



EUI Working Papers

MWP 2012/32
MAX WEBER PROGRAMME

WIPO AND THE PUBLIC-PRIVATE WEB OF GLOBAL
INTELLECTUAL PROPERTY GOVERNANCE

Andrea Wechsler

EUROPEAN UNIVERSITY INSTITUTE, FLORENCE
MAX WEBER PROGRAMME

WIPO and the Public-Private Web of Global Intellectual Property Governance

ANDREA WECHSLER

EUI Working Paper **MWP** 2012/32

This text may be downloaded for personal research purposes only. Any additional reproduction for other purposes, whether in hard copy or electronically, requires the consent of the author(s), editor(s). If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper or other series, the year, and the publisher.

ISSN 1830-7728

© 2012 Andrea Wechsler
Printed in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu
cadmus.eui.eu

Abstract

The World Intellectual Property Organization (WIPO) has always been recognized as an important international economic institution for the global governance of intellectual property (IP) law. Moreover, its role in promoting, facilitating and supporting national, regional and local governance of IP law worldwide has long been uncontested. However, ever since the late 1980s, fundamental transformations in the IP landscape have challenged the established position of WIPO in global IP governance.

First, increasing perceptions of the interconnectedness of IP issues with larger global development issues have required substantial adaptations in WIPO's policy formulations. Second, fragmentation and horizontal forum-shifting of IP issues from WIPO to both complementary and competing international institutions, such as the World Trade Organization (WTO), have challenged the uncontested role of WIPO in global IP governance. Likewise, vertical forum-shifting from multilateral to bilateral law-making has necessitated strategic adaptations on the part of WIPO. And third, the rise of private regulation in IP law as well as new soft law regulatory approaches have pressurized WIPO into redefining its own position towards public actors, private actors and civil society.

In the light of these transformations, the following paper introduces, discusses and evaluates the mission, role and activities of WIPO as an international economic institution for the global governance of intellectual property. It discusses, first, the larger public-private web of global IP governance in which WIPO operates. It then introduces in detail WIPO as an international economic institution for IP governance. This introduction is followed by a discussion of WIPO's mission and strategic goals as well as an overview of its core activities. The final conclusions evaluate WIPO's current positioning and provide recommendations for WIPO's further establishment in the public-private web of global IP governance.

Keywords

World Intellectual Property Organisation (WIPO), international economic law, intellectual property law, public-private governance, WIPO Development Agenda.

The author wishes to thank the Max Weber Programme of the European University Institute (EUI) and the Max Planck Institute for Intellectual Property and Competition Law for their funding of this research and expresses her gratitude to Prof. Hans-W. Micklitz and Prof. Reto M. Hilty for inspiration and encouragement. Of course, the author takes full responsibility for any mistakes or omission.

*Andrea Wechsler
Max Weber Fellow, 2011-2012*

1 Introduction

The *World Intellectual Property Organization* (WIPO) has always been recognized as important international economic institution for the global governance of intellectual property (IP) law. Moreover, its role in promoting, facilitating and supporting national, regional and local governance of IP law worldwide has long been uncontested. However, ever since the late 1980s, fundamental transformations in the IP landscape have challenged the established position of WIPO in global IP governance.

First, increasing perceptions of the interconnectedness of IP issues with larger global development issues have required substantial adaptations in WIPO's policy formulations. Second, fragmentation and horizontal forum-shifting of IP issues from WIPO to both complementary and competing international institutions, such as the *World Trade Organization* (WTO), have challenged the uncontested role of WIPO in global IP governance. Likewise, vertical forum-shifting from multilateral to bilateral law-making has necessitated strategic adaptations on the part of WIPO. And third, the rise of private regulation in IP law as well as new soft law regulatory approaches have pressurized WIPO into redefining its own position towards public actors, private actors and civil society.

In the light of these transformations, the following paper introduces, discusses and evaluates the mission, role and activities of WIPO as international economic institution for the global governance of intellectual property. It discusses, first, the larger public-private web of global IP governance in which WIPO operates. It then introduces in detail WIPO as international economic institution for IP governance. This introduction is followed by a discussion of WIPO's mission and strategic goals as well as an overview of its core activities. The final conclusions evaluate WIPO's current positioning and provide recommendations for WIPO's further establishment in the public-private web of global IP governance.

