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GRANTING OF OBSERVER STATUS IN MEETINGS OF THE SCIT

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1. At the fourth Plenary session of the Standing Committee on Information Technologies (SCIT), held in Geneva from December 6 to 10, 1999, the SCIT Plenary agreed “that the International Bureau would prepare, for consideration at the next Plenary session, a set of guidelines which could help clarify the various possibilities for inviting organizations involved in the commercial provision of IP information services to attend or participate in the meetings of the SCIT Plenary and/or the Working Groups, particularly with regard to a possible conflict of interest.” (Document SCIT/4/8, paragraph 21). The request for such guidelines arose in connection with the discussion of whether to grant observer status to certain publishing organizations in the private sector. The specific organizations that were the subject of discussion were the publishers of *World Patent Information (WPI)* and *The Copyright Group*. Views were divided as to whether observer status should be granted taking into account the commercial interests of the publishers of *WPI* and of *The Copyright Group*. The present paper includes the referenced guidelines.

2. Rule 1 of the WIPO General Rules of Procedure (Publication No. 399 Rev. 3) stipulates that those rules shall apply, *inter alia*, to the bodies of WIPO and to “subsidiary bodies” or “*ad hoc* committees.” The SCIT is such a subsidiary body. Rule 45 further stipulates that each body may adopt special rules of procedure that shall enter into force on being adopted by that body.

3. Rule 8 of the WIPO General Rules of Procedure allows each body to decide “in a general way or for any particular session or meeting which other States and organizations shall be invited to be represented by observers.”

4. Pursuant to the authority contained in Rules 8 and 45 of the WIPO General Rules of Procedure, the SCIT adopted a Special Rule of Procedure regarding observers, which reads as follows:

The Director General of WIPO may, and, if so requested by the SCIT Plenary, shall invite, as observers, interested intergovernmental organizations (other than member organizations mentioned above) and interested international and national non-governmental organizations, as well as organizations providing information services in the field of intellectual property information, which are not accredited with observer status at WIPO meetings. (document SCIT/1/7, Annex III, Appendix I, paragraph 4)

5. Thus, the SCIT Plenary may invite any organization to be represented by observers at its meetings, including “organizations providing information services in the field of intellectual property information.” The term “organization” is broad enough that such organizations could include organizations in the private sector – a conclusion clearly implied in the passage from the Special Rules of Procedure of the SCIT Plenary quoted in this paragraph. Such organizations could include the publishing organizations that were the subject of the discussion at the fourth Session of the SCIT Plenary referred to in paragraphs 1 and 2. It is thus within the power of the SCIT Plenary to invite such private-sector publishing organizations to participate in its meetings as observers.

6. The invitation to an organization to be represented as an observer in a given body in WIPO brings with it a limited ability to participate in the activities of that body. The nature of the participation by observers in sessions of bodies in WIPO, including the SCIT, is limited. In particular, observers may “take part in debates at the invitation of the Chairman [but] may not submit proposals, amendments or motions.” (WIPO General Rules of Procedure, Rule 24). Moreover, “observers shall not have the right to vote.” (WIPO General Rules of Procedure, Rule 39).

7. The invitation to an organization to be represented as an observer in a given body of WIPO is not immutable. It is implicit in the power of a body, such as the SCIT Plenary, to rescind an invitation to an organization to be represented by observers. Moreover, the WIPO General Rules of Procedure make it clear that an invitation to an organization to be represented by observers may be general “or for any particular session or meeting.” (WIPO General Rules of Procedure, Rule 8(2)). The SCIT Plenary has the power to control or limit the participation by observers within a particular session or meeting. This power to control or

limit is implicit in the power to rescind an invitation to an organization to send an observer and in the power to limit the participation of such an observer to particular sessions. Thus, the SCIT Plenary may decide, as a general matter or for any particular session, to limit the participation of observers of a given organization or class of organizations to be part of the session or meeting. Further, the SCIT Plenary may decide that the observers of a given organization or class of organizations may be excluded from a session or portions of a session that deals with a particular topic or class of topics.

8. The concern expressed by the SCIT Plenary – as identified in paragraph 1 – is that of a possible conflict of interest arising when organizations involved in the commercial provision of intellectual property information services attend or participate in the meetings of the SCIT Plenary and/or Working Groups established thereunder. Such conflicts of interest may be ameliorated or avoided in two ways. First, the SCIT Plenary may decide that such types of organizations shall not be invited to send observers to participate in its sessions. Second, the SCIT Plenary may decide to identify certain topics or classes of topics that may give rise to conflicts of interest if such organizations were to be present during discussions. The SCIT Plenary may, for such topics or classes of topics, specifically exclude the observers of such organizations from sessions or portions of sessions when the said topics are under discussion. Neither of the two ways to ameliorate or avoid conflicts of interest identified in this paragraph requires any change to the Special Rules of Procedure for the SCIT Plenary.

9. *The SCIT Plenary is invited to:*

(i) *take note of the contents of this document;*

(ii) *resume discussions on the requests by WPI and The Copyright Group to be represented by observers in meetings of the SCIT Plenary and/or Working Groups; and*

(iii) *to take appropriate action on the requests of WPI and The Copyright Group.*

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