

ESTABLISHING ACCOUNTABILITY AT THE WORLD INTELLECTUAL
PROPERTY ORGANIZATION: ILLICIT TECHNOLOGY
TRANSFERS, WHISTLEBLOWING, AND REFORM

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,
GLOBAL HUMAN RIGHTS, AND
INTERNATIONAL ORGANIZATIONS

THE

SUBCOMMITTEE ON
THE MIDDLE EAST AND NORTH AFRICA

AND THE

SUBCOMMITTEE ON ASIA AND THE PACIFIC
OF THE

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WEDNESDAY, FEBRUARY 24, 2016

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,
GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS,
SUBCOMMITTEE ON THE MIDDLE EAST AND NORTH AFRICA, AND
SUBCOMMITTEE ON ASIA AND THE PACIFIC,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittees met, pursuant to notice, at 2:03 p.m., in room 2172 Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations) presiding.

Mr. SMITH. The hearing of the three subcommittees will come to order. And thank you all for being here.

Our hearing today shines a spotlight on an organization that is a critical component of a global system of intellectual property and patent protection, the World Intellectual Property Organization or WIPO. It is an organization that, unfortunately, appears to have lost its way under its current Director General Francis Gurry, and is in need of major reform.

We will hear from very courageous whistleblowers today who will relate how they uncovered illicit transfers of technology to rogue nations such as North Korea, and to friendly nations like Japan, and how WIPO, under Director General Gurry, unbeknownst to member states, cuts deals with China and Russia to open offices in those countries, potentially putting our intellectual property at risk.

This hearing is thus about national security as much as the importance of sound governance and oversight. China, for example, has notoriously a bad record on protecting intellectual property rights, and WIPO ought to be part of the solution. Parenthetically, you may know that I serve as chairman of the Congressional-Executive Commission on China. Senator Marco Rubio is co-chairman. Ominously, the Commission's latest annual report, released last October, concluded that human rights violations have significantly worsened and were broader in scope than at any other time since the Commission was established in 2002.

Last week I traveled to China on a mission to promote human rights, the rule of law, including intellectual property rights, and

democracy. In China I met and argued with government leaders and had the privilege of delivering a keynote address at NYU-Shanghai. As I think many of us have come belatedly to understand, hopes in the 1990s that China would eventual and inevitably matriculate from dictatorship to a democracy hasn't even come close to materializing.

The Commission pointed out that U.S. companies face significant difficulties related to intellectual property rights in China. And, of course, China is not the only place where these problems exist and persist.

Two of our witnesses, Jim Pooley and Miranda Brown, will recount what they saw at WIPO and what happened when they sought to bring to light what they saw. It is not a pretty story but it is one I will leave to them to explain in their own words. It is the personal aspect of governing from oversight that we all want to emphasize because it is at the heart of the story we will hear revealed in this afternoon's hearing, a human drama about brave individuals who, at great personal cost to themselves and their country, saw wrongdoing and decided to do something about it.

Today's hearing is timely as well as topical, as there has been an internal investigation of WIPO by the U.N.'s Office of Internal Oversight Services into the allegations of wrongdoing. The results of this investigation are currently before the chairman of WIPO's General Assembly. This is a General Assembly of member states, including the United States, based in Geneva. It is incumbent upon the General Assembly Chairman Gabriel Duque of Colombia that he act upon this report and share it with member states and make it publicly available.

We also call upon our own State Department to follow up on this and to be persistent in pushing full reform, transparency, and accountability at WIPO.

I would point out that this is the first in a series of hearings. And our next witnesses we hope will be the State Department.

Today's hearing will have reverberations beyond WIPO, for there appears to be a culture of corruption at many international organizations, not only at WIPO. We hear revelations, for example, about FIFA and world soccer and how the serpent of corruption wriggles its way even into the world of sports, undermining the nobility of athletic competition. We hear of the sexual exploitation of minors occurring in U.N. peacekeeping missions.

I would note, parenthetically, I have chaired three hearings on that issue and traveled to D.R. Congo to investigate personally this issue of peacekeepers raping little girls and boys and then being not part of the protection force.

This hearing is the first in what will be a series of hearings that this Congress will hold to focus on the need for reform at the U.N. and its institutions. And the next will be with the State Department, we hope, and on U.N. peacekeepers and the issue of exploitation and abuse.

We do believe that by shining a light we can help victims and help the corruption come to an end, bringing healing and true reform. Organizations such as WIPO are too important to be abandoned. It is essential that we conduct vigorous oversight and de-

mand accountability to help refocus this organization on fulfilling its vital mission.

Finally, I would like to thank the other chairs for joining this hearing. This is a group effort, three subcommittees. Frankly, it is unprecedented to have three subcommittees; sometimes two, but not three. Our distinguished Chairwoman Ros-Lehtinen, Chairman Salmon, of course our ranking members, Ms. Bass, Mr. Deutch, and Mr. Sherman. This is an important hearing and we look forward to our distinguished witnesses.

I would like to now yield to Ms. Bass for any opening comments.

Ms. BASS. Thank you, Mr. Chairman. I would like to welcome the witnesses to this joint hearing, and note that I look forward to hearing from each of you.

I would also like to underscore my support for whistleblower protections. Let me say that intellectual property rights are important, not only to my constituency in Los Angeles in the State of California, but the country as a whole. Intellectual property rights are legal, private, enforceable rights that governments grant to inventors and artists. Intellectual property is and of itself essential to the growth and vitality of our economy and the sustainability of our competitive edge worldwide. The role played by WIPO is, therefore, also critically important.

I would also like to note that intellectual property is increasingly important to the continent of Africa. Last year in Senegal the Africa Union organized a conference on intellectual property in coordination with WIPO, the Government of Senegal, the Government of Japan, and African Union member states. Building on earlier AU conferences on the topic, the Conference on Intellectual Property for an Emerging Africa emphasized the strategic use of intellectual property in achieving the goals of the AU's strategic agenda for 2063. This is a critical step in the right direction for the continent and, frankly, for the United States.

I can definitely speak to the importance of intellectual property issues to my district in Los Angeles, which is home to Sony and Fox and hundreds of other studios and entertainment industry-related businesses. In Nigeria, Nollywood, the highly acclaimed movie industry, is a source of major revenue. This revenue can be doubled and tripled as jobs and apprenticeships are created and maintained. This is a burgeoning industry that can even be more effective with a greater focus on intellectual property rights.

The same can also be said for the movie, music, and television industries in South Africa, Kenya, Ghana, and many other venues. Not only is there potential opportunity for cooperation and collaboration regionally, but internationally with and, for example, of course the United States. This is why the effective operation of WIPO remains so important both domestically and internationally.

And in our subcommittee, Africa is one of the main issues that is covered. So when the chairman mentioned that there will be future hearings, I look forward to focusing on the continent. Thank you.

Mr. SMITH. Thank you, Ranking Member Bass.

It is now a distinct privilege to recognize the chairwoman emeritus of the full committee and now chairwoman of the Middle East and North Africa Subcommittee, Ileana Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you so much, Chairman Smith and Chairman Salmon, as well as the ranking members Ms. Bass and Mr. Sherman for bringing to our subcommittees this important hearing. And a special thank you to our esteemed witnesses.

Mr. Pooley and Dr. Brown are two brave whistleblowers who have sacrificed much in their personal and professional lives in order to shed light on the misconduct of the World Intellectual Property Organization (WIPO) and its Director General. I am grateful to you both for being here to finally give your testimony today. This has been a long time coming.

And I also want to thank Mr. Parish for being here to represent the views of the WIPO Staff Council. It is about time that all your voices and the truth are heard.

When I first began investigating WIPO's illegal transfers of technology to Iran and North Korea almost 4 years ago, our committee could not have known to the extent that the WIPO's misconduct took. We were just scratching the surface. We also could not have known to what length the Director General Gurry would go to silence his critics.

Upon learning in 2012 that WIPO was secretly transferring high tech U.S.-origin computers, programs and equipment to Iran and North Korea, technology with clear dual-use benefits to those regimes, I wrote to then Secretary of State Hillary Clinton raising concern about these violations. In my letter I informed the Secretary that the committee was opening an investigation into the matter and I requested that the administration freeze all U.S. contributions to WIPO until we were given complete and unfettered access to relevant documents and witnesses without fear of retribution or retaliation until the committee and the State Department both finished their investigations, and until all those responsible at WIPO were held accountable.

These illegal transfers violated WIPO rules and which require prior disclosure to member states before authorization. If known ahead of time, WIPO member states and, undoubtedly, U.S. representatives to the organization would have objected due to national security concerns. Even worse, these transfers violated both U.S. sanctions and U.N. Security Council resolutions, laws designed to prevent the regimes in Tehran and Pyongyang from getting their hands on dual-use technologies.

A few days later, after some preliminary fact finding and inquiries with WIPO staff, the committee's ranking member at the time, Congressman Howard Berman of California, and I sent multiple letters to the Director General himself and followed up with his office and through the State Department. We were appalled at Gurry's lack of accountability and transparency and his lack of judgment at attempts at keeping these illegal transfers secret, and the lack of any kind of consultation with the Security Council, and his failure to properly control sensitive dual-use technology. Absolutely appalling.

We were outraged by Gurry's disgusting intimidation and retaliation against whistleblowers. And because WIPO depends on patent application fees, of which more come from the U.S. than any other country, we were also disturbed that WIPO was effectively using

fees paid by U.S. inventors to fund a secret and illegal transfers to Iran and North Korea.

We strongly urged Gurry to change course, to uphold his commitments as an official of an international organization, to commission an independent external investigation into the matter, and to provide WIPO stakeholders with access to all documents and witnesses while fully protecting whistleblowers.

During this process Congressman Berman and I invited three of the whistleblowers, two of whom are with us today, to testify before our committee, only to be denied permission by Mr. Gurry through his legal counsel. Their names were then leaked to the press, further underscoring the Director General's intimidation tactics, his imperious management of WIPO employees, and his outright manipulation of the investigations. Day after day, month after month Mr. Gurry failed to provide access to key documents, denied interviews with key witnesses, and even sought to interfere with the State Department's cooperation with our committee.

In the years following we learned even more about Gurry's misconduct, including secret agreements to Gurry's efforts to open satellite offices in China and Russia, two of the world's most notorious cyber criminals and thieves of intellectual property.

Last year Chairman Smith and I sent our staff to Geneva to meet with Dr. Brown and WIPO officials, and they discussed these new offices in more detail. Hosting WIPO offices in these countries poses an enormous security risk for the confidential and proprietary information included in patent applications, and further damages the credibility of WIPO, whose mission is supposed to be about protecting intellectual property, not destroying it.

We learned from our witnesses about Gurry's potential vote buying and nepotism, about his proposal for a WIPO satellite office in Iran, about his involvement in the theft of WIPO employees' personal items to extract their DNA, and about his retaliation against Mr. Pooley and Dr. Brown, as well as the eventual firing of Mr. Moncef Kateb, the former president of the WIPO Staff Council.

But despite multiple letters that other members and I sent to Secretary Kerry expressing our dismay and concern about Gurry's potential reelection as Director General, the State Department did nada, zilch, zip, nothing to block it, and he was reelected to another 6-year term in 2014.

The State Department finally woke up to Gurry's repulsive behavior last year when it decided to withhold a portion of U.S. contributions to WIPO for its violation of U.S. whistleblower protections. But that is not nearly enough to demonstrate a commitment to the whistleblowers and the dedicated public servants who believe in the mission of the United Nations agencies at which they work but are paralyzed by corrupt officials that run them. And it is not nearly enough to deter the Director General and others like him in the broken U.N. system from continuing to engage in disgraceful and dangerous behavior.

I know that our witnesses have some excellent recommendations for both Congress and the State Department on reforming WIPO and the entire U.N. I look forward to hearing from them and discussing how we can not only make these U.N. agencies more transparent and accountable, but ensure that they are protecting their

employees and working toward the mission for which they are funded.

And with that, Mr. Chairman, I would like to ask for unanimous consent to insert into the record the letters that we have written from this committee sent on this important matter. I would also like to thank our former Ranking Member Howard Berman for his leadership on this issue, as well as the committee staff who led the effort into the initial investigation, Dr. Yleem Poblete, our former staff director of the committee, Harold Rees, the former chief investigator of the committee, and Shana Winters, counsel for Mr. Berman.

Thank you, Mr. Chairman.

Mr. SMITH. Without objection, so ordered.

Ms. ROS-LEHTINEN. Thank you.

Mr. SMITH. Thank you, Chairwoman Ileana Ros-Lehtinen for not just the powerful statement but for all of the herculean efforts of yours to date. And we have got to get success on this. And again, our next hearing will be with the State Department.

I would like to yield to Ranking Member Brad Sherman.

Mr. SHERMAN. Thank you. And I want to associate myself with the gentlelady from California describing the importance of intellectual property, not only in the United States but to Africa and around the world. I am pleased to see that the employees of this organization have a union. If I had to pick an organization where employees needed a union to protect them, this would be it.

And if I had to pick somebody who at least ought to be paying his own parking tickets, it would be Francis Gurry.

This is an important international organization. We need to safeguard intellectual property worldwide. We have got limited leverage on WIPO because they get the vast majority of their money from fees. And we are withholding 15 percent of our contribution, but we are talking about roughly the same amount a Member of Congress gets paid every year.

The technology transfer I look forward to finding out just how critical it is. It is my understanding that what was transferred is available on Amazon. But that doesn't mean that it is entirely easy for Iran or North Korea to get their hands on it. And I believe in a broken-window approach to law enforcement we have got, we ought to do everything we can to enforce even the modest violations of sanctions.

This is not a well-run agency. It is not a good governance system. I look forward to improving it. And I look forward I hope, also, to seeing it do good work to protect the intellectual property for which Karen's district and mine is famous. And with that I yield back.

Mr. SMITH. Thank you very much, Mr. Sherman.

I would like to now yield to the chairman of the Subcommittee on Asia and the Pacific, Matt Salmon, for any comments.

Mr. SALMON. Thank you, Mr. Chairman. I would like to express my thanks to both you and Chairman Ros-Lehtinen for holding this hearing with the Asia and Pacific Subcommittee. I know that the Committee on Foreign Affairs has taken the lead on this issue over the past several years.

We are here today to investigate concerns about the World Intellectual Property Organization, or WIPO, its history of transferring

technology to rogue regimes like North Korea and Iran, and its whistleblower protection policies. Today we seek to unravel the events from the perspective of our insider witnesses, determine the implications of technology transfers to North Korea, and assess whether congressional action is necessary to prevent this from happening again. I suspect that it probably is.

In 2012 WIPO, a U.N. agency created in part to foster innovation and promote the protection of intellectual property throughout the world, sent very capable hardware, firewall and network security appliances to North Korea without proper consultation with U.N. sanctions committees. This meant violating multiple U.N. security resolutions on North Korea. Furthermore, the tech transfer provided the regime with technology that North Korea could not have purchased on its own, due to U.S. domestic restrictions.

Worse, it was not the first time. An independent external review report found that the history of deliveries of information technology hardware and software to North Korea dated back to at least the year 2000. Since 2006, the report continues, WIPO has provided North Korea with three deliveries, including servers, computers, notebooks, software, printers, and accessories. The report also noted that prior to 2012, WIPO had no procedure in place to review whether technology transfers and shipments to countries like North Korea would potentially violate U.N. sanctions. That to me is unfathomable and unconscionable.

WIPO may still have been inconsistent in requesting reviews of shipments to countries subject to U.N. sanctions. It should be a reasonable expectation that a U.N. body would follow U.N. Security Council resolutions. I don't think that is outlandish. WIPO's transfer of dual-use technology and software to North Korea should have undergone at least some level of scrutiny. The risk that North Korea could use these technologies to assist in its development of nuclear and missile capabilities is a risk we don't want to take. The regime has already conducted cyber attacks on foreign governments and organizations, and it is totally unacceptable the WIPO might be the organization that provided the computers from which they conducted these attacks. We must ensure that we prevent these mistakes from occurring again.

Now, we brought some very brave individuals here today who have brought these issues to our attention. We may not have learned of these activities if it weren't for these brave people that are on our panel. And I commend them for their efforts and for their courage. I know it is not easy to stand up and do what you did.

I am proud to support whistleblowers, and firmly believe in robust protections for all whistleblowers, as well as greater transparency in all government agencies. I think that is what the taxpayer and the people of the United States expect and deserve. I look forward to hearing from our witnesses with their first-hand knowledge on this issue, particularly as it relates to North Korea.

I thank you and I yield back.

Mr. SMITH. Thank you, Chairman Salmon.

I would like to now introduce our distinguished witnesses beginning first with Mr. James Pooley, who recently completed a 5-year term as Deputy Director General of the World Intellectual Property

Organization, where he was responsible for the management of the international patent system. Before his service at WIPO, Mr. Pooley was a successful trial lawyer in Silicon Valley for over 35 years, representing clients in patent, trade secret, and technology litigation.

He currently provides litigation and management advice in trade secret and patent matters and has taught at the University of California, Berkeley. Mr. Pooley is author or co-author of several major works in the intellectual property field.

We will then hear from Dr. Miranda Brown who is a former Australian Government official who joined the Australian Department of Foreign Affairs and Trade and occupied a number of positions in the Department before being appointed as the Deputy Permanent Representative at the Australian Mission to the U.N. in Geneva.

As Australian Deputy Permanent Representative in Geneva she worked closely with Mr. Francis Gurry, the current Director General of WIPO. She worked in support of his election campaign in 2008. She later joined WIPO as the Strategic Advisor to the Director General of WIPO in July 2011, and occupied this position until November 2012.

We will then hear from Dr. Matthew Parish who is here today because he serves as outside counsel to the WIPO Staff Council, an organization that represents WIPO employees. He is an international lawyer specializing in cross-border arbitration, litigation and enforcement, international trade, foreign investment, resource extraction and export, emerging markets, and public international law.

Dr. Parish has represented clients across a wide variety of industries, including shipping, international trade, energy and infrastructure sectors, banking, insurance and financial services, governments, and international organizations. He is a fellow of the Chartered Institute of Arbitrators and accepts appointments to sit as an arbitrator across Europe. He is also founder and managing director of Gentium Law Group in Geneva.

Mr. Pooley, the floor is yours.

**STATEMENT OF MR. JAMES POOLEY, ATTORNEY AT LAW
(FORMER DEPUTY DIRECTOR FOR INNOVATION AND TECHNOLOGY, WORLD INTELLECTUAL PROPERTY ORGANIZATION)**

Mr. POOLEY. Thank you, Chairman Smith, and good afternoon to you and good afternoon to Chairs Ros-Lehtinen and Salmon, and to Ranking Members Bass, Deutch, and Sherman.

I had the privilege of serving at the World Intellectual Property Organization and reported to Mr. Gurry from 2009 to 2014. Mr. Gurry is the most senior Australian national at the U.N., and has been working at WIPO for over 30 years.

WIPO has a very serious governance problem. In effect, the organization is run by a single individual. And this is possible only with the tacit cooperation of the member states that are supposed to act as WIPO's board of directors.

I will describe today just three examples of things that Mr. Gurry did while I was there: First, his gift of powerful computer

equipment to North Korea; second, his secret agreements with China and Russia to open offices, and; third, his retaliation against whistleblowers.

In March 2012, I heard from my colleague here Dr. Brown that the Bank of America had intercepted an international payment intended by WIPO for the shipment of high-end U.S.-origin computer equipment and an electronic firewall to North Korea. I was very disturbed by this, in part because as a lawyer I knew that this was dual-use technology that could not go to North Korea without an export permit. But I was also alarmed by the firewall because there was no reason that we needed to give North Korea a firewall except for one, which was to keep North Korean citizens from using that equipment to get onto the Internet.

I went to Mr. Gurry and I asked him to reconsider. I explained to him that in the U.S., where you can go to prison for quite a number of years for doing what we had done here, that it would be seen as unacceptable for a U.N. agency to be doing the same thing. He told me that he didn't care what the U.S. thought because WIPO didn't have to obey U.S. law.

This committee then started an investigation, or attempted to. Mr. Gurry blocked the testimony by myself and Dr. Brown and, as a result, the hearing for July 2012 was canceled. Around that same time I understand that Mr. Gurry hired a DC lobbying firm to help him with whatever U.S. political problems he had. And in 2012, WIPO paid that firm \$193,500. Now, that money and the money that went to pay for the equipment that went to North Korea was substantially from U.S. inventors and their patent fees.

Second example: In 2013 I learned that Mr. Gurry had entered into secret negotiations with China and with Russia for the opening of satellite WIPO offices. We, on the senior management team, learned about this only from articles in the China Daily News and the Voice of Russia. And the resulting controversy around this caused the breakdown of that year's meeting of member states in October.

Shortly thereafter, in November, a bipartisan group of 12 Members of Congress sent a letter to Secretary Kerry asking that the U.S. find someone else to support for the upcoming election of Director General, it recited the problem with the shipment to North Korea, the offices, and also the role that Mr. Gurry had apparently played in the theft of DNA from staff members and his later cover-up of the incident. Now, the immediate response to this letter did not come from the State Department but, rather, it came from Kim Beazley, the Australian Ambassador to the U.S., who basically denied everything and referred to the equipment that had been sent to North Korea as standard office equipment.

In this, and in many other ways at that time, Australia made it very clear that it wanted Mr. Gurry to be reelected and as a result, the U.S. agreed to stand on the sidelines during the election process.

Third example: In early 2014 I learned that Mr. Gurry had interfered with an external effort to place a contract for a competitive bid on an IT matter by directing that the contract be awarded directly to a company in Australia run by a friend of his. And when I learned this I reported that and the DNA theft to the chair of the

WIPO General Assembly. The retaliation against me was both swift and hard. Mr. Gurry had the chief legal officer of WIPO threaten me and a U.S. journalist who had written an article about my complaint, who was told that he faced criminal prosecution in Switzerland if he did not immediately take down the article and issue a personal apology to Mr. Gurry.