2 The Public-Private Web of Global Intellectual Property Governance

With WIPO having been one of the first international institutions for the global governance of IP law in the 20th century, its position has dramatically changed at the beginning of the 21st century. At the time of writing, WIPO constitutes merely one of a multiplicity of actors, organizations and institutions that claim their role and share in the public-private web of global IP governance. Its having been embedded into a system of global governance corresponds to the tremendous rise in academic governance literature and increasingly so in literature revolving around the global governance of IP law.¹ This rising focus on governance reflects the fading trust in traditional modes of regulation and the Westphalian system in capturing and controlling current dimensions of global IP protection.² These developments warrant a closer look at and discussion of the transformations of global IP governance and the factors that have driven such transformation. Thus, the following section introduces and discusses the growing interconnectedness of IP law with related policy issues which is herein termed "IP and ..." -approach, horizontal and vertical forum-shifting and novel regulatory modes.

2.1 The "IP and ..." -Approach

One of the driving factors for changes in the global IP governance structure were both the growing realities of and increasing perceptions about the interrelationship of IP issues with larger global policy issues related to, *inter alia*, civil society, development, human rights, biodiversity and the

¹ Sand, Polycontextuality as an Alternative to Constitutionalism, in: Joerges/Sand/Teubner, *Transnational Governance and Constitutionalism*, 2004, p. 41, 44.

² Burris/Kempa/Shearing, Changes in Governance: A Cross-Disciplinary Review of Current Scholarship, *Akron L. Rev* 41 (2008), p. 1 (2).

environment.³ While IP law and its realities had long been regarded a highly technical legal field, it is in particular the adoption of the *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)*⁴ which has brought the interconnectedness of IP to the forefront of attention.

Prior to the realities of the *TRIPS Agreement*⁵ itself, it has primarily been the *US Trade Act*⁶ which has exposed the linkage between IP and trade. Subsequent to the *TRIPS Agreement*⁷ however, the trade-relatedness of IPRs has become widely acknowledged.⁸ As a result of the effects of the *TRIPS Agreement* on national policy space,⁹ the perceptions about the trade-relatedness of IPRs have been closely followed by perceptions about the impact of IP protection on development.¹⁰ In particular, the impact of IP protection on public health was the subject of intense debate and eventually pressures for policy adaptations through, for instance, the *Doha Declaration*.¹¹ In recent years, further public interests have come to feature prominently in the IP debate – amongst them IP and human rights and IP and the environment.¹² In consequence, the changing face of the global IP debate in recent years is herewith characterized as having led to an “IP and ...”-approach to IP policy debates and formations.

Moreover, recent years have seen a growing infiltration of economic analysis into IP policy discussions.¹³ Having arisen out of re-conceptualizing IP law as complementary to competition law and thereby approximating IP analyses with the more economic approach in competition law, a more economic approach to IP law in itself is on the rise.¹⁴ The economic analysis of IP law is focusing on almost all aspects of IPRs.¹⁵ However, particular emphasis is placed on the interrelationship of patents and innovation and patents and technology.¹⁶ This growing emphasis on economic perspectives on IP protection testifies to an increasing instrumental and functional use of IP law for the promotion of domestic innovation capacities and economic development goals.¹⁷ Yet, critical voices have also

³ For a discussion of further challenges see Yu, *TRIPS and Its Achilles' Heel*, *J. Intell. Prop. L.* 18 (2011), p. 479 (479-530).

⁴ Marrakesh, *Agreement Establishing the World Trade Organization*, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1125, 1197.

⁵ Marrakesh, *Agreement Establishing the World Trade Organization*, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1125, 1197.

⁶ Cf. *US Trade Act* (Section 301), see Gervais, *The TRIPS Agreement: Drafting History and Analysis*, 2008 (3rd edition), p. 154.

⁷ Marrakesh, *Agreement Establishing the World Trade Organization*, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1125, 1197.

⁸ Gervais, *Intellectual Property and Human Rights: Learning to Live Together*, in: Torremans (ed.), *Intellectual Property and Human Rights*, 2008, p. 15.

