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# COOPERATION BETWEEN THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) AND THE WORLD TRADE ORGANIZATION (WTO)

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Thank you very much. I know everyone is getting hungry so I will be very brief. I would like to thank St. John's University for inviting me here today on behalf of the World Intellectual Property Organization (WIPO).<sup>1</sup> I should also thank Mr. Lehman for plugging the WIPO website ([www.wipo.int](http://www.wipo.int)), which has information about all WIPO activities, and for those of you who don't know what WIPO is about, I am going to do a quick overview of WIPO. I will then talk briefly about how WIPO has survived intellectual property moving to the World Trade Organization (WTO). For a while people were concerned that this would be the death-knell of WIPO, but in fact the opposite has been the case. The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)<sup>2</sup> has been good for WIPO's business. I then will talk a bit about WIPO's cooperation with the WTO and WIPO's Cooperation for Development activities.

As Professor Thomas and Bruce Lehman have mentioned, the origins of WIPO predate the United Nations. They date back to the end of the last century, to the Paris Convention for the Protection of Industrial Property of 1883 in particular.<sup>3</sup> The

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<sup>1</sup> See World Intellectual Property Organization, at <http://www.wipo.org>. (last visited Apr. 12, 2003) (allowing access to all WIPO information).

<sup>2</sup> See *Tackling Global Software Piracy Under TRIPS: Insight from International Relations Theory*, 116 HARV. L. REV. 1139, 1141-42 (2003) (giving an overview of TRIPS).

<sup>3</sup> See WIPO General Information, at <http://www.wipo.org/about-wipo/en/gib.htm>. (last visited Apr. 12, 2003) (discussing Paris Convention and creation of WIPO).

Industrial Revolution, which spawned incredible technological developments, highlighted the need for an international framework for intellectual property rights. Exhibitors at the great international exhibitions towards the latter part of the nineteenth century feared losing rights to their inventions because there was not such an international framework in place.<sup>4</sup> Similarly, “globalization” in artistic and literary fields led to the creation of the Berne Convention for the Protection of Literary and Artistic Works in 1886.<sup>5</sup> The secretariats for these two treaties were combined in the late 1890s and housed by the Swiss government in Berne until WIPO’s predecessor organization, with the acronym BIRPI (the “Bureau International Reunis pour la protection de la Propriete Intellectuelle”, or the “United International Bureaux for the Protection of Intellectual Property”), moved to its new headquarters in Geneva in 1960.<sup>6</sup> At that time, the organization was very small, with only fifty staff members.

WIPO was actually established by the 1967 Convention Establishing the World Intellectual Property Organization adopted in Stockholm, Sweden, which came into force in 1970.<sup>7</sup> The Patent Cooperation Treaty (PCT) was also adopted in 1970.<sup>8</sup> That treaty has allowed WIPO to be unique among UN agencies in that it is a self-funding agency by and large, with over ninety-one percent of WIPO’s budget coming from fees paid by the private sector for its services.<sup>9</sup> The PCT generates the bulk of this revenue from fees paid by applicants who use the Patent Cooperation Treaty to secure the filing of a patent application in multiple countries with a single application. WIPO, therefore, is

<sup>4</sup> See *id.* (noting that “[F]oreign exhibitors refused to attend the International Exhibition of Inventions in Vienna in 1873 because they were afraid their ideas would be stolen and exploited commercially in other countries.”).

<sup>5</sup> See *id.* (discussing beginnings of the Berne Convention for the Protection of Literary and Artistic Work).

<sup>6</sup> See *id.* (discussing merging of the Berne Convention and Paris Convention).

<sup>7</sup> See Edward Kwakwa, *Some Comments on Rulemaking at the World Intellectual Property Organization*, 12 DUKE J. COMP. & INT’L L. 179, 180 (2002) (noting signing date of convention was 1967).

<sup>8</sup> See Patent Cooperation Treaty, June 19, 1970, 28 U.S.T. 7645 (noting all relevant dates of the treaty).

