged to complete on an urgent basis consultations with other relevant organizations, *inter alia*, the European Patent Office and submit to the General Assembly a proposed methodology to determine the cost of processing PCT applications."

The Secretariat has started work towards establishing a possible methodology for determining the cost of processing PCT applications. The Secretariat believes that this work should be conducted in consultation with all stakeholders.

13. JIU Recommendation 4:

"The General Assembly should limit transfers between programmes to five per cent of the smaller amount of the two biennial appropriations of the programmes concerned."

The implication of this recommendation is to reduce the flexibility which has been built into the budget system for more than two decades.

14. JIU Recommendation 5:

"The PCT Assembly should consider taking the necessary steps to:

- "a. Have users of WIPO services pay fees for services rendered in Swiss francs, the currency in which the budget is denominated and most expenditures incurred; and
- "b. Have PCT fees paid directly to the IB at the time of filing the application with the national receiving office and not at the time of its transmittal to the IB by the national receiving office."

The Secretariat confirms that exchange rate fluctuations between the Swiss franc and the currencies in which PCT fees are paid by applicants may have an impact on the level of income of the PCT and admits that the existing corrective mechanism may not be adequate. It also recognizes the fact that the modality recommended by the JIU in (b.), above, would improve the financial situation of WIPO. These issues may deserve broad consultation.

15. **JIU Recommendation 6:**

"The Director General should look into the feasibility of establishing a mechanism to allow fees to be paid through an on-line basis to an established WIPO account."

See response for Recommendation 5, above.

16. **JIU Recommendation 7:**

"The General Assembly is invited to institutionalize the decision of the current Director General not to accept extra remuneration for his duties in relation to UPOV, as provided for in the relevant WIPO/UPOV Agreement. In the future, the Director General should not receive any extra remuneration for additional tasks that may be entrusted to the post."

The current Director General is personally sympathetic with the recommendation. However, it should be noted that this is not a matter that can be dealt with by the WIPO General Assembly. UPOV is a separate intergovernmental organization with a separate international legal personality. UPOV is not a specialized agency of the United Nations, nor is it a part of the UN common system. The UPOV Convention is the instrument which establishes the post of Secretary-General of UPOV. The WIPO-UPOV Agreement also provides that the Director General of WIPO shall also serve as the Secretary-General of UPOV.

17. JIU Recommendation 8:

"The Coordination Committee should allow the Director General to recruit and promote against approved posts at the D-level without seeking their advice."

The Secretariat agrees to submit the JIU recommendation to the Coordination Committee.

18. JIU Recommendation 9:

"The Director General should direct that:

- "a. Employment of any contractual form be frozen at current levels until the headquarters review is completed;
- "b. The transfer of positions with posts be discontinued;
- "c. Any reclassifications of Professional level posts and General Service to Professional level posts be approved via the budget process, not after implementation;
- "d. The practice of personal promotions be discontinued;
- "e. A comprehensive human resources strategy be established in one properly sanctioned document, which focuses on the identification, development, and appraisal of the human resources needed to meet the priorities of the Organization. This should include, in particular, policies on career development, gender balance, geographical distribution and administration of justice;

"and report back, through the Coordination Committee, to the General Assembly at its next session, on the implementation of these measures."

The Secretariat agrees with the recommendation, subject, for (a), to limited exceptions for stringent operational needs, and, for (c), on the understanding that prior approval of the Program and Budget Committee is required only for the level of posts, not for the reclassification exercise.

19. JIU Recommendation 10:

"The Director General should suspend the current practice of direct recruitment and identify and submit to the General Assembly through the Coordination Committee appropriate contractual modalities that would meet the purpose of Staff Regulation 4.8 (b) while preserving the competitive nature of the recruitment process."

The basis for this practice is Staff Regulation 4.8 (b). However, the Secretariat will apply this rule restrictively.

