

Commission on Intellectual Property Rights

Background Paper for Study 9: Institutional Issues for Developing Countries in IP Policy-Making, Administration and Enforcement

A Model Intellectual Property Institutional Framework for Developing Countries

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A MODEL INTELLECTUAL PROPERTY INSTITUTIONAL FRAMEWORK FOR DEVELOPING COUNTRIES

INTRODUCTION

1. The paper proposes a model intellectual property institutional framework for developing countries, particularly Least Developed Countries (LDCs), based on observations and experiences at a point approximately half way through the ten-year period of transition under the terms of the 1995 Agreement on Trade-Related Aspects of Intellectual Property (the TRIPS Agreement).
2. In the absence of published literature that could provide a basic but useful institutional overview of intellectual property (IP) institutions, the proposed model may serve as a starting point for discussion and debate. As developing countries are beginning to face the implementation and operation of TRIPS-compliant IP regimes, such discussion will hopefully contribute to a compilation of practical experiences and knowledge that will prove useful in the further creation and modernization of effective IP institutions.
3. It is emphasized that the present focus is on the design of the institutional framework as a component part of a broader national system of intellectual property rights. Experience during the half-decade following TRIPS has demonstrated that the “modernization” of IP laws and the drafting of new laws to meet TRIPS standards, and their implementation, has been an onerous task for developing countries. The drafting of these laws has been largely completed. The development of regulations and detailed procedures to enforce these laws judicially and administratively, including at borders, is under way. The present model is intended to contribute to the creation of effective institutions and agencies that will be responsible for granting and recording IPRs as part of the total global IP system.
4. The proposed model has been designed in accordance with criteria and assumptions set out below. It is emphasized that there is no “cookie cutter” approach to establishing national IP institutions. The adoption of developed country models often presents its own difficulties, largely because these institutions are themselves evolving as they try to cope with increasing workloads, changing roles and the impacts of information and communications technologies.

5. Article 1 of the TRIPS Agreement, in the third sentence, reads: “Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.” For every design criterion and assumption set out in this paper there exists a potentially broad range of “sub” criteria and assumptions that would need to be considered in the creation of each individual national institution. That is beyond the scope of this paper. In the final analysis, the most effective IP institutional framework for each country will be unique.

6. Finally, the proposed institutional model attempts to address the specific needs of developing countries to manage the balance between the “rewards” incentive of IPRs and the need to encourage imitation and the diffusion of knowledge into and within the country.

MODEL DESIGN CRITERIA

7. The model endeavors to cover the essential institutional capacity across both public and private sector institutions necessary to ensure:

- compliance with the WTO TRIPS Agreement and
- a reasonably functional intellectual property system from the perspective of rights holders (both foreign and national) and consumers.

COMPLIANCE WITH THE WTO TRIPS AGREEMENT

8. The TRIPS Agreement, Part II, establishes minimum standards of protection for the following forms of intellectual property¹:

- copyright and related rights
- trademarks
- geographical indications
- industrial designs
- patents²
- layout-designs (topographies) of integrated circuits
- protection of undisclosed information

¹ Article 1.2 of the TRIPS Agreement defines “intellectual property” for the purposes of the Agreement.

² TRIPS Article 27 3 (b) requires Members to provide protection for “plant varieties” either by patents or by an effective *sui generis* system or by any combination thereof.

9. The Agreement sets out the subject matter that is protectable, including rights conferred and exceptions to those rights, as well as specific minimum provisions on duration, coverage and criteria for protection. The Agreement also addresses licensing and assignment conditions for some of these rights (e.g. patents and trademarks) and, in addition, addresses the control of anti-competitive practices in contractual licenses.

10. The TRIPS Agreement, Parts III, IV and V address the areas of Enforcement, Acquisition and Maintenance and Dispute Prevention and Settlement, respectively, in regard to intellectual property rights.

11. Additionally, under “Objectives”, the TRIPS Agreement states that:

“The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.³”

... and, under “Principles” the Agreement states that:

“Members may, in formulating or amending their national laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.⁴”

12. Article 1 of the TRIPS Agreement, the third sentence reads:

“Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.”

At the same time, it is useful to note the wording of the preamble to the Agreement, particularly the following three statements:

“... Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

³ Article 7 of the TRIPS Agreement

⁴ Article 3,1 of the TRIPS Agreement

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base; ...”

13. These statements, along with Articles 7 and 8.1 help to establish a context for a balanced consideration of the interests of owners of intellectual property rights (IPRs) and TRIPS Members’ domestic socio-economic development objectives, in the design of IP agencies and institutions.

A REASONABLY FUNCTIONAL INTELLECTUAL PROPERTY SYSTEM FROM THE PERSPECTIVE OF RIGHTS HOLDERS (BOTH FOREIGN AND NATIONAL) AND CONSUMERS

14. This design criterion requires the model intellectual property institution to be able to effectively administer a nation’s IP laws, where the laws and the manner in which they are administered are both TRIPS compliant. At the same time, the model must recognize that “effectively” includes within its meaning cost effectiveness as well as functional effectiveness in meeting national developmental objectives and goals.

15. The model provides that the numerous options and flexibilities that are part of the TRIPS Agreement will be exercised by a nation to the degree and in a manner that will reflect the nations “absorptive” capacity, in terms IP administration and enforcement, and will best serve to meet domestic developmental objectives.

16. The statement in the TRIPS Preamble: “... Recognizing that intellectual property rights are private rights; ...”, suggests that the institutional model should lean towards administration of laws that emphasize a civil rather than a criminal justice system, thereby reducing the enforcement burden on the institution and the government.

17. The model proposes an institutional arrangement that:

- avoids the needless⁵ duplication of effort that has already been expended in other nations, particularly with respect to determining that applications meet established standards and criteria for protection. (e.g. patent search and examination would be minimized through adherence to the Patent Cooperation Treaty, trademark registration would be simplified through membership in the Madrid Agreement or Protocol, while industrial design

⁵ Limited duplication of certain effort, such as searching patent literature may be desirable and necessary in order to ensure that the searching and technical skills are available and up to date within the nation. This may be important in facilitating access by nationals (e.g. researchers, industry, academics, etc.) to both national and international patent databases.

protection could be facilitated through membership in the Hague Agreement, etc.)⁶; and

- imposes minimum administrative burdens in that national IP laws reflect “minimum” requirements for TRIPS compliance (e.g. no copyright registration system will be implemented and layout-designs of integrated circuits and Geographical Indications are treated in the same manner as copyright or, at most, are objects of voluntary registration).

18. The proposed model is designed for administration of a national intellectual property system that must “fit” into or “connect” with the global IP regime while balancing the interests of owners of IPRs with those of users. The great majority of nations are net importers of patented technology and creations protected by copyright and well-known trademarks. To a large extent therefore, the activities of governmental IP agencies center on the acquisition, recording and dissemination of information needed to establish and enforce IPRs held primarily by foreign owners. To permit effective enforcement of the IPRs that are granted, including a small but steadily growing proportion to nationals, the IP institutions must ensure that close linkages are created and maintained with the judicial institutions and the various enforcement authorities that play a role. The IP institutional model therefore proposes the maximum use of Information Technology (IT) for its operations.

BASIC ASSUMPTIONS

19. The design of the model is based of the following broad assumptions:

- Small to mid-sized low income developing country in Asia or Africa;
- Low level of domestic intellectual property creation;
- Low level of professional (technical and legal) staff available locally; and
- Low level of recurrent budget resources.

These assumptions are taken together. It is self-evident that one or more of the individual assumptions may not hold true when examined in the context of individual developing countries or LDCs.

SMALL TO MID-SIZED LOW INCOME DEVELOPING COUNTRY IN ASIA OR AFRICA

⁶ The WIPO Membership lists for the PCT, Madrid and Hague are attached as Annex F.

20. The United Nations Conference on Trade and Development (UNCTAD) lists 49 countries as Least Developed Countries (LDCs) in 2001. The criteria underlying this list of LDCs are:

- low income, as measured by GDP, per capita (presently below US \$800);
- weak human resources, measured by a composite index including *inter alia* combined primary and secondary school enrolment and adult literacy;
- low level of economic diversity as measured by a composite index including, *inter alia* share of manufacturing in GDP, the share of the labour force in industry and UNCTAD's merchandise export concentration index.

21. Of the forty-nine countries listed, forty-one are members of the World Intellectual Property Organization (WIPO). Of the forty-nine, eight are also members of OAPI⁷ (out of a total of eleven OAPI member states) and ten are members of ARIPO⁸ (out of a total ARIPO membership of fifteen states).

LOW LEVEL OF DOMESTIC INTELLECTUAL PROPERTY CREATION

22. WIPO statistics on IP applications and registrations in Member States are available for the year 1999⁹. For LDCs, the statistics indicate that, on average, less than 6% of trademark registrations were effected¹⁰ in the name of nationals. In other words, over 94% of trademarks were registered by foreigners.

23. The number of trademarks registered in LDCs during 1999 in this manner ran from less than 10 (zero in one case) to approximately 1,300 Madrid designation (in the case of 4 countries) and 100 to 1,200 national registrations (in the case of 9 countries). It

⁷ OAPI (African Intellectual Property Organization) is a regional industrial property system of mainly French-speaking countries that issues patent rights on behalf of and in the name of its members. OAPI's mandate extends also to the collection, publication and dissemination of patent documentation and the delivery of a program of outreach and training activities aimed at ensuring that the patent system contributes to the technological development of members.

⁸ ARIPO (African Regional Industrial Property Organization) is a regional industrial property system of mainly English-speaking countries that complements the national industrial property systems of member states by allowing the filing of one application for trademarks, patents or designs with effect in all designated Member States. Objectives of ARIPO focus on cooperation in the area of industrial property in order to achieve technical advancement and economic and industrial development of member states. Activities are aimed at harmonization and development of industrial property laws and establishment of "common services or organs" for coordination, harmonization and development of IP activities, training, etc.

⁹ WIPO Intellectual Property Statistics (Publication A) for 1999 may be found on the Internet at <http://www.wipo.org/ipstats/en/>.

¹⁰ Registrations effected reflect applications filed in LDC offices directly (national filings), as designations under the Madrid Agreement or Protocol, or through ARIPO.

is noted that in the same year trademark registrations among developing countries ranged from several thousand to almost 116,000 (110,000 national and 6,000 Madrid) in China.

24. For the purpose of designing the model, it is assumed that direct “national” trademark registrations may be approximately 2,000 per annum and that Madrid designations effected will increase to approximately 4,000 per annum.

25. With regard to patents, the referenced WIPO statistics reflect that LDCs are being “designated” under the PCT in relatively large numbers (i.e. ranging from 14,000 to over 80,000¹¹ in some countries) but that, to the date of the report (1999) none, or very few (e.g. 30 or less) had been granted in those countries. At the same time, LDCs, as a group, saw less than 1.5% of patents granted to nationals (i.e. almost 99% of patents are granted to foreigners). It should be noted that, during the same year, the numbers of designations and grants among developing countries (including large DCs) generally fall within the same numeric range. Thus, there is no reliable model for projecting what proportion of “designations” will eventually enter the national phase as applications, particularly for LDCs.