<sup>9</sup> See Press Release, World Intellectual Property Organization, Member State Support Draft Program and Budget for 2002-2003 (Sept. 21, 2001), at <http://www.wipo.org/pressroom/en/updates/2001/upd143.htm>. (last visited Apr. 12, 2003) (noting less than ten percent of funding comes from contributions by its members).

not dependent on any single member state paying its dues. In fact, the contribution of any single member state represents less than one-half of one percent of WIPO's budget.<sup>10</sup> WIPO joined the United Nations in 1974 as the specialized agency dealing with intellectual property matters.<sup>11</sup> This allowed WIPO to become a global agency, as opposed to a small club of mainly developed countries, which it really was at the time.

WIPO is engaged in four main activities. First, WIPO engages in treaty making, what we call the progressive development of international IP law.<sup>12</sup> In addition to treaties, WIPO has developed international norms through model laws, guidelines, non-binding resolutions and the like. The second main activity, which provides the bulk of WIPO's funding, is its "global protection service".<sup>13</sup> WIPO actually has three of these – one each for patents (the PCT), trademarks (the Madrid system), and industrial designs (the Hague system). The PCT itself brings in over eighty-five percent of WIPO's income.<sup>14</sup> The United States is on the verge of joining the Madrid Protocol, and U.S. membership is expected to significantly increase the current use of the Madrid system. The third main activity, whose expansion has been made possible by the global registration services, is WIPO's technical assistance program.<sup>15</sup> Known as "Cooperation for Development," that is what I will focus on shortly. Finally, the fourth and most recent activity came about in 1999, and that

<sup>10</sup> See *id.* (noting small percentage of member state contributions).

<sup>11</sup> See Marney L. Cheek, *The Limits of Informal Regulatory Cooperation in International Affairs: A Review of the Global Intellectual Property Regime*, 33 GEO. WASH. INT'L L. REV. 277, 296 (2001) (noting association with U.N. in 1974).

<sup>12</sup> See Sarah E. Henry, *The First International Challenge to U.S. Copyright Law: What Does the WTO Analysis of 17 U.S.C. §110(5) Mean to the Future of International Harmonization of Copyright Laws Under the TRIPS Agreement?*, 20 PENN. ST. INT'L L. REV. 301, 306 (2001) (discussing the goals of WIPO including, "the creation of a unified, cohesive body of worldwide international law").

<sup>13</sup> See Michael Byers, *The Challenge of Change*, 12 DUKE J. COMP. & INT'L L. 1, 4 (2002) (noting that more than 85 % of WIPO's income comes from services it provides).

<sup>14</sup> See Susan K. Snell, *TRIPS and the Access to Medicines Campaign*, 20 WIS. INT'L L. J. 481, 519 (2002) (noting, "WIPO receives 85% of its revenues from the Patent Cooperation Treaty").

<sup>15</sup> See World Intellectual Property Organization, *Cooperation for Development*, at <http://www.wipo.int/cfd/en/index.html>. (last visited Apr. 12, 2003) (discussing "[t]he objective of the WIPO Cooperation for Development Program is to enable developing countries all over the world to establish or modernize intellectual property systems, consistent with national objectives and requirements, and to utilize them for their social, economic and cultural benefit.").

is WIPO's domain name dispute resolution service.<sup>16</sup> WIPO is one of four domain name dispute resolution providers accredited by the non-profit corporation that manages the domain name system (the Internet Corporation for Assigned Names and Numbers, or ICANN).<sup>17</sup>

WIPO now administers some twenty-two treaties in all fields of intellectual property rights.<sup>18</sup> Mr. Fowler mentioned the WIPO Copyright Treaty<sup>19</sup> that just came into force this month, plus there are three more concluded treaties that are awaiting entry into force. WIPO has grown from 13 members in 1970 to 177 today, and its staff is now over 1,000.<sup>20</sup>

The mission of WIPO is part of the reason why intellectual property discussions moved to the WTO. WIPO's mission is to promote the protection of intellectual property worldwide, but importantly, "through cooperation among states".<sup>21</sup> There is no formal enforcement mechanism, no dispute resolution system among states in WIPO. It is only through moral persuasion in the General Assembly of WIPO that pressure is exerted on members to implement their treaty obligations. The lack of an enforcement mechanism, therefore, led some developed countries to push for discussion on intellectual property in the WTO.<sup>22</sup>

Other factors also contributed to the desire to include

<sup>16</sup> See World Intellectual Property Organization, Frequently Asked Questions, at <http://www.arbiter.wipo.int/center/faq/domains.html>. (last visited Apr. 12, 2003) (explaining WIPO's domain dispute resolution service).