⁹ Taubman, *TRIPS Jurisprudence in the Balance. Between the Realist Defense of Policy Space and a Shared Utilitarian Ethic*, in: Lenk et al. (eds), *Ethics and Law of Intellectual Property, Current Problems in Politics, Science and Technology*, 2007, p. 90 (90-93).

¹⁰ Gervais, *TRIPS and Development*, in: Gervais (ed.), *Intellectual Property, Trade and Development. Strategies to Optimize Economic Development in a TRIPS-Plus Era*, 2007, p. 21.

¹¹ *Declaration on the TRIPS Agreement and Public Health*, adopted on 14 November 2001, WT/MIN(01)/DEC/W/2. See also Sell, *The Quest for Global Governance in Intellectual Property and Public Health: Structural, Discursive, and Institutional Dimensions*, *Temp. L. Rev.* 77 (2004), p. 363.

¹² E.g. Stoeva, *New Norms and Knowledge in World Politics: Protecting people, intellectual property and the environment* (2009), p. 12.

¹³ Drexl, *Is there a 'more economic approach' to intellectual property and competition law?*, in: Drexl (ed.), *Research Handbook on Intellectual Property and Competition Law* (2008), p. 3.

¹⁴ For early beginnings see Posner, *Intellectual Property: The Law and Economics Approach*, *The Journal of Economic Perspectives* 19(2), 2005, p. 57 (57-73).

¹⁵ E.g. Elkin-Koren/Salzberger, *The Law and Economics of Intellectual Property in the Digital Age*, 2011.

¹⁶ E.g. Blair/Cottier, *Intellectual Property, Economic and Legal Dimensions of Rights and Remedies*, 2005, p. 13 (13-20).

¹⁷ Wechsler, *Intellectual Property Law in the P.R. China: A Powerful Economic Tool or Innovation and Development*, *China-EU Law Journal* 1 (2011), p. 3 (3-54).

pointed to the methodological and substantive limitations of economic analysis for guiding the policy formation process in IP law.¹⁸

From these transformations of IP policy discussions it not only follows that new perspectives on IP policy elements and powerful novel methodologies have emerged. It follows also that new experts, new actors, new agents and new governing institutions have entered the stage claiming their share in shaping the IP environment of the 21st century.

2.2 Proliferation of Governing Bodies

The entry of new actors and new governing institutions into international IP law has led to both a proliferation of governing bodies in the sense of horizontal forum-shifting and to vertical forum-shifting for IP policy issues. The fragmentation of IP law-making and its enforcement in the international realm is thereby one of the most striking features of global IP law in the 21st century.

First, fragmentation and horizontal forum-shifting of IP issues from WIPO to both complementary and competing international institutions, such as the WTO, have challenged the uncontested role of WIPO in global IP governance.¹⁹ The very beginnings of transnational IP governance were marked by a very limited number of fora with the foundation of WIPO in 1967 signalling the concentration of IP governance and standard-setting in one specialized agency of the *United Nations* (UN). In 1994, however, the *TRIPS Agreement*²⁰ formally brought IP rules into the WTO framework and opened the floodgates for numerous novel IP policymaking initiatives and thereby institutional competition.²¹ Organizations – such as the *Organization for Economic Co-operation and Development* (OECD),²² the *World Health Organization* (WHO),²³ the *United Nations Conference on Trade and Development* (UNCTAD),²⁴ and the *Convention on Biological Diversity* (CBD)²⁵ – started to integrate questions of IP protection into their agendas. Helfer conceptualizes these new forms of IP law-making as having focused on four different international regimes: “biodiversity, plant genetic resources for food and agriculture (PGRs), public health, and human rights.”²⁶ Yet, the multiplication of IP sources, fora, and processes has stretched far beyond those four substantive regimes and has led to the integration of countless policy dimensions and institutions into IP policymaking.²⁷ This proliferation of international fora for the governance of IP law has been termed horizontal forum-shifting – a process which is rightly so, however, still seen to be “under construction.”²⁸

Second, and quite distinct from horizontal forum-shifting, vertical forum-shifting from multilateral to bilateral and individual law-making has necessitated strategic adaptations on the part of WIPO. Vertical forum-shifting is taken to denote a top-down shifting in IP norm-setting, rule-making,

¹⁸ Wechsler, *Criminal Enforcement of Intellectual Property Law – An Economic Approach*, forthcoming in: Geiger, *Criminal Enforcement of Intellectual Property: A Handbook of Contemporary Research*, 2012, copy on file with author.