26. For the purposes of the model, the capacity to accept up to 100 national patent application filings and record up to 50,000 PCT designations (directly or through ARIPO or OAPI) is proposed.

LOW LEVEL OF PROFESSIONAL (TECHNICAL AND LEGAL) STAFF AVAILABLE LOCALLY

27. Generally the availability of technical (scientific and engineering) and legal expertise tends to be in very short supply in LDCs as well as in many developing countries. Where legal expertise does exist, it is generally not well versed in matters relating to the acquisition or maintenance of IPRs. Technical skills are also in short supply and with government salaries invariably well behind those in the private sector, IP authorities find it extremely difficult, if not impossible, to attract and to retain scientists and engineers to join IP offices.

28. In developing countries there is generally a greater availability of IP legal expertise, particularly in the trademark field. In exceptional cases such as India, for example, there are numerous firms with agents and attorneys well qualified and experienced in acquisition and litigation of all available forms of IPRs (in India and also abroad). Even in larger and relatively advanced developing countries, however, there is a shortage of technically trained people who are prepared to consider working for government IP authorities. The salaries offered by private sector organizations, including patent and trademark agent firms and other governmental agencies such as research institutions, are generally more attractive than those of patent and trademark offices.

¹¹ These may include utility models or design patents.

29. The institutional model is based on the assumption that there is a shortage of appropriate technical and legal skills available locally and that, in any event, the salaries offered in the public sector are not competitive with salaries for similar skills in the private sector.

LOW LEVEL OF RECURRENT BUDGET RESOURCES

30. Intellectual property administrations in even relatively advanced developing countries, and certainly in LDCs, where such exist, tend to be seriously under funded. Traditionally, IP institutions have been poorly understood within government bureaucracies and their operations have been accorded low priority. Where such institutions do exist, the fee revenues that they generate are generally directed to consolidated revenue funds of treasury departments. With very few exceptions, most existing IP offices operate on annual budgets that are allocated by the ministries to which they report, or by government treasuries.

31. To the extent that TRIPS compliance requirements have served in recent years to highlight the role of IP offices, states have begun efforts to modernize them or, where none existed, to establish them. Frequently these efforts have encountered difficulties, usually caused by inadequate budgetary resources. The lack of adequate resources is itself not due to a lack of income from fee revenues (actual or potential) but is often attributable to:

- a lack of understanding of the importance role and functioning of national IP offices on the part of responsible ministries or treasuries; and
- the inability of management of IP institutions to make an effective case for increased resources.

32. The institutional model proposed sets out one option (Annex B) for auto-financing through a scheme of fee-revenue retention.

FUNCTIONALITY OF THE MODEL

33. In light of the “design criteria” and the “basic assumptions” set out above, the proposed institutional model is designed to provide developing countries with IP institutions that:

- create IPRs having the highest possible presumption of validity;
- at low costs of acquisition and maintenance;

- at low costs of enforcement; and
- with maximum return in terms of making available scientific and technical knowledge to nationals.

The proposed institutional model must also provide the “functionality” as discussed below.

POLICY AND LEGISLATION DEVELOPMENT

34. The creation of IP policy in most developing countries, particularly LDCs, is driven by ministries that have lead responsibility for international trade and/or foreign affairs. These lead ministries manage national participation in WTO/TRIPS and WIPO matters. Other key participants are ministries of industry, commerce, science and education or culture (for copyright and related rights). IP administrators, in most cases, have input to the policy development process at a third level, through the ministry to which they report. At an operational level, national IP offices often have well established direct linkages with WIPO.

35. With regard to the development of legislation and regulations, there is generally a much greater involvement of IP office experts. In developing countries where such offices exist, the responsibility for preparation of draft new legislation (as well as amendments) often falls to those offices.

36. Recent experience in efforts to modernize IP laws and the institutions that must administer these, suggests that there is an undesirable discontinuity in the continuum from the development of trade policy to operational IP policy (as reflected in IP legislation), and then to the implementation of the latter through regulations and office procedures. This is particularly evident in difficulties being experienced in some states in establishing or revising IP office organization and operating procedures to encompass and reflect broader national IP policy objectives.

37. In terms of the institutional model proposed, it is recommended that a policy and international relations unit, in the case of a small office, should be located in close proximity to the office (e.g. in the responsible department or ministry). In the case of a larger (and financially autonomous) IP agency, this unit would be a part of the agency itself. In either case, the goal should be to make the policy unit become the national center of IP expertise that would provide policy and legal advice to the office and also to other ministries and the government, on matters relating to intellectual property.

38. It is not uncommon that bureaucratic tensions may develop between national industrial property (e.g. patents and trademarks) policy interests and those whose primary interest may relate to copyright and neighbouring rights policies. The copyright area generally has a more diverse national policy constituency than may be the case for

industrial property. In addition to economic issues, copyright policy development must also address cultural, educational, communications and other matters.

39. From an operational perspective, there are significant economies and advantages to be gained by treating some industrial property subjects such as integrated circuit topographies, plant varieties (or plant breeders) rights and industrial designs in the same way as is done in some countries that maintain computerized copyright registration¹² systems. In the final analysis, computerized IP registrations systems are fundamentally very similar.

40. There is a very important role to be played by private sector interests in the national IP policy and legislation development process. The nature of IPRs and the ways in which they will need to be enforced continue to evolve rapidly. The scope of subject matter under IP continues to expand to encompass computer software, computerized business methods, databases, higher life forms, etc. At the same time, enforcement must be increasingly carried out in the borderless world of the Internet. In this environment it becomes particularly important to involve all players in the policy making process early and consistently. Thus, chambers of commerce and industry, consumer groups, environmental interest groups and others, need to be factored in to the policy development process.

41. The present model proposes that governments and IP institutions should encourage and, if necessary, support the establishment of private sector organization that can contribute to the policy and legislative development processes. Such groups may range from specialized IP “think tanks” or “institutes”, to associations of IP attorneys, copyright “collectives”, inventors (and their associations), academics, industry and trade associations, chambers of commerce, etc. Annex D sets out a matrix of proposed linkages between a model Intellectual Property Office and key stakeholders in the national IP system.

PUBLIC EDUCATION AND AWARENESS RAISING

42. The importance of public education and awareness raising cannot be overstated. If the IP system is to work to the benefit of the nation, then those who exploit, or should exploit this system, must be aware of it and know how to use it. This includes the business, industrial, academic and R&D communities, and also the general public. Consumers can be “morally selective when it comes to purchasing counterfeit goods, and frequently view the pirating of clothing and CDs as soft crimes”¹³. The public, as consumers, need to understand the benefits of respecting IPRs and the negative

¹² Copyright registration is voluntary in accordance with the TRIPS Agreement and the Berne Convention.

¹³ “Counterfeiting in the new millennium”. (ICC Commercial Crimes Services, London, 13 January 2000)

consequences of IP piracy and counterfeiting and will therefore need to be persuaded to refuse to knowingly purchase counterfeit goods.

43. The proposed model places the primary responsibility for enhancing public awareness and understanding of intellectual property on the national IP institution itself. As the national IP authority, the institution has the obligation and mandate, and must have the resources needed to ensure that IP laws are effectively administered. This in turn means that all those affected, including the owners of IPRs (and their legal representatives), would-be owners of IPRs and the general public (as consumers), should have the clearest possible understanding of the IP system and the rules that govern its operation.

ENFORCEMENT (CUSTOMS, POLICE, JUDICIARY, BOTH CIVIL AND CRIMINAL ASPECTS)

44. The arguments underlying the importance of public education and awareness raising set out above apply equally to the judiciary and enforcement authorities.

45. As mentioned at the outset, the proposed model emphasizes the “private” nature of intellectual property and therefore leans heavily towards supporting the resolution of disputes between parties under civil law. Therefore the model emphasizes the granting of IPRs with a high presumption of validity, the keeping of accurate and readily accessible registries and records and the correction of defects in IPR titles through administrative rather than judicial means (where possible).

46. These same characteristics of the model institution are also intended to support the undertaking of effective criminal actions when such are called for. Thus, for example, to support customs authorities, the police and the judiciary to apply criminal procedures and penalties in “cases of willful trademark counterfeiting or copyright piracy”¹⁴, the IP authority must maintain accurate, up-to-date and readily accessible¹⁵ registries and records.

47. In addition to the registry operations of the institution, the model proposes that, to support enforcement of IPRs, the IP authority is well placed to contribute to the funding and delivery of programs to train and qualify legal representatives (i.e. attorneys and agents) of IPR owners, representatives of enforcement authorities including the police and customs officials, as well as public prosecutors and judges.

¹⁴ See TRIPS Article 61.

¹⁵ It may be useful, for example, to give customs authorities access to computerized trademark registers at points where counterfeit or pirated goods may enter the country.

48. The model does not explicitly address the enforcement of copyright. Enforcement of copyright and neighbouring rights is generally the responsibility of the owner. The collective enforcement of copyright through creation of national societies of authors, composers, performers, etc., has proven to be very effective and continues to grow in importance. In the case of willful piracy and counterfeiting on a large scale, the state's enforcement agencies, including, police, customs authorities, etc., would come into play.

49. In the event that a country chooses to implement a voluntary registration system for copyright, then such registry should be maintained in the IP agency. In this case, the same requirements with respect to accuracy and access to information from such system would apply, whether for individual or collective enforcement of copyright and effective resolution of disputes before the courts.

CONTROL OF ABUSES AND ANTI-COMPETITIVE PRACTICES

50. The Paris Convention (1971):

- Article 10bis requires that: Countries of the Paris Union must assure nationals of such countries effective protection against unfair competition and then defines unfair competition and specifies certain acts that must be prohibited.
- Article 10ter(1) requires countries to assure to nationals of other (Paris) countries appropriate legal remedies to repress acts referred to in Articles 9, 10 and 10bis.

51. The TRIPS Agreement incorporates the Paris Convention, by reference, and adds to 10bis specifics regarding:

- Protection of Undisclosed Information (Article 39).
- Control of Anti-Competitive Practices in Contractual Licences (Article 40).
- Border Measures for counterfeit trademarks or pirated copyright (Part III - Enforcement).
- Criminal procedures for counterfeiting and piracy (Article 61).

Further, the WIPO Model Law on Marks, Trade Names, and Acts of Unfair Competition, sets out a series of practices that constitute “unfair competition”.

52. The broad issue of the linkages between intellectual property policy and competition policy (e.g. restraint of trade and anti-competitive practices, including monopolies) is recognized and addressed in the institutional model by ensuring the close proximity of IP operational activities to IP policy and legislative expertise. The IP policy

center would be expected to maintain a close and ongoing relationship with those entities in government and abroad that have links to IP policy¹⁶.

53. At the same time, it is recognized that the relationship between IP policy and competition policy is dynamic and evolving in many nations. Effective communications links need to exist between the authorities responsible for these, within countries and internationally. In some developed countries IP and competition policy are both viewed as part of “marketplace framework” legislation and may be co-located in the same government department or ministry.

54. For the model institution, the issue of abuses and anti-competitive practices is addressed by ensuring that registries (e.g. computerized databases) that accurately and comprehensively reflect the legal status of ownership of IPRs exist in the nation and are readily accessible to both enforcement agencies and the public.