There was condemnation from the international intellectual property community about this but the State Department made no public statement. And 3 weeks later the member states of WIPO gathered and elected by consensus Mr. Gurry to another 6-year term.

The retaliation continued. And so, as required, I reported it to WIPO's chief ethics officer Avard Bishop, who told me, unsurprisingly, that there was nothing that could be done about it. Indeed, Mr. Bishop had come to me in confidence not long before to describe to me how he believed his entire job was hopeless under the circumstances. And I am sad to report that 3 months later he committed suicide.

Mr. Gurry's replacement chief ethics officer dithered with my complaint for retaliation for 6 months, eventually deciding that WIPO could do nothing with my complaint because by that time my term was over and I was no longer a WIPO employee. And he specifically refused to allow external arbitration of the sort that is required by the Budget Act of this Congress.

In the meantime, the investigation into my original allegations was started, but it was halted in the fall of 2014 by Mr. Gurry. Now, the U.S. objected strongly to that. Eventually, last May the investigation was restarted by an internal organ of the U.N. and my understanding is that that investigation has been completed. But try as hard as I have, I have not been able to find out exactly who has the report and what it says.

Any one of these three behaviors as examples that I have given you—and there are more—in a private company or in a public institution would result in the executive being dismissed by the board. In this situation, we collectively are the board of WIPO. We can accept that countries act in their national interests, but we should not accept that the U.S. stand by or stand down while its national interests are ignored, especially if they are interests like transparency and good governance.

I also appreciate that there are competing geopolitical concerns that weigh on the most senior officers of the State Department. But in this case, when our good reliable ally Australia came to us and asked us to be quiet, the right response should have been, "We understand, but we have competing considerations that override your concerns." Now, I believe that the State Department would benefit by having the cover that would come from Congress making very clear and strong what the priorities are, including proper governance and the protection of whistleblowers. We would all benefit, I believe, from the kinds of reforms that we have suggested in our submitted statements.

So let me close here by observing, as President Reagan once did, "There are no easy answers, but there are simple answers. We must have the courage to do what we know is morally right."

Thank you.

[The prepared statement of Mr. Pooley follows:]

Testimony of James Pooley
“Establishing Accountability at the World Intellectual Property
Organization: Illicit Technology Transfers, Whistleblowing, and Reform”
U.S. House of Representatives Committee on Foreign Affairs
February 24, 2016

Good morning Chairman Royce, Ranking Member Engel, and Members of the Committee. Thank you for inviting me to address you today. My name is James Pooley. I started as a lawyer in Silicon Valley in 1973, and soon became deeply involved in intellectual property law and public policy. This led to law school teaching, writing, and service on various committees and leadership of professional organizations. Currently I am in independent private practice and serve as Chairman of the Board of the National Inventors Hall of Fame.

In 2009 I was asked by the White House to join the World Intellectual Property Organization in Geneva, where I served for five years as a Deputy Director General and was the senior American official at the agency. My main job was to manage the international patent system under the Patent Cooperation Treaty. The PCT system is critically important to U.S. industry and innovators. Our country always produces more international patent applications than any other, and our inventors' application fees represent WIPO's largest single source of income. So the U.S. has a unique and compelling interest to make sure that those fees are well spent and that WIPO's systems are well managed.

Based on my experience I can report to you that the vast majority of the people at WIPO are competent, dedicated and deliver as required, many of them well beyond that. But this belies a profoundly serious problem with governance. The agency, in my opinion, is run by a single person who is not accountable for his behavior. He is able to rule as he does only with the tacit cooperation of member countries who are supposed to act as WIPO's board of directors. And he is ultimately protected by an anachronistic shield of diplomatic immunity.

The current Director General, Francis Gurry, is an Australian who started working at WIPO over thirty years ago and knows the system well. During my tenure I witnessed how a lack of any effective oversight frequently led to reckless decisions, often reflecting a disregard for the legitimate interests of the U.S. There are many examples I could provide, but here I will focus on three: his gift of high-end computer equipment to North Korea, his secret agreements with Russia and China to open satellite WIPO offices, and his relentless retaliation against whistleblowers who dared to come forward with the truth.

By March of 2012 I had been at WIPO for over two years, and had developed some understanding of his secretive management style. But I wasn't ready for what I learned from Dr. Miranda Brown, his senior advisor. She told me that a WIPO international wire payment had been intercepted and halted by the Bank of America because it was to reimburse the purchase and shipment to North Korea of high end Hewlett Packard computers and a printer, as well as a state of the art electronic firewall made by SonicWall, another Silicon Valley company.

I should point out that none of this equipment was necessary for the operation of the North Korean patent office. Over the entire 33 year span of its membership in WIPO, North Korea submitted a grand total of 25 international patent applications. And I knew that the computers were "dual-use" technology that could easily have been applied to telemetry calculations or other military use. But I was also alarmed by the firewall, which had only one purpose: to keep North Korean citizens from gaining access to the Internet.

This project had been going on for some time but had not been revealed in WIPO's high-level budget reporting, and so was unknown to the member states. And it had been kept secret from almost all of us on the senior management team. As a result, there had been no chance to discuss the wisdom of the activity, and no one had even considered the impact of U.N. or U.S. sanctions.

Once the bank transfer was halted, WIPO's senior counsel and head of administration advised cancelling the project, but Mr. Gurry insisted on proceeding with it. I went to speak with him privately and urged him to reconsider. I explained that regardless of whether this was a technical violation of Security Council sanctions, there were some very practical considerations relating to other sanctions that had been imposed on North Korea by various countries, including the U.S. I told him that in the U.S., where anyone caught doing this would go to federal prison, it would be seen as unacceptable for a UN agency to be doing the same thing. This was especially true because WIPO in effect was spending the patent application fees paid by U.S. inventors to help a rogue government oppress its people. He said basically that I should shut up, that I didn't know what I was talking about, and that he didn't care what the U.S. thought, because WIPO was an independent agency of the UN and was not required to follow U.S. law.

Not long after that conversation, this Committee launched an investigation into how these shipments possibly could have happened. I was asked to come and testify at a hearing in July 2012. I told Mr. Gurry that I would go on my own time and pay for travel myself, but he refused to allow me to attend. His resistance to the process prompted some strong correspondence from the Committee's Chair. But Mr. Gurry played for time, and he hired a U.S. lobbying firm, paying them almost \$200,000, to help him avoid an investigation. Again, that was WIPO's money that came in significant part from U.S. inventors. Even when he chose some experts to do a "review" of the incident, they concluded that they "could not fathom" how he possibly could have thought that proceeding in secret this way, without ever consulting with countries like the U.S. who had their own sanctions in place, would have been acceptable.¹

Time went on and, overtaken by the 2012 presidential election and other geopolitical events, ultimately there was no investigation, but I learned of another secret project that Mr. Gurry was planning. This one would involve opening one

or more WIPO offices in China, where some confidential patent applications would be processed outside of Geneva for the first time. Naturally, this involved serious operational risks, and so I organized a team to analyze and report to him on what could go wrong with that project. But early in 2013 he sent me a short handwritten memo directing me to “desist work” on the risk analysis.

Although I didn’t know it at the time, his secret plans for opening satellite WIPO offices also included a promise he had apparently made to Russia in advance of his first election to Director General, that WIPO would open an office in Moscow. On the merits, it made no sense to me, since Russia produces fewer international patent applications each year than Belgium. But I learned after the fact that Mr. Gurry had negotiated secret agreements with both China and Russia, which were first announced not by WIPO but by the China Daily News and The Voice of Russia, respectively. I remember very well going to lunch with one of my senior colleagues, when he surprised me with the news of the Moscow office, while I was the one to first inform him about the Beijing office.

These secretive deals provoked a storm of controversy among the member states of WIPO, and as a result at their annual meeting in October 2013 they could not agree on a budget for the organization. At about the same time, other information had emerged about possible misconduct by Mr. Gurry in connection with his election in 2008. It was at this point that twelve Members of Congress wrote an open letter to Secretary Kerry asking that the U.S. find some alternative candidate for the upcoming election at which Mr. Gurry was expected to stand for a renewed six-year term. The letter recited Mr. Gurry’s secret program to “ship high-end computers and other electronic gear to North Korea and Iran” and his refusal to cooperate with this Committee’s investigation. It noted his secret agreements to open satellite offices in China and Russia. It also referred to information that had just been leaked about Mr. Gurry’s apparent role in illegal acquisition of staff members’ DNA and his efforts to suppress the incident – an issue that would later become a subject of my Report of Misconduct.

There was no immediate response to this letter from the State Department. Instead, a reply came from Australia's Ambassador to the U.S., Kim Beazley, who denied that the shipments to North Korea were secret and referred to the material as "standard office equipment." While not directly denying the secrecy of the satellite office agreements, he said that Mr. Gurry had "foreshadowed" the proposal in an earlier briefing to Ambassadors. And he flatly denied that Mr. Gurry had any role in the DNA collection. All of these issues, he said, were "old claims," and the "Australian Government stands behind his candidacy." Follow-up letters from Congress challenging Mr. Beazley's assertions were either waved away or just not answered.² In any event, it was made very clear that this was important to Australia, and the U.S. agreed to remain on the sidelines during the election process, resulting in Mr. Gurry's return for another six year term despite the controversies and unanswered questions about the propriety of his actions.³

This leads me to my third and final example of serious wrongdoing inside WIPO. As you know, whistleblower protection is a core principle for the U.S., which recognizes that evidence of institutional corruption normally is only discovered when insiders are guaranteed safety in coming forward with what they know. In early 2014 I was approached by a trusted colleague for advice about an external competitive procurement for a major IT contract. Mr. Gurry had ordered the team first to add to the list of invited bids a company run by a friend of his in Australia. Then when the bids came in and that company was 40% higher than the others, he ordered that the bidding process be canceled and the contract awarded directly to his friend's company. I asked my colleague to report what had happened, but he was not prepared to take that step. So I did, and at the same time reported on a separate and earlier incident of apparent corruption. All of the relevant information and supporting documents were contained in my Report of Misconduct by Director General, submitted to the Chair of WIPO's relevant governing committees on April 2, 2014 (and amended on April 11).⁴

The retaliation for my report was swift and hard. A U.S. journalist had posted an article about my complaint, along with a copy of it. (He did not get it from me; I provided it only to official channels.) Within days the chief legal officer of WIPO sent me a memo implying that I would be held liable for any resulting claims made by Mr. Gurry's Australian friend. Even worse, he wrote to the U.S. journalist, asserting as fact that my complaint was "insulting," "false" and "defamatory" of Mr. Gurry, and demanding that he take down from his website all relevant information and "publish an apology to the Director General." The demand was reinforced with a threat to invoke criminal proceedings in Switzerland or "any jurisdiction to which you may be subject." The journalist, who was then going into the hospital for an operation, took down the material and in its place posted the lawyer's threatening notice.⁵

There was public condemnation from the press of the international IP community, but the U.S. State Department issued no statement about it. Three weeks later the member states of WIPO gathered and re-elected Mr. Gurry by consensus to another six-year term.

Various other acts of retaliation were taken against me, and as required by WIPO's Whistleblower policy, I notified WIPO's Chief Ethics Officer, Avarad Bishop, of what was going on, and he agreed that there was nothing he could do about it. Coincidentally, a week before I filed my complaint Mr. Bishop had approached me in confidence to share his personal distress at continuing to do what he thought was an impossible job. Although at his request he no longer reported to Mr. Gurry but instead to his Chief of Staff, most of the serious complaints to the Ethics Office involved Mr. Gurry himself, and Mr. Bishop knew that nothing could be done about them. I encouraged him to carry on, because people at least had someplace they could go and he gave them hope. Just over three months later, at the end of a week in which I understand he was told he should leave WIPO, Mr. Bishop committed suicide. Orders were immediately

issued to secure his office, and even his widow was denied access to his emails. I am not aware of any investigation into these events.

In the meantime, a "preliminary investigation" had begun into the allegations contained in my report. Ultimately, two independent investigation firms were engaged, because it turned out that one of them had a conflict of interest concerning the procurement corruption allegations. Their reports were apparently finished by September 2014, because I received word that a "full investigation" was underway, something that under the rules would not happen unless the preliminary work had found good cause to believe that misconduct had occurred. However, in November that investigation was abruptly terminated. I am informed that this happened because Mr. Gurry made certain unrelated allegations against WIPO's Director of Investigation, who was providing office support to the external investigation. I understand that the U.S. made private interventions with the Chairs of the relevant WIPO governance committees, but it took until May of 2015 for any investigation to begin again, and this time it was undertaken not by a private firm, but by OIOS, the UN's own internal investigation group. I have heard that that investigation has been completed and the report submitted, but I have received no official confirmation.

My term at WIPO ran from December 1, 2009 to November 30, 2014. On October 8, while I still had almost two months to serve, I filed a complaint for whistleblower retaliation, in accordance with WIPO's policy that required this to be done within six months from the first act of retaliation. It was submitted to the Acting Chief Ethics Officer, a staff member in Mr. Gurry's office who had been given these duties in addition to his existing job. For the next six months, I exchanged a series of emails with this person, who claimed variously that he couldn't understand what I wanted, that he needed to confer, or that it wasn't clear what he was to do. I repeated that I wanted him to do what the rules required, and perform a preliminary evaluation of the issues raised in my complaint. Finally, on March 31, 2015 I received an official WIPO memorandum

informing me that there was nothing to be done because by that time I was no longer a WIPO employee. Perhaps needless to say, this position was not justifiable, and indeed could be used to encourage managers to fire staff once they had filed retaliation complaints.⁶

In any event, the next month WIPO's position turned from merely untenable to completely inconsistent, when on April 29 I received an official notice that I was being placed under investigation for an alleged false and defamatory statement made by me as part of my report that had been filed more than a year earlier. I cooperated in this investigation, which was completed externally and quickly. On June 17, I received a notice that the case against me was being closed for "insufficient evidence."

To this day, WIPO has taken no action on the merits of my complaint for retaliation, and it has refused to provide me with access to external arbitration, as required by the Congressional Consolidated Appropriations Act of 2014.⁷

What we see in these three examples is an agency suffering from a lack of effective oversight. The first incident showed a flippant disregard for U.S. sanctions against a rogue regime. The second showed secret politics run amok, contrary to transparency and common sense management of the international IP system. And the third showed a defiant self-interest in sabotaging a legitimate whistleblower complaint, contrary to a core U.S. policy.

In any private company or public institution, where boards of directors or trustees serve as a check on executive misbehavior, any one of these – or of the other behaviors you will hear about today, including the summary firing of the WIPO staff union president, who had been the first to blow the whistle publicly on the North Korea shipments – would result in dismissal of the executive, at least for astonishingly bad judgment. That the person responsible here was re-elected in the midst of all of this turmoil would be inexplicable to anyone unfamiliar with the

intense national politics that drives the UN. Now that I have become familiar with it, I understand how it happens, but that makes it no more excusable.

We can accept that countries act in their national interests, but we should not accept the U.S. standing down or standing by while its interests are flouted or ignored, especially when those interests are grounded in our existential principles of transparency, fairness and good governance.

I appreciate that we live in a complicated world, and that compromise is often necessary in order to move ahead on matters of great international import. But I suggest that it is not necessary to give in to another country's demand just because they are a close ally. One important personal lesson we all learn from life is just as applicable to international relations: friends help their friends and themselves by not going along, and by advocating for the truth and what is right. That is especially true where the stakes are as high as they are here: this is not about a single person and his misbehavior. It is instead about a practice of going along to get along that enables that behavior.

When I served in Geneva I was constantly told by ambassadors from other countries that their governments would act, if only they got a positive signal from the U.S. They constantly asked me: "what is the U.S. going to do?" We have much more soft power that we apparently think, but in the many smaller decisions not to use it, we have instilled a powerful and pernicious conclusion in the diplomatic community: the U.S. is afraid or unwilling to act on certain issues where anyone would expect us to be leading the pack. So the irony is that in what some may think is a prudent decision to stay our hand, we risk reducing ourselves in the eyes of others, and with it our future power to influence important outcomes.

I do not believe that the problem lies with the majority of career civil servants within the State Department. In my experience they see the issues clearly and

have been as helpful as they can. Rather, the problem is with competing geopolitical considerations that weigh on the most senior leaders and political appointees. These come in at least two types. First, there is the general concern that the U.S. “keep our powder dry” or “pick our battles,” resulting in a hesitation to take on issues that are deemed insufficiently important for the commitment of our power. And then there are specific transactions in which other countries tell us what they want us to do, saying that it’s very important to them.

It is this second kind of situation that I believe has been at work in the U.S. response to the problems at WIPO. Mr. Gurry is the highest-ranking Australian in the UN system, and at every point where it mattered, Australia made it abundantly clear to the U.S. that it wanted him to stay where he was and wanted the U.S. to back off or stand down. While there are many examples of this, all of which are presumably well known to the State Department, the most public case in point resulted from the open letter of November 21, 2013 to which I have already referred.

What lessons should be drawn from this experience, and what can this Committee do to improve the situation at WIPO and the other UN agencies? It’s no surprise that when you create a political structure owned by a group of sovereign countries, governance is going to be a challenge. Individual countries will try to influence decisions on budgets, programs, office locations and even individual hiring and firing of personnel. And the U.S. can’t be the self-appointed referee or decider on all of these questions. But it seems to me that there is an important role for Congress and this Committee, as elected representatives of the American people, to insist that those who act on behalf of the U.S. consistently and powerfully project its position on questions that truly matter to us, even when that means standing up to one of our friends and pointing out that they are wrong.

I don't mean to suggest that Congress should micromanage the State Department, which as I have said is filled with some of the smartest and most dedicated professionals in the world. But those professionals could benefit from the cover that comes with a strong public expression of priorities by Congress. We need to recognize that they operate in a dynamic environment with many competing concerns. But we can't afford to let them ever forget the mandate of this body and the constituency it represents. If this Committee thinks it's wrong that U.S. inventor fees help pay for illicit gifts of computers to North Korea, that WIPO should make secret agreements to locate new offices around the world, and that whistleblowers should be ignored and persecuted with impunity, then it should communicate those priorities publicly and insist on prompt and substantive action from the executive branch.

I respectfully request that this Committee consider the following reforms:

First, establish an independent board to oversee the executive at WIPO, and ensure that it is beyond the power of the Director General to influence its composition.

Second, insist on better financial and operational reporting to ensure that all agency activities are identified and open to detailed inspection.

Third, establish a meaningful procedure to receive and investigate complaints of wrongdoing by agency executives, ensuring that the process will always be handled by a professional organization that is independent of the UN.

Fourth, establish and enforce a UN-wide requirement that whistleblower retaliation complaints be subject to external arbitration.

Fifth, reconsider the grant of traditional, near absolute diplomatic immunity to UN agency executives.

Thank you again for the opportunity to appear before you today. As President Reagan once said, "There are no easy answers, but there are simple answers. We must have the courage to do what we know is morally right."

¹ See Report of the "Review", page 4, available at http://www.wipo.int/export/sites/www/about-wipo/en/oversight/pdf/wipo_external_review_2012.pdf.

² See Exhibit A, letter exchange with Congress.

³ At one point in the summer of 2013 I indicated to the State Department that I would be willing to stand for the election, but they responded that they did not wish to run any Americans for such a post, and the issue was dropped.

⁴ A full copy of my Report of Misconduct and its exhibits is available at http://regmedia.co.uk/2014/07/08/wipo_report_james_pooley.pdf.

⁵ See the April 8, 2014 issue of IP Watchdog, available at <http://www.ipwatchdog.com/2014/04/08/wipo-deputy-director-alleges-gurry-misconduct/id=49010/>.

⁶ See Exhibit B, copies of retaliation complaint correspondence and ultimately refusing access to external arbitration. (The complaint of October 8 is not included because it includes confidential information.)

⁷ See Exhibit B, emails of June 27, July 2, July 10, July 19 and August 6.

Mr. SMITH. Mr. Pooley, thank you very much for your testimony and you and Dr. Brown for your courage in being so steadfast over the course of so many years in making sure that this information is made completely laid bare for all to see. And we will follow up. And I thank you for it.

Dr. Brown, please provide your testimony.

STATEMENT OF MS. MIRANDA BROWN (FORMER STRATEGIC ADVISER TO THE DIRECTOR GENERAL, WORLD INTELLECTUAL PROPERTY ORGANIZATION)

Ms. BROWN. Good afternoon, Chairman, ranking members, and members of the committee.

I will focus on what happened following my report to the U.S. Government of WIPO's shipment of computers to North Korea, my cooperation with this committee in 2012, and subsequent retaliation against me as a whistleblower, as well as providing information on what I believe is an ongoing pattern of abuse of authority at WIPO.

On March 14, 2012, I received a phone call from a WIPO staff member working in the procurement area who informed me that there was a problem with a payment for a shipment of computers to North Korea. At first I thought this was a joke, but I soon realized that the staff member was serious, as he explained that the U.S. Office of Foreign Assets Control, OFAC, had blocked the WIPO/UNDP payment by the Bank of America for the computers. At that stage it was not yet clear whether the computers had already been shipped to North Korea and I decided to immediately try to stop the transfer.

I called Mr. Gurry and expressed my very strong concerns about WIPO engaging in any project with North Korea without prior approval of the member states of WIPO, including the U.S., and without clearance by the U.N. Security Council Sanctions Committees. I informed him that OFAC had blocked the payment for the equipment.

Mr. Gurry's response was profoundly disturbing. He said that North Korea is a WIPO member state like any other and it deserves technical cooperation. He also said that WIPO is not bound by U.S. domestic or U.N. Security Council sanctions. I advised him to immediately stop the project. He told me to go and fix the payment problem.

I returned to my office and immediately called the U.S. Mission in Geneva to report the situation. Later that day I forwarded the email chain on the OFAC decision to the U.S. Mission. The following day I obtained all the documents on the project and provided these too to the U.S. Mission. It became clear that sophisticated IT equipment, which was American origin and which included high-end servers and firewalls, had already been shipped to Pyongyang.