20. **JIU Recommendation 11:**

"The General Assembly should take steps to strengthen the effectiveness and independence of oversight at WIPO by:

- "a. Requesting the External Auditor to review and submit for its consideration his/her terms of engagement with a view to bringing them in line with best practices of other United Nations organizations;
- "b. Requesting the Director General to submit concrete proposals with a view to creating a D-level post and determining the qualifications required for the head of the Internal Audit and Oversight Division; and
- "c. Enhancing the staffing of the Division with the necessary professionals qualified to carry out its mandate."

Parts of this recommendation are already being implemented. Other parts will be conveyed to the competent governing bodies.

21. JIU Recommendation 12:

"The Director General should ensure that the Internal Audit and Oversight Division:

- "a. Expands and fine tunes an Oversight Charter for approval by the Member States;
- **"b.** Elaborates audit and evaluation plans based on risks and opportunities for the Organization;
- "c. Establishes a follow-up system to ensure compliance by managers with oversight recommendations;

"and report back to the General Assembly at its forthcoming session on all the measures taken."

Parts of this recommendation are already being implemented. Other parts will be conveyed to the competent governing bodies.

V. WIPO'S COMMENTS ON THE CONTENT OF THE JIU REPORT

Headquarters Review

- 22. Paragraphs 2 and 3: The Secretariat does not share the analysis of the Inspectors. The view of the Secretariat is, rather, that the current situation is the result of three combined facts: fees had been reduced rapidly between 1997 and 2003 (by approximately 40 per cent); this reduction has coincided with the progressive depletion of the reserves, decided by Member States; and also with a slow down (and even temporary stagnation) in the growth of demand for PCT services. However, the Secretariat welcomes the opportunity to carry out a comprehensive analysis of the human and financial needs of the Organization. This would also allow it to refine and update its human resource (HR) and information technology (IT) strategies.
- 23. The Secretariat also believes that the remarks contained in paragraph 3 prejudge the outcome of a needs assessment analysis. If further consolidation of certain programs may be possible, the conclusions of the Inspectors on duplication in areas such as translation or archives cannot be supported. These conclusions may be due to an insufficient exposure to the complex operations of the PCT and Madrid areas, whose archiving and translation functions cannot be assimilated to the traditional archiving and translation functions in the rest of the Organization.
- 24. Paragraph 4: The Secretariat believes that it is impossible to appreciate the level of resources required by the Organization in the next biennium on the basis of the limited number of interviews that the Inspectors were able to carry out in only two months. Also, as pointed out in paragraph 9, above, certain areas of the Organization were not included in the review. Concerning the proposed level of the 2006/07 "initial budget", please refer to WIPO's Comments on Recommendation 2.

Budget and Financial Issues

- 25. Paragraphs 5, 6 and 7: Again, the analysis of the JIU lacks precision and does not accurately reflect the financial evolution of the Organization.
- 26. Paragraph 7: The recommendation of the JIU that the reserves should not be drawn down before September 2005 is in contradiction with the decisions taken by the Member States of the PCT in September 2004 (see document PCT/A/33/7, paragraph 70, and A/40/7, paragraph 174):

"The [PCT] Assembly adopted the following decision:

- "(a) Consideration of the proposal on the adjustment of PCT fees should be continued beyond the 2004 WIPO Assemblies to reach a conclusion.
- "(b) The PCT Assembly recommends to the WIPO General Assembly that, as soon as possible, there should be a session of the Program and Budget Committee that should analyze, *inter alia*, any readjustment of PCT fees.
- "(c) An extraordinary session of the PCT Assembly should be convened, if needed, to consider any proposal on the adjustment of PCT fees. In order to minimize the cost of such an extraordinary session, Rule 84.1 of the Regulations Under the PCT should be applied in this particular instance.
- "(d) The PCT Assembly takes note of the concerns expressed regarding the possible impact of any delay in decision making on adjustment of PCT fees on the implementation of WIPO's program activities, in particular, on its cooperation for development programs.
- "(e) The PCT Assembly was informed that in order to maintain its present level of technical and development assistance, WIPO will have to draw on its reserves."
- 27. Furthermore, under WIPO Financial Regulation 8, financial reserves and working capital funds are established precisely to cover cash flow and budget deficit. The Secretariat wishes nevertheless to stress that it is committed to continue to make all efforts to limit the deficit in the 2004-2005 biennium.