¹⁹ Oguamanam, *Beyond Theories: Intellectual Property Dynamics in the Global Knowledge Economy*, *Wake Forest Intell. Prop. L. J.* 9 (2009), p. 104 (110).

²⁰ Marrakesh, *Agreement Establishing the World Trade Organization*, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1125, 1197.

²¹ Helfer, *Regime Shifting: The TRIPS Agreement and New Dynamics of International Intellectual Property Lawmaking*, *Yale J. Int'l L.* 29 (2004), p. 1 (2).

²² See <http://www.oecd.org/> (last access March 15, 2012).

²³ See <http://www.who.int> (last access March 15, 2012).

²⁴ See <http://www.unctad.org> (last access March 15, 2012).

²⁵ See <http://www.cbd.int> (last access March 15, 2012).

²⁶ Helfer, *Regime Shifting: The TRIPS Agreement and New Dynamics of International Intellectual Property Lawmaking*, *Yale J. Int'l L.* 29 (2004), p. 1 (27).

²⁷ Cf. Dutfield, *Literature Survey on Intellectual Property Rights and Sustainable Human Development* (2003).

²⁸ Chon, *Global Intellectual Property Governance (Under Construction)*, *Theoretical Inquiries L.* 12 (2011), p. 349 (349-350).

implementation and enforcement.²⁹ More precisely, Sell has conceptualized vertical forum-shifting along four dimensions. The first dimension denotes a trend towards bilateral and regional negotiations and treaties and is reflected in an increasing number of bilateral trade agreements, such as for instance *Free Trade Agreements* (FTAs).³⁰ By 2010, the US had concluded FTAs with no less than 17 countries while the number of *Bilateral Investment Treaties* (BITs) reached 40.³¹ While such FTAs and BITs govern issues of IP protection amongst other policy areas, there are even 30 more specific treaties called *Intellectual Property Rights Agreements* which focus exclusively on IP issues.³² On a global scale, Figure 1 graphically depicts this trend towards bilateral treaty-making as opposed to more traditional modes of multilateral and regional treaty-making. The second dimension of vertical forum-shifting denotes a trend towards law-making amongst a small group of like-minded countries. A most recent example of this second dimension is provided by the negotiations towards the *Anti-Counterfeiting Trade Agreement* (ACTA).³³ A third dimension of vertical forum-shifting is the intensifying of trans-pacific partnership (TPP) negotiations as reflected in a number of TRIPS-plus initiatives.³⁴ And a fourth dimension of vertical forum-shifting arises out of the increasing tendency to enforce IP interests at the lowest regional level through direct contact with stakeholders, governments and sub-state actors.³⁵ This latter dimension of vertical forum-shifting constitutes a first expression of the rising power of private parties in determining the shape of global IP law and policy.