PROMOTION OF TECHNOLOGY TRANSFER

55. The need for developing countries to derive increased economic benefits from adoption of TRIPS Agreement conditions for protection and enforcement of IPRs underlies the design of the proposed model institution. It is emphasized that there are several facets of complementary and equal importance to the administration of national IP regimes that must be taken into account to ensure that such economic benefits are efficiently and effectively derived.

56. There is considerable evidence, based on the experiences of developed and larger developing countries that an effective IP system of modern, enforceable laws contributes to increased transfer of technology into the nation. The OECD reported¹⁷ in a survey that IP problems are among the most significant barriers to foreign companies undertaking licensing to developing countries. Overcoming some of these problems would presumably create employment, increase tax revenues, improve trade, etc.

57. There is also growing evidence that the ways in which national IP regimes are administered, particularly in developing countries, is an important factor in influencing the degree to which such technology transfer takes place. Thus, the registration of IPRs that have a high presumption of validity, in a timely and cost-effective manner, and that are enforceable and therefore lead to an enhanced climate of confidence for investment, is one facet of an effective IP regime. Secondly, and equally important, is the administration of the national system in a manner that will ensure that the technological

¹⁶ Examples include but are not limited to: competition policy, trade policy, industrial policy, science and technology policy, health policy, agricultural policy, cultural policy, education policy, etc.

¹⁷ Economic Arguments for Protecting Intellectual Property Rights Effectively, OECD, TC/WP (88), (1989)

information that is disclosed as part of the patenting process is useful, complete and easily accessible to those nationals who can make use of it. The latter aspect of an institutional framework (i.e. patents as a source of technological information) leads to a broadening of focus from the traditional “granting of exclusive rights” to activities that will also contribute directly to national economic development goals: the transfer of knowledge and technological information into the state.

58. The model institutional framework therefore calls for the national IP agency to have a mandate to actively diffuse the technical information that is obtained in exchange for the granting of patents to individuals and organizations that can, and should, exploit such information in the interest of accelerating the economic development of the country. Thus, the national IP institution would be at the center of an electronic patent information and documentation network that would be connected to the research and development, academic and business communities, as well as being directly accessible to interested individuals.

59. Finally, if a state decides that it will maintain an agency that will monitor and record technology transfer (e.g. technology licensing) agreements and transactions, then it may be useful for such agency to have ready access to IP records and registers, much as was suggested in the case of customs authorities, above. In some countries the organization that is responsible for recording technology transfer agreements is organizationally located near or in the intellectual property agency¹⁸.

PARTICIPATION IN INTERNATIONAL RULE MAKING

60. Experience has shown that the participation of IP institutions in developing countries and LDCs in international rule making varies widely. In the case of some developing countries, including larger one, the IP institutions focus almost exclusively on day-to-day operations for receiving and disposing of applications and registrations. Some, but not all of these, participate to a limited extent in international rule-making activities by contributing to the development of national positions on various issues and then participating as a member of the national delegation to WIPO meetings and conferences (including diplomatic conferences), WTO meetings (including accession meetings) and regional meetings (e.g. ASEAN, SAARC, etc.). In other cases, IP offices play a key role, as IP experts, in supporting national efforts and pursuing national interests in regional and international rule-making fora.

61. In the case particularly of LDCs where national IP institutions exist, these attempt to play whatever role they are able to. Often this may be constrained by lack of travel budget, notwithstanding WIPO funding support in this area. In some instances the

¹⁸ This is, for example, the case in the Philippines, where the technology transfer registry is a part of the intellectual property office.

national IP agency may not have on staff personnel with the skills needed to effectively represent the nation's interests in international fora. In other instances still, where a national IP agency may or may not exist, considerable IP knowledge and expertise may reside with one or two key policy advisers in departments ministries (outside of the agency itself) that have responsibility for IP matters (e.g. foreign affairs, trade, etc.).

62. The institutional model proposes that the IP policy unit described above, should ensure that there is appropriate involvement of IP authorities and private sector interests in the national efforts to contribute to international rule making. At the same time, such participation would generate benefits that would lead to better and more effective administration of IP laws in the domestic interests.

IDENTIFICATION OF OPTIONS

REGIONAL COOPERATION (E.G. MEMBERSHIP OF ARIPO, OAPI OR SIMILAR)

63. TRIPS obligations to provide protection for layout topographies of integrated circuits, plant varieties, extensions of copyrights and related rights, in addition to broader scope for traditional patents and trademarks (e.g. Geographical Indications for wines and spirits) has expanded the scope of subject matter that must be addressed by IP institutions.

64. The growing volumes of applications for IPRs (e.g. globally patents number over 40 million and are increasing at a rate of approximately 1 million applications per year) means that offices must adapt to processing these volumes of new applications and the growth of registries and searchable databases of IPRs that this means.

65. The growth in volumes is attributable not only to new kinds of IPRs and the increasing importance of those IPRs but also to the greater ease of applying for those rights through regional and international cooperation agreements. Regional IP institutions such as the European Patent Office, the Eurasian Patent organization, OAPI and ARIPO, overlaid by international agreements such as the Madrid Agreement and Protocol (trademarks) and the Patent Cooperation Treaty, are causing huge increases in "filings" in member countries and, at the same time, are helping to reduce the processing impact of such increases on member states. As the number of members of Madrid and PCT continues to increase, the total number of trademarks registered and patent applications created continues to grow at an accelerated rate. In the final analysis, the task of processing such workloads can best be handled through cooperation and by rationalization of procedures by the members of these same organizations and agreements.

66. The model institution therefore proposes that:

- the nation should become a member of both PCT (patents) and Madrid Protocol (trademarks) if it is not yet a member of either, and
- the nation should consider seriously the benefits of cooperating with others, in a regional context if such makes sense, in sharing the common work relating to the promotion, granting and enforcement of IPRs and the dissemination of information.

INTERNATIONAL COOPERATION (E.G. MEMBERSHIP OF PCT)

67. As mentioned above, PCT and Madrid are keys to increasing exploitation of IPRs and also to managing the work involved for members in processing the resulting increased filings. These benefits will accrue if national institutions are designed with this in mind. Where there are no “legacy” IP institutions in existence, particularly in patents, this may be more straightforward than in the case where patent operations already exist. Experience in both developed and developing countries has taught that it is often harder to “change” an institution than to create a new one.

68. As mentioned earlier, the needless duplication of work relating to application processing, searching, formalities and substantive examination, publication, registry building and maintenance should be minimized. As was also noted, there may be instances where some repetition of activities such, as searching, are beneficial in contributing to the development of domestic skills and talent and would therefore not be viewed as being “needless”.

69. The present institutional model proposes, as already noted, that international cooperation should be maximized through membership in international IP treaties and agreements. To fully benefit from such membership in the case of the PCT, it is important that the national institutions should accept and adopt, as much as possible, the results of the searches conducted by International Search Authorities (ISAs) and the preliminary “no-binding” opinions on patentability based on such searches from International Preliminary Examination Authorities (IPEA’s), both under the PCT.

70. In the final analysis, it is important to note that from 98% to 100% of patent applications filed in LDCs arrive via the PCT or PCT/Regional Office route, requiring minimal original work to be done by member national offices.

OUTSOURCING (E.G. USING FOREIGN PATENT OFFICE FOR PATENT EXAMINATION)

71. Beyond the effective “outsourcing” of search and examination that results from membership in a regional IP treaty or the PCT and Madrid, the outsourcing of work in a bilateral context is being evaluated informally by patent offices in several developing countries. Such outsourcing generally involves the novelty search and substantive examination of “national” patent applications. These are usually applications that are filed by nationals directly, not through PCT or a regional treaty and without the benefit of “priority¹⁹” under the Paris Convention.

72. For patents, the model assumes a maximum of 100 national “direct” patent applications per year. These are the applications that may be considered for outsourcing of search and/or examination. Under the WIPO Cooperation for Development Program, a number of developed countries provide limited numbers of free-of-charge patent novelty searches for developing countries, primarily through regional cooperation programs. The experiences of this WIPO activity warrant examination to determine the cost and effectiveness of such searching as an outsourcing option.

73. For trademarks, the model assumes a direct national filing rate of 2,000 per annum and a Madrid designation rate of 4,000 per annum. Given that the determination of “distinctiveness” of trademark applications is relatively straightforward (when compared to patent applications) and that trademark applications are, for the most part, closely tied to language and culture, these volumes should not require outsourcing of work.

74. Outsourcing need not be restricted to foreign patent offices and International Search Authorities. Consideration may also be given to the use of private sector firms and individuals, including commercial search organizations and former employees of patent and trademark offices.

EXPANDING ROLE OF PRIVATE SECTOR AGENCIES IN ENFORCEMENT

75. The expanding role of private sector agencies in enforcement of IPRs is best illustrated by the rapid growth in the collective administration of copyright and neighbouring rights in developing countries and by the growing use of Alternative Dispute Resolution (arbitration and conciliation) to resolve patent disputes.

76. Collective societies are organizations that administer the rights of copyright owners. They can grant permission to use the works of copyright owner-members and set the conditions for such use. Collective administration is common throughout developed countries and rapidly expanding in developing countries, particularly for music performance rights, reprography rights and mechanical reproduction rights. Many

¹⁹ Patent applications that exercise Paris Convention priority would often be expected to have the results of foreign prosecution available that would assist the national office of a developing country in determining patentability.

national collective societies are affiliated with foreign societies, allowing them to represent the interests of foreign copyright owners in the country. Generally, the operations of collective societies are monitored and regulated by national governments.

77. WIPO administers the WIPO Arbitration and Mediation Center²⁰ in Geneva. The Center was established in 1994 and offers arbitration and mediation services for the between private parties. The services of the WIPO Center have been used effectively to settle cross-border disputes in technology, entertainment and other areas involving intellectual property.

COST-RECOVERY OPTIONS (E.G. TIERED USER FEES; % OF COMPENSATION AWARDS, ETC.)

78. Several cost-recovery options warrant consideration for IP institutions. The preferred option has been to have the so-called “users” pay a fee for the IPR that is being sought. In most developed countries the “user” has traditionally been considered to be the applicant/owner of the IPR. As a consequence, application and registration fees have been set to at least cover the cost of the work expended by the national IP agency in processing such applications and registrations. It would not be unreasonable to assume that over time, the relationship between IP fees and actual costs of processing work has blurred to the point where such relationship may no longer exist. The consequence of this is that there are many countries, particularly among developing countries, where IP institutions are grossly under funded, as evidenced by IP fee incomes to national treasuries that are several times greater than the operating budgets allocated to these institutions, while work backlogs grow.

79. To ensure that the costs of using the IP system is not a deterrent to domestic innovation, particularly for individuals and small enterprises, there is an increasing adoption of “tiered” user fees, particularly with respect to patents. Often called “small entity” fees, these are significantly lower than (e.g. 50%) regular prescribed fees and generally apply to filing of applications, requests for search and examination, granting of patents and the annuities required to maintain patents in force. Tiered fees must meet TRIPS requirements in that national treatment provisions must be respected. Experience has demonstrated that most beneficiaries of “small entity” fees are domestic innovators and applicants.