Personnel Practices

- 28. Pragraph 14: It should be noted that this increase in the workforce reflects the increase in demand for the Organization's services and the overall increase in its activities, and was within the levels approved by the Member States. Also, the number of approved posts is not the same thing as the actual number of staff.
- 29. Paragraph 15: The report does not seem to acknowledge the increase in geographical diversity in both staff and temporary employees over the period from 1997 to 2004, as evidenced by statistics provided to the JIU Inspectors. In 1997, 68 nationalities were represented among WIPO staff; by 2004, this had risen to 95, an increase of 40 per cent. In the same period, there was also a significant increase in diversity among temporary

employees. We would also note that much improvement has been made in the area of gender balance. In 1997, 3 per cent of the higher category posts, and 36 per cent of professional posts were held by women. By 2004, the figures were 15 per cent and 47 per cent respectively.

- 30. Paragraph 16: It should be made clear that the practice referred to was applied only in certain instances. In the majority of cases, transfers were made either to vacant posts or involved swapping of posts between programs.
- 31. Paragraph 17: It should be stressed that the posts which were subject to reclassification in the 2002-2003 biennium were all reclassified in accordance with the standards established for the United Nations common system organizations by the International Civil Service Commission (ICSC).
- 32. Paragraph 18: It should be noted that the instrument of direct recruitment has served the Organization well, and has been very positively evaluated by independent external experts, in the Mathis report of 1999, and the National Academy of Public Administration (NAPA) report of 2001.

The New WIPO Building

33. Paragraphs 30 and 31: The Secretariat welcomes the conclusion of the Inspectors, that WIPO should start without delay the conclusion of a less expensive version of the new construction project (139.1 million Swiss francs) by way of a bank loan in the amount of 113.6 million Swiss francs, as per WIPO document WO/PBC/IM/05/3, paragraphs 13 to 16 and 19. The Secretariat notes with satisfaction that the information which it provided to the informal session of the Program and Budget Committee has been validated by the JIU.

[Annexes follow]

ANNEX I



JOINT INSPECTION UNIT of the United Nations System

CORPS COMMUN d'INSPECTION du Système des Nations Unies

December 2, 2004

Dear Mr. Director General:

in the course of discussions by the Joint Inspection Unit of its programme of work for 2005, we were considering including a report on the Administration and Management of WIPO. This exercise would review all aspects of the Organization. It would be similar in scope to other reports on Administration and Management we have carried out in recent years in several other UN organizations and programmes such as ILO, WHO, UNESCO, FAO, ITU, UNIDO and UNHCR.

It has come to our attention that there will be an extraordinary meeting of WIPO's Programme and Budget Committee next February and that the Secretarist is in the process of propering pipers on two issues; WIPO's budget and income and on alternatives for financing the additional building space required.

Cur Executive Secretary has already made preliminary informal contacts with the office of Mrs. Graffigns, WIPO Comptroller and discussed possible cooperation, as well as reviewed the information that the Unit might require to undertake this task. Based on all this information, the Unit has taken the decision to carry out this report which will be coordinated by our Vice-Chairperson Inspector M. Deborah Wynes.

We intend to begin this exercise in December 2004 in order to be able to have a preliminary paper that would be of use to you and to the Member States in assessing these two issues during your forthcoming February meeting.

I am most glad to enclose a preliminary calendar of activities for this report. We will of course we come your views and will consider any suggestions you might have to make this exercise as meaningful and useful as possible.

MLy I take this opportunity to reiterate our commitment to assisting you and the Member Stress in strengthening the work of WIPO.