<sup>17</sup> See Approved Providers for Uniform Domain-Name Dispute-Resolution Policy, at <http://www.icann.org.html>. (last visited Feb. 21, 2003) (acknowledging three other managers of domain name systems: the Asian Domain Name Dispute Resolution Centre, CPR Institute for Domain Name Dispute Resolution, The National Arbitration Forum)

<sup>18</sup> See World Intellectual Property Organization, Treaties and Contracting Parties, at <http://www.wipo.int/treaties/index.html>. (last visited Feb. 21, 2003) (stating that WIPO "administers some 23 treaties in the field of intellectual property which may be subdivided into areas of 'Intellectual Property Protection Treaties,' 'Global Protection System Treaties,' and 'Classification Treaties.'").

<sup>19</sup> See World Intellectual Property Organization, at <http://www.wipo.int/clea/docs/ern/wo/wo033en.htm>. (last visited Feb. 21, 2003).

<sup>20</sup> See World Intellectual Property Organization, General Information at [http://www.wipo.int/about-wipo/en/gin.htm#P13\\_2033.htm](http://www.wipo.int/about-wipo/en/gin.htm#P13_2033.htm). (last visited Feb. 21, 2003) (giving statistics on the composition of the organization).

<sup>21</sup> See World Intellectual Property Organization, Vision and Strategic Direction of WIPO, at [http://www.wipo.int/about-wipo/en/index.html?wipo\\_content\\_frame=/about-wipo/en/dgo/pub487.htm](http://www.wipo.int/about-wipo/en/index.html?wipo_content_frame=/about-wipo/en/dgo/pub487.htm). (last visited Apr. 12, 2003) (explaining WIPO goals to promote Intellectual Property and the inclusion of states to implement plan to achieve the goal).

<sup>22</sup> See David James, *Patently Pending*, BUS. R. WKLY (Australia), Sept. 5, 2002, at 64 (criticizing the WIPO thrust on implementation of a global system, where, "there is little underlying agreement about how the law should be framed, still less that there should be a global legal authority for intellectual property.").

intellectual property rules in the WTO. Mr. Lehman mentioned the over ten-year effort to update the Paris Convention<sup>23</sup> which was never successfully concluded. The developed countries wanted the Paris Convention to include more detailed patent rules, such as strengthening some of the conditions on compulsory licensing of patents, while most developing countries insisted on weakening the Convention. The Paris Convention revision negotiation ended in a North-South stalemate.<sup>24</sup> The Paris Convention has not been updated since its last revision in 1967.<sup>25</sup> Similarly, the Berne Convention has not been updated since its last revision in 1971, and many people believed that technological developments warranted its revision.<sup>26</sup> So for over twenty-five years there was really no substantive improvement in the norms of intellectual property in WIPO. Mr. Lehman alluded to one of the reasons for this, namely the lack of cross-sectoral negotiating ability within WIPO, which deals only with intellectual property matters. There was not an ability to trade market access, for example, for higher levels of intellectual property protection. Perhaps another reason why the WTO was successful in concluding the TRIPS Agreement was the desire by many developing countries to get out from under the so-called "unilateralism" of certain countries.<sup>27</sup> The United States, since the 1970s, had been pressuring countries to improve their protection of intellectual property, linking intellectual property protection in trade statutes to the extension of benefits. This linkage exists, for example, under the Caribbean Basin Initiative,<sup>28</sup> the Generalized System of Preferences program,<sup>29</sup>

<sup>23</sup> See Gary M. Hoffman & George T. Marcou, *Law and Society: Who's Stealing America's Ideas?*, WASH. POST, Nov. 5, 1989, at C3 (acknowledging the inadequacy of the Paris Convention).