80. An issue that should be addressed and resolved early in the examination of cost-recovery is the definition of “user” in the concept of user-fees. As noted above, the traditional view has been that the user of the IP system is the applicant or owner of IPRs. The consequence of this has been that IP owner interests (including those of the lawyers and agents that represent them) were also central to the IP agencies that received these

²⁰ The Center may be located on the Internet at: <http://arbiter.wipo.int/center/>.

fees. Any consideration by an IP agency to “divert” fee revenues to such “public good” activities as enhanced IP awareness, training and education, were often met with great resistance by the “fee payers” who were first and foremost concerned about the need to improve service level such as turn-around times during the prosecution of applications. This situation has begun to change as the balance between private and public interests in the rapidly expanding international IP system continues to be more closely examined.

81. The question of whether or not cost-recovery principles should be applied to improving the funding and the capacity of public law enforcement agencies is not exclusively an IP issue. The IP enforcement activities of customs, police and other authorities are generally a small part of their total activities. Whether financial penalties prescribed by courts as a result of these enforcement activities would be in amounts sufficient to contribute to enhancing such activities is not easily determinable.

82. In terms of the proposed model, the preferred funding option is to exploit user fees, in the context of business-like operations as discussed below.

**OTHER OPTIONS WHICH WOULD REDUCE COSTS OR INCREASE
EFFECTIVENESS/FEASIBILITY**

83. In many countries efforts are under way to modernize and improve the cost-effectiveness of the delivery of government programs and services. In this environment of “reinventing” government, national IP institutions have successfully exploited opportunities to improve their own effectiveness and efficiency. Among the successful approaches has been the elimination of various bureaucratic controls by government in return for a commitment by the IP institution to “improved performance”. This approach has led to greater service orientation and a client-centered approach to administration of IP agencies. In its simplest form, this approach is intended to adopt the best business-like practices of the private sector and to apply these to the delivery of government programs.

84. The transformation of an existing IP institution into a modern, business-like operation is a significant undertaking. The investment of time and effort to undertake what essentially amounts to a “culture change” has been found worthwhile where it has been done. Among the benefits have been increased financial and management autonomy along with clearer accountability for effective performance and results. To make a successful transition towards such “autonomous” agency status requires an initial investment of time and resources that may not be justifiable (in terms of the long term return on such investment) in the case of very small organizations. In larger IP organizations, however, experience has shown that significant gains can be made.

85. The proposed model institutional framework therefore sets out two alternatives. The first (Annex A) would be a preferred option for small (i.e. basic) IP institutions.

Such basic organizations would focus primarily on the operation of IP registries²¹ and would not have internal resources to contribute significantly to national IP policy and legislation development and would not be required to administer substantive search and examination functions but would rely almost totally on international treaties and foreign cooperation for these.

86. The alternative model institution (Annex B) is proposed as a preferred option for larger (i.e. advanced) IP institutions. This model presents a financially and administratively “autonomous” IP agency. The agency would carry out some minimum levels of substantive search and examination of IP applications and would maintain registries for all IPRs. The institution would be accountable to government through a board of directors for results-oriented business-like operations. The range of activities of the agency would include policy and legislation development²², representation of the nation on IP matters at the international level, the funding and/or delivery of national IP awareness, educational and training programs, and the active diffusion of technological and business information to nationals.

IDENTIFICATION OF RECURRENT COSTS AND REVENUES

RECURRENT COSTS OF VARIOUS AGENCIES

87. The magnitude of recurrent (operating) costs of IP agencies is determined primarily by the nature and size of the human resource components of the agencies. Generally, the salaries paid to employees account for the largest part of operating cost. If a national IP institution includes the functions of substantive examination for patents and trademarks, as part of the process for granting IPRs, the salary component may be up to 70% of the annual operating cost. The salary component is often inflated by the high cost of retaining qualified scientist and engineers as patent examiners, and lawyers in trademark operations. On the other hand, a national IP institution that chooses to maintain registry operations only, without substantive examination, may be able to significantly reduce the high salary component. In either case, costs of enforcement activities are not included since these are incurred by the enforcement agencies themselves.

88. Variances in local labour and accommodation costs, combined with fluctuating currency exchange rates makes meaningful comparisons of recurring costs and revenue incomes among developing countries very difficult. Nevertheless, in terms of order of

²¹ Plant varieties protection is normally administered through a registry established for that purpose in the state’s Ministry of Agriculture.

²² This would include the provision of advice to other ministries and the government.

magnitude, a “typical” non-autonomous “full service” IP agency (responsible for patents and trademarks, including very limited substantive patent examination) with a total staff ranging from 110 to 150, operating at “steady state” but with growing backlogs, may be expected to incur annual direct expenditures in the order of US \$0.8 million and revenues in the order of US \$2.5 million. The growth in backlogs of pending applications is generally attributable to operating budgets that have not kept pace with increased volumes of foreign patent and trademark applications.

89. Direct expenditures do not normally include certain “common services” provided by governments or ministries, such as utilities, accommodation, employee benefits and legal, financial, personnel and communications services. These are generally called indirect costs. A fully autonomous IP agency would be expected to cover both direct and indirect costs plus certain additional costs such as those incurred for policy development and public awareness and outreach programs. Fully autonomous agencies should generally only offset expenditures with revenues and should not serve as governmental “cash cows”. Certain extraordinary one-time costs such as the provision of training in IP for enforcement authorities, including the judiciary²³, from IP fee revenues may facilitate and expedite the delivery of such training and should be considered as legitimate expenditures by autonomous agencies. In either type of agency, “basic”²⁴ or “advanced”²⁵ the second most significant recurring cost may be the maintenance and regular upgrading of the information technology on which their registries are constructed.

90. In order to establish a reasonably complete and accurate picture of the recurring costs of the model IP institution, a detailed and rigorous costing exercise should be carried out. If a national agency is to be created for the first time, then the costing exercise should also include a detailed analysis of start-up costs, since recurring costs will be largely determined by the nature and scope of organization that is initially set up. In this regard it is noted that any on-going IP enforcement costs incurred by the judiciary and enforcement agencies (e.g. police and customs) are often marginal to them or, in some instances, non-existent (e.g. training of judges, customs officials, etc., has already been completed). A brief comparison, to the extent that comparison is possible, of operating budgets for the Offices of Kenya, India, New Zealand and Canada is attached as Annex E.

91. On the basis of the costing exercise, the proposed basic model institution may prepare an annual budget request. A proposed advanced IP institution should prepare a business model and a business plan in support of its submission for financial and administrative autonomy. A number of developed countries have successfully

²³ An argument may also be made that IP fee revenues should be used to provide one-time training to others who are part of the IP enforcement system, such as IP attorneys, where this would be in the public and IPR owners interest.

²⁴ See Appendix A.

²⁵ See Appendix B.

modernized their IP institutions to place them on a more businesslike footing. Varying degrees of financial and administrative autonomy have been achieved and in the process valuable lessons have been learned. Several developing countries are also in the process of creating similar self-financing IP institutions. Any developing country that is contemplating the adaptation of either the basic or the advanced institutional model would no doubt benefit greatly from the experiences (both good and bad) of others.

REVENUES FROM COST-RECOVERY

92. As indicated above, in an ideal situation the costs of creating and operating IP institutions would be offset by revenues generated from those operations. In this regard, the traditional cost-recovery method has been to levy fees for various products and services of the IP institution. They are generally prescribed in the regulations under the statutes governing all forms of IP: e.g. patents, trademarks, industrial designs, copyright, topographies, plant varieties protection etc. As discussed above, in the section entitled “Cost-Recovery Options”, these are generally described as “fees for services” or “user fees”. Both descriptions have traditionally focused on IP applicants and owners as the users of services. In considering cost-recovery for the model institution, the issue of using fee-revenues (versus the tax base) to cover the costs of public education and awareness activities, the building of information access facilities, etc., since both public and IPR owners benefit directly, should be addressed and resolved at the outset.

93. The fee revenues of national IP institutions in developing countries generally far exceed operating expenditures, sometimes by a factor of three or four. These revenues are usually deposited directly into the consolidated revenue accounts of governments or ministries and do not go to the IP institutions themselves. The institutions then must apply for annual budget appropriations. The administration of IP has traditionally stood very low in terms of government priorities and where IP administrative organizations exist, these have been and remain seriously under funded. To a great extent therefore, the issue of cost-recovery may be one of better accessing an existing revenue stream than creating new user fees. In reality however, it may be necessary to initially do both: gain better access to revenues and to also increase the flow of those revenues.

94. For the purposes of the proposed model IP institutions, it is recommended that the aforementioned costing exercise should include an examination of opportunities to generate additional new income. This should be approached from a service-oriented and client-centered perspective. For example, international patent applicants are generally prepared to pay “world-class” fees for “world-class” services and products. Since almost 100% of patent applications in most developing countries are filed by foreign applicants, consideration should be given to what IP institutions in those countries can do to provide “world-class” patent services and products and to encourage more application²⁶. It

²⁶ National IP institutions benefit financially from membership in the PCT, Madrid and regional cooperation arrangements by sharing in original application and national level fees paid by applicants under those systems.

should be noted that under these circumstances, virtually all costs of maintaining a national patent operation, including domestic technology diffusion and outreach activities, would effectively be borne by foreign users.

IDENTIFICATION OF LIKELY UPGRADING (MODERNIZATION) PROGRAMME REQUIREMENTS

MANAGEMENT

95. Following the preparation of national intellectual property legislation, the drafting of rules and procedures and the creation of the necessary administrative infrastructure should proceed in tandem. Experience suggests that the modernization of an existing national IP agency is often at least as difficult as the first-time creation of such an agency.

96. The difficulties in modernizing existing offices appear to stem from lack of skills in “managing change”. IP offices, the legal profession that represents the IP applicants and owners, and the courts that resolve disputes among them, tend to be universally very conservative in accepting changes to their environment, whether legislative, administrative or procedural. Concerns over professional liability and the traditional reliance on jurisprudence for predictability mean that change occurs slowly in the IP world. For example, it may take years before any of the parties will confidently accept that a computerized version of a trademark register is an acceptable replacement for the traditional paper register. Several unreadable documents in an electronic database may jeopardize the credibility of the entire database, notwithstanding that paper records are also frequently lost or misfiled in paper registries.

97. Senior managers of IP agencies has traditionally been appointed from the IP profession, whether from within the agency or from the private sector IP legal community. This has resulted in institutions being well adapted to administering IP laws and procedures, but sometimes lacking in the management experience and leadership skills needed to bring about large-scale change in the national IP regime. There is a growing trend, particularly in developed countries, to create “autonomous” IP agencies that are headed by experienced “entrepreneurial” senior government executives. At the same time, the individual IP operations continue to be headed by their respective “statutory persons” who report administratively to the head of the agency.

INFRASTRUCTURE AND IT EQUIPMENT

98. As mentioned above, two alternatives are set out for the model IP institution: the basic model (Annex A) and the advanced model (Annex B). The basic model is intended to support a relatively small, non-autonomous registry type of institution. The advanced model is designed to support a more sophisticated, autonomous organization that carries out some level of substantive examination²⁷ for non-priority patent applications. A simple chart depicting the functions carried out in each is presented.