Yours Sincerely,

Chairman

Dr. Kamil Idriss Director General

World Intellectual Property Organization

cc. ids. Graffigna

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TENTATIVE SCHEDULE FOR THE REPORT ON ADMINISTRATION AND MANAGEMENT - WIPO

By carty February 2005:

 we shall have reviewed in detail the report that the Secretarist will provide member states by the 24th. of December 2004 relating to the financial status and budgetary process of WIPO and shall have validated it to ensure that the recommendations therein are realistic and provide all possible options available to ensure a balanced and viable budget for 2005;

2) we shall formulate a recommendation on the adequate level of operational

reserve for WIPO;

 we shall analyse the internal oversight function and draw conclusions on an appropriate structure for this key function;

 we shall draft a first interim report outlining recommendations on the above points.

By early April 2005:

 we shall have had a preliminary review of additional cost saving measures that could be introduced (both on staff and non-staff costs);

6) we shall issue a second preliminary report including our recommendations

on point 5 above.

Tentatively by August 2005;

7) we shall have carried out a full fledged review of the Administration and Management of WIPO including its internal structure, governance, policies and procedures, its human resources, the process of delegation of authority and accountability, the internal control systems etc.;

8) we shall issue our draft final report.

By epd November 2005:

9) we issue our final report.

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

世界知识产权组织

ORGANIZACION MUNDIAL
DE LA PROPIEDAD INTELECTUAL

ANNEX II



ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE

المنظمة العالمية للملكية الفكرية

ВСЕМИРНАЯ ОРГАНИЗАЦИЯ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ

December 1, 2004

Dear Mr. Larrabure:

/. Further to our meeting yesterday, I have the pleasure to enclose with this letter a number of documents and publications, which I hope will be of use to you in getting to know more about the World Intellectual Property Organization (WIPO).

The documents provide some general background on the Organization in terms of our business, income and expenditure as well as a general introduction to the world of intellectual property. There are also some more detailed documents such as those prepared for the WIPO General Assemblies in September and the reports of that series of meetings. I have also included a copy of the letter of invitation that was issued regarding the informal meeting on PCT income forecasting. As I mentioned yesterday you and your colleagues would be most welcome to attend.

Some of it maybe rather dense reading, but I hope that it is not too overwhelming to receive all at once. Once you have had a chance to look through the documents, if you have any questions or require any further assistance please do not hesitate to contact me. Together with my colleagues here, we look forward to working in closest possible cooperation with you and your colleagues.

Yours sincerely,

Carlotta Graffigna Controller

Mr. Juan Luis Larrabure Executive Secretary Joint Inspection Unit of the United Nations System Palais des Nations 1211 Geneva 10

Enclosures:

 Invitation to the Informal Information Meeting on the Forecasting and Predictability of Numbers and Revenue under the Patent Cooperation Treaty (PCT) system

General Background Information

- General Information Brochure
- Annual Report 2002
- Annual Report 2003
- · WIPO Intellectual Property Handbook
- · Membership of the WIPO Convention
- Membership of Paris
- Membership of Berne
- · Membership of the Madrid Agreement
- Membership of the Hague Agreement
- · Guide to WIPO Mediation

WIPO Technical Cooperation Activities

- Intellectual Property for Small and Medium Sized Enterprises CD-Rom
- Intellectual Property: A Power Tool for Economic Growth CD-Rom and Overview Brochure
- Information Brochure of the WIPO Worldwide Academy (in French)

Patent Cooperation Treaty Information

- · Basic Facts about the Patent Cooperation Treaty (PCT) Publication
- · Membership of the Patent Cooperation Treaty
- PCT Statistical Indicators Report, September 2004
- Evolution of PCT Fee Schedule 1990-2003

Financial and Program Information

- Program and Budget 2004-2005
- Financial Management Report 2002-2003
- External Auditor's Report on the Auditing of the Accounts of the World Intellectual Property Organization (WIPO) for the 2002-2003 Biennium
- Tentative Time Schedule of Program and Budget Meetings 2005
- Draft Agenda for the Program and Budget Committee, February 16 to 18, 2005
- Draft Outline of the document being prepared on "The Short and Long-Term Financial Situation of WIPO"
- Draft Outline of the document being prepared on "Matters Concerning the New Construction"