<sup>24</sup> See *Twisting Whose Arm?*, THE ECONOMIST, Nov. 29, 1975, at 79 (observing that third world countries ask for concession, yet fail to understand or compromise with the "rich" nations in order to come to a decision).

<sup>25</sup> See Paris Convention for the Protection of Industrial Property, July 14, 1967, 21 U.S.T.1583 (noting Paris Convention was last signed in 1967).

<sup>26</sup> See Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, 1 B.D.I.E.L. 715 (indicating the present status of the Berne Convention, including that it was last revised on July 24, 1971 and was amended on October 2, 1979).

<sup>27</sup> See *India for Continuation of Study Process on Singapore Issues*, THE PRESS TRUST OF INDIA, Nov. 11, 2001 (examining the rift between developing and developed countries).

<sup>28</sup> See Caribbean Basin Initiative, Frequently Asked Questions, at <http://www.mac.doc.gov/CBI/WebMaininro.htm> (explaining the Caribbean Basin Initiative).

<sup>29</sup> See International Trade Data Systems, at <http://www.itsd.treas.gov/gsp.html>. (last

the Andean Trade Preferences Act,<sup>30</sup> and of course the so-called "Special 301" provisions of U.S. trade law.<sup>31</sup> This pressure had resulted in imposition of trade sanctions, as well as the creation of extra-statutory lists of countries failing to provide adequate and effective intellectual property protection. Countries dislike the "Special 301" lists almost as much as the threat of trade sanctions because being placed on a list basically tells investors that this is not a good place to invest.

As I mentioned earlier, the TRIPS Agreement was good business for WIPO because it incorporated as its basis the provisions of WIPO's fundamental treaties, the Paris and Berne Conventions. WIPO has seen a large increase in the membership of these treaties since the TRIPS Agreement was concluded. The Berne Convention membership jumped from 84 in 1990 to 146 in 2000.<sup>32</sup> Similarly the Paris Convention has gone from 100 to over 160 now.<sup>33</sup> In 1995, at the time of the conclusion of the Uruguay Round, WIPO and the WTO entered into a cooperation agreement under which WIPO provides assistance to all members of either the WTO or WIPO.<sup>34</sup> This cooperation was pushed initially by the United States to avoid "recreating the wheel" in the WTO. The WTO Intellectual Property Division has about five people, a handful of people, whereas WIPO, as I mentioned, has over 1,000 staff. Developing countries, and in fact all countries, were very accustomed to coming to WIPO for assistance, and the thought was that we should not try to recreate this institution within the WTO.

The idea of WIPO-WTO cooperation was somewhat

visited Apr. 12, 2003) (stating "[t]he United States of America under the Generalized System of Preferences (GSP), provides preferential duty-free entry to approximately 3,000 products from some 1,423 designated beneficiary countries and territories.").

<sup>30</sup> See Ginger Thompson, *Behind Roses' Beauty Parlor, Poor and Ill Workers*, N.Y. TIMES, Feb. 13, 2003, at A1 (explaining that Andean Trade Preference Act of 1991 gives tariff-free access to American markets to farmers in Bolivia, Ecuador and Peru).

<sup>31</sup> See *Nintendo Urges Trade Action to End Video Game Piracy*, PR NEWSWIRE ASS'N, Feb. 20, 1996 (noting "Special 301 provision of U.S. trade law . . . protects U.S. copyrights, trademarks and other intellectual property").

<sup>32</sup> See International Intellectual Property Alliance, at <http://www.iipa.com/iiplamilestones.html>. (last visited Feb. 21, 2003) (stating membership of the Berne Convention rose from 74 countries in 1984 to 149 countries in 2002).