When I tried to find out more about the secret project, WIPO staff told me that this was one of North Korea's requests in exchange for supporting Mr. Gurry's election.

Soon after, I learned that——

Mr. SHERMAN. Could you repeat that sentence again?

Ms. BROWN. When I tried to find out more about the secret project, WIPO staff told me that this was one of North Korea's requests in exchange for supporting Mr. Gurry's election.

Soon after, I learned that Mr. Gurry had approved a similar project with Iran. I reported this and the documents to the U.S. Mission too.

Then Mr. Kateb, acting as the president of WIPO's Staff Council, demanded that these projects be examined by the U.N.'s Office of Internal Oversight Service, OIOS, and by the U.N.'s Joint Inspection Unit. And shortly thereafter, your committee launched an investigation into the shipments. Mr. Gurry refused to allow me to testify, and forbade me from cooperating with this committee. Despite this, I provided this committee with all relevant documents relating to the projects, and responded to requests from staffers for further materials and information.

At the time I reported the shipments, WIPO had no whistleblower policy in place. I had to use my own judgment. Had the member states been consulted on the North Korea project and approved it? No.

Did the U.S. know about it? No.

Did the U.S. have a right to know that American IT equipment had been shipped to North Korea in likely violation of U.S. sanctions and national law? Yes.

Was this matter urgent? Yes.

Did I stop to think about whether WIPO had a whistleblower policy in place and whether I should be protected—I would be protected? No.

Retaliation was the last thing on my mind at that point. I felt confident that the U.S. Government would use its considerable influence to fully protect me for reporting secret shipments of American IT equipment to North Korea. But, sadly, the retaliation was severe. Mr. Gurry accused me of disloyalty and of leaking documents to the U.S. Mission and to the media. He told an Ambassador from a Western state that he would be offering me a plea bargain whereby I would be exonerated from any investigation into the so-called "leaks" in exchange for the names of those WIPO staff with whom I had shared the North Korea and Iran project documents. The names apparently included Mr. Pooley, Mr. Kateb, the president of the WIPO Staff Council, and others whom he apparently wanted to purge from the organization.

If I signed the plea bargain I would not be suspended or placed under investigation for the "leaks." Of course I could not sign any plea bargain and expose my colleagues to certain disciplinary sanctions, so I went on extended medical leave for stress.

When I returned to work, Mr. Gurry immediately resumed the retaliation against me. And in an apparent test of my loyalty to him, he ordered that I work on another secret project, this one to establish WIPO external satellite offices, including in Beijing and Moscow. He expressly forbade me from talking with any member state and insisted on total secrecy. I again informed the U.S. and other member states.

When I protested about the secrecy of this project, Mr. Gurry told me that he would not be renewing my contract, which was not due to expire for 7 months, on the basis that I was disloyal and

too close to the member states, and in particular the U.S., and because I had cooperated with this committee. Given this, I had no option but to leave WIPO. I resigned under duress and took a lower-level position in another organization.

International organizations must balance the need for confidentiality with transparency. There is no Freedom of Information Act and member states must rely on the integrity and good faith of the U.N. agency head, in the case of WIPO, the Director General, to run the organization in an open and transparent manner, with the member states being consulted on all aspects of the organization's work.

Mr. Gurry's leadership of WIPO is sadly characterized by secrecy and also an extraordinary vindictiveness toward whistleblowers. He apparently sees the organization and its resources as his personal fiefdom, and he expects staff to demonstrate their absolute loyalty toward him and not the organization and its mandate.

The adoption of the WIPO whistleblower policy in November 2012 was a positive development, however, its implementation has failed under Mr. Gurry's regime. More generally, U.N. whistleblower protections fail where the allegations of wrongdoing involve the U.N. agency head, because all of the internal accountability mechanisms report directly to the U.N. agency head.

Prior to leaving WIPO in November 2012, I blew the whistle on what I strongly suspected was improper and possibly criminal behavior on Mr. Gurry's part. Documents, including a hospital report, indicated that Mr. Gurry was involved in a theft of personal effects from WIPO staff and secret extraction of their DNA. I requested an independent investigation into Mr. Gurry's role but this was denied.

In February 2013, I filed a complaint with the U.N. International Labor Organization Dispute Tribunal, which is a staff tribunal, requesting that the tribunal overturn the decision not to allow an investigation. Three years have passed, and the tribunal has yet to consider my request for an external investigation.

These allegations have now been examined by the U.N.'s Office of Internal Oversight Services. And I was told that the investigation report has been finalized and the report transmitted to the chair of the WIPO General Assemblies, Ambassador Gabriel Duque of Colombia. It's clear, based on the investigation process, that the report contains adverse findings against Mr. Gurry.

Mr. Kateb, who was fired by Mr. Gurry for his whistleblower activities, and I remain without a job. We are both unemployed. In October 2015, we sent a joint letter to Ambassador Duque requesting our urgent reinstatement at WIPO. There has been no response to date.

Both of us stood up for the interests of WIPO, the U.S., and the international community. If what happens to us goes unchecked, no U.N. staff member will feel safe reporting corruption at the top of the U.N. organization. Our cases will sadly act as a very strong deterrent.

My motive for reporting the allegations of wrongdoing at WIPO is, and always has been, to protect the organization. I believe that my government, the Australian Government, has been seriously misled by Mr. Gurry, as we all have been. In my opinion, Mr.

Gurry's leadership is dangerous to the organization, and his ongoing tenure as Director General risks further damaging not only WIPO but the U.N.'s reputation.

I thank you for inviting me here today.

[The prepared statement of Ms. Brown follows:]

Testimony of Miranda Brown
“Establishing Accountability at the World Intellectual Property
Organization: Illicit Technology Transfers, Whistleblowing, and Reform”
U.S. House of Representatives Committee on Foreign Affairs
February 24, 2016

Good afternoon Chairman Royce, Ranking Member Engel, and Members of the Committee. Thank you for inviting me to address you today. My name is Miranda Brown. I am a dual Australian and British national, and a former Australian Government official. I joined the Australian Department of Foreign Affairs and Trade (DFAT) in 2001 and occupied a number of positions in the Department before being appointed as the Deputy Permanent Representative at the Australian Mission to the United Nations in Geneva, in January 2008. I hold a PhD in Science and a Masters of International Law.

I must inform the Committee at the outset, that as a former Australian Government official, I am bound by certain confidentiality obligations towards the Australian Government. I have informed the Australian Foreign Minister about my presence at the hearing today.

As the Australian Deputy Permanent Representative in Geneva, I worked closely with Mr Gurry, in support of his election campaign for Director General, from my arrival in Geneva in January 2008 until his election as Director General by the WIPO Coordination Committee in May 2008 and the subsequent confirmation by the WIPO General Assemblies in September 2008.

I joined WIPO as the Strategic Adviser to the Director General of WIPO in July 2011, on leave of absence (Leave without Pay) from the Australian Government. I occupied this position until November 2012.

I was appointed as Strategic Adviser to the Director General through a standard WIPO recruitment process. In this senior-level adviser position, I reported directly to Mr Gurry and provided him with advice on all aspects of WIPO's Strategic Plan. I worked closely with Members of WIPO's Senior Management Team, which included Mr James Pooley and Mr Geoffrey Oneyama, now the Foreign Minister of Nigeria. I met with Mr Gurry on most days and often attended meetings with him, providing him with strategic advice on all aspects of WIPO's work and in particular its engagement with Member States. My job soon evolved to be primarily a trouble-shooter, tasked with resolving problems both internally and with the Member States. Throughout this time at WIPO I worked closely with Mr Pooley and regularly turned to him for advice on how to manage the increasingly difficult situation I faced working with Mr Gurry.

I have consistently maintained close relations with the US Mission in Geneva, built on the foundations I formed during my time as the Deputy Permanent Representative of the Australian Mission to the UN. As you know, the US and Australian Governments enjoy the closest of relations.

My testimony will focus on what happened following my report to the US Government of WIPO's shipment of computers to North Korea, my cooperation with this Committee in 2012, and subsequent retaliation against me as a whistleblower, as well as providing information to the Committee on what I believe is an ongoing pattern of abuse of authority and impunity by Mr Gurry.

On 14 March 2012, I received a phone call from a WIPO staff member working in the Procurement area who informed me that "there was a problem with a payment for a shipment of computers to North Korea". At first I thought this was a joke, but I soon realized that the staff member was serious, as he explained that the US Office of Foreign Assets Control (OFAC) had blocked the WIPO/UNDP payment by the Bank of America, for the computers. At that stage it was not yet clear whether the computers had already been shipped to North

Korea and I decided to immediately try to stop the transfer. I called Mr Gurry and counseled him against WIPO engaging in any project with North Korea without the prior approval of the Member States of WIPO (specifically including the US) and without clearance by the UN Security Council Sanctions Committee. I informed him that OFAC had blocked the payment for the equipment. I expressed strong concerns about the potential for the project to violate US domestic and UN Security Council sanctions. Mr Gurry's response was profoundly disturbing: he said that "North Korea is a WIPO Member State like any other and it deserves technical cooperation"; he also said that "WIPO is not bound by US domestic or UN Security Council sanctions". I advised him to immediately stop the project. Mr Gurry was non-committal. He told me to go and fix the payment problem.

I returned to my office and immediately called the US Mission in Geneva to report the situation to US Government officials. I was confident that this was necessary, and that the US Government urgently needed to know. I explained to US officials at the Mission that I had strongly advocated that Mr Gurry stop the project and halt all shipments to North Korea. Later that day, I forwarded the email chain on the OFAC decision to the US Mission (at Attachment A). The following day I obtained from the Project Director, Mr William Meredith (a national of New Zealand), the project document (Attachment B), the list of equipment which had been shipped to North Korea (Attachment C) and the authorization memo, signed by Mr Gurry (Attachment D). It became clear from these documents that the sophisticated IT equipment, which was American origin and which included high-end servers and firewalls, had already been transferred to Pyongyang. That afternoon, I provided the US Mission in Geneva, with all the documents relating to the project.

I met with the Project Director, Mr Meredith, whom I did not know well, and I tried to ascertain the reason why Mr Gurry had commissioned and approved the North Korea project, and why it had been kept secret from the Member States of WIPO.

The project had not been included as a line item in the WIPO budget, which is approved by Member States. Mr Meredith indicated that the project, including the shipment of computers, was one of North Korea's requests in exchange for North Korea's support for Mr Gurry's election as Director General. North Korea was a Member of WIPO's Coordination Committee at the time of Mr Gurry's election in May 2008. Mr Gurry had won by one vote against the runner-up, Brazilian candidate Mr Jose Graca Aranha.

Later I learnt that Mr Gurry had also approved a similar project with Iran, another member of the WIPO Coordination Committee at the time of Mr Gurry's election. This discovery I also reported to the US Mission in Geneva, providing them with the documents.

Shortly thereafter, your Committee launched an investigation into the shipments to North Korea and Iran. I was asked to testify before this Committee at a hearing in July 2012, but Mr Gurry refused to allow me to attend, or to cooperate with the Committee. Despite this, I provided this Committee with all relevant documents relating to the projects, and responded to requests from staffers for further materials and information.

I reported these shipments to the US Government, as I did subsequent further abuses of authority by Mr Gurry. Despite the fact that WIPO had no whistleblower policy in place at the time I blew the whistle on the North Korea and Iran shipments, I felt confident that the US Government would use its considerable influence to fully protect me. I felt I had a responsibility, as a UN staff member, to blow the whistle and report a UN agency that was supplying high-end American IT equipment to North Korea, in violation of US domestic sanctions and without consulting the UN Security Council Sanctions Committees. Up until 2012 there were no protected channels for whistleblowers disclosures, so I was obliged to use my own judgment about how to report misconduct most effectively.

The retaliation following my blowing the whistle on these shipments to the US Government was severe. Mr Gurry accused me of disloyalty and of leaking documents to the US Mission and to the media. An Ambassador from a Western Member State inquired about my situation, and Mr Gurry told him that he would be willing to offer me a plea bargain, whereby I would be exonerated from any investigation into the "leaks" in exchange for the names of those WIPO staff with whom I had shared the North Korea and Iran project documents. I am told that the list of names had already been drawn-up and included Mr Pooley, Mr Moncef Kateb (then the President of the WIPO Staff Council and subsequently fired by Mr Gurry for his staff representation and whistleblower activities), the staff member in the Procurement area and several other senior staff whom he considered disloyal and whom he apparently wanted to purge from WIPO. Mr Gurry told the Ambassador that if I signed the plea bargain, I would not be suspended or placed under investigation for the "leaks". I was not prepared to sign such a plea bargain and thereby expose my colleagues to certain disciplinary sanctions. I had no option but to go on extended medical leave for stress. I hoped that the US and other Member States would intervene and talk Mr Gurry out of his retaliatory approach. In September 2012, at the end of my statutory medical leave, I returned to work, but Mr Gurry immediately resumed the retaliation against me.

In an apparent test of my loyalty to him, he ordered in writing that I work on another secret project, to establish WIPO external satellite offices, including in Beijing and Moscow, without the approval of the Member States. He expressly forbade me from talking with any Member State and insisted on total secrecy. I again informed the US Mission in Geneva and provided US officials with the documents, including the Memorandum of Understanding being negotiated with the Russian Federation. I learned later that Mr Gurry subsequently had WIPO secretly sign Memoranda of Understanding with both the Russian Federation and

China, without consulting all the Member States of WIPO, and in apparent violation of WIPO's Convention (framework treaty).

Further retaliatory action ensued: Mr Gurry had me removed from the Senior Management Team; I was excluded from meetings and subjected to ostracism; Mr Gurry told staff to avoid me or they could face "consequences". When I protested the secrecy of the external office project, Mr Gurry summoned me to his office and declared that he would not be renewing my contract, which was not due to expire for seven months, on the basis that I was disloyal and too close to the Member States and in particular the US, and that I had cooperated with this Committee.

I knew that if Mr Gurry decided not to renew my contract, it would take over three years of litigation in the International Labour Organization's Administrative Tribunal (ILOAT), before I would even be granted a hearing, as WIPO, like most international organizations is immune from national laws. During that period, I would not have a salary and would most likely not have been allowed by the Swiss Government to remain in Geneva, where my children are schooled in the Swiss public system. Given this, I had no option but to leave WIPO. I resigned under duress and took a lower level position in another UN organization at a significant pay cut and responsibility.

Throughout the period during which I experienced severe retaliation at WIPO, which lasted from March to November 2012, I remained in close contact with the US Mission in Geneva and also kept staffers from this Committee informed. The US Mission intervened several times to appeal to Mr Gurry to take a more constructive approach towards whistleblowers. This was to no avail.

International Organizations must balance the need for confidentiality with transparency. There is no Freedom of Information Access and Member States must rely on the integrity and good faith of the UN agency head, in the case of

WIPO, the Director General, to run the organization in an open and transparent manner, with the Member States being consulted on all aspects of the organization's work.

Mr Gurry's leadership of WIPO is characterized by secrecy and also an extraordinary vindictiveness towards whistleblowers. He apparently sees the organization and its resources as his personal fiefdom, and he expects staff to demonstrate their absolute loyalty towards him and not the organization and its mandate. The fact that staff at WIPO sign an oath of allegiance to the organization — and not to the Director General — appears to be lost on Mr Gurry.

The adoption of the WIPO whistleblower policy in November 2012 was a positive development, however, its implementation has failed under Mr Gurry's regime. More generally, UN whistleblower protections fail where the allegations of wrongdoing involve the UN agency head. At WIPO, the Chief Ethics Officer, who is supposed to consider claims of retaliation, reports directly to the Director General. The Director of the Internal Oversight Division, which is charged with examining claims of misconduct, reports directly to the Director General as well and serves at his pleasure.

Mr Gurry has consistently undermined the internal accountability mechanisms at WIPO. He apparently placed the Director of Internal Investigations, Mr Thierry Rajaobelina, under investigation for spurious reasons. Mr Rajaobelina subsequently resigned abruptly from his position at WIPO and now works at UNRWA. Mr Gurry attempted to suppress the report of the Ombudsperson, and frequently undermined the work of Mr Avard Bishop, the Chief Ethics Officer, who reported Mr Gurry's abuses of authority to me on numerous occasions. Mr Bishop's tragic suicide should be investigated in my opinion.

Mr Gurry's relentless pursuit of the WIPO Staff Council, and in particular its President, Mr Moncef Kateb (a national of Algeria), stands out as most egregious.

Prior to his election as President of the Staff Council, Mr Kateb worked as a senior staff member in the WIPO Copyright Division, and, before that, as the Head of the Algerian Copyright Office. As Staff Council President, Mr Kateb publicly blew the whistle on the shipments to North Korea. He also reported allegations of election vote-buying by Mr Gurry and other abuses of authority. In response to Mr Kateb's actions, Mr Gurry stated at a WIPO Staff Town Hall meeting that Mr Kateb's assertions were a "low blow" and "would not go without consequences". In September 2014, a few days before Mr Kateb was to deliver a statement to the Member States of WIPO's Coordination Committee, Mr Gurry made good on his threat and fired Mr Kateb, ostensibly on the basis of a conflict of interest during his intervention in support of a staff member. These actions were condemned by unions worldwide.

I witnessed frequent abuses of authority by Mr Gurry. This included denigrating WIPO staff and government officials, both orally and in writing, as well as misleading Member States. I included written evidence of these abuses in a complaint I filed with the ILOAT and requested an external investigation. Prior to his election as Director General, Mr Gurry made all sorts of allegations against his predecessor Mr Kamil Idris (a national of Sudan), including relating to the corruption of the construction of a new WIPO building (the New Construction Project). These allegations turned out not to be true (outright lies). An independent investigation into the New Construction Project was undertaken by two investigators, Mr Marler (a barrister from the UK) and Mr Kramer (an American investigator). Mr Gurry suppressed the report of the investigation and refused to release it to the Member States. Written correspondence with the investigators revealed that Mr Gurry apparently attempted, unsuccessfully, to have the investigators change their conclusion, namely that "it was unlikely that the New Construction Project had been subject to corrupt practices on the part of the Organisation". It is my belief and understanding that Mr Gurry retains the sole copy of the Marler report under lock and key. The Marler report should be released to Member States.

Prior to leaving WIPO in November 2012, I blew the whistle on what I strongly suspected was improper and possibly criminal behavior on Mr Gurry's part. This was also linked to his election as Director General. While preparing in 2007 to run for election, Mr Gurry was the target of several anonymous letters accusing him of financial improprieties and sexual harassment. In response Mr Gurry filed a complaint against "unknown persons" with the Swiss authorities. In February 2008, Mr Gurry asked that DNA and fingerprint samples be taken from WIPO staff in order to locate the perpetrators. That request was denied by the then Director General of WIPO, Mr Kamil Idris on the basis that immunity of those individuals would need to be lifted and there was insufficient grounds to do so. Believing that three senior WIPO staff were the most likely source of the anonymous letters, Mr Gurry apparently gave secret instructions to one of the WIPO security officers to enter their offices and take personal effects, such as lipsticks, dental floss and other personal items without their knowledge or consent. The personal effects were then handed to the Swiss police for DNA analysis. Later in May 2008, on the same day Mr Gurry was elected as the future Director General, he elicited a request from Switzerland to waive the immunity of eleven WIPO staff, including the three who had been victimized by the theft of personal effects, in order to have their DNA gathered directly – most likely to provide cover for the earlier illegal theft of DNA. Subsequent genetic testing exonerated all who had provided samples. One of the victims later requested the official file from the Swiss authorities; the hospital report within this file revealed evidence of theft of personal effects and DNA. I had obtained the documents and reported them to Director of WIPO's Internal Oversight Division and requested an independent investigation into Mr Gurry's role. I also provided the documents to Member States, including the US, and called for their intervention. My request for an independent investigation was denied, which is hardly surprising given that the Director of Internal Oversight Division reports to the Director General and serves at his pleasure, a typical systemic problem in UN organizations. In February 2014, I filed a complaint with the UN International Labour Organization Dispute Tribunal requesting that the Tribunal overturn the

decision not to allow an investigation into Mr Gurry's involvement in the theft of personal effects from WIPO staff and illicit extraction of their DNA, as well as other abuses of authority by Mr Gurry. Almost three years have passed and the Tribunal has yet to consider my request for an external investigation.

I provided Mr Pooley with all the documents relating to the theft of personal effects from WIPO staff and illicit extraction of their DNA. These formed one of the bases of Mr Pooley's Report of Misconduct which was submitted to the Chair of the WIPO General Assemblies in April 2014.

The allegations have now been independently investigated by the UN's Office of Internal Oversight Services (OIOS) and the investigation report transmitted to the Chair of the WIPO General Assemblies, Ambassador Gabriel Duque, of Colombia.

Disturbingly, and contrary to the advice of WIPO's Legal Counsel, Ambassador Duque has to-date been unwilling to share the conclusions of the OIOS report with all the Member States of WIPO. He has also been unwilling to brief me on the conclusions of the investigation even though I have the right to be briefed under WIPO rules, as the original source of the report. He has also refused to consult Member States on the requests for reinstatement at WIPO by myself, and Mr Kateb. Our letter sent to him in October 2015 remains unanswered (Attachment E).

The OIOS investigation report reportedly contains adverse findings against Mr Gurry. The situation inside WIPO is deteriorating rapidly. Mr Gurry has ordered that the Staff Council, which blows the whistle on his actions, be replaced by another association of his own choosing. This is in violation of staff rights to freedom of expression and association. He apparently recently suppressed the conclusions of an external investigation report which concluded there had been fraud committed by a serving Deputy Director General and instead of instituting

disciplinary proceedings against her, he provided her with a lucrative separation package. There are reports that he has recently ordered the shredding of documents, which could constitute further evidence of wrongdoing.

Finally, I would like to emphasize that my motive for reporting the allegations of wrongdoing at WIPO, both previously and now, is to protect the organization. This has come at a considerable personal sacrifice.

In terms of reforms at WIPO, I respectfully request the Committee consider the following.