99. Intellectual property offices may be viewed conceptually and in their simplest form, as being in the information processing business. They receive information in the form of applications for IPRs, they determine if such applications should be refused or granted (based on criteria such as novelty, originality and distinctiveness as set out in legislation) and recorded in various public registries. These registries are the means that are used to determine if subsequent applications for IPRs should be granted or refused. Their operations have traditionally been paper-based. With continued growth in the size of registries the problems of maintaining file integrity while also providing access has caused these offices to seek solutions in information storage and retrieval technology. This led initially to the adoption of microform and later to the exploitation of computer and telecommunications technologies.

100. The electronic databases for patents and other collections are huge and growing annually at near exponential rates. Logic dictates that international cooperation will be key to ensuring continued reliable access to these essential databases. Modern IP institutions in both developing and developed countries will therefore need to be highly computerized to minimize the costs of processing and granting valid IPRs, and to ensure that nationals will have ready access to IP registries (domestic and international) and the information that these contain.

101. Accession to the Patent Cooperation Treaty²⁸ has become a virtual prerequisite for cost-effective administration of patents for all nations, including developing countries. Membership in the Madrid Agreement or Protocol would be of great benefit to many countries. To reduce the needless duplication of effort, offices may consider the options set out earlier in terms of cooperation and out-sourcing.

102. Key to the design and development of efficient and effective IP infrastructure therefore is early exploitation of Information Technology (IT). The connection of the national IP agency as an active “node” to the virtual global IP system should be a priority. The activities of WIPO in the construction of WIPOnet and the full computerization of the PCT system should be factored directly into plans for design of national and regional IP infrastructure.

²⁷ It is not proposed that search and/or examination should be conducted for the entire spectrum of patentable technologies. It may be considered for certain strategically important domestic industry sectors.

²⁸ It should be noted that membership in the Paris Convention is a prerequisite for membership in the PCT.

103. For the basic model institution, this may require as little as the computerization of the applications workflow and registration process and an Internet link to WIPO and other regional and national offices (e.g. ISA's and IPEA's under PCT). The technology and cost implications of such computerization suggest the adoption of inexpensive desktop personal computers and "off-the-shelf" applications software. Little useful information exists on the initial, or "start-up", costs of such computerization although such efforts are under way in several developing countries and warrant tracking.

TRAINING AND TECHNICAL ASSISTANCE

104. Training in intellectual property law, including the implications of the TRIPS Agreement, has been actively conducted in developing countries, largely by WIPO but also through bilateral technical assistance programs and by the countries themselves. WIPO training and development activities have been targeted at and tailored to the needs of IP administrators, enforcement agencies, the judiciary, attorneys and the research, academic and business communities. The WIPO World Wide Academy offers distance learning via the Internet in addition to delivering training courses in Geneva. In general, efforts to develop and train the human resources relating to national IP requirements appear to be reasonably well in under way.

105. WIPO has also begun to increase technical assistance support to modernize and computerize the administration of IPRs in developing countries, as a growing component of National Focused Action Plans (NFAPs). These activities often take the form of advisory missions by experts from developed countries to developing countries. At the same time, there may also be bilateral activities under way aimed at modernizing and computerizing the administration of the same IP institutions in the same countries. At times these activities are not coordinated by the multiple donors offering the assistance or by the countries that are receiving such assistance, resulting in duplication of efforts or, at worst, conflicting advice.

106. To implement the model institution, it is proposed that a mechanism should be established that would ensure the effective coordination of technical assistance activities in the recipient country along with ways to better measure the results that are to be achieved. This may take the form of an annual meeting of all IP technical assistance partners and the appropriate authorities in the recipient country, to review plans and progress of the various activities that may be under way. Such coordination should lead to better definition of needs and more focused allocation of efforts on the part of all interested parties, and a consequent achievement of faster and better results.

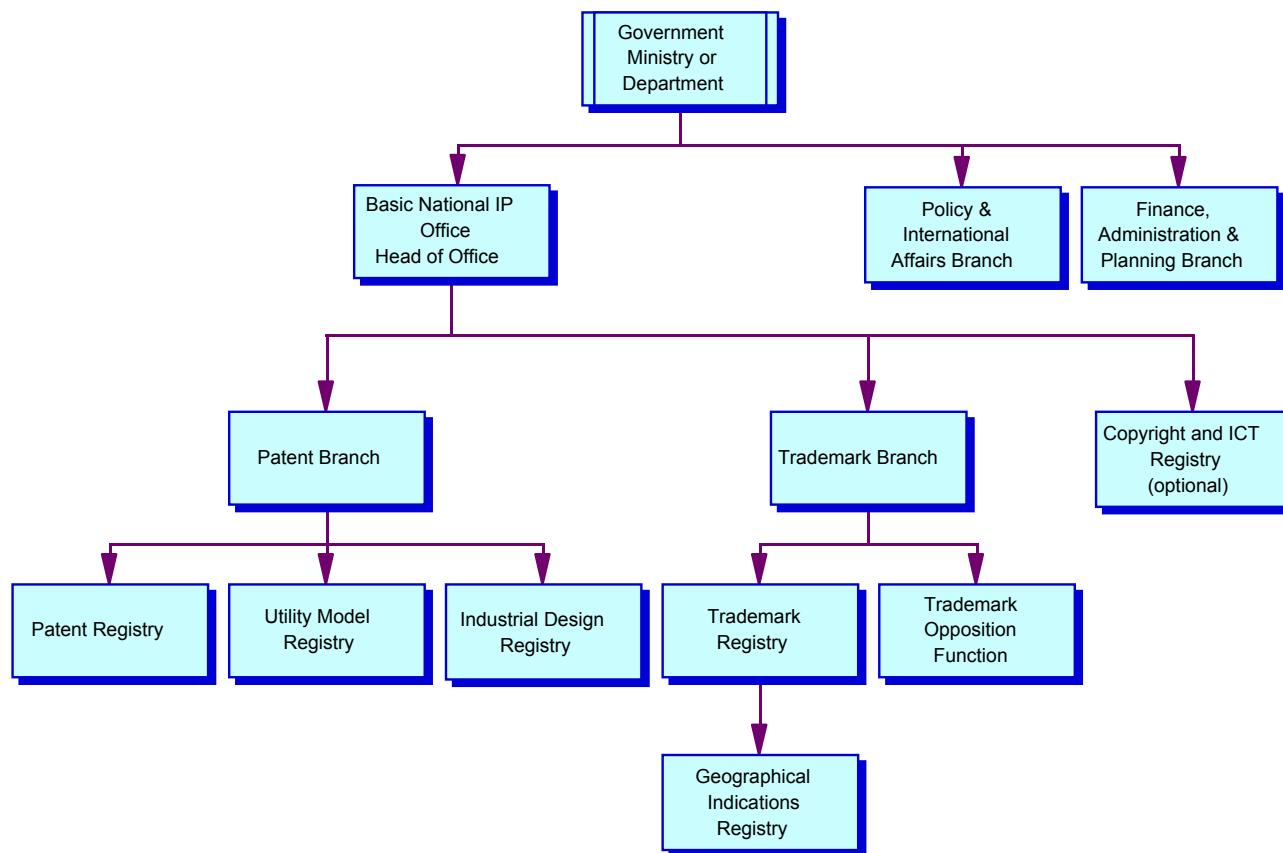
CAPITAL COST ELEMENTS OF THE ABOVE

107. The costs associated with the establishment of a new IP institution, or the modernization of an existing one, will be dependent largely on the objectives set out for it by the government. If, for example, the mission of the institution is to provide the minimum level of functionality required for TRIPS compliance, the costs will be relatively low. In this case, the basic model institution (Annex A) may provide the needed functionality. If, on the other hand, the IP institution must contribute proactively to improving the nations economic performance, a different and higher set of costs will be incurred. The advanced model (Annex B) may serve as a starting point in the latter case.

In either case, experience has demonstrated that modernization costs are likely to be incurred initially to pay for consultation charges (IP, management and system design consultants), secondly to acquire new or additional staff and accommodation, and thirdly for the purchase of computer systems. The ongoing costs of maintaining and updating the computer systems may also be a significant part of annual operating budgets. For the model institution proposed, the capital cost requirements should be established as part of the costing exercise described above, in the section entitled "Identification of Recurrent Costs and Revenues".

ANNEX A

**BASIC MODEL INTELLECTUAL
PROPERTY INSTITUTIONAL FRAMEWORK
FOR DEVELOPING AND LEAST
DEVELOPED COUNTRIES**



NOTES FOR BASIC MODEL A

Government Ministry or Department

1. Provides policy, legal, international affairs services for the basic IP Office.
2. Provides financial, personnel and administrative support services for the Office.

Head of Office

1. A single “statutory person” is also the Head of the Office and is accountable for all IP administration including the granting and refusal of rights in all titles of IP as well as maintenance of registries, hearing and disposition of appeals, etc.

Patent Branch

1. The country is a member of PCT and the great majority (up to 100%) of foreign applications are filed via PCT or PCT and Regional procedure (e.g. OAPI and ARIPO). Less than 2% of total patent applications are filed by nationals.
2. Patent search and examination skills do not yet exist in the country and the results of foreign (e.g. PCT) search, examination and prosecution accepted.
3. National (i.e. directly filed) patent, utility model and industrial design (if required) applications are searched under contract by another office, regional office or International Search Authority (under PCT). PCT and regional office search and examination procedures also include publication.
4. Registries are maintained to support enforcement actions and for public (information) access:
 - Patents
 - Industrial Designs (optional – could be copyright model)
 - Utility Models (optional – could be copyright model, if this form of IP exists in the country)
5. Administrative means exist to hear appeals for corrections to IPRs.
6. Enhanced public awareness and technological and business information dissemination are considered to be important national policy goals.