<sup>33</sup> See Press Information Bureau, Government of India, at <http://pib.nic.in/focus/foyr98/fo11298/fo3012981.html>. (last visited Feb. 21, 2003)

<sup>34</sup> See Deborah P. Steger, *The Boundaries of the WTO: Afterward The Trade and . . . 'Conundrum - A Commentary*, 96 AM.J.INT'L.L. 135, 136 (2002) (noting the importance of this cooperative relationship and its importance in the development of TRIPS).

controversial at the time. Initially there was concern on the part of a number of developed countries that WIPO, which had originally opposed moving intellectual property to the WTO, might be too sympathetic to developing countries. It might give weak advice to countries seeking advice on TRIPS implementation, for example. Ultimately it was recognized that no matter where a country turns for advice, whether to the U.S. government or to the European Commission or WIPO or anywhere else, ultimately each country is responsible for fulfilling its obligations under the TRIPS Agreement. Each country is subject to the WTO dispute resolution system, and so the feeling was that the more help available to countries in implementing their TRIPS obligations, the better.

The real test for the continued relevance of WIPO in norm setting came with the negotiation of the two so-called "Internet treaties", the WIPO Copyright Treaty (WCT)<sup>35</sup> and the WIPO Performances and Phonograms Treaty (WPPT).<sup>36</sup> Former Under Secretary of Commerce and Commissioner of the U.S. Patent and Trademark Office, Bruce Lehman, led the U.S. delegation in the negotiation of these treaties, and I think he will agree that the dynamic within WIPO was radically changed by the TRIPS Agreement. Once countries basically realized that, to be a part of the world trading system they had to respect intellectual property, they began to look at intellectual property protection not necessarily as a concession, but perhaps as something they could use for their own economic development. In every region there was strong support for these treaties, despite disagreements on certain areas, because each region has a stake in protecting their creations in the digital environment, whether it is the sound recording industry in Latin America, or the computer software industry in India, or African sound recordings. Every region supported these treaties, and that was a real turning point for WIPO, because the dynamic within WIPO has fundamentally changed. A number of additional treaties have been concluded in WIPO since the conclusion of the TRIPS Agreement. The Geneva Act of the Hague Agreement Concerning the International Registration of Industrial

<sup>35</sup> WIPO Copyright Treaty, Dec. 20, 1996, 36 I.L.M. 65.

<sup>36</sup> WIPO Performance and Phonograms Treaty, Dec. 20, 1996, 36 I.L.M. 76.



Designs,<sup>37</sup> concluded in 1999, allows “examining” countries like the United States, Korea, Japan, and others, to join the existing Hague Agreement, which now only applies to countries that register designs without substantive examination and provide copyright-like registration.<sup>38</sup> Again, there was great progress on eliminating cyber-squatting. WIPO led that effort and delivered its report in 1999 making recommendations to combat cyber-squatting.<sup>39</sup> The new corporation that governs the domain name system, the so-called Internet Corporation for Assigned Names or Numbers, or ICAN, largely implemented those recommendations.<sup>40</sup> Then in 2000, WIPO concluded a procedural patent law treaty and is currently working on a substantive patent law treaty to supplement it.

The WIPO-WTO Agreement provides basically three things. First, WIPO and the WTO will provide assistance to members of both organizations on the same basis that they provide their own members.<sup>41</sup> That means that WIPO is giving assistance to countries that aren't members of WIPO. The second point is that—and all of these are, again, meant to avoid duplication and recreating the wheel in the WTO – is that WIPO makes available to the WTO and its member states its collection of laws.<sup>42</sup> Under both the Berne and Paris Conventions, there are longstanding notification obligations, and so WIPO has built up a collection of laws that are available on the website now in electronic form. Thirdly, WIPO also processes the so-called Article 6ter notifications under the Paris Convention.<sup>43</sup> Article 6ter provide

<sup>37</sup> The Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, at [http://www.wipo.int/hague/en/legal\\_texts/wo\\_hass\\_t.htm](http://www.wipo.int/hague/en/legal_texts/wo_hass_t.htm). (June 2, 1999) (last visited Feb. 21, 2003).

<sup>38</sup> See James F. Davis, *Judicial Management of Patent Litigation in the United States: Observations from the Litigation Bar*, 9 FED. CIRCUIT B.J. 549, 552 (2002) (noting the expansion of the geographical scope of review permitted by legislation).