In the immediate term:

- 1) Firstly, that this Committee call for Mr Gurry's removal from office and recommend to the State Department that it pursue the removal swiftly and demand accountability. Clearly there is sufficient evidence now that Mr Gurry's leadership is corrupt, dangerous for the organization and that he has himself engaged in wrongdoing, possibly of a criminal nature. His actions are inimical to US interests and his ongoing tenure as Director General risks further damaging not only WIPO but the UN's reputation.
- 2) Secondly, that this Committee demand that the whistleblowers be immediately reinstated at WIPO and be provided with appropriate compensation. The current Chair of the WIPO General Assemblies could request the assistance of the Legal Counsel of WIPO in drawing up agreements for the return of Mr Kateb and myself to WIPO. Our cases are well-known and if they are not resolved promptly, they will sadly act as a very strong deterrent to other UN staff considering blowing the whistle on wrongdoing by a UN agency head.

In the longer term:

- 3) Ensure that allegations of wrongdoing by UN agency heads are promptly and independently examined, and when misconduct is confirmed, a mechanism for swift redress exists.
- 4) Seek the amendment of all UN frameworks for the Administration of Justice to ensure that whistleblowers have access to external arbitration, consistent with the provisions of the US Consolidated Appeals Act 2015; such access does not generally exist at WIPO specifically, or within the UN generally.
- 5) Institute special protection measures for whistleblowers who report allegations of wrongdoing by UN agency heads. Whistleblowers may be vulnerable to retaliation across the UN system (not just in the organization where they blew the whistle) and for the duration of their career. Because of the political linkages at the top of the organizations, UN whistleblowers can be subject to retaliation, in another UN organization, many years later. Moreover the nature of immunity of international organizations can breed impunity at the highest levels.
- 6) Ensure that the next Director General of WIPO and UN Secretary General understand the importance of whistleblower protection and commit to protecting whistleblowers from retaliation. This is especially important given the lack of Freedom of Information Access at the UN.

I thank this Committee for its ongoing engagement and look forward to working with the Committee and US Government to see that meaningful and effective reforms are instituted at WIPO.

Mr. SMITH. Thank you very much, Dr. Brown.
I would like to now yield to Dr. Parish.

**STATEMENT OF MR. MATTHEW PARISH, FOUNDER AND
MANAGING DIRECTOR, GENTIUM LAW GROUP**

Mr. PARISH. Chairman, ranking members, and distinguished members of the committee, thank you for the opportunity to testify today on the lack of accountability at WIPO.

As you have learned from your investigation and from the other witnesses, WIPO seems to have set a new low when it comes to accountability and management of its affairs.

I am testifying in my capacity as private legal counsel to the WIPO Staff Council. The Staff Council is the sole union available to employees of the organization. The Staff Council exists under purview of the rules and internal institutions that the WIPO Director General controls. It is not an exaggeration to say that members of the Staff Council live in daily fear for their jobs and their careers.

The individual members of the Staff Council are effectively prohibited from testifying here today because, as WIPO employees, they are banned from providing testimony on matters relating to whistleblowing or wrongdoing because their employer, the Director General Francis Gurry, prohibits them from doing so.

I wish to share with you my client's concerns about the theft of staff personal effects and subsequent extraction of those staff members' DNA without their consent. In essence, it appears that Mr. Gurry unlawfully employed techniques ordinarily reserved solely to Swiss law enforcement agencies acting under a due warrant to attempt to determine the identity or one or more WIPO employees critical of him. It has been reported that he orchestrated raids of staff members' offices, while they were not present, to achieve this goal.

Some of these allegations date back to 2008, and it took substantial time before the Office of Internal Oversight Service of the United Nations took the matter up. Officials of the OIOS subsequently opened an investigation, reached conclusions, and prepared a report. The report was copied, was forwarded to the chair of the General Assemblies of WIPO, from whom I have requested a copy. My reasoning was simple: If the report exonerated Mr. Gurry, it is fair and proper to Mr. Gurry that it be circulated and released so that his reputation might be cleared.

But if the report criticizes Mr. Gurry, then it should be released forthwith, subject to any redaction appropriate to protect the identities of vulnerable witnesses. It should, first and foremost, be released to the member states whose role is to oversee the proper functioning of WIPO and of Mr. Gurry. Only they can decide to sanction Mr. Gurry, dismiss him from office, or waive his legal immunity from prosecution. They cannot perform their oversight mandates without receipts of a full copy of the report, as WIPO is required to do.

But the report should also be released to the Staff Council, so that the more than 1,000 WIPO staff are informed of the investigation's outcome. They have a right to know about whether there is a conclusion that the Director General violated their rights or oth-

erwise acted in a manner inconsistent with ethical management of the organization.

There is another issue I wish to share with the committee today. The former chair of the WIPO Staff Council, Mr. Moncef Kateb, was renowned as a severe critic of Director General Gurry over several years. Unfortunately, he cannot be here today. But I would like to say a few things about how he was dismissed.

WIPO used to have a disciplinary regime for staff accused of misconduct, in order to protect their rights and interests. Last year, the entire system was dismantled by Mr. Gurry and replaced with a system permitting him to suspend a staff member without pay upon an accusation leveled by him. It might be fair to classify this new system as a “Court of Star Chamber,” particularly where the sin of the staff member in question is criticism of the Director General himself.

Mr. Kateb was among the first victims of this. He was dismissed upon 7 days’ notice on an absurd technicality. After Mr. Kateb’s dismissal, a new Staff Council was constituted.

Another arch-critic of Mr. Gurry was elected as Mr. Kateb’s successor by the members of the Staff Association. Now Mr. Gurry is unilaterally changing the rules for Staff Council elections, in order to force another election of staff members to the Staff Council in an attempt to dislodge the new Staff Council.

In view of the considerable power that the Director General has over WIPO staff in terms of their job security, I had to decide not to share drafts of my written testimony with the WIPO Staff Council so that Mr. Gurry can’t consider them to have taken any individual actions that would lead him to terminate them summarily from their jobs with WIPO, as he did to Mr. Kateb, or to threaten them in other ways. That is the state of employment with WIPO today.

The old adage that “sunlight is the best disinfectant” is appropriate for the issues surrounding WIPO. The Congress is, in my view, well-positioned to help generate the release of the OIOS report and to provide greater transparency and accountability into the operations of WIPO.

Thank you very much for listening to me today.

[The prepared statement of Mr. Parish follows:]

**TESTIMONY OF MATTHEW PARISH
LEGAL COUNSEL TO THE STAFF COUNCIL OF
THE WORLD INTELLECTUAL PROPERTY ORGANIZATION**

HOUSE COMMITTEE ON FOREIGN AFFAIRS

FEBRUARY 24, 2016

Chairmen Smith, Salmon, and Ros-Lehtinen, and Ranking Members Bass, Sherman, and Deutch, as well as Distinguished Members of the Committee:

Thank you for the opportunity to testify today on the lack of accountability at the World Intellectual Property Organization (WIPO). WIPO plays an important role in helping oversee the international system of intellectual property rights, the protection of which is critical to American innovators and companies as well as to businesses and entrepreneurs around the world.

As you have learned from your own investigation and from the other witnesses, WIPO seems to have set a new low when it comes to accountability and management of its affairs.

I am testifying in my capacity as private legal counsel to the WIPO Staff Council. The Staff Council is the sole staff union available to employees of the organization. The Staff Council exists under purview of the rules and internal institutions that the WIPO Director-General controls, and its members come under constant pressure from the Director-General whenever they attempt to represent staff interests faithfully. It is not an exaggeration to say that members of the Staff Council live in daily fear for their jobs and their careers.

The individual members of the Staff Council themselves are effectively prohibited from testifying here today because as WIPO employees, they are banned from providing testimony on matters relating to whistleblowing or wrongdoing because their employer, in the name of the Director-General, prohibits them from doing so. I am advised that WIPO threatens staff who seek to expose wrongdoing in public fora and that its leadership has prohibited staff from testifying before Congress in the past. My understanding is that WIPO tells its staff that they are forbidden from whistleblowing to the media, due to their confidentiality obligations to their employer. But the Organization's own whistleblowing procedure involves cover-ups and charades, as I shall explain below. It seems safe to infer that WIPO takes this position because its Director-General, Francis Gurry, seeks to eliminate criticism of his own behavior. None of this is surprising in light of the grave offenses of which Mr. Gurry has been publicly accused.

As legal counsel to the WIPO Staff Council, I am most interested in sharing with you my clients' concerns about the theft of their personal effects and the subsequent extraction of those staff members' DNA, without their consent. In essence, they believe that Mr. Gurry unlawfully employed techniques ordinarily reserved solely to Swiss law enforcement agencies acting under a due warrant issued by a proper authority, in order to attempt to determine the identity or identities of one or more WIPO employees who had authored a memorandum critical of him. It is believed that he orchestrated raids of staff members' offices, while they were not present, to achieve this goal.

Some of these allegations date back to 2008 and it took substantial time before the Office of Internal Oversight Service of the United Nations (OIOS) took the matter up. WIPO is a so-called "specialized agency" of the United Nations, pursuant to treaty, and it is pursuant to this designation that the oversight mechanisms of the United Nations took jurisdiction over these allegations. Officials of the OIOS subsequently opened an investigation, reached conclusions, and prepared a provisional report. They then submitted a copy of that provisional report to Mr. Gurry for his

comment. No doubt the reason they submitted a copy of that report to him is because it contained conclusions critical of him, and they wished to provide him an opportunity to comment before said report was finalized. I am aware that he was initially provided with a period of ten days to provide his comments. He then requested a further period of ten days, with which he was duly provided.

I am informed that he in fact provided no comments to said report. Hence, after the expiration of the prolonged period of time for him to provide comments, the report was finalized without his comments and forwarded to the Chair of the General Assemblies of WIPO, Ambassador Duque of Colombia. The General Assemblies consist of the member states of the Organization - virtually every country in the world - represented by their Ambassadors to the United Nations and other international organizations in Geneva. The General Assemblies serve effectively as an organ of oversight of WIPO.

On February 17, 2016, I wrote to Ambassador Duque, on behalf of my client the WIPO Staff Council, asking for him to release the report OIOS had prepared into the conduct of Mr. Gurry. My reasoning was simple: if the report exonerated Mr. Gurry, then it is fair and proper to Mr. Gurry that it be circulated and released so that his reputation, currently sullied under the weight of accusations about which no final institutional determination has been published, might be cleared.

On the other hand, should the report prepared by OIOS assessing the veracity of these accusations be critical of Mr. Gurry, then it should be released forthwith, subject to any redaction appropriate to protect the identities of vulnerable witnesses such as whistleblowers. It should, first and foremost, be released to the member states whose role is to oversee the proper functioning of the World Intellectual Property Organization and of Mr. Gurry. Only the member states can decide to censure Mr. Gurry; dismiss him from office; waive his legal immunity from prosecution; or impose any other penalty they may consider appropriate. They cannot perform their oversight mandate without receipt of a full copy of the report which either exonerates or condemns him.

But the report should also be released to the Staff Council, so that the more than 1,000 WIPO staff, the majority of whom are naturally aware of the serious accusations levelled against their Director-General, are apprised of the investigation's outcome. They have a right to know more about whether there is a conclusion that the Director General or anyone else in management violated their rights or otherwise acted in a manner inconsistent with ethical management of an organization.

As of today, Ambassador Duque has ignored my request for release of the OIOS report, notwithstanding the urgency of this issue.

In the absence of any meaningful response from the Chair of the WIPO General Assemblies, I have shared my correspondence to him with three out of the five Permanent Representatives to Geneva of the five permanent members of the United Nations Security Council, namely the United States, the United Kingdom, and France. I understand that the offices of the US and British Ambassadors have been in contact with OIOS and Ambassador Duque respectively, requesting copies of the report into the accusations against Mr. Gurry. But still, at the time of writing, that report appears not to have been distributed to member states. I do not know of the position of the French Ambassador at the current juncture, but I would imagine that her position will be much the same as those of the US and British Ambassadors. They will, very surely, want to see the report: as do my clients, and as, no doubt, will this Committee.

I can conceive of no imaginable legal or policy reason why the OIOS report should be withheld.

The sole reasonable inference I can draw from the foregoing extraordinary state of affairs is that the report is critical of Mr. Gurry in at least some substantial respect, and that therefore he is taking measures to suppress its distribution, cognizant of the detrimental consequences circulation of a critical report might have for his career, his reputation or his liberty.

There is one other issue I wish to share with the Committee today. The former Chair of my client the WIPO Staff Council, Mr. Moncef Kateb, was renowned as a severe critic of Director-General Gurry over several years. Unfortunately, he cannot be here today. But I would like to say a few things about his situation.

WIPO used to have a disciplinary regime for staff accused of misconduct. Where a colorable accusation of wrongdoing was leveled against a staff member, an internal oversight agency would investigate the matter. If they made a finding of misconduct, they would refer the matter to a "Joint Advisory Committee": essentially a trial chamber, that would assess the indictment. They would receive submissions, and then they would decide whether to recommend acquittal of the accusation, or a finding of guilt; and if they made a finding of guilt, they would make a recommendation about the appropriate sanction to be imposed upon the staff member. The final decision about the penalty to be imposed would be decided by the Director-General, but he was restrained by law from departing from the recommendations of the committee save for good reasons or exceptional circumstances.

Last year, this entire system was dismantled by Mr. Gurry and he replaced it with a system permitting him to suspend a staff member without pay upon an accusation leveled by him; he could then give a staff member seven days to respond in writing to his accusations; and then he could decide, unilaterally, whether or not to terminate their employment without compensation. Reaching into my British historical background, I respectfully suggest that it might be fair to classify this new system as a "Court of Star Chamber", particularly where the sin of the staff member in question is criticism of the Director-General himself.

It may come as no surprise to you to learn that amongst the first, if not the very first, victims of this new regime was Mr. Gurry's most formidable critic, Mr. Kateb. He was dismissed upon seven days' notice upon an absurd technicality, namely that he had a conflict of interest between representing staff interests and also serving as a member of the (by then disbanded) Joint Advisory Committee. This was a particularly ludicrous ground for criticism of him, given that the committee's constitution expressly mandated staff representation as well as that of management. He had served in the position for a number of years. The committee was abolished, and then he was fired, on seven days' notice, for his participation in it.

I am obliged to state for the record that I have not consulted in any way with Mr. Kateb about the contents of this testimony before preparing it, because I fear that should I have done so, and should Mr. Kateb be accused of facilitating my testimony in any way, then Mr. Gurry may seek to retaliate against him even though he is no longer an employee of WIPO, having been summarily dismissed by Mr. Gurry without proper grounds.

After Mr. Kateb's dismissal, a new Staff Council was constituted. Another arch-critic of Mr. Gurry was installed as Mr. Kateb's successor, upon the election of members of the Staff Association. Now Mr. Gurry is unilaterally changing the rules for Staff Council elections, in order to force a new election of staff members to the Staff Council in an attempt to dislodge the new Staff Council.

In view of the considerable power that the Director-General has over WIPO staff in terms of their job security, I decided not to share any drafts of my written testimony with WIPO staff so that Mr. Gurry can't consider them to have taken any individual actions that would lead him to terminate them summarily from their jobs with WIPO, as he did to Mr. Kateb, or threaten them in other ways. Rather than risk Mr. Gurry's outrage that an individual WIPO Staff Council member authorized my testimony in contradiction to his perception that they are obliged to remain silent, I have gleaned what I could from my ongoing legal representation, discussions with other parties, and prepared the text I submitted to your Committee.

The old adage that "sunlight is the best disinfectant" is appropriate for the issues surrounding WIPO. The Congress is well-positioned to help generate the release of the OIOS report and to provide greater transparency and accountability. Many hardworking men and women who

comprise the Staff Council would like nothing more than to continue to immerse themselves in the intellectual property matters that are in WIPO's purview, rather than have to sit in fear of reprisals from the Director-General.

In conclusion, if we are to have a United Nations system responsible for upholding international standards in areas of common concern to nations, including the global protection of intellectual property rights, then it is imperative that such a system upholds the highest standards of integrity, transparency and accountability. Allegations of wrongdoing, where they do occur, must be subject to a due and proper process of investigation and, where findings of wrongdoing are upheld, those responsible are held accountable through censure, dismissal from office, and/or the sanctions of criminal law, wherever that may be appropriate. Otherwise the evil we suffer is not just that public funds are bound to be wasted in the pursuit of corrupt or ineffective bureaucracy. Rather the very goals that international cooperation purports to stand for may be compromised or lost altogether in the undergrowth of international public wrongdoing. Whatever the OIOS report says about Mr. Gurry, in my opinion it should be made public; and if it is critical of him, then a due penalty should be imposed upon him. I am grateful for your consideration of my remarks today.

Mr. SMITH. Thank you very much, Dr. Parish.

Let me just begin the questioning. First, you know, to take your last point first about trying and Congress generating some pressure to release it, all of you might want to speak to what the Congress might do. Should we be looking to a resolution, for example, sense of the Congress or otherwise, calling on the President to use his full voice and vote—our representative of course at WIPO—to do just that?

I know you point out in your testimony that the Ambassadors of the UK and the United States have asked by way of correspondence, but a simple ask can be very easily ignored. This ought to be a demand that is backed up by punch and by a great deal of pressure just to get that report out. So that would be number one.

Secondly, why hasn't the Obama administration been more aggressive in trying to—I mean North Korea, you talk about rogue states, there are few nations on Earth that are as threatening as Pyongyang to the world, not just to South Korea, but to the world—so why haven't they been more aggressive?

You might want to further detail what it is that was sent, the servers and the like. What really did make its way to North Korea?

The accusations made against WIPO are serious, including vote buying by North Korea for the Director General, technology transfers to Iran, of course North Korea, Cote D'Ivoire, DRC, Iran, Iraq, Liberia, Libya, and Sudan. It was Dr. Brown who said that WIPO is not bound by U.S. domestic and U.N. Security Council sanctions. Are you kidding me? U.N. Security Council sanctions don't apply to Mr. Gurry? I find that appalling. Is that legal for him to suggest that? It would seem to me that it applies to every player in the world. And this is a member state organization, why wouldn't it apply to them, both U.S. as well as U.N. Security Council resolutions?

I do have a number of questions but we do have a lot of members here so I will just hold it to that for now and yield to you for your response.

Mr. POOLEY. If I may, Chairman Smith, I, there is perhaps one of your questions I can't really answer because it is a broad political one. I suppose we can speculate about why certain actions were taken or not taken. But let me just say that in my experience at Geneva, one thing I can tell you is that the people that we have representing the United States there are very fine professionals and represent the interests of the United States very well.

I think the problem that we entered into in this broad issue with WIPO came as a result of a miscalculation about what our relationship with Australia really meant. And sometimes I put it this way: Friends don't let friends drive drunk. You are supposed to talk, in talking to a good friend, tell them the bad news along with the good news.

And so I can only—I am not privy to the inside conversations that they may have had, and there may have been other issues. I don't know, but it sure felt like that to me. Let me just say, I do believe that some sort of resolution by Congress would be extremely helpful. Having spent 5 years in Geneva talking with many diplomats from many other countries, what I heard over and over

again was: What is the United States going to do? What does the U.S. think about this?

And for a lot of probably good reasons in certain circumstances, our diplomatic representatives there are, well, they are very diplomatic. And now and then if we think something is very, very important, I think the representatives of the American people here in Congress can have a voice heard across the Atlantic in ways that may be more difficult to ignore. And that is an example of the kind of cover that Congress can give the State Department on matters of really great importance.

So I can also, I think it would be helpful perhaps if I responded on what the equipment was here, coming from Silicon Valley. If anyone had come to me as a lawyer and said, I would like to, I can buy these things. . . . They were a Hewlett-Packard ProLiant DL360 G7 server which WIPO paid \$7,845 for. This is not something you get at Office Depot; right? A Hewlett Packard Color LaserJet massive printer, almost \$14,000; a 24-terabyte disc array.

And remember, this was 4 years ago. Technology has come pretty far since then. Back then a 24-terabyte disc array was a massive storage device. And then, of course, there was the SonicWall firewall which came, itself came in at almost \$5,000.

That was the equipment. And, yes, I suppose it could have been purchased in the U.S., but you can't buy it to send it to North Korea. And if you did, you would go to prison for a long time.

Mr. SMITH. Before the other two witnesses answer, if you could also answer the question, the lobbyist firm that was hired, who is it? With whom did they meet? Was the pressure primarily on the White House, the Congress? They certainly didn't visit me as far as I know. If they did, I would have showed them the door. Would have asked questions but shown them the door, given what has to be a feeble response.

The Australians are very close friends and allies. I am bewildered. I am shocked by this. In shock for many months, and even years now. If you have a bad apple, you expunge the bad apple. This is hurting their reputation. And, again, they are good close friends.

And just for the record, too, I would just point out to my colleagues, as they know, we did invite Francis Gurry to come and brief us. It would be a briefing rather than a hearing, pursuant to House rules. If he couldn't make it, we asked that John Sandage come. We will repeat that over and over. We want to hear from them and ask them honest questions and tough questions.

So that will remain open, our door. All three of us want them to come, our three subcommittees. But this lobby firm, where did they put the pressure?

Mr. POOLEY. Well that, Chairman Smith, I hope that if they come you do ask them about that because, quite honestly, we don't know and we can't find out. We didn't know, the U.S. didn't know about WIPO spending this money on a lobbyist firm here in DC until it was discovered by virtue of the lobbyist disclosure regulations that apply here. And doing searches over and over again for something about WIPO we finally found something. And there it was, \$193,000 paid to a company called Manchester just in 2012.

Now, what actually happened as a result of that we have no way of knowing. When Mr. Gurry sends somebody on an overseas trip they are, of course, bound to absolute confidentiality. And I am probably one of the last people they would report on something like that.

So we, I would love to find out the answer to that question.

Mr. SMITH. And just to that final question, Dr. Brown, about the Security Council sanctions not applicable as to WIPO; how could that be?

Ms. BROWN. Thank you. I think the point there is that in the subsequent conversation with Mr. Gurry what he said was that WIPO was not a member state, therefore it wasn't bound by U.N. Security Council sanctions or resolutions.