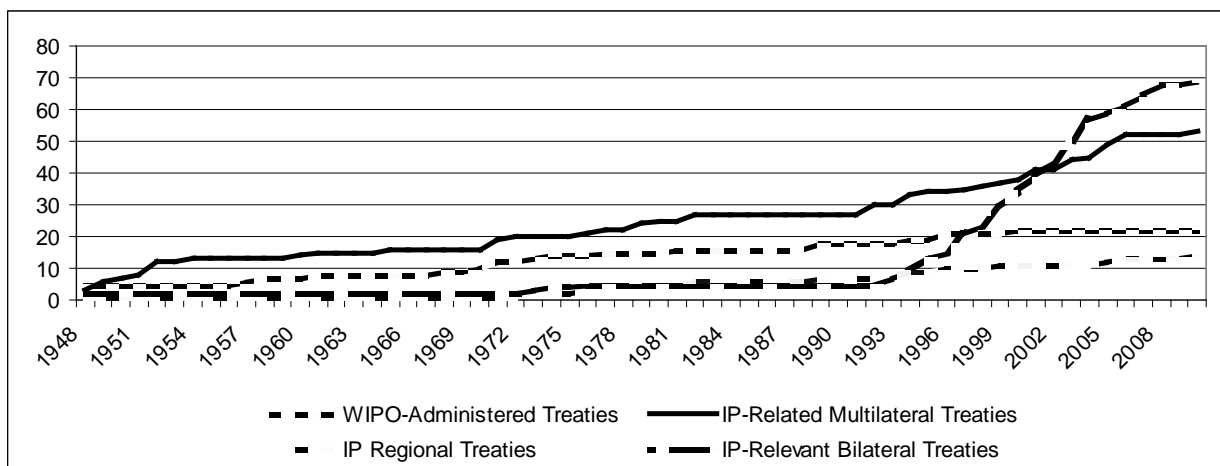


Figure 1: Number of IP-Related Treaties, 1948-2010

²⁹ Sell, *TRIPS Was Never Enough: Vertical Forum Shifting, FTAs, ACTA, and TPP*, *Journal of Intellectual Property Law* 18 (2011), p. 477 (Section III).

³⁰ For an overview over the *European Partnership Agreements* (EPA) by the European Union see <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/> (last access March 15, 2012).

³¹ See *Office of the United States Trade Representative*, <http://www.ustr.gov/trade-agreements> and *Trade Compliance Center*, available at: http://tcc.export.gov/Trade_Agreements/Bilateral_Investment_Treaties/index.asp (last access March 15, 2012).

³² E.g. The 1992 *People's Republic of China Intellectual Property Rights Memorandum of Understanding*, the 1995 *People's Republic of China Intellectual Property Rights Memorandum of Understanding*, the 1996 *People's Republic of China Implementation of the 1995 Intellectual Property Rights Agreement*, available at: http://tcc.export.gov/Trade_Agreements/Intellectual_Property_Rights/index.asp (last access March 15, 2012).

³³ See *Opinion of European Academics on ACTA*: <http://www.iri.uni-hannover.de/acta-1668.html> (last access March 15, 2012).

³⁴ For more information see <http://www.ustr.gov/tpa> (last access March 15, 2012).

³⁵ Sell, *TRIPS Was Never Enough: Vertical Forum Shifting, FTAs, ACTA, and TPP*, *Journal of Intellectual Property Law* 18 (2011), p. 477 (Section III).

Cumulative number of IP-related treaties, 1948-2010 (including prior treaties), distinguishing between WIPO-Administered Treaties, IP-Related Multilateral Treaties, IP Regional Treaties, and IP-Relevant Bilateral Treaties³⁶

It follows from this proliferation of fora and the attendant forum-shifting that new levels of IP politics have assumed greater importance in recent years. These new levels are not only threatening the role of established governing bodies but also the global *acquis* on the normative underpinnings of the IP law regime that had found expression in the IP policies of more traditional bodies of global IP governance.

2.3 Novel Regulatory Modes

Not only the actors and institutions in global IP governance have changed. It is also the regulatory modes that have undergone substantial transformation. On the one hand, particular emphasis shall herein be placed on the changing nature of IP law through the rise of soft law initiatives. On the other hand, particular emphasis shall be placed on the changing sources of regulation – especially the rise of private regulatory approaches in the form of self- and co-regulation.

First, soft law is defined as referring to “non-legally binding instruments, such as guidelines, standards, criteria, code of practice, resolutions, decisions, and principles or declarations.”³⁷ In global IP governance, reliance on soft law has grown tremendously in comparison to treaty-making whose lengthy procedures appear to be less adapted to the rapidly changing and technologically driven area of IP law. Examples of such soft law reliance are both the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks*³⁸ and the *Recommended Standards for Industrial Property*.³⁹ The rationale of such swiftly enacted soft laws lies in their immediate reaction to new economic and technological developments.⁴⁰ Their theoretical justification as suggested by constructivists lies in the capacity of soft laws to define shared norms and a sense of commonality without being endangered by the threat of potential litigation.⁴¹ However, the disadvantage of this transformation of the nature of IP protection lies not only in the danger of solidification of such soft laws and the rising inconsistencies between hard and soft laws but in the fact that developing countries, whose traditional focus has been on treaty-making, have not fully grasped the implications of a greater reliance on soft-law thereby tipping the IP-balance in favour of industrialized nations.⁴²