<sup>39</sup> See Eugene R. Quinn, Jr., *The Evolution of Internet Jurisdiction: What a Long Strange Trip It Has Been*, 2000 SYRACUSE L. & TECH. J. 1, 43 n.221 (indicating the important role of the UDRP on the implementation of ICANN's regulation).

<sup>40</sup> See Milton Mueller, *Technology and Institutional Innovation: Internet Domain Names*, 5 INT'L J. COMM. L. & POL'Y 1, 30 (2000) (indicating the importance of UDRP on the implementation of ICANN's regulations).

<sup>41</sup> See Alexander A. Caviedes, *International Copyright Law: Should the European Union Dictate Its Development*, 16 B.U. INT'L L.J. 165, 193 (1998) (indicating the ability of a WIPO member to become a “free rider” in the WTO under the agreement).

<sup>42</sup> See Adrian Otten & Hannu Wager, *Compliance with TRIPS: The Emerging World View*, 29 VAND. J. TRANSNAT'L L. 391, 410-11 (1996) (providing cooperation in three main areas including notification).

<sup>43</sup> See Philip M. Nichols, *From International Trade to International Economic Law:*

countries a mechanism by which they can notify their emblems, and flags and seals to WIPO, which are then notified to all the member states to avoid having them trademarked by private concerns.<sup>44</sup>

WIPO's TRIPS assistance has taken the form of two joint initiatives. The first was in 1998 in anticipation of the coming into force for the developing countries of their TRIPS obligations on January 1, 2000. The WTO and WIPO jointly notified all developing countries of the impending deadline and made them aware of the technical assistance available.<sup>45</sup> That was quickly followed by a joint symposium on the TRIPS Agreement at WIPO headquarters in Geneva.

Then again just last year a similar notification was sent to the least developed countries, which are facing their deadline for TRIPS implementation in 2005.<sup>46</sup> In response to these two notifications WIPO has provided legislative assistance and training to over 100 countries.<sup>47</sup> The Cooperation for Development activities of WIPO is organized within WIPO into several units. WIPO has four regional bureaus for each of the developing country regions, as well as a WIPO Academy, a Least-Developed Country unit, and a relatively recent initiative known as WIPONET. I will briefly talk about each of these.

The regional Cooperation for Development bureaus, as well as the WIPO Academy, are basically engaged in providing legal and technical assistance, advice on legislation, and assistance in modernizing and computerizing intellectual property offices, both

*Electronic Uncertainty Within the International Trade Regime*, 15 AM. U. INT'L L. REV. 1379, 1420-21 n.154 (2000) (elucidating Article 6ter of the Paris Convention protection of national emblems).

<sup>44</sup> See Shilpa Mehta & Leslie Steele Smith, *An American Practitioner's Guide to the Developing System of Trademark Law in the European Union*, 3 TEX. INTELL. PROP. L.J. 85, 89-90 (1995) (noting the ability for member states to register such materials and its categorical prohibition of its registration by others).

<sup>45</sup> See Steger, *supra* note 34, at 136 (noting the assistance provided to developing countries).

<sup>46</sup> See World Intellectual Property Organization, *WIPO and WTO Launch New Initiative to Help World's Poorest Countries*, at <http://www.wipo.int/pressroom/en/releases/2001/p276.htm> (last visited Feb. 21, 2003) (describing the assistance that WIPO is providing least developed countries in complying with TRIPS obligations).

<sup>47</sup> See World Intellectual Property Organization, *Legislative Assistance provided by the World Intellectual Property Organization (WIPO) in relation to the Implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) and the Doha Declaration*, at <http://www.wipo.int/cfdiplaw/en/trips/index.htm> (last visited Apr. 12, 2003).

for national IP offices and regional offices. They put on training courses and try to develop human resources in these offices, as well as training of the private sector in these countries, and helping to create national IP associations, collective administrative of rights, and innovation promotion activities. As former commissioner Lehman said here earlier, know-how and brainpower are not limited to developed countries. It exists in the developing countries and, for WIPO, it is a matter of trying to promote that creativity and to promote use of the IP system. Jamaica is one example where WIPO is trying to help them use the IP system for development. The reggae music industry is over a billion dollar industry worldwide, but very little of that money was ever repatriated to artists in Jamaica, and it was found primarily because they lacked an effective collective administrative system to seek royalties from other countries.<sup>48</sup> WIPO has been working with Jamaica and the Caribbean states to set-up a regional collecting society.