I mean I, I am not a legal expert on this, but I have to say that the intent of those resolutions is surely meant to be binding on everybody, including the U.N. organizations.

And one point perhaps I could elaborate on is at the time that these projects were taking place, the U.N. had gone through some considerable soul searching about its relation to engaging with North Korea. And, in fact, there had been an inquiry. The Nemeth report had been issued. And from then on it was determined that any engagement from the U.N. specialized agencies, there would be a board essentially that would establish the review projects, and the UNDP would administer these projects.

And at that time the only projects that were really taking place, the only U.N. projects taking place in North Korea were very basic technical cooperation projects which related to seed production, food production. And any equipment being taken in by the U.N. was being closely monitored and had to come out at the end of the project.

So this, this particular WIPO project was also in a way in violation of the U.N.'s own structure that had been established for North Korea.

Mr. SMITH. Yes.

Mr. PARISH. Sir, on the issue of sanctions, United Nations sanctions, the entire analysis we have heard that came from Mr. Gurry is obviously specious and fictitious as a matter of law. It is completely absurd.

WIPO is a specialist agency of the United Nations. It is designated as such, pursuant to treaty. The idea that an agency of the United Nations can lawfully act as an agent for the evasion of U.N. sanctions endorsed by the Security Council is completely absurd. It is ridiculous. Nobody could defend that for even 30 seconds. It is crazy.

One other comment, sir, on what Congress might do. We have got to see this report. The report is being investigated. We know that the investigators investigated it. We know the report has been finished. We know it has been passed to Ambassador Duque who is the chair of the WIPO General Assemblies. I have asked him for it. He ignored me. I asked him again. He ignored me. I asked his Foreign Minister. He ignored me. I have not had any response whatsoever. This, everybody has been asking for this report; nobody is getting it.

Where is it? Why can't we see it? I can't imagine of any conceivable legal or policy reason for holding it back. And there is nothing but a wall of silence.

Mr. SMITH. Thank you.

Ranking Member Sherman.

Mr. SHERMAN. We seem to see the FIFA of U.N. agencies. I, the only question from me is what should Congress do?

I sit here as ranking member of the Asia and Pacific Subcommittee. First, I joined with colleagues here to introduce a resolution demanding audit, disclosure and a copy of this report. The question is, do we go further than that and explicitly say in the resolution that Gurry should resign? Based on what I have heard here, I am happy to throw that into the resolution.

But then, and this comes before our subcommittee, should we explicitly criticize the Government of Australia for sticking the world with this person? Dr. Brown.

Ms. BROWN. Thank you very much. I think the Australian Government has been misled by Mr. Gurry.

Mr. SHERMAN. Well, they, when they use their power and influence they have an obligation not to be bamboozled because someone who is a native of Australia asks a favor. And whether it is negligence from the Foreign Ministry of Australia or whether it is gross negligence is something the resolution could ask, that we would ask the Australians to tell us whether it was negligence or whether it constituted gross negligence.

But the Australian Government has asked the United States for help in its national security again and again. And now it is responsible for technology that I realize now was more advanced by the standards of when it was shipped than it is today, they are responsible for North Korea and Iran for having this technology. So if Australia is going to ask for our soldiers and then foist this guy and put him in a position where he can evade U.S. security sanctions, it sounds like the only part of the world whose security they care about is Australia. Yet they ask us to care about the security of the world.

So I do think we need a resolution. I would like to see the Australian Ambassador come here and brief us, our subcommittee, either publicly or privately, should we simply discount as ill-considered everything we hear from the Australian Foreign Ministry? Because obviously they didn't spend any time determining whether they should fight for Mr. Gurry.

Mr. Pooley.

Mr. POOLEY. I, one thing I want to point out, I had a similar reaction from Mr. Gurry, that Dr. Brown has reported, when all of this happened. Later there was a study done by U.N. lawyers who determined that when you parse the Security Council sanctions very carefully, the kind of equipment here was not radiation-hardened or otherwise of the sort that would necessarily apply. There are lawyers I think who might disagree, but that was the finding.

So I think in fairness what, what we need to focus on—

Mr. SHERMAN. What Mr. Gurry did is contrary to security, national security interests of the United States. And he obviously did not care whether he was violating U.N. security. Now, even if as a technical matter he can come back after the fact and point to

some loophole, this is a man who has asserted that he will boldly violate U.N. Security Council resolutions designed to protect the national security of the United States and the world. And he puts forward the idea that U.N. Security Council resolutions do not apply if you have an entity created by two countries, therefore it is not a country.

If that were the case, anyone, say Paraguay wanted to ship something to North Korea, all they have to do is form the Paraguay-Cayman Islands Joint Committee, and apparently every U.N. Security Council resolution can be evaded by any country completely legally so long as the Cayman Islands will participate, or any one of the other tiny countries in the world.

So the Australian Ambassador wants us to take them seriously. They want us to listen to them on the theory that they care about world security and that their comments are not rubbish. Support for Mr. Gurry demonstrates one or other of those statements is false: Either they will just repeat without investigation anything that a well-paid Australian asks them to say, or they really don't care about the sanctions against North Korea, the sanctions against Iran, not to mention how this agency is being run.

So I, I would hope that Australia would remedy this by taking the lead on this organization in demanding this man's resignation. And I think that that is something that would be listened to because we are not the only country aware that this gentleman was foisted on the world by a Australian Foreign Ministry that either didn't know or didn't care.

But I will ask the panel, other than the soft resolution I am talking about here, what else can Congress do?

Mr. POOLEY. Well, one of the things we have indicated in our written submissions is to reconsider the issue of diplomatic immunity for top executives. We give unqualified, more or less, diplomatic immunity. And it actually is qualified in a certain way. But we need to have a different standard applied so that they don't retreat and they don't know that they can retreat into this safe harbor of diplomatic immunity.

Mr. SHERMAN. But in this case the gentleman is based in Switzerland; correct?

Mr. POOLEY. He is. He is. But and he has, he enjoys that status because we have generally agreed to it. And that, that allows him to know that he can't be pursued and he can't be held accountable in some of the ways that would matter the most. And so that is one thing that could be looked at.

Another thing is to create some sort of executive board that he could not manipulate. And by "he" I mean any Director General of any agency could not manipulate in a sense of seeing to it who was appointed.

Mr. SHERMAN. How many countries are in the organization? They each have an equal vote?

Mr. POOLEY. It is one country, one vote. And it is about 185 I think.

Mr. SHERMAN. Gotcha.

Mr. POOLEY. In that, it is in that range. So that would be very, very helpful.

Mr. SHERMAN. That is how FIFA was run by a director who then bought off the smallest and most needy countries.

Mr. POOLEY. As a personal note, Congressman, I have to say that when I saw the first long article about the FIFA problems it almost threw me back on how you could substitute names. And it represents—

Mr. SHERMAN. Does anybody else have a program for Congress?

Ms. BROWN. No. I would agree with what Mr. Pooley and Dr. Parish have said. I mean I think the Congress could play a very significant role here. Your voice is what matters.

Mr. SHERMAN. I would say that we shouldn't criticize Australia in the resolution so long as prior to the introduction of the resolution Australia calls for the resignation of Mr. Gurry.

Dr. Parish, anything else Congress can do?

Mr. PARISH. The only point I would make, sir, is this: Mr. Gurry is completely immune from any Swiss criminal or civil jurisdiction. If the evidence you have heard today is correct, then it does appear that he has committed some very serious criminal offenses. They are criminal offenses in Switzerland, just like they are criminal offenses in the United States. But there is nothing anybody can do about it because whereas he can waive anybody's immunity that works for him, his immunity is completely unwaivable unless you get a majority of these member states to waive it. And it is an absolutely impossible bar to achieve.

Mr. SHERMAN. I yield back.

Mr. POOLEY. Mr. Chairman.

Mr. SMITH. Mr. Pooley.

Mr. POOLEY. If I might make one more suggestion, and that is, and you may have noticed that external arbitration was refused to me, we may benefit greatly from Congress taking steps to enforce that idea, that across the U.N. the only way that you can get justice for whistleblowers who have come forward and presented something important and who have suffered retaliation as a result, the only entity that can make a judgment about whether or not that has happened and what to do about it is an entity other than the U.N. itself or its agencies.

So external independent arbitration would be very helpful.

Mr. SMITH. Chairwoman Ileana Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you so much, Chairman Smith. And I want to thank all of the witnesses for excellent testimony today, especially Mr. Pooley and Dr. Brown. Thank you so much. It has been a very long road to this point and you both have been incredibly brave to continue coming forward despite the grave risk involved. And I am very concerned by Mr. Gurry's capacity to continue retaliating against you both.

Dr. Brown and Mr. Pooley, I want to ask, I want to ask you, has the State Department been asked to watch Mr. Gurry closely? Do you get that sense, Dr. Parish, that to ensure that these whistleblowers, as well as Moncef Kateb are protected in the months ahead? Do you get the sense that Mr. Gurry feels any pressure whatsoever?

Mr. POOLEY. Yes, thank you, Congresswoman Ros-Lehtinen. I have probably been more closely in touch with State Department personnel than others here. And I can say certainly the ones that

I have been dealing with are all very concerned and watching very closely. There is no doubt that they receive all of this information, they are concerned about it. At a personal level they have made expressions of concern to me.

And so they certainly are aware.

Ms. ROS-LEHTINEN. Does Mr. Gurry, do you think he feels any pressure?

Mr. POOLEY. I have no idea.

Ms. ROS-LEHTINEN. And his behavior at WIPO by any standard would be judged to have been absolutely despicable. And I am shocked that he remains in office. Are you shocked as well or do you know that agency so well that it is hard to shock you?

Mr. POOLEY. Well, maybe that is true by now. As I said to someone today, nothing would surprise me anymore.

I would prefer not to take a position on that. I have from the beginning said that my involvement in all of this has one goal and one goal only, and that is to get information to the member states so the member states on an informed basis can decide what to do.

Mr. Gurry has on various other occasions tried to make this a personal issue. I do not want to go there and so I hope you will forgive me if I don't comment.

Ms. ROS-LEHTINEN. Absolutely. I understand.

But I hope that this administration would use every bit of its voice, its vote, its influence at WIPO and with the member states to ensure that Gurry is removed from office as soon as possible. This administration must also ensure that whistleblowers are reinstated at WIPO immediately.

So I will ask you both about whistleblowers. Dr. Brown, how will the failure to protect whistleblowers like you impact the entire U.N. system? And why are whistleblowers at one U.N. agency subject to retaliation, if so, at another?

And then I will ask Mr. Pooley, continuing on whistleblowers, if you could please comment on the impact on whistleblowers like yourself and Dr. Brown, both in a personal and in a professional capacity. How has it impacted you, Dr. Brown?

Ms. BROWN. Thank you. I think just looking at the U.N. more generally, there is the U.N. Secretariat which has a U.N. policy on whistleblowers, and then WIPO which has a separate one. And each, the different bodies have different tribunals where the staff go to take a complaint, for example. And the problem really faced by whistleblowers is that in the case of WIPO it will take 3 years before the tribunal will consider your case. So you will find yourself unemployed potentially or without a job for 3 years waiting for this tribunal to decide on whether you will be reinstated or not.

This is why I took the decision to—I jumped before I was pushed.

And then in terms of the vulnerability of whistleblowers, I think generally when it comes to reporting wrongdoing or allegations or wrongdoing by a U.N. agency head, we have to remember that the senior echelons of the U.N. the staff move around. This is a political situation, political body and political appointees. And, therefore, one staff member who is retaliated against in one organization may well face retaliation if they move to another organization. There is no protection for that across the system. There is not a uniform policy across the system.

There is the ILO Tribunal for WIPO. There is the U.N. Dispute Tribunal for the U.N. Secretariat. And staff easily get caught in the morass, and there is very little that can, that can be done if you are a staff member. Once the retaliation starts it is difficult to respond to.

Ms. ROS-LEHTINEN. Thank you.

Mr. Pooley.

Mr. POOLEY. Thank you, Chair Ros-Lehtinen. At WIPO, like other U.N. agencies, staff are prohibited from speaking with the outside world except by permission. And because of this confidentiality and secrecy, this cone of silence that is imposed on staff members who are naturally fearful of losing their jobs, the only way that we will ever learn of misconduct within these organizations is from whistleblowers who are prepared, notwithstanding those challenges, to come forward.

At this point, given what has happened with WIPO, many others within the U.N. system are watching what is going to ultimately happen as a result of what we have done here. And in the event that we don't achieve something useful, you may be looking at the last U.N. whistleblowers ever to come forward.

Ms. ROS-LEHTINEN. That is what I worry about as well. Thank you.

And finally, Mr. Pooley, you mentioned that you gave Mr. Gurry a risk analysis, which he rejected, of his secret plan to open offices in Russia and in China. What did you tell Mr. Gurry about the risks of putting offices in these countries? How do the risks impact WIPO's mission of protecting intellectual property? And did Gurry understand that he might be aiding and abetting violations of U.S. sanctions with the transfers to Iran and North Korea?

Mr. POOLEY. Thank you. The transfers to North Korea were separate from the risk analysis that we did. But that, that effort was a more or less standard management tool where you look at some operation or proposed operation and you identify all the things that can go wrong and what their effects would be, and whether or not you can mitigate them, or if there is some irreducible level of risk that you can't get rid of. That was the process that I assembled a team to do with respect to a particular office that he wanted to open in China. And I presented that to him. And his response was to come back to me with a note that said stop that work.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. It is just incredible.

Mr. SMITH. I know.

Ms. ROS-LEHTINEN. Thank you.

Mr. SMITH. Chairman Rohrabacher.

Mr. ROHRABACHER. Thank you very much. And let me admit I am not personally equipped with all the knowledge that I need to analyze what your testimony is about today, so I am going to ask you some fundamental questions. And that is the purpose of WIPO itself as an organization, first of all, it is an official United Nations organization. And that is right. Okay.

And the purpose of it is what? Is it to prevent, is it to prevent the theft of American or other people's intellectual property in certain countries? Or is it—and what is the other purposes then, if not that?

Mr. POOLEY. In general the purpose of WIPO is not to deal with issues of enforcement of intellectual property rights. Instead, WIPO exists to facilitate the acquisition in the international sphere of intellectual property rights that are essentially national in character.

There is no international patent. There is no international copyright. There is no international trademark. But we have a system at WIPO that allows you to use it as a portal to get access in a much easier and more efficient way to these national rights and bundle them much more easily and efficiently. That is what it does. And it actually does that very, very well. The Patent Cooperation Treaty that I oversaw—

Mr. ROHRABACHER. So it does not protect the American inventor who has a patent, that is not their purpose?

Mr. POOLEY. It is not their purpose to enforce any inventors' intellectual property rights; correct.

Mr. ROHRABACHER. And it is only, and it is designed then to facilitate the transfer of technology that if it is not owned what, isn't it fair game then that people take what is not owned?

Mr. POOLEY. It is not part of their mission to deal with the enforcement or what you do when someone steals someone else's intellectual property rights. What they, what they handle is the acquisition of those rights in the first place and making it easier to do that.

Enforcement has to happen with the courts of countries that recognize those rights. And sometimes those are cross-border disputes.

Mr. ROHRABACHER. Yes, I am—quite frankly this is all a little confusing to me. And I—

Mr. POOLEY. I can understand.

Mr. ROHRABACHER [continuing]. And I consider myself someone who knows a lot about our own patent system.

Mr. POOLEY. I know that.

Mr. ROHRABACHER. And this, so this organization is aimed at trying to, how would you say, regulate or to be able to have an overview of technology that is being transferred from one country to another?

Mr. POOLEY. It doesn't deal directly in technology transfer. But what it does is bring together, in the case of the Patent Cooperation Treaty, 148 countries from around the world, all of whom have agreed to take an application that is submitted to WIPO as if it was one of their own, and to recognize it when it comes to their country. And that gives those who want to acquire rights among a number of countries a much more efficient way to go about it. And they get an extra, they get 30 months to decide before they have to start spending the money on any particular national application.

So it is about acquisition. People in the U.S. often start out at the U.S. PTO and file their application there. They have a year then to file that application with WIPO, which gives them an additional period of time within which to think about it, develop the technology before they go in and spend the money to get patents in another jurisdiction. That is what it is good at.

Mr. ROHRABACHER. And but it is not dealing directly with people in other countries that are engaged in theft, actual hacking in and stealing someone's technology; is that right?

Mr. POOLEY. That is correct. It doesn't, it doesn't deal with those issues.

Mr. ROHRABACHER. Doesn't do that. Okay.

And if, indeed, what we are talking about then is trying to facilitate transfers, why would they want to have it secret that they have an agreement or they are negotiating with Beijing and Moscow to open up some kind of office there? Wouldn't that facilitate discussions? And why would someone want to keep that secret?

Mr. POOLEY. All I can tell you is what Mr. Gurry told me, which is that if people knew that he was doing this the flood gates would open and he wouldn't be able to get it done. It was for political purposes that he did this in a way that it could be presented as a fait accompli. That is my understanding.

Mr. ROHRABACHER. But in reality, do you see anything philosophically or morally or legally wrong with opening up an office in Beijing and Moscow to actually have someplace to step forward with your claims, if nothing else?

Mr. POOLEY. Well, having a, having a WIPO office in Beijing I felt was at least, at least nominally justifiable because at the time China was the fastest growing customer of the international patent system and other systems. And it would make sense, it seemed to me, to have a customer service office there.

I have a lot more trouble understanding the office in Russia because it didn't seem to meet any of those kinds of guidelines. But then we were not asked our opinion on the senior management team, this was just a decision by Mr. Gurry.

Mr. ROHRABACHER. And we are talking about now there was a transfer of some kind of equipment and technology that was part, to North Korea. What was that equipment that we are talking about?

Mr. POOLEY. That equipment consisted of a, at least among other things, a high-end server, a very, very fancy printer, a 24-terabyte disc array, a memory device that is, and an electronic firewall, the only purpose of which was to keep North Korea citizens from using this equipment to access the Internet. All of that was transferred, ostensibly, in order to support the North Korean Patent Office in its efforts to modernize its technology.

Mr. ROHRABACHER. And, okay, so we know that. I guess what we are saying then, if a country is known to be a thief and knowingly been involved or at least maybe not directly but they are letting this happen, like North Korea, they steal intellectual property, or is it the fact that they are preceding with a nuclear weapons program? What is the reason for singling out North Korea and Iran, for example?

Mr. POOLEY. Yes. Whether or not a country seems to be encouraging or allowing the theft of intellectual property is not an issue, and probably shouldn't be an issue, when it comes to just whether or not you support their Patent Office so that they can be part of the international community.

Mr. ROHRABACHER. Right.

Mr. POOLEY. But whether or not they are using or could use equipment that you send to them to help their Patent Office for some other purpose that would violate U.N. Security Council sanctions or would violate the intention of U.S. export controls—

Mr. ROHRABACHER. Right.

Mr. POOLEY [continuing]. That is very much a concern.

Mr. ROHRABACHER. It is export control and it is United Nations sanctions that this organization then will be conscious of in terms of enforcing those type of restrictions, and not that there is a bunch of hackers up in North Korea who are coming in and stealing Boeing's secrets on or patents on how to build a wing for an airplane?

Mr. POOLEY. That is, that is not part of their mission to deal with that.

Mr. ROHRABACHER. All right. Well, thank you for your testimony today. I am still not fully satisfied that I understand the whole process. But I am glad you brought this to our attention.

And I am also glad that you have stepped forward to try to have a public discussion on something that you felt was wrong and you were willing to courageously step forward, even though you could pay a personal price for it. And we want to thank you for that because we will, you know, we are so busy here. You know, you have got Chris over here who is the champion of human rights all over the world, every country, and we are so busy at times that we need, we certainly need people like yourselves to draw our attention to these things so that we can have a proper judgment of it and see if some legislation will help.

So thanks for guiding us in that today.

Mr. POOLEY. Thank you.

Mr. ROHRABACHER. Thank you.

Mr. SMITH. Thank you very much.

Let me just ask some concluding questions and then we will conclude the hearing. I remember, because I have been in Congress now for 36 years, when U.S. Attorney General Richard Thornburgh did extensive research and made landmark recommendations for U.N. reform. And that was back in 1993, 23 years ago.

I remember when he sat right where you sit and called for the establishment of Inspectors General; that there was no accountability; waste, fraud, and abuse were habitual in the U.N. It was degrading its image as well as the mission. And he was very, very eloquent. And he was one of our best Attorney Generals ever, Dick Thornburgh.

So my question, you know, that I would like to ask: The U.N.'s response has been lackluster, I believe, when it comes to IGs in terms of real robust interventions and protections for whistleblowers. Are there other, as far as you know, other agencies where there is a better situation, where whistleblowers, while they may be seen as a nuisance, bring forward information that honorable and noble people will take and say this is a problem, we need to fix it?

Because, frankly, we are going to do a great deal of follow-up on this. And I take to heart, as do the other chairs and ranking members who are here today, when you said that if you come forward, as you have done, and there is not a robust response on the part of Congress, that that could spell the end for whistleblowers coming forward because they know they will not be pushing on an open door but it will be a cul-de-sac to get in for them. We need to have

your back. And I can assure you this chairman will do everything humanly possible.

Because I remember Dick Thornburgh; he said, if we don't fix this, the U.N. is in serious trouble going forward. It is not a sustainable organization if we don't make sure that every dollar is accounted for and that policies are followed.

And, again, as you pointed out, Dr. Parish, to suggest that they are not covered, they being WIPO, by U.N. sanctions—and Dr. Brown as well—is ludicrous. U.N. policies, Security Council policies have application for the world, not just for those who, you know, there is no immunity there. And we will follow up on that as well.

But if you could speak to whether or not there is any other sister agency where there might be a better situation, if you would like to speak to that.

Dr. Brown, you spoke of the 9 months, March to November 2012, where you remained in close contact with the U.S. Mission in Geneva, and also kept staffers from this committee, of course, informed. When the U.S. Mission intervened do you recall how they intervened? Was it just a letter? Was it a very strong response? Was there any possible penalty affixed to it?