Second, the rise of private regulation in IP law has pressurized WIPO into redefining its own position towards public actors, private actors and civil society. In a comparative institutional analysis, the institutional frameworks involved in governing IPRs, essential complementarities between public and private institutions have long been recognized.⁴³ Thus, it was shown that reliance on

³⁶ Data sources: http://www.wipo.int/wipolex/en/other_treaties/ and

<http://docs.law.gwu.edu/burns/research/tools/IPtreatyFinder.pdf> (last access March 15, 2012).

³⁷ Chopra, *Ecosystems and Human Well-Being. Policy Responses*, 2005, p. 42.

³⁸ WIPO Doc. No. A/34/13 at 3 (August 1999), available at:

http://www.wipo.int/about-ip/en/development_iplaw/pub833.htm (last access March 15, 2012).

³⁹ Available at: <http://www.osim.ro/brevete/manuale.osim/manualompi/handbook/eng/03/e030001.pdf> (last access March 15, 2012).

⁴⁰ Dinwoodie, *The International Intellectual Property System: Treaties, Norms, National Courts and Private Ordering*, in: Gervais (ed.), *Intellectual Property, Trade and Development. Strategies to Optimize Economic Development in a TRIPS-Plus Era*, 2007, p. 80.

⁴¹ Shaffer/Pollack, *Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance*, *Minn. L. Rev.* 94 (2010), p. 706 (706).

⁴² Dinwoodie, *The International Intellectual Property System: Treaties, Norms, National Courts and Private Ordering*, in: Gervais (ed.), *Intellectual Property, Trade and Development. Strategies to Optimize Economic Development in a TRIPS-Plus Era*, 2007, p. 83.

⁴³ Brousseau/Bessy, *Public and private institutions in the governance of intellectual property rights*, in: Andersen (ed.), *Intellectual Property Rights: Innovation, Governance and the Institutional Environment*, 2006, p. 243 (243).

interindividual governance structures (IGS) can lead to efficient cost-shifting towards private agents for regime governance.⁴⁴ However, recent years have seen an entirely new dimension of private regulation in global IP law which not only refers to regime governance but to the law-making entities themselves. Essentially, various dimensions of privatization – that is the rise of private commercial actors, the rise of private rule-making, and reduction of state involvement in the enforcement of private law – are identifiable in IP law and policy. A first example of private ordering is the creation of norms by information intermediaries, such as Internet service providers (ISP) in response to allegations of copyright infringement by their subscribers.⁴⁵ A second example is the evolution of digital rights management (DRM) norms through copyright owners for the prevention of user activities that are, however, authorized by copyright law. Yet another well-known example of an extensively permissive, and consequently widely hailed, model of private governance of online content constitutes the governance of the *Apple Computer's iTunes Music Store*.⁴⁶ A third example is set by the regulation of collective rights management organizations in Norway. Both TONO as Norway's Performing Rights Society for authors and composers of musical works⁴⁷ and Kopinor as collecting society for books, newspaper, and comparable publications⁴⁸ are owned and governed by its members as opposed to being under governmental supervision.⁴⁹ The rise of private actors in law-making and regulation is by no means confined to the realms of IP law. It is traceable in a variety of legal areas, such as food safety regulation.⁵⁰ However, what all of these areas of law have in common is as of yet a certain insecurity of how to theoretically and practically deal with the rise of private power.

In consequence, this discussion of novel regulatory modes has shown both a trend towards soft law initiatives and a trend towards private regulation. Both of these trends have major implications for an institution – such as WIPO – that has traditionally relied on classical modes and sources of international law-making.

3 WIPO as International Economic Institution

Against the above-discussed background of transformations and the emerging public-private web of global IP governance, the following section introduces WIPO as international economic institution. It focuses, in particular, on the history, establishment and evolution of WIPO, relevant facts and figures and WIPO's institutional structure.