The WIPO Academy was established to leverage the assistance provided by WIPO in the field.<sup>49</sup> The WIPO Academy has established a distance-learning program that has reached hundreds more than would otherwise have been reached, and in fact it is available to students anywhere in the world free of charge who wish to sign up. Currently there is a single course, Intellectual Property 101, but there are two new course offerings that will soon be added – one on intellectual property and electronic commerce and one on intellectual property and traditional knowledge. The latter course is aimed at teaching countries how they can use the existing IP system to protect certain aspects of their traditional knowledge.

In addition to the professional training programs, which are aimed at what you might call typical targets, the government officials in the administrations of the intellectual property system, WIPO has instituted what is known as the Policy

<sup>48</sup> See Press Release, World Intellectual Property Organization, *WIPO General Director Meets With Prime Minister of Jamaica*, Mar. 15, 2002, at <http://www.wipo.int/pressroom/en/updates/2002/upd161.htm> (last visited Apr. 12, 2003) (describing the need for implementing an intellectual property system in Jamaica to protect music royalties).

<sup>49</sup> See World Intellectual Property Organization, *WIPO Worldwide Academy* at <http://www.wipo.int/academy/en/> (last visited Apr. 12, 2003) (describing the function of the Academy).

Training program. This program is meant to reach out to policymakers at high levels, such as development ministers and finance ministers, to show that the intellectual property system is not some certain piece of the bureaucracy that can be buried away and not thought about, but is really one of the fundamental institutions that is required for a country's economic development, just like a central bank or other infrastructure of a country.<sup>50</sup> Also, the WIPO Academy works with universities around the world to offer diploma courses, including some in the United States, and offers scholarships to students.

The least developed countries unit was established in 1998 to really focus on the needs of the least developed countries. Since this category was established by the United Nations decades ago, I think the number of least developed countries has more than doubled.<sup>51</sup> In other words, they are not leaving poverty, and so the idea here is to focus on their needs in particular to help them enact laws in fields of their comparative advantage, whether it is handicrafts, indigenous technologies and folklore, geographic indications, or plant varieties.

The WIPONET<sup>52</sup> is a project that is trying to bring Internet connectivity to those IP offices around the world that don't currently have it, and there were 152 that lacked connectivity when this project was undertaken.<sup>53</sup> WIPO is basically aiming to connect all of these offices to a secure network that will allow access to several things. First, WIPONET will bring access to what are called the intellectual property digital libraries (IPDLs).<sup>54</sup> These are collections of published intellectual

<sup>50</sup> See World Intellectual Property Organization, *Policy Development Program at* <http://www.wipo.int/academy/en/> (last visited Apr. 12, 2003) (describing the function of the program).

<sup>51</sup> See World Intellectual Property Organization, *Evolution of Least Developed Countries at* <http://www.wipo.int/lcds/en/index.html> (last visited Apr. 12, 2003) (indicating that the number of least developed countries has risen from twenty-four in 1971 to forty-nine in 2001).

<sup>52</sup> See World Intellectual Property Organization, *WIPONET: Connecting the Global IP Community at* <http://www.wipo.int/it/en/projects/wiponet.htm> (last visited Apr. 12, 2003) (describing the purpose structure of the proposed system to connect intellectual property offices throughout the world).

<sup>53</sup> See World Intellectual Property Organization, *WIPONET at* <http://www.wipo.int/it/en/projects/wiponet.htm> (last visited Apr. 12, 2003) (providing that the current WIPONET project will connect 332 IP offices in 171 countries).