I do write a lot of laws on human rights, and the trafficking laws, four of them now, including the Trafficking Victims Protection Act. There were a lot of people who didn't want that law because it had punitive sanctions. Our own civil rights laws, as you know, in the United States would not have had the kind of impact they have had if it wasn't for the threat of a sanction. And I think the greater the Sword of Damocles that hangs over the head of an agency or a state or a country, the better, so long as the sanctions are judiciously included and implemented.

What did our representative do, Dr. Brown, if you could speak to that?

And let me finally, if I could, Mr. Pooley, on Shanghai—I was just in Shanghai—what was the nature of the office that was opened there? Or was it in Beijing; did I mishear that?

Mr. POOLEY. The office ultimately that was opened was in Beijing.

Mr. SMITH. Oh, it was ultimately opened.

Mr. POOLEY. Yes.

Mr. SMITH. If you could, Dr. Brown and Dr. Parish.

Ms. BROWN. Thank you. Well, this morning I can only really comment on what I know and what I was told, which is essentially that the U.S. Mission made multiple representations to Mr. Gurry and demanded that he fully protect whistleblowers. I am not aware apart from that. And, of course, the U.S. Mission or the U.S. Government pursued the whistleblower policy which wasn't in existence at WIPO.

But I'm not aware, I can't really comment on any other initiatives; I'm not aware of them.

Mr. SMITH. And the 15 percent contribution, because our contribution is de minimis anyway, only because so much of it is derived from patents, if I am not mistaken—what kind of impact would that have? Why not a 100-percent cut and some other action that says we are not kidding?

And that is what kills me. You have put your lives, your careers on the line. And again, I say to my Australian friends, please take note: You are good friends and allies. This is an aberrant departure; hopefully it is an exception. There needs to be more introspection on the part of that great friend and ally.

I like what you said: Friends don't let friends drive drunk. Well, friends don't let friends commit human rights abuses or back a bureaucrat who with impunity is misusing his authority.

And, again, we invite him to come and testify. I can't wait to ask questions. We invited him today and they sent a note. I would rather have him in the flesh and let's hear their side of the story. It will be a briefing, not a hearing, and they could ask us, the chairs and ranking members, any questions they want to ask as well.

Mr. POOLEY. Well, Mr. Chairman, all I would say is we would very much welcome any kind of "we really mean it" consequence that Congress, working with the professionals at the State Department, can develop that would prevent these kinds of things from happening in the first place, and that would protect whistleblowers, give whistleblowers strong enough protection so that you can get the kind of information that you need in order to be able to engage in the oversight that you are supposed to do.

Mr. SMITH. Yes, Dr. Parish.

Mr. PARISH. Well, Mr. Chairman, thank you. I followed issues relating to the accountability of various different international organizations within the U.N. system, some are without, outside the U.N. system, and some that seem to be appended to the U.N. system like WIPO, for about the last 10 to 12 years. And I am just going to offer some general observations in as far as they can be helpful to you.

I would say that things are patchy and they have generally and gradually improved within the United Nations system. The United Nations Disputes Tribunal is one form of staff right protection, which is certainly better than what came before. And we found that in some cases the system of dispute resolution has, has improved, has become more public, and has created a, we hope, a more effective structure to protect staff rights, whistleblowers' rights. But it is patchy. It is not perfect.

But the real bottom of the barrel, if I can describe it like that, sir, are cases where there are organizations which sit on the outskirts of the United Nations system, like WIPO, over which the hands of tradition may be more for loss of public scrutiny of any kind whatsoever, which have kind of fallen away. And the danger you find with an organization like that is that they might become captured by any one particular individual who doesn't frankly have, may not have model scruples of any particular kind, and may not be at all committed to the goals of transparency and accountability, in which case the danger in a case like that is that the organization may simply be run off, run away with by such person and ends up who knows where.

And it might be that the committee concludes on the basis of the evidence it has heard today that WIPO is an organization in that category.

Now, as to the question of what the committee can do, I am, certainly my own view is that although, yes, the 15 percent cut is effectively de minimis for reasons of WIPO's funding, nonetheless the message of Congress is going to be an extremely important one because U.S. entrepreneurs and businesses are major users of WIPO. And, therefore, the United States does have a very, very strong voice. And a 100 percent cut is one option.

But in any event, a public statements of censure in the strongest possible terms is something that is going to cause people to say, hang on, this is an important organization. My own view is that it has an extremely important mandate which is to promote intellectual property rights worldwide. The basic idea is that a U.S. entrepreneur can obtain some sort of patent pending protection in many of the jurisdictions through applying with WIPO. It is a very important mandate to promote the obvious goals of intellectual property advancements.

And perhaps what is necessary is that some public light of scrutiny is shone into what the organization is doing, and that is something which I respectfully suggest it would be most appropriate for Congress to do.

Thank you, sir.

Mr. SMITH. I just have one last question and then any concluding comments, if you would like. Anything that my colleagues and I may have missed or not asked, please speak out.

Dr. Brown, you mentioned that Mr. Gurry "decided not to renew my contract." It will "take over 3 years of litigation in the International Labour Organization's Administrative Tribunal" before being granted a hearing, as WIPO, like most international organizations is immune to national laws. "During that period, I would not have a salary," you said, "and would most likely not have been allowed by the Swiss Government to remain in Geneva, where my children are schooled."

Let me ask you, even with a hearing, how much longer would it have taken for them to adjudicate the case and render an opinion?

And then, is that standard operating procedure that it takes so long to get a hearing, and meanwhile you are out of a job?

That seems to me—"justice delayed is justice denied"—that seems to me that that is a de facto advantage to the offending party because you don't have a right of recourse there.

Ms. BROWN. Thank you. Yes. I think you have summarized the situation accurately. Essentially if you go through the Tribunal, you will find that it is 3 years, most likely it will take 3 years before your case is heard. And during that time you will be waiting to find out what happens. You will be unemployed probably or you have to look for—

Mr. SMITH. And there is no provision to continue your employment pending the outcome of the case?

Ms. BROWN. No.

Mr. SMITH. Wow.

Ms. BROWN. And the ILO Tribunal can order reinstatement. So at WIPO, after 3 years if you win your case you could be reinstated. But there again, the Director General would have to implement what the Tribunal orders. And in the case of Mr. Gurry, on occasion that has not occurred.

I would then add that in the U.N. system it is probably a little bit faster. But the problem there is that the Tribunal does not necessarily order the reinstatement and it is the Secretary General who decides whether or not his staff member is reinstated. And in practice, what happens is that the staff member is usually given a small payout.

So whichever system you look at, it doesn't work well for whistleblowers. And I would like to emphasize that the situation in general, probably, whistleblowers across the U.N. system, and it may have improved in some respect, but where this problem is really exacerbated is where the allegations of wrongdoing involve the U.N. agency head. There the system just doesn't work.

Mr. SMITH. Thank you.

Mr. POOLEY. If I may add, Chairman, the problem that you have identified is a very serious one. The way that the system is set up now encourages the agency to not only take a position against a staff member, but to string it out for as long as possible.

And I have to say that, again I have been a lawyer for a long, long time, and I know that there is a certain view of the law that focuses on procedure and delay. And I think Dickens gave us some really good examples of it. Some of what happened in Bleak House, you find repeated and worse at WIPO.

In terms of focus on tiny distinctions in procedural issues in order to try to produce the longest possible delay to the, to the detriment of the staff member. And basically, as you said, it becomes so delayed that there is no possibility of reasonable justice. Mr. Gurry used to be the organization's legal counsel. And he is very well-versed in how to take advantage of these procedural rules.

Mr. SMITH. I do have one final question. And that is, is there anything or any provision in the founding documents that established WIPO that protects personnel from retaliation other than these long, drawn-out, the Tribunal process for example?

And can a member, can member states table a resolution perhaps at the Assembly to reform WIPO to get it right, so that, you know, a hearing could be within 30 days or 60 days so that everything is on the table?

Because I would think, and I do believe whistleblowers are one of the most noble and important groups of persons in any organization. They are the canaries in the coal mine. If there is a problem and somebody comes forward, corrective action can be taken.

And I would think that the way you have been misdealt with has had a chilling effect on anybody else in WIPO coming forward. As they say, except for the grace of God, there goes I; jobless because of your courage.

Is there anything can be done? Is there anything in the founding documents? And again, can a member state like America, the United States, table a resolution that would reform this flawed system?

Mr. POOLEY. Thank you, Mr. Chairman. Indeed, if I would leave you with one final thought it is that WIPO belongs to the U.S. and the other member states. It is up to them, if they don't like what they see in how it is being governed, to change it. And one of the most impactful ways to change that and resolve some of the concerns that we have seen here would be to ensure that staff mem-

bers have a legitimate, easy to use, and fair way to get their problems and issues resolved.

And for whistleblowers, as I have said earlier, that really needs to include external independent arbitration. Thank you.

Mr. SMITH. Thank you. Thank you.

Dr. Brown or Dr. Parish, any final comments?

Ms. BROWN. I would agree with what Mr. Pooley says. External arbitration is really vital. And at the moment it is denied to U.N. staff across the system.

Mr. PARISH. One final remark from me, Mr. Chairman. The problem in WIPO, specific to WIPO, is that there are internal rules and procedures but they all start and finish at the end of the day with the Director General. So if you have got a complaint against the Director General there is absolutely nothing you can do because he can, and he will, be able to block you at absolutely every touch and turn. And that may well be, sir, why we are here giving evidence before you today.

Mr. SMITH. Thank you so very much. I can assure you we will follow up. You have provided enormous insight and wisdom to the committees. And we need to come up with an action plan.

The hearing is adjourned.

[Whereupon, at 3:39 p.m., the subcommittees were adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE RECORD

JOINT SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6128

Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations
Christopher H. Smith (R-NJ), Chairman

Subcommittee on the Middle East and North Africa
Heana Ros-Lehtinen (R-FL), Chairman

Subcommittee on Asia and the Pacific
Matt Salmon (R-AZ), Chairman

February 24, 2016

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held jointly by the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, the Subcommittee on the Middle East and North Africa, and the Subcommittee on Asia and the Pacific in Room 2172 of the Rayburn House Office Building (and available live on the Committee website at <http://www.ForeignAffairs.house.gov>):

DATE: Wednesday, February 24, 2016

TIME: 2:00 p.m.

SUBJECT: Establishing Accountability at the World Intellectual Property Organization:
Illicit Technology Transfers, Whistleblowing, and Reform


WITNESSES: Mr. James Pooley
Attorney at Law
(Former Deputy Director for Innovation and Technology, World Intellectual Property Organization)

Ms. Miranda Brown
(Former Strategic Adviser to the Director General, World Intellectual Property Organization)

Mr. Matthew Parish
Founder and Managing Director
Gentium Law Group

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.



COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON Office, Global Health, Global Human Rights, and International Organizations;
the Middle East and North Africa; and Asia and the Pacific HEARINGDay Wednesday Date February 24, 2016 Room 2172 Rayburn HOBStarting Time 2:04 p.m. Ending Time 3:39 p.m.Recesses 0 (____ to ____) (____ to ____) (____ to ____) (____ to ____) (____ to ____) (____ to ____)

Presiding Member(s) _____

Check all of the following that apply:

Open Session ☒Executive (closed) Session ☐Televised ☒Electronically Recorded (taped) ☒Stenographic Record ☒

TITLE OF HEARING:

Establishing Accountability at the World Intellectual Property Organization: Illicit Technology Transfers, Whistleblowing, and Reform

SUBCOMMITTEE MEMBERS PRESENT:

Rep. Heena Ros-Lehtinen, Rep. Matt Salmon, Rep. Dana Rohrabacher, Rep. Steve Chabot, Rep. Ron DeSantis, Rep. Lee Zeldin, Rep. Karen Bass, Rep. Brad Sherman, Rep. Grace Meng, Rep. Brendan Boyle, Rep. Lois Frankel, Rep. David Clelline

NON-SUBCOMMITTEE MEMBERS PRESENT: (Mark with an * if they are not members of full committee.)

HEARING WITNESSES: Same as meeting notice attached? Yes ☒ No ☐

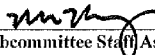
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: (List any statements submitted for the record.)

Letters on the World Intellectual Property Organization, submitted by Rep. Heena Ros-Lehtinen
Statement from the Government Accountability Project, submitted by Rep. Chris Smith
Information from Mr. Francis Gurry, World Intellectual Property Organization Director General, submitted by Rep. Chris Smith
Letter from legal counsel of the World Intellectual Property Organization to Ambassador Duque, submitted by Rep. Chris Smith
Memo from Mr. Jim Pooley to Mr. Francis Gurry, submitted by Mr. Pooley

TIME SCHEDULED TO RECONVENE _____

or

TIME ADJOURNED 3:39 p.m.

 Subcommittee Staff Associate

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE ILEANA ROS-LEHTINEN,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA, AND CHAIRMAN,
SUBCOMMITTEE ON THE MIDDLE EAST AND NORTH AFRICA

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One Hundred Twelfth Congress
U.S. House of Representatives
Committee on Foreign Affairs
2170 Rayburn House Office Building
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RICHARD J. NESSLER
DELEGATE & SEN. SPENCER

August 1, 2012

His Excellency Francis Gurry
Director General
World Intellectual Property Organization
34, chemin des Colombettes
1211 Geneva 20, Switzerland

Dear Director General Gurry:

We are in receipt of your letter of July 23, 2012, responding to our initial inquiry regarding WIPO's transfers of U.S.-origin technology by your organization to North Korea and Iran. While you promise to fully cooperate with our Congressional investigation and offer to appear before the Committee, your refusal to authorize two of our chosen witnesses raises questions about this commitment. Though in your letter, you asserted that you would authorize Mr. Moncef Kateb, President of the WIPO Staff Association, to testify "without impediment" before the Committee, we note that we are also in receipt of the email sent last Monday by your Legal Counsel, Mr. Edward Kwakwa, to our Committee's Chief Investigative Counsel, Mr. Harold Rees, attaching e-mails in which you denied authorization for the appearance of the two other WIPO staff members whom our Committee invited to testify. (The identities of those two staff members, Mr. James Fooley and Dr. Miranda Brown, apparently were leaked to the media by an unnamed "WIPO official.")

On several occasions, you have publicly promised your full cooperation with our Congressional investigation and you reiterate this commitment in your letter to us, stressing "how seriously WIPO as an organization, and [you] personally as Director General, view this matter" and that "[your] sole focus in this case is to provide thorough and credible information to Member States." It is for this reason that we are extremely concerned by your refusal to allow these two witnesses to appear before the Committee. Moreover, Mr. Kateb has indicated through his attorney that the conditions you have imposed on his testimony make him unwilling to testify—especially by himself—due to fear of retaliation or other form of reprisal. As a result of your actions, we had no choice but to cancel a planned briefing on this matter, which was scheduled for July 24, 2012.

His Excellency Francis Gurry
 August 1, 2012
 Page 2 of 3

As you know, Mr. James Pooley, WIPO Deputy Director General, Innovation and Technology, is a widely-known and very well-respected lawyer and is the senior U.S.-national official at WIPO. We invited him to brief the Committee on the evidence that violations of UN sanctions may have been committed, his assessment of the role of WIPO in these transactions, and his recommendations for remedial measures to prevent recurrence. We are naturally interested why he and others among senior management may have been previously unaware of these transactions. Receiving his testimony is entirely reasonable. For similar reasons and for possible corroboration, we invited another senior level manager, Dr. Miranda Brown, your own Strategic Advisor, to testify.

According to your e-mails denying permission to Mr. Pooley and Dr. Brown, neither of these senior officials have the competence and knowledge to testify about the technology transfers at issue. We understand that there may be other WIPO personnel who have direct knowledge of this matter, and we take under advisement your offer to testify before our Committee and to make available other WIPO officials as well. However, our Committee will run its own investigation as it deems appropriate, and it is up to our Committee alone to determine the utility, competence, and knowledge of prospective witnesses, and to choose which witnesses to invite to testify.

Your denial of authorization for Mr. Pooley and Dr. Brown to testify, and the conditions you have imposed on the testimony of Mr. Kateb, is not the full cooperation that you promised or the full cooperation that we expect from you. Moreover, it is not the full cooperation that ought be expected for an investigation being conducted by the Congress of the United States, a Member State whose citizens provide significant funding for WIPO.

Accordingly, we urge that you reconsider your opposition and make available Messrs. Pooley and Kateb and Dr. Brown, as well as any other WIPO employee we subsequently may invite, to testify to the Committee at their earliest mutually agreeable time. We emphasize that all requested witnesses should be provided by WIPO unlimited and unqualified immunity and authorization to speak freely. Moreover, WIPO must give effective guarantees to requested witnesses that they will be protected against retaliation in any form for statements or actions taken in connection with the subject matter of the investigation. This protection should be afforded not only to Mr. Kateb, who first blew the whistle, but also to any other witness called to testify before Committee Members or speak to Committee investigators that may be asked to travel to Geneva to investigate the matter on behalf of the Committee.

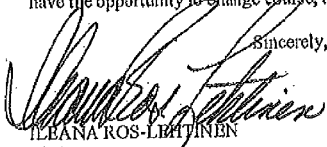
We also note that in WIPO's statement of July 19th, that the organization would be terminating the provision of information technology hardware to any of WIPO's technical assistance programs. Yet, in our initial letter to you, we made clear that we are generally supportive of WIPO's efforts to strengthen the capacity of member states to enforce international intellectual property protections. We are not opposed to these programs, or the provision of IT equipment per se, rather it is the transfer of that equipment to countries under U.S. and UN sanctions that has us deeply concerned.

His Excellency Francis Curry
August 1, 2012
Page 3 of 3

Finally, we resubmit our request for unfettered access to documents for our investigation including any internal memoranda or other communications, including but not limited to those detailing the scope, history, and justification of WIPO's technology transfers to North Korea and Iran.

Director General Curry, either one provides full cooperation or one does not. To this point, you have not provided full cooperation to our Committee, in default of your commitments and in default of your responsibilities as an official of an international organization. You still have the opportunity to change course, and we urge you to take it.

Sincerely,


ILEANA ROS-LETTINEN
Chairman


HOWARD L. BERMAN
Ranking Member

Dr. CHUANG, J. K. S. & F. C. CHAN
Department of Statistics, The University of Hong Kong

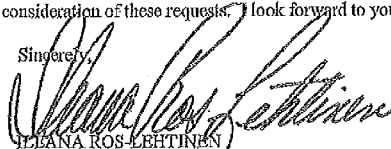
I understand that the Department of State has also commenced an investigation and that WIPO had not been fully cooperative. Instead, WIPO appears to be most interested in retaliating against organization whistleblowers.

The Honorable Hillary Rodham Clinton
July 12, 2012
Page two

Given WIPO's egregious behavior, I respectfully request an immediate freeze by the Administration of all U.S. contributions to WIPO until it allows unfettered access to all relevant documents and to witnesses without fear of retaliation, until investigations by both the State Department and by this Committee are concluded, and until WIPO has implemented remedial measures to ensure no such violations occur in the future and that those responsible for these violations have been held fully accountable.

Thank you for your consideration of these requests. I look forward to your response.

Sincerely,



HILANA ROS-LEHTINEN
Chairman

[illegible]

HOVARD, EDWARD, Disposition
Riverside County, 1970-71

DANIEL ACKERMAN, New York
NANCY FALCONBERG, AMHERST, MA
BRUCE SIGHEIM, California
RUDY C. ENGEL, New York
GREGORY VILKINS, New York
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DAVID GILLESPIE, Rhode Island

THE UNIVERSITY OF CHICAGO

Dear Director General Gurry,

We are gravely concerned about WIPO's decision to ship U.S. origin computers and other high-tech equipment to Iran and North Korea. As an agency that receives significant funding from United States inventors, we are astonished that WIPO would think it proper to use those funds to send such material to these rogue regimes. In order to build confidence in your organization and ensure that such technology transfers do not take place in the future, we request that you immediately commission an independent, external investigation with unfettered access to all relevant documents and witnesses—and without fear of retaliation—and provide the same unfettered access to Member States and to our Committee.

Please do not misinterpret our concern. This is not about WIPO's technical assistance programs to developing countries—programs designed to build infrastructure for national innovation and IP systems. Instead, it is about your organization's misuse of those programs to send dual-use technology to two specific countries that are subject to Security Council sanctions. In fact, these actions undermine the mission of WIPO to foster respect of intellectual property rights through, among other things, the provision of technical assistance.

In your public statements you have asserted that there was nothing improper with the Iran and North Korea transactions, and that you have acted entirely properly in this matter. We strongly disagree. It was wrong for these transfers to have been authorized without prior disclosure and consultations with the Member States of WIPO and with full reporting after shipment, in accordance with accepted UN practice. We assume that had Member States been properly notified, they surely would have objected in this case, given the sanctions in place.

Furthermore, we are also disturbed by your ongoing attempts to keep these technology transfers a secret within your organization. We were appalled to learn that you failed to seek advice from the relevant sanctions bodies of the U.N. before proceeding with these transactions. Why did your organization feel it was unnecessary to consult with the Security Council prior to initiating these transfers to ensure they were in compliance with applicable sanctions? Given the obvious "dual use" nature of this technology, why was no attempt made to keep strict control over these items and closely monitor their use?

The Honorable Francis Gurry
 July 16, 2012
 Page two

Even more troubling are allegations that your primary focus on this issue has not been full disclosure of all relevant information on these projects in Iran and North Korea, but rather discovering and punishing whistleblowers who initially alerted outside bodies about these transactions. With regard to your claim to confidentiality in documents provided to us, the information they contain is exactly what WIPO, as a governmental agency, should be providing to all its stakeholders. There is no justification for concealing them from the public.