Trademark Branch

1. The country is a member of Madrid and/or a regional IP organization and accepts foreign filings through such organization.
2. National applications are accepted basically “as filed” (i.e. “minimal” search and substantive examination is conducted by the Office), then published for opposition and, if unopposed, are registered. Alternatively, search and examination of national filings could be “contracted out” or performed on the basis of a regional cooperative effort.
3. Geographical Indications (for wines and spirits) are registered and oppositions in this field are handled by the trademark opposition function.
4. Registries are maintained to support enforcement actions and for public (information) access:
 - Trademark Registry
 - Geographical Indications Registry
 - Trademark Opposition Function

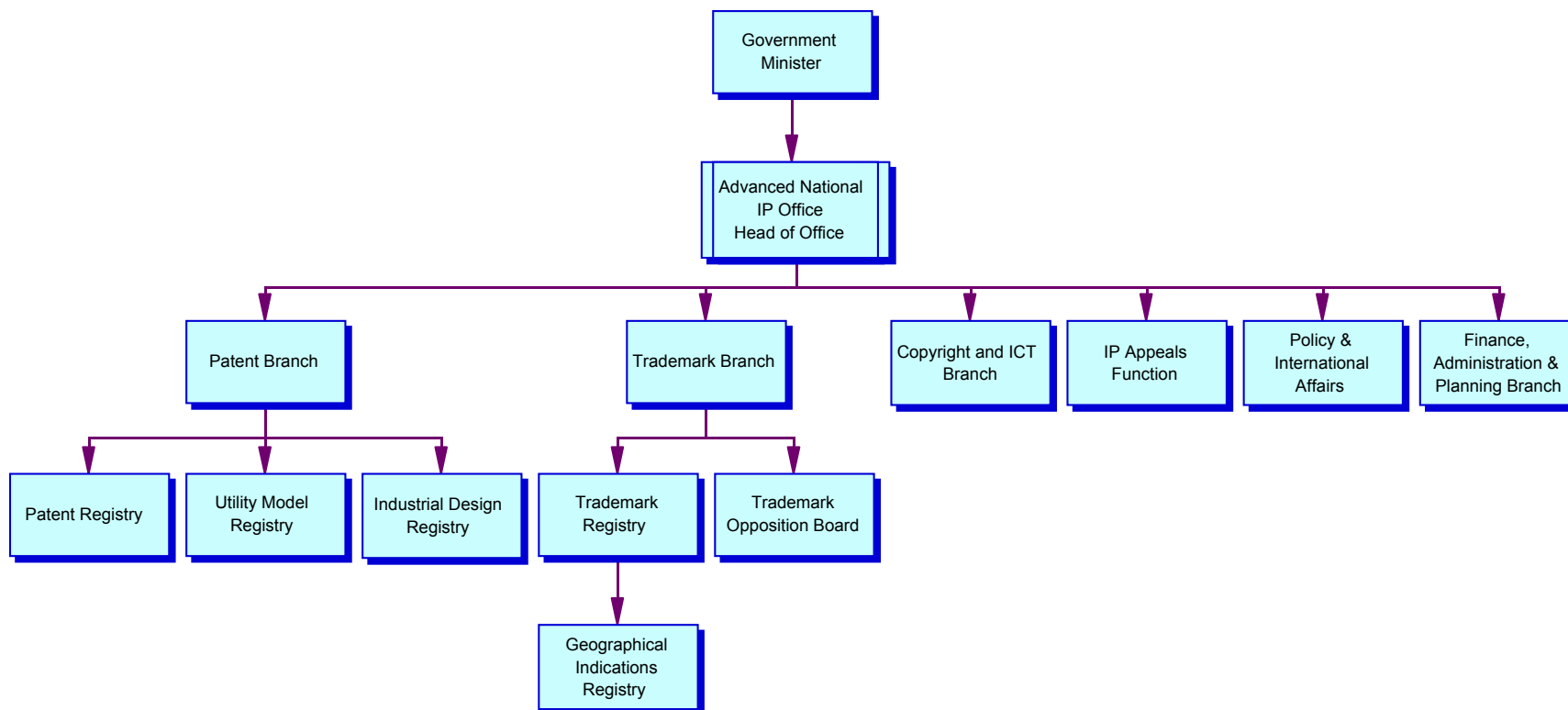
Copyright and ICT Registry (optional)

1. Applicable only if a voluntary copyright and/or Integrated Circuit Topography registration system is in place to facilitate establishing prima facie evidence of ownership in either case.
2. If no copyright registry is required but a registry is required for Integrated Circuit Topographies, such could be located in either the patent or trademark registry.

Plant Varieties Protection

1. Plant varieties protection registration is frequently carried out by the state’s Ministry of Agriculture. Such Ministry is more likely to already have personnel with the skills needed to administer *sui generis* legislation in this field.

ANNEX B

**ADVANCED MODEL INTELLECTUAL
PROPERTY INSTITUTIONAL FRAMEWORK
FOR DEVELOPING AND LEAST
DEVELOPED COUNTRIES**

NOTES FOR ADVANCED MODEL B

Government Ministry or Department

1. The advanced IP agency would be statutorily, financially and administrative autonomous, or as autonomous as possible, within the national governance framework. The agency would be accountable to government through an appropriate Minister of the Government.

Head of Office

1. The Head of the Office would be a senior executive who has the qualifications and experience needed to manage a complex, financially autonomous governmental regulatory agency.
2. The Head of the Office would be accountable for managing the financially autonomous agency in accordance with the agency's business charter, which is approved by the government.
3. There may be a Board of Directors appointed to whom the Head of the Office would be accountable for operations of the agency.
4. A separate "statutory persons" would be accountable for granting and refusal of rights in all titles of IP as well as maintenance of registries, hearing and disposition of appeals, etc.
5. Alternatively, a single "statutory person" may be accountable for all IP administration including the granting and refusal of rights in all titles of IP as well as maintenance of registries, hearing and disposition of appeals, etc.
6. The statutory person(s) would be accountable to government for legislated responsibilities and to the Head of the Office for administrative and other matters that are not explicitly set out in IP laws.

Patent Branch

1. The country is a member of PCT and the great majority of foreign applications are filed via PCT or PCT and Regional procedure (e.g. OAPI and ARIPO).

2. Patent search and examination skills do not yet exist in the country and the results of foreign (e.g. PCT) search, examination and prosecution accepted.
3. National (i.e. directly filed) patent, utility model and industrial design (if required) applications are searched under contract by another office, regional office or International Search Authority - includes early publication.
4. Registries are maintained to support enforcement actions and for public (information) access:
 - Patents
 - Industrial Designs (optional – could be copyright model)
 - Utility Models (optional – could be copyright model, if this form of IP exists in the country)
5. Administrative means exist to hear appeals appeal function for corrections.
6. Enhanced public awareness and technological and business information dissemination are considered to be important national policy goals.
7. The patent branch will develop a limited capacity to perform search and examination for national directly filed application in certain fields of technology representing industry sectors of strategic importance to the country. This would ensure the existence of some practical and useful level of patented technological information search and retrieval skills in the country.

Trademark Branch

1. The country is a member of Madrid and/or a regional IP organization and accepts foreign filings through such organizations.
2. National applications are accepted basically 'as filed' (i.e. 'minimal' search and substantive examination is conducted by the Office), then published for opposition and, if unopposed, are registered. Alternatively, search and examination of national filings could be 'contracted out' or performed on the basis of a regional cooperative effort.
3. Geographical Indications are registered and oppositions in this field are handled by the trademark opposition function.
4. Registries are maintained to support enforcement actions and for public (information) access:
 - Trademark Registry
 - Geographical Indications Registry
 - Trademark Opposition Function

Copyright and ICT Registry (optional)

1. Applicable only if a voluntary copyright and/or Integrated Circuit Topography registration system is in place to facilitate establishing prima facie evidence of ownership in either case.
2. If no copyright registry is required but a registry is required for Integrated Circuit Topographies, such could be located in either the patent or trademark branch.

Note: Plant Varieties Protection

1. Plant varieties protection registration is frequently carried out by the state's Ministry of Agriculture. Such Ministry is more likely to already have personnel with the skills needed to administer *sui generis* legislation in this field.

Policy & International Affairs Branch

1. The branch would provide legal advice to the Head of the Office and to the "statutory persons", and IP policy advice to the IP Agency (including "statutory persons") and the government.
2. The branch is accountable to the Head of the Office for the preparation of legislative change proposals, participation in or supporting processes leading to accession to international IP conventions and treaties and participation in WIPO, WTO and regional activities. The branch is the nation's centre of policy and legislative expertise in intellectual property.
3. The branch would maintain liaison with other ministries, foreign IP offices, WIPO, WTO, WCO, etc.

FINANCE, ADMINISTRATION & PLANNING BRANCH

1. The IPO would be financially autonomous. It would have access to its fee revenues and would fund all operations to deliver the services from which those fees are generated.
2. In addition, fee revenues would be utilized to cover (or to offset as much as possible) the costs of policy development and international affairs activities, and public awareness and information dissemination activities.

3. The branch would be responsible for: business planning (including long-term strategic planning), budgeting, administration, human resources (including general training) and management of information technology

ANNEX C

SUMMARY OF DESIGN ASSUMPTIONS AND PERFORMANCE REQUIREMENTS FOR MODEL IP INSTITUTIONAL FRAMEWORK**ASSUMPTIONS:**

The proposed model is designed for a developing country with the following IP “characteristics”:

1. small to mid-sized developing or least developed country;
2. low level of domestic intellectual property creation;
3. low level of technical and legal skills are available domestically;
4. low level of recurrent budget resources are available;
5. Member of TRIPS;
6. Member of Patent Cooperation Treaty;
7. Member of Madrid Agreement (and possibly Hague),
8. Member of a regional IP cooperation treaty, where possible;

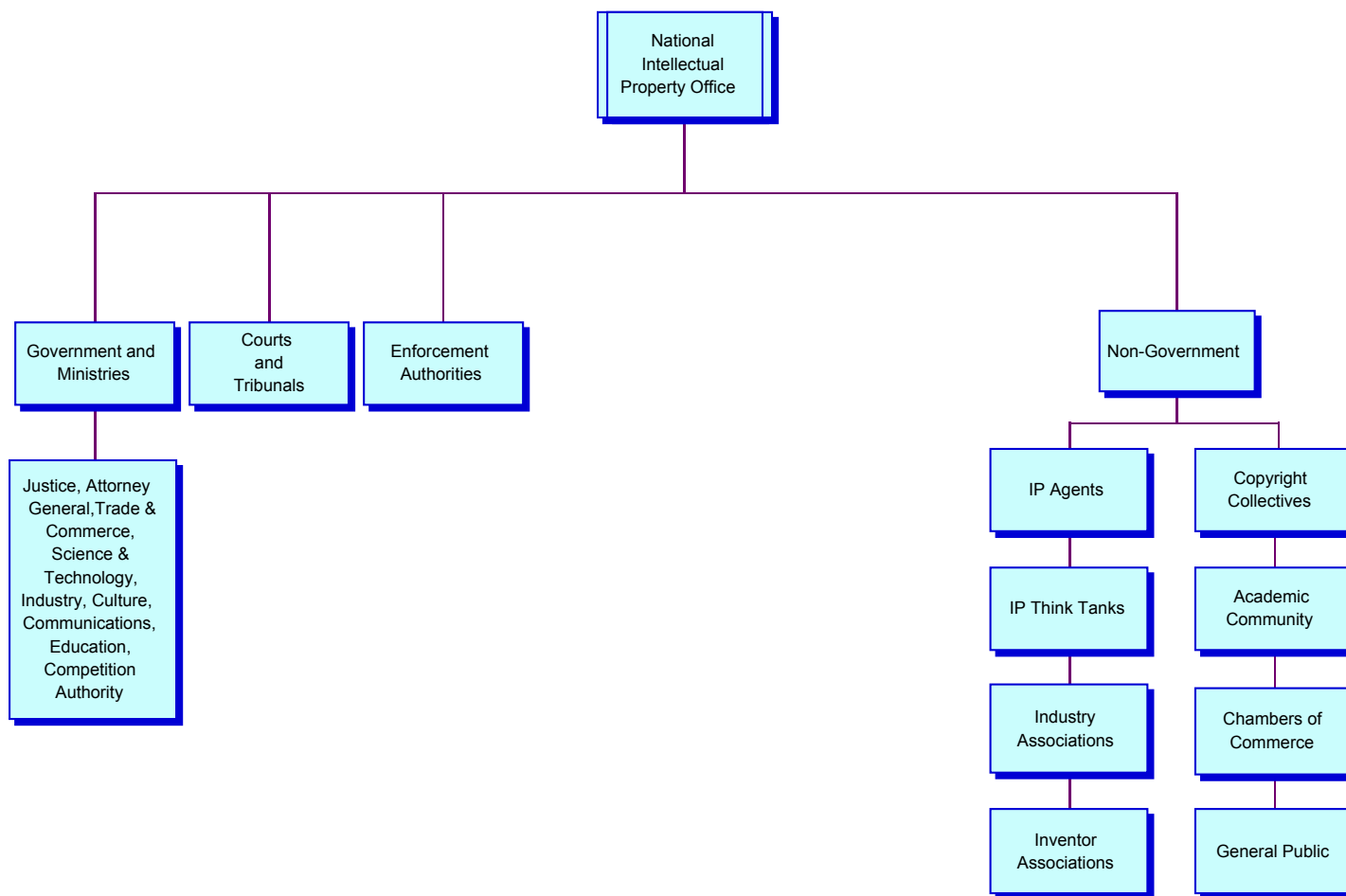
PERFORMANCE REQUIREMENTS

The following performance characteristics are contemplated for the model IP institution:

1. registration and application volumes:
 - a. up to 2,000 direct annual national trademark application registrations;
 - b. up to 4,000 annual “Madrid designations”;
 - c. up to 100 direct annual national patent application filings;
 - d. up to 50,000 annual “PCT designations” (directly or through a regional system);
2. capacity to undertake technological information dissemination activities based on patents;
3. capacity to undertake “outreach activities” to enhance national awareness and understanding of IP;
4. capacity to exploit basic information technology (IT) to link to the global IP system through WIPOnet (i.e. the Internet).

ANNEX D

**LINKAGES BETWEEN IP OFFICE
AND MAJOR IP STAKEHOLDERS**



ANNEX E

MODEL OPERATING BUDGET BREAKDOWN (x !000)

	Canada	%	New Zealand	%	India ²⁹	%	Kenya	%
	2000		2000		2000		2001	
Salaries and employee benefits	35900	53.0	3677.0	49.6	31776	53.4	19414	20.6
Amortization of capital assets ³⁰	14356	21.2	991.0	13.4				
Professional services	9625	14.2	650.0	8.8	36	0.1	678	0.7
Accommodation	4084	6.0	516.0	7.0			14000	14.8
Materials and supplies	1403	2.1	In prof svcs		8089	13.6	1039	1.1
Information	867	1.3			2742	4.6	6203	6.6
Communications	530	0.8	In travel				1698	1.8
Travel	196	0.3	298.0	4.0	927	1.6	8414	8.9
Freight and postage	256	0.4					7254	7.7
Repairs and maintenance	249	0.4					3800	4.0
Training	87	0.1	in travel				2090	2.2
Rentals	148	0.2			15947	26.8	14000	14.8
Capital charges			46.0	0.6				
Loss on sales			2.0	0.0				
Other operating (incl. overhead)			1230.0	16.6				
World Intellectual Property Organization							8085	8.6
ARIPO							5831	6.2
Industrial Property Tribunal							1837	1.9
Total	67701	100.0	7410	100.0	59517	100.0	94343	83.3
	CAD		NZD		IRs		KShs	

²⁹ The operating budget shown is for patents only.

³⁰ If this component were to be excluded, then salaries and employee benefits would amount to 67% and 57% respectively for Canada and New Zealand.

ANNEX F

Note: The following three tables are taken from the WIPO World Wide Web site at www.wipo.org

PCT Applicant's Guide – Volume I – Annex A

A		PCT Contracting States*		A	
Name of State followed by country code	Date on which State became bound by the PCT*	Name of State followed by country code	Date on which State became bound by the PCT*		
Albania AL	4 October 1995	Hungary HU ¹	27 June 1980		
Algeria DZ ¹	8 March 2000	Iceland IS	23 March 1995		
Antigua and Barbuda AG	17 March 2000	India IN ¹	7 December 1998		
Armenia AM ¹	25 December 1991	Indonesia ID ¹	5 September 1997		
Australia AU	31 March 1980	Ireland IE	1 August 1992		
Austria AT	23 April 1979	Israel IL	1 June 1996		
Azerbaijan AZ	25 December 1995	Italy IT	28 March 1985		
Barbados BB	12 March 1985	Japan JP	1 October 1978		
Belarus BY ¹	25 December 1991	Kazakhstan KZ ¹	25 December 1991		
Belgium BE	14 December 1981	Kenya KE	8 June 1994		
Belize BZ	17 June 2000	Kyrgyzstan KG ¹	25 December 1991		
Benin BJ	26 February 1987	Latvia LV	7 September 1993		
Bosnia and Herzegovina BA	7 September 1996	Lesotho LS	21 October 1995		
Brazil BR	9 April 1978	Liberia LR	27 August 1994		
Bulgaria BG	21 May 1984	Liechtenstein LI	19 March 1980		
Burkina Faso BF	21 March 1989	Lithuania LT	5 July 1994		
Cameroon CM	24 January 1978	Luxembourg LU	30 April 1978		
Canada CA	2 January 1990	Madagascar MG	24 January 1978		
Central African Republic CF	24 January 1978	Malawi MW	24 January 1978		
Chad TD	24 January 1978	Mali ML	19 October 1984		
China CN	1 January 1994	Mauritania MR	13 April 1983		
Colombia CO	28 February 2001	Mexico MX	1 January 1995		
Congo CG	24 January 1978	Monaco MC	22 June 1979		
Costa Rica CR	3 August 1999	Mongolia MN	27 May 1991		
Côte d'Ivoire CI	30 April 1991	Morocco MA	8 October 1999		
Croatia HR	1 July 1998	Mozambique MZ ¹	18 May 2000		
Cuba CU ¹	16 July 1996	Netherlands NL ⁴	10 July 1979		
Cyprus CY	1 April 1998	New Zealand NZ	1 December 1992		
Czech Republic CZ	1 January 1993	Niger NE	21 March 1993		
Democratic People's Republic of Korea KP	8 July 1980	Norway NO ²	1 January 1980		
Denmark DK	1 December 1978	Oman OM ¹	(will become bound on 26 October 2001)		
Dominica DM	7 August 1999	Philippines PH	17 August 2001		
Ecuador EC	7 May 2001	Poland PL ²	25 December 1990		
Equatorial Guinea GQ	17 July 2001	Portugal PT	24 November 1992		
Estonia EE	24 August 1994	Republic of Korea KR	10 August 1984		
Finland FI ²	1 October 1980	Republic of Moldova MD ¹	25 December 1991		
France FR ^{1,3}	25 February 1978	Romania RO ¹	23 July 1979		
Gabon GA	24 January 1978	Russian Federation RU ¹	29 March 1978		
Gambia GM	9 December 1997	Saint Lucia LC ¹	30 August 1996		
Georgia GE ¹	25 December 1991	Senegal SN	24 January 1978		
Germany DE	24 January 1978	Sierra Leone SL	17 June 1997		
Ghana GH	26 February 1997	Singapore SG	23 February 1995		
Greece GR	9 October 1990	Slovakia SK	1 January 1993		
Grenada GD	22 September 1998	Slovenia SI	1 March 1994		
Guinea GN	27 May 1991	South Africa ZA ¹	16 March 1999		
Guinea-Bissau GW	12 December 1997	Spain ES	16 November 1989		

[Continued on next page]

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PCT Applicant's Guide – Volume I – Annex A

A PCT Contracting States* A

[Continued]

Name of State followed by country code	Date on which State became bound by the PCT*	Name of State followed by country code	Date on which State became bound by the PCT*
Sri Lanka LK	26 February 1982	Uganda UG	9 February 1995
Sudan SD	16 April 1984	Ukraine UA ¹	25 December 1991
Swaziland SZ	20 September 1994	United Arab Emirates AE	10 March 1999
Sweden SE ²	17 May 1978	United Kingdom GB ⁵	24 January 1978
Switzerland CH	24 January 1978	United Republic of Tanzania TZ	14 September 1999
Tajikistan TJ ¹	25 December 1991	United States of America US ^{6,7}	24 January 1978
The former Yugoslav Republic of Macedonia MK	10 August 1995	Uzbekistan UZ ¹	25 December 1991
Togo TG	24 January 1978	Viet Nam VN	10 March 1993
Trinidad and Tobago TT	10 March 1994	Yugoslavia YU	1 February 1997
Tunisia TN ¹	(will become bound on 10 December 2001)	Zambia ZM	(will become bound on 15 November 2001)
Turkey TR	1 January 1996	Zimbabwe ZW	11 June 1997
Turkmenistan TM ¹	25 December 1991		

* All PCT Contracting States are bound by Chapter II of the PCT relating to the international preliminary examination.

¹ With the declaration provided for in Article 64(5).

² With the declaration provided for in Article 64(2)(a)(ii).

³ Including all Overseas Departments and Territories.

⁴ Ratification for the Kingdom in Europe, the Netherlands Antilles and Aruba.

⁵ Extends to the Isle of Man.

⁶ With the declarations provided for in Articles 64(3)(a) and 64(4)(a).

⁷ Extends to all areas for which the United States of America has international responsibility.

(10 September 2001)

Madrid Agreement Concerning the International Registration of Marks

Madrid Agreement (Marks) (1891), revised at Brussels (1900), Washington (1911),
The Hague (1925), London (1934), Nice (1957) and Stockholm (1967), and amended in 1979

and

Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

Madrid Protocol (1989)

(Madrid Union)ⁱ

Status on December 11, 2001

State	Date on which State became party to the Madrid Agreement ⁱⁱ	Date on which State became party to the Madrid Protocol (1989)
Albania	October 4, 1995	—
Algeria	July 5, 1972	—
Antigua and Barbuda	—	March 17, 2000
Armenia	December 25, 1991	October 19, 2000 ^{vii,xi}
Australia	—	July 11, 2001 ^{vi,vii}
Austria	January 1, 1909	April 13, 1999
Azerbaijan.....	December 25, 1995	—
Belarus.....	December 25, 1991	January 18, 2002 ^{vii,xi}
Belgium	July 15, 1892 ⁱⁱⁱ	April 1, 1998 ^{iii,vii}
Bhutan.....	August 4, 2000	August 4, 2000
Bosnia and Herzegovina	March 1, 1992	—
Bulgaria	August 1, 1985	October 2, 2001 ^{vii,xi}
China.....	October 4, 1989 ^{iv,v}	December 1, 1995 ^{v,vi,vii}
Croatia	October 8, 1991	—
Cuba.....	December 6, 1989	December 26, 1995
Czech Republic.....	January 1, 1993	September 25, 1996
Democratic People's Republic of Korea	June 10, 1980	October 3, 1996
Denmark	—	February 13, 1996 ^{vi,vii,viii}
Egypt.....	July 1, 1952	—
Estonia	—	November 18, 1998 ^{vi,vii,x}
Finland.....	—	April 1, 1996 ^{vi,vii}
France	July 15, 1892 ^{ix}	November 7, 1997 ^{ix}
Georgia	—	August 20, 1998 ^{vii,xi}
Germany	December 1, 1922	March 20, 1996
Greece.....	—	August 10, 2000 ^{vii,xi}
Hungary	January 1, 1909	October 3, 1997 ^x
Iceland	—	April 15, 1997 ^{vii,xi}
Ireland.....	—	October 19, 2001 ^{vi,vii}
Italy.....	October 15, 1894	April 17, 2000 ^{vi,vii}
Japan.....	—	March 14, 2000 ^{vii,xi}
Kazakhstan.....	December 25, 1991	—
Kenya.....	June 26, 1998	June 26, 1998 ^{vi}
Kyrgyzstan.....	December 25, 1991	—
Latvia.....	January 1, 1995	January 5, 2000
Lesotho	February 12, 1999	February 12, 1999
Liberia.....	December 25, 1995	—
Liechtenstein.....	July 14, 1933	March 17, 1998
Lithuania.....	—	November 15, 1997 ^{vi}
Luxembourg.....	September 1, 1924 ⁱⁱⁱ	April 1, 1998 ^{iii,vii}
Monaco.....	April 29, 1956	September 27, 1996