<sup>54</sup> See World Intellectual Property Organization, *WIPONET at* <http://www.wipo.int/it/en/projects/wiponet.htm> (last visited Apr. 12, 2003) (indicating the connection to IPDL as a primary function of WIPONET).

property rights, whether they are patents, trademarks, or designs. The IPDLs can be used by researchers, by inventors in those countries, by universities and so forth. The WIPONET will also be used for the electronic filing of applications under the three registration systems that I mentioned earlier, as well as for the distance learning courses that WIPO offers.

I just want to say a quick word about WIPO's funding situation. I think there is a perception that WIPO is a rich organization because it relies on fee income, and fortunately does not have to rely on any single government's contribution. WIPO, thus, does have a stable funding base, but its budget is really quite small compared to most other UN agencies, and is certainly small compared to some of the development agencies like the World Bank.<sup>55</sup>

Of WIPO's total budget of 212,000,000 Swiss francs per year, about 25,000,000 Swiss francs are spent on development in technical assistance for the entire world.<sup>56</sup> That's the size of a single, small World Bank or International Monetary Fund (IMF) project. Because of this, WIPO really has to leverage its assistance by working with other organizations.

At one time WIPO did have about a 250 million dollar surplus that was purposely generated through the PCT fees, but that surplus already has been dedicated for two purposes.<sup>57</sup> First, the surplus is earmarked for the construction of a new headquarters building in Geneva, because like the U.S. Patent and Trademark Office in Arlington, WIPO is spread out over about 15 or 16 buildings, most of it in rented space.<sup>58</sup> So WIPO is going to

<sup>55</sup> Compare Edward Kwakwa, *Some Comments on Rulemaking at the World Intellectual Property Organization*, 12 DUKE J. COMP. & INT'L L. 179, 180 (2002) (noting "[t]he recently approved budget of the Organization for the 2002-2003 biennium is 678.4 million Swiss francs or 410 million U.S. dollars.") with Reginald Ezetah, *The Right to Democracy: A Qualitative Inquiry*, 22 BROOKLYN J. INT'L L. 495, 523 (1997) (recognizing "while the U.N. budget does not normally exceed three billion dollars, the U.N. and the World Bank together disburse more than 30 billion dollars on social and development programs.").

<sup>56</sup> See Marney L. Cheek, *The Limits of Informal Regulatory Cooperation in International Affairs: A Review of the Global Intellectual Property Regime*, 33 GEO. WASH. INT'L L. REV. 277, 305 (2001) (highlighting WIPO's commitment to providing technical assistance to countries in order to meet TRIPs compliance).

<sup>57</sup> See J. Douglas Hawkins, *Importance and Access of International Patent Protection for the Independent Inventor*, 3 U. BALT. INTELL. PROP. J. 145, 148 (1995) (commenting "[t]he financial operations of the PCT at WIPO are now self-supporting as surplus revenues, mainly coming from fees paid by applicants, reached forty-seven million Swiss Francs as of 1991.").

<sup>58</sup> See Robert J. Gutowski, Comment, 47 BUFFALO L. REV. 713, 726 n. 71 (1999)

consolidate its staff into a new headquarters building. The second purpose for the surplus is to meet WIPO's information technology needs.<sup>59</sup> In fact, the surplus fund specifically was set-up for these purposes. As of this year, most of the surpluses already have been dedicated. WIPO, therefore, is no longer a rich organization, in case anyone thought it was. WIPO must now look more and more to work closely with other international organizations, other IP offices, the private sectors and institutions to leverage its resources.

In conclusion, WIPO's goal is to help countries develop their intellectual property systems so they can harness the creativity of their citizens. WIPO is trying to show countries how the intellectual property system can be used as a tool of economic, social, and cultural development. And WIPO hopes to work with other partners, including the private sector, to accomplish its mission.

Thank you very much.

(noting WIPO is planning to expand its physical headquarters in Geneva).

<sup>59</sup> See World Intellectual Property Organization, *Program and Budget*, at [http://www.wipo.int/about-wipo/en/index.html?wipo\\_content\\_frame=budget.html](http://www.wipo.int/about-wipo/en/index.html?wipo_content_frame=budget.html) (last visited Apr. 12, 2003) (recognizing "[t]he current intake of cases is already stretching to the limit the available staff, office space and automated processing systems of the Organization.").