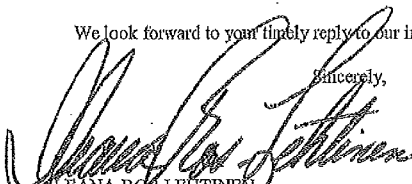
In this similar vein, we are outraged by your recent refusal, on the basis of "confidentiality," of a request by the U.S. Department of State to conduct an independent, external investigation into how and why these transactions happened. There is no rational basis for this refusal. And there is ample precedent for the request, including a prior investigation addressing alleged corruption by your predecessor. On the face of it, the documentary record, coupled with your public statements, shows a shocking and intolerable lack of judgment, together with an inclination to disregard the legitimate concerns of Member States and to retaliate against staff who are simply trying to tell the truth. However, if you truly believe that your actions have been entirely proper, then surely you would have nothing to hide and no reason to block the requested independent investigation.

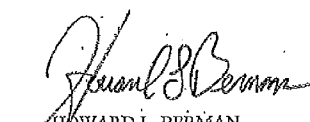
We do not believe that it is sufficient to simply promise that future shipments to Iran and North Korea will be reviewed by the Sanctions Committee in New York. In light of your conduct in this matter thus far it is imperative that we learn how and why all this happened, so that we can understand how to prevent similar lapses in judgment in the future. As a fiduciary for the thousands of inventors throughout the world who pay their fees to WIPO expecting that the money will be wisely spent, we believe that it is past time for you to stop trying to defend and deflect, and to focus instead on building confidence in the integrity of your organization.

We strongly urge you, in the interest of the institution, to reconsider your position by allowing an independent, external investigation and by providing WIPO stakeholders - particularly the United States Government - with unfettered access to all documents and witnesses relating to these transfers to Iran and North Korea, ensuring that Member States are fully consulted prior to the establishment of any future technical assistance programs, and fully protecting whistleblowers against retaliation.

We look forward to your timely reply to our inquiry.

Sincerely,


 ILANA ROS-LIITTINEN
 Chairman


 HOWARD L. BERMAN
 Ranking Member

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE CHRISTOPHER H. SMITH,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY, AND CHAIRMAN,
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTER-
NATIONAL ORGANIZATIONS



GOVERNMENT ACCOUNTABILITY PROJECT
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(202) 457-0034 | info@whistleblower.org

**WRITTEN TESTIMONY OF THE GOVERNMENT
ACCOUNTABILITY PROJECT BEFORE HOUSE COMMITTEE ON
FOREIGN AFFAIRS SUBCOMMITTEES**

February 24, 2016

Thank you for accepting the Government Accountability Project's written testimony on the World Intellectual Property Organization (WIPO) whistleblower policy. We appreciate your oversight, because this seriously-flawed policy does not provide genuine free speech rights against retaliation for those who challenge abuses of power that betray WIPO's mission. Without a systematic makeover, it is a threat to its stated objectives of safe reporting channels for institutional accountability. That is because its structure enables the predictable, official approval of retaliation that would be outlawed under credible policies. Whistleblowers who have worked with this committee will not disagree, and the testimony bears witness how the policy's track record has ranged from ineffective to counterproductive. This testimony will be limited to a review of the policy's provisions – the rights on paper. While not sufficient, they are the necessary foundation for rights in reality.

The Government Accountability Project (GAP) is a non-profit, nonpartisan public interest law firm that specializes in protection for genuine whistleblowers -- employees who exercise free speech rights to challenge institutional illegality, abuse of power or other betrayals of the public trust they learn of or witness on the job. GAP has been a leader in the public campaigns to enact or defend nearly all United States national whistleblower laws; and played partnership roles in drafting and obtaining approval for the original Organization of American States (OAS) model law to implement its Inter-American Convention Against Corruption and whistleblower protection policies for staff and contractors at the African Development Bank, the Asian Development Bank, the OAS, and the United Nations.

While whistleblower protection laws are increasingly popular, in many cases the rights have been largely symbolic and therefore counterproductive. Employees have risked retaliation thinking they had genuine protection, when in reality there was no realistic chance they could maintain their careers. In those instances, acting on rights contained in whistleblower laws has meant the near-certainty that a legal forum would formally endorse the retaliation, leaving the careers of reprisal victims far more prejudiced than if no whistleblower protection law had been in place at all. Review of the track records for these and prior laws over the last three decades has revealed numerous lessons learned, which have steadily been solved on the U.S. federal level through amendments to correct mistakes and close loopholes.

GAP labels token laws as “cardboard shields,” because anyone relying on them is sure to die professionally. We view genuine whistleblower laws as “metal shields,” behind which an employee’s career has a fighting chance to survive. The checklist of 20 requirements below reflects GAP’s 35 years of lessons learned on the difference. All the minimum concepts exist in various employee protection statutes currently on the books. These “best practices” standards are based on a compilation of national laws from the 30 nations with minimally credible dedicated whistleblower laws, as well as Intergovernmental Organization policies, including those at the United Nations, World Bank, African Development Bank, Asian Development Bank, and Inter-American Development Bank.

The WIPO policy is even weaker – a paper shield. In theory, it only passes 4 of 20 criteria for recognized best practices, or 20%, and two of those are largely academic due to enforcement conflicts of interest. The only two criteria that cleanly pass muster are the policy’s scope of prohibited harassment tactics, and the six month time limit to act on rights. Specific analysis is below.

I. SCOPE OF COVERAGE

The first cornerstone for any reform is that it is available. Loopholes that deny coverage when it is needed most, either for the public or the harassment victim, compromise whistleblower protection rules. Seamless coverage is essential so that accessible free expression rights extend to any relevant witness, regardless of audience, misconduct or context to protect them against any harassment that could have a chilling effect.

1. Context for Free Expression Rights with “No Loopholes”. Protected whistleblowing should cover “any” disclosure that would be accepted as evidence of significant misconduct or would assist in carrying out legitimate compliance functions. The consistent standard is for the whistleblower to reasonably believe the information is evidence of misconduct. Motives should not be a relevant factor, if the whistleblower believes the information is true. There can be no loopholes for form, context or audience, unless release of the information is specifically prohibited by statute. In that circumstance, disclosures should still be protected if made to representatives of organizational leadership or to designated law enforcement or legislative offices. The key criterion is that public freedom of expression be protected if necessary as the only way to prevent or address serious misconduct. It also is necessary to specify that disclosures in the course of job duties are protected, because most retaliation is in response to “duty speech” by those whose institutional role is blowing the whistle as part of organizational checks and balances.

Best Practices: United Nations Secretariat whistleblower policy (UN), section 4; World Bank Staff Rule 8.02 (WB), section 4.02; Australian Public Interest disclosure Act, (“Aus. PIDA”), Part 2, Div. 2; Irish Public Disclosure Act (“Irish PDA”), Sec. 10; United Kingdom (UK) Public Interest Disclosure Act of 1998 (“PIDA”), c. 23, amending the Employment Rights Act of 1996, c.18), section 43(G); Protected Disclosures Act of 2000 (“PDA”); Act No. 26, GG21453 of 7 Aug. 2000 (S. Afr.), section 7-8; Anti-Corruption Act of 2001 (“ACA”) (Korea – statute has no requirement for internal reporting); Ghana Whistleblower Act of 2005 (“Ghana WPA”), section 4; Japan Whistleblower Protection Act, Article 3; Romanian Whistleblower’s Law (“Romania WPA”), Article 6; Whistleblower Protection Act of 1989 (“WPA”) (U.S. federal government), 5 USC 2302(b)(8); Consumer Products Safety Improvement Act (“CPSIA”) (U.S. corporate retail products), 15 USC 2087(a); Federal Rail Safety Act (“FRSA”) (U.S. rail workers) 49 USC 20109(a); National Transportation Security Systems Act (“NTSSA”) (U.S. public transportation) 6 USC 1142(a); Sarbanes Oxley Reform Act (“SOX”) (U.S. publicly-traded corporations) 18 USC 1514(a); Surface i31105(a); American Recovery and Reinvestment Act of 2009 (“ARRA”), (U.S. Stimulus Law), P.L.111-5, Section 1553(a)(2)-(4); Patient Protection and Affordable Care Act (“ACA”), (U.S. health care), sec. 1558, in provision creating section 18C of Fair Labor Standards Act, sec. 18B(a)(2)(4); Food Safety Modernization Act (“FSMA”) (U.S. food industry), 21 USC 1012(a)(1)-(3); Dodd Frank Wall Street Reform and Consumer Protection Act (“Dodd Frank”)(U.S. financial services industry), sec. 1057(a)(1)-(3); Bosnia WPA, Art. 2(d); Irish Public Disclosures Act (Irish PDA), secs. 7, 10; Japan Whistleblower Protection Act (WPA), Art. 1; Serbian Law for the Protection of

Whistleblowers (Serbian WPA”), Art. 2,2, 2.5, 19, Liberia Executive Order 62, Protection of Whistleblowers (“Liberia EO”), Sec. 4(1)(a-j), 11; Slovakia WPA, sec. 2(2); OAS Staff Rule 101.11 Procedures for Whistleblowers and Protections Against Retaliation (OAS Staff Rule), sec. (c)(vi).

WIPO POLICY: FAIL. While the policy permits public freedom of expression, disclosures must be formal accusations rather than “any” communication that discloses serious problems. That excludes the safe, free flow of information as the norm in dealing with institutional problems as they arise. Similarly, there is no protection for “duty speech” such as assignments that spark retaliation due to political pressure.

Finally, section 10(b) creates serious obstacles that could render the policy counterproductive by imposing a “good faith” test, and by disqualifying protection if the motives were solely for personal benefit. These prerequisites put the whistleblower’s motives on trial. Other than credibility, they are completely irrelevant for the policy’s purpose of uncovering fraud, waste, corruption or other misconduct. Neither is present in the U.N. whistleblower policy, and both have been widely rejecting in international best practices. Some emerging laws even offer bounties. Convicted criminals are allowed to plea bargain tangible benefits, in exchange for truthful and significant testimony. Shouldn’t whistleblowers be allowed to safely bear witness with truthful, significant testimony, whether or not they seek to benefit?

2. Subject Matter for Free Speech Rights with “No Loopholes”. Whistleblower rights should cover disclosures of any illegality, gross waste, mismanagement, abuse of authority, substantial and specific danger to public health or safety and any other activity which undermines the institutional mission to its stakeholders, as well as any other information that assists in honoring those duties.

Best Practices: UN ST/SGB/2005/21, section 2.1(a); World Food Programme (WFP) Executive Circular ED2008/003, section 5; World Bank Staff Rule 8.02, section 1.03; African Development Bank (AfDB) “Whistleblowing and Complaints Handling Policy, section 4; The Whistleblowers Protection Act, 2010 (“Uganda WPA”), section II.2; PIDA, (U.K.); PDA, section 1(i)(S. Afr.); Irish PDA, Sec. 5; New Zealand Protected Disclosures Act (“NZ PDA”), 2000, section 3(1), 6(1); ACA (Korea), Article 2; Public Service Act (“PSA”), Antigua and Barbuda Freedom of Information Act, section 47; R.S.O., ch. 47, section 28.13 (1990) (Can.); Ghana WPA, section 1; WPA (U.S. federal government), 5 USC 2302(b)(8); FRSA (U.S. rail workers) 49 USC 20109(a)(1); NTSSA (U.S. public transportation) 6 USC 1142(a); STAA (U.S. corporate trucking industry) 49 USC 31105(a)(1); ACCR (U.S. Stimulus Law) P.L. 111-5, Section 1553(A)(1)-(5); ACA (U.S. health care) *id.*; FMSA (U.S. food industry) *id.*; Dodd Frank (U.S. financial services industry) *id.*; Aus. PIDA, sec. 2; Belgium WPA, Art. 2; Bosnia WPA, Art. 2(b); WPA, Art. 2; Irish PDA, sec. 7; Serbian WPA, Art. 2.1, 13; Liberia EO, sec. 1(f), 4(1)(a-j); Zambia PIDA, sec. 2. 2, 11; Malta Protection of the Whistleblower Act 2013 (Malta PWA), Art. 1(2); OAS Staff Rule, sec. (b)(v)

WIPO POLICY: FAIL: Definition “g” for wrongdoing does not include protection for disclosures of wrongdoing by contractors, who have committed the most serious betrayals of the U.N. mission.

3. Right to Refuse Violating the Law. This provision is fundamental to stop *faits accomplis* and in some cases prevent the need for whistleblowing. As a practical reality, however, in many organizations an individual who refuses to obey an order on the grounds that it is illegal must proceed at his or her own risk, assuming vulnerability to discipline if a court or other authority subsequently determines the order would not have required illegality. Thus what is needed is a fair and expeditious means of reaching such a determination while protecting the individual who reasonably believes that she or he is being asked to violate the law from having to proceed with the action or from suffering retaliation while a determination is sought.

Best Practices: Asian Development Bank (ADB) Administrative Order No. 2.10, section 3.5 (see AO 2.04, section 2.1 (f) for corresponding definition of misconduct); World Bank Staff Rule 8.02, section 2.07(see Staff Rule 8.01, section 2.01 for definition of misconduct); WPA (U.S. federal government) 5 USC 2302(b)(9); FRSA (U.S. rail workers) 49 USC 20109(a)(2); NTSSA (U.S. public transportation) 6 USC 1142(a)(2); CPSIA (U.S. corporate retail products) 15 USC 2087(a)(4); STAA (U.S. corporate trucking industry) 49 USC 31105(a)(1)(B); ACA (U.S. health care) sec.18C(a)(5); FSMA (U.S. food industry) 21 USC 1012(a)(4); Dodd Frank (U.S. financial services industry) sec. 1057(a)(4); Liberia EO, sec. 13(b); OAS Staff Rule, sec. (a)(iii).

WIPO POLICY: FAIL. The policy does not include this right.

4. Protection Against Spillover Retaliation. The law should cover all common scenarios that could have a chilling effect on responsible exercise of free expression rights. Representative scenarios include individuals who are perceived as whistleblowers (even if mistaken), or as “assisting whistleblowers,” (to guard against guilt by association), and individuals who are “about to” make a disclosure (to preclude preemptive strikes to circumvent statutory protection, and to cover the essential preliminary steps to have a “reasonable belief” and qualify for protection as a responsible whistleblowing disclosure). These indirect contexts often can have the most significant potential for a chilling effect that locks in secrecy by keeping people silent and isolating those who do speak out. The most fundamental illustration is reprisal for exercise of anti-retaliation rights.

Best Practices: World Bank Staff Rule 8.02, section 2.04; AfDB Whistleblowing and Complaints Handling Policy, section 6; Organization of American States, “Draft Model Law to Encourage and Facilitate the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses” (“OAS Model Law”), Article 28; Aus. PIDA, Provisions (“Prov.”) 13, 57; ACA (Korea), Art. 31; NZ PDA, section 4(3); WPA (U.S.), 5 USC sections 2302(b)(8) (case law) and 2302(b)(9); Energy Policy Act of 2005 (U.S. Nuclear Regular Commission, Department of Energy and regulated corporations), 42 USC 5851(a); FRSA (U.S. rail workers) 49 USC 20109(a); NTSSA (U.S. public

transportation) 6 USC 1142(a); CPSIA (U.S. corporate retail products) 15 USC 2087(a); STAA (U.S. corporate trucking industry) 49 USC 31105(a); ACA (U.S. health care) sec. 18C(a); FSMA (U.S. food industry) 21 USC 1012(a); Dodd Frank (U.S. financial services industry) Sec. 1057; Irish PDA, sec.12; Japan WPA, Art. 3; Serbian WPA, Art. 6-9; OAS Staff Rule, secs. (a)(ii), (b)(vi).

WIPO POLICY: FAIL. Protection does not begin until a formal communication, and is limited to the whistleblower as final messenger. The law does not protect against retaliation by those who are mistakenly perceived as or associated with the whistleblower, or for the whistleblower while doing all the homework for a responsible disclosure.

5. “No Loopholes” Protection for All Citizens With Disclosures Relevant to the Public Service Mission. Coverage for employment-related discrimination should extend to all relevant applicants or personnel who challenge betrayals of the organizational mission or public trust, regardless of formal status. In addition to conventional salaried employees, whistleblower policies should protect all who carry out activities relevant to the organization’s mission. It should not matter whether they are full time, part-time, temporary, permanent, expert consultants, contractors, employees seconded from another organization, or even volunteers. What matters is the contribution they can make by bearing witness. If harassment could create a chilling effect that undermines an organization’s mission, the reprisal victim should have rights. This means the mandate also must cover those who apply for jobs, contracts or other funding, since blacklisting is a common tactic.

Most significant, whistleblower protection should extend to those who participate in or are affected by the organization’s activities. Overarching U.S. whistleblower laws, particularly criminal statutes, protect all witnesses from harassment, because it obstructs government proceedings. Any increasing number of global statutes do not limit protection to employees, but rather protect “any person” who discloses misconduct. A list of nations with rights broader than the employment context is enclosed as Attachment 2.

Best Practices: AfDB Whistleblowing and Complaints Handling policy, sections 5.1 & 6.2; ADB Administrative Order No. 2.10, section 8; Inter-American Development Bank (IDB) Staff Rule No. PE-328, section 2.1 & 2.2; Anti-Corruption Initiative for Asia-Pacific (Organization for Economic Cooperation and Development [OECD]); Aus. PIDA, Prov. 13; NZPDA, section 19A; PIDA (U.K.), sections 43 (K)(1)(b-d); ACA (Korea), Art. 25; Whistleblower Protection Act of 2004 (Japan WPA), section 2; Ghana WPA, sec. 2; Slovenia Integrity and Prevention of Corruption Act (Slovenia Anti-Corruption Act), Article 26; Uganda WPA, section II.3; Foreign Operations Appropriations Act of 2005 (“Foreign Operations Act”)(U.S. MDB policy) section 1505(a)(11)(signed November 14, 2005); False Claims Act (U.S. government contractors), 31 USC 3730(h); sections 8-9.; STAA (U.S. corporate trucking industry) 49 USC 31105(j); ACCR of 2009 (U.S. Stimulus Law) P.L.111-5, Section 1553(g)(2)-(4); Dodd Frank, Sec. 922(h)(1); Jam PDA, Part 1.2; Kosovo Law No. 04/L-043 on Protection of Informants (Kosovo LPI), Art.2, Sec. 1.1; Serbian WPA, Art. 2.2, 2.3;

The complete version of this document may be accessed at:
<http://cradmin.clcrk.house.gov/repository/FA/FA16/20160224/104528/HHRG-114-FA16-20160224-SD002.pdf>

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE CHRISTOPHER H. SMITH,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY, AND CHAIRMAN,
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTER-
NATIONAL ORGANIZATIONS



Mr. Edward R. Royce
Chairman
Committee on Foreign Affairs
United States House of Representatives
2170 Rayburn House Office Building
Washington, DC 20515
United States of America

February 23, 2016

Dear Chairman Royce,

Thank you for your letter of February 18, 2016 in which you refer to a briefing of the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, the Subcommittee on the Middle East and North Africa, and the Subcommittee on Asia and the Pacific, of the United States House of Representatives Committee on Foreign Relations, which will be held on February 24, 2016, in Washington.

In view of the short notice, the World Intellectual Property Organization (WIPO) will not be in a position to attend the meeting of the Subcommittees. However, please find enclosed information pertaining to the matters which you raise in your letter. This information is provided so as to ensure that facts surrounding these matters are available to the Subcommittees.

Yours sincerely,

Francis Gurry
Director General

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Factual Information provided by the World Intellectual Property Organization (WIPO)

North Korea and Iran

In 2009, as part of WIPO's technical assistance program to support IP Offices in developing countries – as approved by WIPO's Member States – WIPO provided various IT equipment to various IP Offices, including those of the Islamic Republic of Iran and the Democratic People's Republic of Korea (DPRK). This technical assistance had its origins in the mid-1990s when it was decided that each new Contracting Party to the Patent Cooperation Treaty (PCT) or to the Madrid System for the International Registration of Marks should receive a free work-station (consisting of a computer terminal, printer and associated software) in order to reduce the flow of paper copies that the Organization was otherwise required to send to Contracting Parties under the relevant treaties. That initial program was extended in the late 1990s and 2000s to assistance in the processing through information technology (IT) of patent, trademark and design applications. Over 80 countries use the WIPO provided system, known as IPAS for Intellectual Property Automated System, greatly facilitating the grant of intellectual property protection for domestic and, more importantly universally, foreign enterprises and persons.

In early 2012, concerns were voiced by various media and institutions, suggesting that this assistance might have been in violation of UN Security Council sanctions.

UN Sanctions against the Islamic Republic of Iran, promulgated under resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010), prohibit the supply of a number of arms and related materials, nuclear missiles, chemical and biological weapons, as well as technology which could contribute to uranium enrichment.

Similarly, UN sanctions against DPRK promulgated under resolutions 1718 (2006) and 1874 (2009) prohibit the supply of all arms and related material, items relevant to nuclear and ballistic missiles and other weapons of mass destruction-related programmes.

At the time, noting in particular that the IT equipment transferred by WIPO to DPRK and Iran (mainly computers and scanners) were standard devices, without any special configuration or enhanced capabilities beyond those of ordinary office equipment, the Office of the Legal Counsel of WIPO considered that there was no reason or requirement to refer this case to the relevant Security Council Sanctions Committees.

However, following the concerns that were raised, WIPO sent in July and August 2012 a request to the relevant UN Sanctions Committees to, inter alia, seek its guidance and clarification regarding whether the technical assistance carried out in the DPRK and Iran violated the Security Council resolutions pertaining to these countries.

On September 20, 2012, the Chairman of the Security Council Committee concerning DPRK replied to WIPO that it was *"the Committee's understanding that nothing in the Security Council resolutions prohibits the technical assistance program that WIPO has carried out in the DPRK"*.

Likewise, on September 21, 2012, the Chairman of the Security Council Committee concerning the Islamic Republic of Iran replied to WIPO that it was *"the Committee's understanding that nothing in Security Council resolutions prohibits the proposed project as described in your letter"*

Factual Information provided by the World Intellectual Property Organization (WIPO)

aimed at assisting Iran in developing technical capacity for intellectual property rights protection”.