State	Date on which State became party to the Madrid Agreement ⁱⁱ	Date on which State became party to the Madrid Protocol (1989)
Mongolia.....	April 21, 1985	June 16, 2001
Morocco.....	July 30, 1917	October 8, 1999
Mozambique.....	October 7, 1998	October 7, 1998
Netherlands.....	March 1, 1893 ^{iii,xii}	April 1, 1998 ^{iii,vii,xii}
Norway.....	–	March 29, 1996 ^{vi,vii}
Poland.....	March 18, 1991	March 4, 1997 ^{xi}
Portugal.....	October 31, 1893	March 20, 1997
Republic of Moldova.....	December 25, 1991	December 1, 1997
Romania.....	October 6, 1920	July 28, 1998
Russian Federation.....	July 1, 1976 ^{xiii}	June 10, 1997
San Marino.....	September 25, 1960	–
Sierra Leone.....	June 17, 1997	December 28, 1999
Singapore.....	–	October 31, 2000 ^{vi,vii}
Slovakia.....	January 1, 1993	September 13, 1997 ^{xi}
Slovenia.....	June 25, 1991	March 12, 1998
Spain.....	July 15, 1892	December 1, 1995
Sudan.....	May 16, 1984	–
Swaziland.....	December 14, 1998	December 14, 1998
Sweden.....	–	December 1, 1995 ^{vi,vii}
Switzerland.....	July 15, 1892	May 1, 1997 ^{vii, xi}
Tajikistan.....	December 25, 1991	–
The former Yugoslav Republic of Macedonia.....	September 8, 1991	–
Turkey.....	–	January 1, 1999 ^{x, xi}
Turkmenistan.....	–	September 28, 1999 ^{vii, xi}
Ukraine.....	December 25, 1991	December 29, 2000 ^{vi}
United Kingdom.....	–	December 1, 1995 ^{vi,vii,xiv}
Uzbekistan.....	December 25, 1991	–
Viet Nam.....	March 8, 1949	–
Yugoslavia.....	February 26, 1921	February 17, 1998
Zambia.....	–	November 15, 2001
(Total: 70 States)	(52)	(55)

Hague Agreement Concerning the International Deposit of Industrial Designs^{xv}

Hague Agreement (1925), revised at London (1934) and The Hague (1960),^{xvi} supplemented by the Additional Act of Monaco (1961),^{xvii} the Complementary Act of Stockholm (1967) and the Protocol of Geneva (1975),^{xviii} and amended in 1979 (Hague Union)

Status on October 15, 2001

State	Date on which State became party to the Agreement	Date on which State became party to the London Act	Date on which State became party to the Hague Act ^{xvi}	Date on which State became party to the Complementary Act of Stockholm
Belgium ^{xix,xx}	April 1, 1979	—	August 1, 1984	May 28, 1979
Benin	November 2, 1986	November 2, 1986	November 2, 1986	January 2, 1987
Bulgaria	December 11, 1996	—	December 11, 1996	December 11, 1996
Côte d'Ivoire	May 30, 1993	May 30, 1993	May 30, 1993	May 30, 1993
Democratic People's Republic of Korea	May 27, 1992	—	May 27, 1992	May 27, 1992
Egypt	July 1, 1952	July 1, 1952	—	—
France ^{xxi}	October 20, 1930	June 25, 1939	August 1, 1984	September 27, 1975
Germany	June 1, 1928	June 13, 1939	August 1, 1984	September 27, 1975
Greece	April 18, 1997	—	April 18, 1997	April 18, 1997
Holy See	September 29, 1960	September 29, 1960	—	—
Hungary ^{xxii}	April 7, 1984	April 7, 1984	August 1, 1984	April 7, 1984
Indonesia	December 24, 1950	December 24, 1950	—	—
Italy	June 13, 1987	—	June 13, 1987	August 13, 1987
Liechtenstein	July 14, 1933	January 28, 1951	August 1, 1984	September 27, 1975
Luxembourg ^{xx}	April 1, 1979	—	August 1, 1984	May 28, 1979
Monaco	April 29, 1956	April 29, 1956	August 1, 1984	September 27, 1975
Mongolia	April 12, 1997	—	April 12, 1997	April 12, 1997
Morocco	October 20, 1930	January 21, 1941	October 13, 1999	October 13, 1999
Netherlands ^{xix,xx}	April 1, 1979	—	August 1, 1984 ^{xxiii}	May 28, 1979 ^{xxiii}
Republic of Moldova	March 14, 1994	—	March 14, 1994	March 14, 1994
Romania	July 18, 1992	—	July 18, 1992	July 18, 1992
Senegal	June 30, 1984	June 30, 1984	August 1, 1984	June 30, 1984
Slovenia	January 13, 1995	—	January 13, 1995	January 13, 1995
Spain	June 1, 1928	March 2, 1956	—	—
Suriname	November 25, 1975	November 25, 1975	August 1, 1984	February 23, 1977
Switzerland	June 1, 1928	November 24, 1939	August 1, 1984	September 27, 1975
The former Yugoslav Republic of Macedonia	March 18, 1997	—	March 18, 1997	March 18, 1997
Tunisia	October 20, 1930	October 4, 1942	—	—
Yugoslavia	December 30, 1993	—	December 30, 1993	December 30, 1993

(Total: 29 States)

ⁱ The Madrid Union is composed of the States party to the Madrid Agreement and the Contracting Parties to the Madrid Protocol.

ⁱⁱ All the States party to the Madrid Agreement have declared, under Article 3*bis* of the Nice or Stockholm Act, that the protection arising from international registration shall not extend to them unless the proprietor of the mark so requests.

ⁱⁱⁱ The territories of Belgium, Luxembourg and the Netherlands are to be deemed a single country, for the application of the Madrid Agreement as from January 1, 1971, and for the application of the Protocol as from April 1, 1998.

^{iv} In accordance with Article 14(2) of the Madrid Agreement, this State declared that the application of the Stockholm Act was limited to marks registered from the date on which accession entered into force, namely, October 4, 1989.

^v Not applicable to either the Hong Kong Special Administrative Region or the Macau Special Administrative Region.

^{vi} In accordance with Article 5(2)(b) and (c) of the Protocol, this Contracting Party has declared that the time limit to notify a refusal of protection shall be 18 months and that, where a refusal of protection results from an opposition to the granting of protection, such refusal may be notified after the expiry of the 18-month time limit.

^{vii} In accordance with Article 8(7)(a) of the Protocol, this Contracting Party has declared that, in connection with each request for territorial extension to it of the protection of an international registration and the renewal of any such international registration, it wants to receive, instead of a share in the revenue produced by the supplementary and complementary fee, an individual fee.

^{viii} Not applicable to the Faroe Islands and to Greenland.

^{ix} Including all Overseas Departments and Territories.

^x In accordance with Article 14(5) of the Protocol, this Contracting Party has declared that the protection resulting from any international registration effected under this Protocol before the date of entry into force of this Protocol with respect to it cannot be extended to it.

^{xi} In accordance with Article 5(2)(b) of the Protocol, this Contracting Party has declared that the time limit to notify a refusal of protection shall be 18 months.

^{xii} The instrument of ratification of the Stockholm Act and the instrument of acceptance of the Protocol were deposited for the Kingdom in Europe.

^{xiii} Date of accession by the Soviet Union, continued by the Russian Federation as from December 25, 1991.

^{xiv} Ratification in respect of the United Kingdom and the Isle of Man.

^{xv} The Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs was adopted on July 2, 1999. The list of Signatories appears on page 31 of the present publication.

^{xvi} The Protocol to the Hague Act (1960) is not yet in force. It has been ratified by or acceded to by the following States: Belgium, France, Germany, Italy, Liechtenstein, Monaco, Morocco, Netherlands, Switzerland.

^{xvii} The Additional Act of Monaco (1961) is in force in respect of the following States as from the dates indicated: France (December 1, 1962), Germany (December 1, 1962), Liechtenstein (July 9, 1966), Monaco (September 14, 1963), Netherlands (as far as the Netherlands Antilles is concerned) (September 14, 1963), Spain (August 31, 1969), Suriname (November 25, 1975) and Switzerland (December 21, 1962). See also footnote 5.

^{xviii} The Protocol of Geneva (1975), in accordance with Article 11(2)(a) thereof, ceased to have effect as of August 1, 1984; however, as provided by Article 11(2)(b), States bound by the Protocol (Belgium (as from April 1, 1979), France (as from February 18, 1980), Germany (as from December 26, 1981), Hungary (as from April 7, 1984), Liechtenstein (as from April 1, 1979), Luxembourg (as from April 1, 1979), Monaco (as from March 5, 1981), Netherlands (as from April 1, 1979), Senegal (as from June 30, 1984), Suriname (as from April 1, 1979) and Switzerland (as from April 1, 1979)) are not relieved of their obligations thereunder in respect of industrial designs whose date of international deposit is prior to August 1, 1984.

^{xix} Belgium had withdrawn from the Hague Union with effect from January 1, 1975. The Netherlands had denounced, in respect of the Kingdom in Europe and with effect from January 1, 1975, the Hague Agreement (1925) and the subsequent Acts to which the Netherlands had adhered, specifying that the said Agreement and Acts – London Act (1934) and Additional Act of Monaco (1961) – would remain in force in respect of the Netherlands Antilles and Suriname. As a result of their ratification of the Protocol of Geneva (1975) and its entry into force on April 1, 1979, Belgium and the Netherlands became, again, as from that date, members of the Hague Union.

^{xx} The territories in Europe of Belgium, Luxembourg and the Netherlands are, for the application of the Hague Agreement, to be deemed a single country.

^{xxi} Including all Overseas Departments and Territories.

^{xxii} With the declaration that Hungary does not consider itself bound by the Protocol annexed to the Hague Act (1960).

^{xxiii} Ratification for the Kingdom in Europe.