WIPO General Assemblies September 2004 Documents

- PCT Assembly: Document on the "Proposed Readjustment of the International Fee" (PCT/A/33/5)
- PCT Assembly: Draft Report of the PCT Assembly (PCT/A/33/7 Prov.)
- PCT Assembly Decision "Way Forward on Proposal for an Adjustment in PCT Fees"
- Other WIPO General Assembly documents

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ANNEX III

Schedule of JIU Meetings

November 30, 2004	Carlotta Graffigna, Controller
December 15, 2004	Marco Pautasso, Director of Internal Audit and Oversight Division
December 15, 2004	Francis Gurry, Deputy Director General, PCT and Patents Arbitration and Mediation Center, and Global I.P. Issues
December 15, 2004	Jay Erstling, PCT and Patents Arbitration and Mediation Center, and Global I.P. Issues Juan Antonio Toledo Barraza, Director, PCT Operations Division
December 16, 2004	Philippe Favatier, Director of the Finance Division
December 16, 2004	Herman Ntchatcho, Director of the Human Resources Management Department
January 11,2005	Neil Wilson, Chief Information Officer
January 11, 2005	Edward Kwakwa, Legal Counsel
January 14, 2005	Binying Wang, Executive Director, Admin Services
January 18, 2005	Kamil Idris, Director General
January 19, 2005	Giovanni Tagnani, Director Buildings Division
January 19, 2005	Carlotta Graffigna, Controller
February 2, 2005	Brett Fitzgerald, Staff Association

 $[\mathsf{Annex}\; \mathsf{IV}\; \mathsf{follows}]$

ANNEX IV



JOINT INSPECTION UNIT

of the United Nations System

CORPS COMMUN d'INSPECTION

du Système des Nations Unies

Ref.: JIU/REP/2005/1

10 February 2005

Dear Mr. Director General,

I am pleased to send you herewith the original version of the report entitled "Review of Management and Administration in WIPO – Budget, Oversight and Related Issues" prepared by myself and Inspector Victor Vislykh, which is submitted in accordance with Article 11 paragraph 4(a), of the Statute of the Joint Inspection Unit.

The report is addressed for action to the WIPO legislative organs according to the procedures stipulated in paragraph 4(c) and (d) of the same Article.

As provided for in Article 11 paragraph 4(b) of the Statute, the translation of this report into the other official languages of WIPO should be undertaken by your Organization.

We would appreciate receiving in due course, for our information and records, a copy of your formal comments on the report submitted to your legislative organs as per established procedures. We would also request receiving as well any decisions or resolutions taken thereon by the WIPO competent legislative organs, as well as information regarding the follow-up measures that the Secretariat makes in relation to those recommendations addressed to you.

Yours Sincerely,

Mary Deborah Wynes

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Vice-Chairman

Dr. Kamil Idris Director General WIPO Geneva

Jcc. Carlotta Graffigna

[Annex V follows]

WORLD INTELLECTUAL PROPERTY ORGANIZATION

世界知识产权组织

ORGANIZACION MUNDIAL DE LA PROPIEDAD INTELECTUAL ANNEX V



ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE

المنظمة العالمية للملكية الفكرية

ВСЕМИРНАЯ ОРГАНИЗАЦИЯ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ

February 15, 2005

Dear Vice-Chairman Wynes,

Thank you for your letter of February 10, 2005, addressed to Dr. Kamil Idris, Director General of the World Intellectual Property Organization (WIPO) enclosing your report entitled "Review of Management and Administration in WIPO: Budget, Oversight and Related Issues".

On behalf of the Director General, I wish to acknowledge receipt of your letter and report and assure you that it will be given our prompt and full attention.

Sincerely yours,

Carlotta Graffigna Controller

Ms. Mary Deborah Wynes Vice-Chairman Joint Inspection Unit of the United Nations System Room D-507 Palais des Nations 1211 Geneva 10

[End of Annex V and of document]