In light of these opinions expressed by the competent treaty organs, namely the relevant Security Council Committees themselves – under which there was no breach of any Security Council resolutions – no more concerns were raised in relation to the technical assistance provided by WIPO to Iran and DPRK.

It is finally recalled that WIPO subsequently decided to discontinue its practice of providing IT equipment to IP Offices and IP-related institutions in Member States. WIPO is now focusing on technical advice and assistance in the form of project management services, training and related activities for enhancing absorptive capacity of IP offices and institutions.

WIPO External Offices

At the 51st WIPO Assemblies held in 2013¹, Member States approved offers from China and the Russian Federation to host new external offices of the World Intellectual Property Organization². As a result, two WIPO External Offices opened in 2014 in Beijing and Moscow, respectively. The Offices foster awareness of the role of intellectual property (IP) in innovation and development, and promote the use of WIPO services and products, in particular fee-paying services in the Chinese and Russian languages. More information on the activities of these offices is available from WIPO's website³.

Following that decision, WIPO has external offices located in Brazil, China, Japan, the Russian Federation, Singapore and the United States of America (the WIPO Coordination Office in New York functions as WIPO's liaison to the United Nations Headquarters).

Over and above the existing offices, WIPO Member States unanimously decided at the 55th WIPO Assemblies held in 2015⁴ to open up to six additional external offices during the period 2016 to 2019⁵. Members States are expected to discuss the matter in the framework of the WIPO Assemblies 2016.

¹ The fifty-first series of meetings of the Assemblies and other bodies of the Member States of WIPO (Geneva, September 23 to October 2, 2013). More information on: http://www.wipo.int/meetings/en/details.jsp?meeting_id=28124

² Refer to paragraph 26 of document WO/CC/67/4, as unanimously adopted by WIPO Member States on October 2, 2013 (http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=258461)

³ For the WIPO Office in China, refer to <http://www.wipo.int/about-wipo/en/offices/china/>
For the WIPO Russia Office, refer to <http://www.wipo.int/about-wipo/en/offices/russia/>

⁴ The fifty-fifth series of meetings of the Assemblies and other bodies of the Member States of WIPO (Geneva, October 5 to 14, 2015). More information on:

http://www.wipo.int/about-wipo/en/assemblies/2015/a_55/index.html

⁵ Refer to paragraph 268 of document A/55/13, as unanimously adopted by WIPO Member States on October 14, 2015 (http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=327099)

Factual Information provided by the World Intellectual Property Organization (WIPO)

Whistleblowers

WIPO encourages prompt notification of possible wrongdoing so that appropriate and diligent action can be taken in the best interests of the Organization. In this respect, a duty to report breaches of the Staff Regulations and Rules is contained in the Standards of Conduct for the International Civil Service and the duty to report any possible wrongdoing has also been established in WIPO's Whistleblower Protection Policy.

WIPO's Internal Oversight Division operates a hotline to report (on an anonymous basis if so desired) fraud, waste, abuse of authority, non-compliance with rules and regulations of WIPO in administrative, personnel and other matters or other irregular activities relevant to the mandate of the Division. All details of the hotline and an online wrongdoing reporting form are included in WIPO's website.

The Organization is committed to protecting members of WIPO personnel who participate in a wide range of oversight activities as defined in the Whistleblower Protection Policy or who make a whistleblower report. The Whistleblower Protection Policy provides the mechanisms for reporting alleged wrongdoing to either one's hierarchical supervisor, the Office of the Director General, the Director of the Internal Oversight Division or the chair of the WIPO Coordination Committee. The Whistleblower Protection Policy also sets out protections against retaliation so that there is a safe alternative to silence.

WIPO members of personnel which require protection in the framework of WIPO's Whistleblower Protection Policy should make a complaint in writing and forward all information and documentation available to them to support their complaint to the Ethics Office.

Once a complaint of retaliation is made, the burden of proof shall lie with the Organization, which must show on the preponderance of evidence that it would have taken the same action even in the absence of the activities protected under WIPO's Whistleblower Protection Policy.

The Ethics Office will conduct a preliminary review of the complaint to establish the elements of a prima facie case, that is, the complainant participated in an oversight activity or made a whistleblower report, the basic elements to constitute retaliation have been made out, and the activity was a contributing factor in causing the alleged retaliation or leading to the threat of retaliation.

If the Ethics Office finds that there is a prima facie case of retaliation or threat of retaliation (including by way of intimidation), it will refer the matter in writing on a confidential basis to the Internal Oversight Division for investigation and will promptly notify the complainant in writing that the matter has been so referred.

Such an investigation shall be undertaken by the Internal Oversight Division, as a fresh and independent investigation and no reliance shall be placed for the purposes of such an investigation on the preliminary review of the Ethics Office.

Factual information provided by the World Intellectual Property Organization (WIPO)

On the recommendation of any relevant official or at the request of the individual concerned, provisional protective measures may be undertaken at any time before all related internal formal proceedings are completed.

If retaliation is established, appropriate measures will be taken aimed at correcting negative consequences suffered as a result of the retaliatory action.

A finding of retaliation by a member of personnel against an individual because that individual has participated in an oversight activity or made a whistleblower report constitutes misconduct which will lead to appropriate administrative action, including the possibility of disciplinary proceedings.

An adverse decision under the Whistleblower Protection Policy can be appealed to the WIPO Appeal Board and, eventually and if necessary, to the Administrative Tribunal of the International Labour Organization.

The WIPO Ethics Office reports on its activities annually to the WIPO Coordination Committee, composed of representatives of Member States. The Annual Reports of the Ethics Office include statistics on the whistleblower cases reported and are public documents posted on WIPO's website. The reports of the meetings of the WIPO Coordination Committee, at which the Ethics Reports are discussed, are also public documents posted in WIPO's website.

Intellectual property and confidentiality

The Chairman's letter of February 18, 2016, also requested discussion of "the current system of handling intellectual property at WIPO, with a focus on concerns about the confidentiality of such information". There are various dimensions to this request. In order to attempt to address them, copies of the Director General's Report to the October 2015 Assemblies of the Member States and the slides from the Director General's Briefing to Ambassadors in February 2016 are enclosed.

More specifically, it may be noted that all the Organization's services under WIPO's Global IP Systems, more particularly, the PCT, the Madrid System, the Hague System for the International Registration of Designs are delivered through IT platforms, which have facilitated cost-effectiveness (the Organization has not raised fees under these systems in the seven years of the tenure of the current Director General, a record that is unprecedented among the Patent Offices of the world) and the containment of increases in staff numbers (the Organization has less staff than in 2008 and administers twice the workload of 2008). Robust, state-of-the-art information security systems and business continuity plans are in place in respect of these various IT platforms.

[END]

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE CHRISTOPHER H. SMITH,
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SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTER-
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17 February 2016

Dear Mr Ambassador

World Intellectual Property Organisation
OIOS Report into the conduct of Director-General Francis Gurry

As you may know, my firm serves as legal counsel to the Staff Council at the World Intellectual Property Organization (WIPO).

The purpose of this letter is to address you in your capacity of Chair of the General Assemblies of WIPO. The UN Office of Internal Oversight Services' (OIOS) investigation into allegations of serious wrongdoing by the Director General of WIPO, Francis Gurry, has now concluded, and the report of that investigation has now been transmitted to you as the Chair of the WIPO General Assemblies.

It is widely known that the allegations against the Director General include the theft of personal effects from WIPO staff and the subsequent extraction of their DNA, without the staff members' knowledge or consent. It is further alleged that these events occurred without the staff members' legal immunities being lifted or waived in any proper way. As such the allegations, if proven, would appear to entail a serious breach of the Swiss criminal law.

I am now writing very respectfully to ask that you promptly release publicly the

conclusions of the OIOS investigation to my clients and inform all the staff of WIPO of those conclusions, so that the findings made about these allegations may now be known by all. The rumours and speculations about the allegations made against Mr Gurry, and the contents of the report, are circulating not only throughout WIPO but across the city of Geneva and indeed around the diplomatic community as a whole. None of this is desirable. There has been an investigation into the allegations against Mr Gurry; there has been a report about the matter; and the report should be published, so that all rumours may be put to rest.

Any other course would not be fair to Mr Gurry's reputation. He risks being found guilty by innuendo if the conclusions of the report are not now made public. Moreover the staff who work for him have a right to know whether their ultimate manager is guilty of criminal acts against staff or not. Transparency and accountability mandate publication of the report's contents, so that this matter may now reach a conclusion.

Naturally, if the report exonerates Mr Gurry then the organization can put this incident behind it. But if the report is critical of his conduct, and/or intimates that he may have participated in the commission of a criminal offence under Swiss law, then it may be appropriate for him to consider his position: or, if he refuses to do so, then the Member States might wish to be given the opportunity to exercise its mandate to remove him from office. Nothing more can sensibly be said about these issues until the conclusions of the report are published.

Of course as the Chair of WIPO's General Assembly, you will understand that WIPO is obliged to adhere to the highest standards of integrity. The current rumours against Mr Gurry are highly prejudicial not only to him but to WIPO as an institution. Whatever the conclusions of the report are, it is of the utmost import that WIPO's public image does not suffer any further.

Finally, it goes without saying that should you consider it appropriate to redact parts of the report or the conclusions thereof in the interests of protecting witnesses or other persons about whom confidential information is contained therein, prior to passing me a copy of the same, then I would have no objection. I would even be prepared to assist you in the process of redaction, fortified by a professional undertaking under my name (I am licensed to practise law in Switzerland, amongst other jurisdictions) not to share an unredacted draft with my clients until your office and mine had agreed a redacted copy for transmission to the Staff Council.

I rest entirely at your disposition in connection with this matter, and I look forward to hearing from you in shortest order. I respectfully suggest that in light of the forthcoming hearings into alleged misconduct by the Director-General, scheduled for the week beginning 22 February 2016 before the US House Committee on Foreign Affairs in Washington, DC, a most urgent response would be highly desirable.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Parish', with a stylized, flowing script.

Matthew Parish
Managing Partner
Gentium Law Group Sàrl

Copy to:

Chair of the WIPO Coordination Committee

WIPO Regional Coordinators

WIPO Staff Council, CCISUA, FICSA and UNISERV

UN Special Rapporteurs on Freedom of Expression, Freedom of Association
and Assembly and Human Rights Defenders

MATERIAL SUBMITTED FOR THE RECORD BY MR. JAMES POOLEY, ATTORNEY AT LAW
(FORMER DEPUTY DIRECTOR FOR INNOVATION AND TECHNOLOGY, WORLD INTELLEC-
TUAL PROPERTY ORGANIZATION)

<p> To: Mr. Murphy 2: 512 Date: 21 Feb 2013 From: James POOLEY 012 11:02 21 Feb 2013 </p> <p> Dear Francis - As noted, the memorandum provided to you last Friday had not gone through a final check. There were a couple of errors, and some incomplete information. This version corrects those faults. I have included a copy in Track changes to show how this differs from the original. Jim </p>	<p> To: Mr. Pooley Date: 21/2/13 From: Francis GURRY </p> <p> Dear Jim, Thank you. Please don't work on this. Francis </p>
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Date: February 21, 2013

Cc: - Mr. Lei
Mr. Muls
Mr. Beijer
Mr. Kalejs
Mr. Zhao

Subject/ Placing PCT Processing capability in External Offices
Objet:

In response to the Director General's request for input on how best to implement the introduction of PCT processing into a new external office to be established in China, a group was formed consisting of Jim Pooley, Wei Lei, David Muls, Bert Beijer, Kar! Kalejs and Ting Zhao.

In addressing the various IT, HR and systems management issues, we have not always focused exclusively on China, but have assumed that PCT processing may be considered for other external offices at the national level.

Given the organization's increasing reliance on risk analysis as a way to establish and review strategies, we have used risk registers as the framework for identifying and classifying variables. We must emphasize, however, that this analysis is far from comprehensive, and represents only a very high-level look at the choices and attendant risks and mitigation strategies.

To provide context, it may be helpful to back up and consider several options open to the organization regarding the distribution of PCT processing resources outside of Geneva. The first three of these relate to a nationally-based office, while the fourth describes a regional office model.

Option 1: real time connection from the WIPO office into eDossier in Geneva.

Option 2: create an additional instance of eDossier and perform "batch" processing¹ of applications, with processed data delivered to or fetched by Geneva. To start, the system would limit what is processed to a fraction of the whole, for example only post-publication data.

Option 3: incorporate IB processing functionality into ePCT (also a form of batch processing but where the user experience appears real time). To start, the system would limit what is processed to a fraction of the whole, for example, only post-publication data.

¹ As a technical term, "batch" refers to any structure where there is a gap between the front and back ends, preventing direct access into the system. In this sense, "batch" processing could involve hours of locally-collected data that are fetched in bulk, or a system similar to ePCT, in which an intermediary queries the central system for each piece of requested data and similarly performs a mediated delivery.

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Option 4: regional model, with PCT processing located in only two or three external offices as necessary to reflect 24/7 coverage.

The analysis that follows will address most directly Options 1-3, but the implications for Option 4 should be implicit.

ISSUES RAISED: IT, HR, SYSTEMS

In general, we have organized our thinking according to the following sets of issues:

IT and information security: how can the risks of IT coverage and security for processing be managed in a remote location?

HR management: processing requires people, who require management in order to assure the sort of quality that is the hallmark of the PCT; how can a relatively small group be managed from a distance, and what near- and long-term risks arise from local sourcing of personnel?

Systems: closely related to the other two, this area of concern addresses the possible consequences to the PCT system from moving processing away from Geneva into country-based external offices.

MITIGATION: EXTENT OF RELIANCE BY EACH OPTION

The following chart compares the four options according to how much each would rely on the effectiveness of each proposed mitigation.

MITIGATION IMPACTS	OPTION 1 REALTIME	OPTION 2 additional eDossier instance	OPTION 3 Implement IB processing functionality into ePCT	OPTION 4 REGIONAL MODEL
Use outsourced provider for IT control	High	Moderate	Low	Moderate
Make changes to eDossier and IT Infrastructure in Geneva	Low	High	Moderate	Moderate
Limit access to HQ data	High	Moderate	Low	Moderate
Use WIPO personnel only for IT control	High	Moderate	Low	Moderate
Start with 1 mgr and 1 staff, limit to post-pub	Moderate	High	Low	Low
Hire more staff at HQ	Low	Moderate	Low	Low
Send fewer staff, overflow to HQ	Low	Moderate	Low	Low

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Deploy HQ staff on rotation, with close training and communication with local staff	Moderate	Moderate	Low	Moderate
Sick staff overflow to HQ	Low	High	Moderate	Moderate
Hire and train new staff at HQ for 9-12 months	Low	Moderate	High	High
Increase scale (number of total staff)	Low	Moderate	Moderate	High
EO plays regional role rather than national role	Moderate	Moderate	Low	High

RISK REGISTER

The following risk register identifies significant risks in each of the three areas of IT, HR and Systems, identifying proposed mitigation(s) for each. Only risks with a combined likelihood and impact of 6 or more (coded red) are included.

Risks	Threat Source	Likelihood	Impact	Net Rating	Mitigation	Residual Risks	Comments
Loss of confidential data in the EO (IT)	Attacks initiated by entity or individual from outside WIPO	3	3	6	WIPO personnel or outsourced service provider ensure proper control on IT perimeter defense at EO		Safer if sufficient WIPO personnel are available
Loss of confidential data at EO (IT)	Attacks initiated by entity linked to State from outside the host country	3	4	7	WIPO personnel or outsourced service provider ensure proper control on IT perimeter defense at EO		Safer if sufficient WIPO personnel are available
Loss of confidential data at HQ (IT)	Attacks initiated by entity or individual from outside WIPO through EO	3	4	7	WIPO personnel or outsourced service provider ensure proper control on IT perimeter defense at EO WIPO personnel to implement additional control at HQ Limit access to HQ data from EO		Safer if sufficient WIPO personnel are available. Can only limit access to data physically by replicating a subset of the IB dataset

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Risks	Threat Source	Likelihood	Impact	Net Rating	Mitigation	Residual Risks	Comments
Loss of confidential data at HQ (IT)	Attacks initiated by entity linked to Stato from outside the Host country through EO	3	4	High	WIPO personnel or outsourced service provider ensure proper control on IT perimeter defense at EO WIPO personnel to implement additional control at HQ Limit access to HQ data from EO		Safer if sufficient WIPO personnel are available. Can only limit access to data physically by replicating a subset of the IB dataset
Loss of confidential data at HQ (IT)	Attacks initiated by entity linked to the Host government from outside EO but through EO	2	4	High	WIPO personnel ensure proper control on IT perimeter defense at EO WIPO personnel to implement additional control at HQ Limit access to HQ data from EO		Risk best mitigated if all elements (cradle to grave) of EO system set up and maintenance are in WIPO's direct control
Loss of confidential data at HQ (IT)	Attacks initiated by entity linked to the Host government from inside EO	2	4	High	Limit access to HQ data from EO WIPO personnel to implement additional control at HQ		Risk best mitigated if all elements (cradle to grave) of EO system set up and maintenance are in WIPO's direct control
Major system interruptions at HQ (IT)	Attacks initiated by commercial entity or individual from outside EO but through EO	3	3	Medium	WIPO personnel or outsourced service provider ensure proper control on IT perimeter defense at EO WIPO personnel to implement additional control at HQ Limit access to HQ IT infrastructure		Risk best mitigated if all elements (cradle to grave) of EO system set up and maintenance are in WIPO's direct control
Low quality of work at the new EO or complete failure of the scheme (HR)	New recruits at EO are unfamiliar with the PCT process, time difference causes difficulties to resolve urgent issues, or other	3	4	High	Dispatch 2 people from HQ in the 1 st phase, which only deals with post-publication work. One does formalities examination and the other more of a manager but still able to do the work when		If operation still fails, pull back and recalibrate on the need for HQ staff

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Risks	Threat Source	Likelihood	Impact	Net Rating	Mitigation	Residual Risks	Comments
	unforeseen difficulties due to lack of experience in running PCT operations outside HQ				the other person is absent on annual/sick leave. As the IT system becomes more mature and as we gain more experience in EO operations, locally recruited people would be added.		
HQ unable to cope with the current workload (HR)	Sending staff from the already under resourced Chinese team at HQ	4	2		Hire more people at HQ		Budget constraints remain, and timing of transition leaves risk of overload
EO staff under-utilized (HR)	Lack of Scale	3	3		Send fewer people, ship overflow to HQ		Scale problem remains unless EO staff is large
Lack of culture that exhibits international civil service and questionable loyalty to WFO (HR)	Development of mono-culture	3	3		Start with HQ staff first then recruit local staff when the processes are more mature. People sent from HQ would have to rotate after a set period and the locally recruited people would also be required to spend some time at HQ. Regular communications between EO and HQ.		Some element of monoculture will always remain in a country-based office
Inability to cover for sick staff (HR)	Lack of scale	3	3		Ship overflow to HQ		Scale problem remains unless EO staff is large
Chinese colleagues refuse to move (HR)	Preference for Geneva privileges and immunities	3	4		Hire new staff, train for 9-12 months		Long distance managed quality can never be 100%
Confusing roles among RO, EO and IB (system)	Politically motivated Challenge of IB's value if the work could be done in main	2	4		EO plays regional role Rather than national role		

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Risks	Threat Source	Likelihood	Impact	Net Rating	Mitigation	Residual Risks	Comments
	Eos; Confusion from applicants on who to contact -- RO, EO or HQ						
Overall cost greater than current (system)	Lack of Scale	3	3	6	Increase Scale		
Decreased relevance of IB (system)	RO inclination to take over processing	2	4	8	EO plays regional role rather than national role.		All the foregoing risks cannot be completely eliminated with regional model, but will be substantially reduced

IMPLEMENTATION ANALYSIS

On the assumption that option 1 would be considered too risky, and that option 4 is generally well understood but not the focus of the current question, we have addressed our analysis to a comparison of options 2 and 3.

Option 2: In order to get started, the goal from an IT perspective is to remove as much "local dependency" as possible. Therefore, the process would begin with setting up a dedicated server in Geneva, and procuring three laptops for the initial team. These would be set up with an internet connection in the remote location, which is likely to be quite slow but will allow work to be done. In parallel with that, begin work on a robust system, including the building of a synchronizing facility (dropbox), which will require six weeks in order to achieve a "no-frills" minimum functionality. From that point, IT will have to consider experience to date. Under this option, from approximately six weeks from establishment of internet connectivity, we would need a standing commitment of at least six months for a team of at least three: 1 programmer, 1 system administrator and a database administrator (some network administration resources may also be needed) to get to a level of functionality and performance that would be more or less steady state. Locally, beginning at the six week point we would need a dedicated P4 from HQ to do procurement and management, plus one examiner (G6) from HQ plus one or two locally recruited G5 assistant examiners. Depending on experience, it is possible that the P4 could be withdrawn after a year or more, leaving the G6 in charge. One advantage of Option 2 is that we would have some flexibility in locating the server. For example, if it turns out that the internet connection is too slow, we could consider putting the server in the local office, with appropriate controls in place.

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Option 3: Today ePCT has no IB functionality other than viewing the file or adding new documents into a file. Therefore, significant development resources (not yet precisely determined) would be required to replicate the IB functionality identified as needed for external office processing (e.g. post publication processing) in ePCT. A key element of this would be the creation in ePCT of a web-based version of the eDossier image editing tool. From the beginning of the effort, it would take approximately six months to build a version with minimal functionality necessary to allow work to start, again with three laptops at the outset, and the same personnel. For this option, however, the Internet connection is required, and so there is a substantial risk that that connection would be quite slow, depending on local conditions.

Under either option, a detailed workflow needs to be established which would clarify what types of work items will be processed by the External Office staff, how those items will be distributed to them, how they will process them, and how the data will be saved, sent back and uploaded into the IB database. Also, under either option, it should be noted that for some post-publication work we need to perform a translation because of a change in title or abstract, and it is possible that this could be sourced locally.