3.1 History, Establishment and Evolution

The history, establishment and evolution of WIPO show its changing rationale, nature and role in global IP governance. Created originally and primarily for norm administration, it has gradually expanded its global ambit as specialized agency of the UN towards a service-oriented global player in

⁴⁴ Brousseau/Bessy, Public and private institutions in the governance of intellectual property rights, in: Andersen (ed.), *Intellectual Property Rights: Innovation, Governance and the Institutional Environment*, 2006, p. 243 (247).

⁴⁵ Dinwoodie, The International Intellectual Property System: Treaties, Norms, National Courts and Private Ordering, in: Gervais (ed.), *Intellectual Property, Trade and Development. Strategies to Optimize Economic Development in a TRIPS-Plus Era*, 2007, p. 65.

⁴⁶ Armstrong, *Digital Rights Management and the Process of Fair Use*, Harv. J.L. & Tech. 20 (2006), p. 49 (64). Digital Media Project, The Berkman Center for Internet & Society at Harvard Law School, *iTunes: How Copyright, Contract, and Technology Shape the Business of Digital Media – A Case Study*, 2004, p. 40 (40-48).

⁴⁷ See <http://www.tono.no> (last access March 15, 2012).

⁴⁸ See <http://www.kopinor.no/> (last access March 15, 2012).

⁴⁹ Compare the German governmental supervisory system under the *Urheberwahrnehmungsgesetz*, i.e. the first version: *Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten (Urheberrechtswahrnehmungsgesetz)* of 9 November 1965 (BGBl. I, 1294), last revision on 26 October 2007, BGBl. I S. 2513, 2517.

⁵⁰ See Cafaggi, *Private Regulation, Supply Chain and Contractual Networks: The Case of Food Safety*, 2010.

IP governance which transgresses the traditional borders of international organizations in the Westphalian model.⁵¹

Historically, WIPO's predecessor was designed for norm administration of global international IP treaties. WIPO was preceded by the *United International Bureaux for the Protection of Intellectual Property* (BIRPI)⁵² which was set up in 1839 up for the administration of the 1883 *Paris Convention for the Protection of Industrial Property*⁵³ and the 1886 *Berne Convention for the Protection of Literary and Artistic Works (Berne Convention)*.⁵⁴ Having originally been based in Berne, its offices were moved to Geneva in 1960 for closer proximity with the UN and further international organizations. This moving to Geneva indicated the beginning of the changing role of the institution from pure norm administration to a more sophisticated governing body in international IP norm creation and administration.

In 1967, the international consensus about the need for a more pronounced and advanced institution of global IP governance translated into the *Convention Establishing the World Intellectual Property Organization (WIPO Convention)*.⁵⁵ On April 26, 1970, WIPO was established in Geneva and has ever since governed global IP law. The extended mission of WIPO to contribute to a better understanding and cooperation among States, to encourage creative activity and to promote IP protection reflects the changing rationale of the institution.⁵⁶ The convention clearly reflects a state-oriented approach to international policymaking in the Westphalian tradition that disregards at that time further and today firmly established economic agents in global IP governance.

In 1974, the *Agreement between the United Nations and the World Intellectual Property Organization*⁵⁷ made it one of the now 17 specialized agencies of the UN. Article 1 of said agreement entrusted WIPO with the responsibility to take "appropriate action in accordance with its basic instruments, treaties and agreements administered by it." Such appropriate action should be designed "inter alia, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development."⁵⁸ In thus being entrusted as a specialized agency, WIPO has assumed responsibilities in all areas of IP law ranging from industrial property, copyright and related rights to issues of traditional knowledge and traditional cultural expressions.⁵⁹ The closer attachment of the institution to the UN again shows the then prominent role ascribed to the UN and its agencies in governing policy issues of global relevance with and amongst states.

In consequence, the history of WIPO demonstrates its evolution from an institution of norm administration towards a member-state-oriented international economic institution for global IP governance in the Westphalian tradition. However, as further analysis of the development of WIPO's mission and strategic goals will show,⁶⁰ the changing IP infrastructure has forced WIPO into further strategic realignment in the sense of redefining its core mission and strategies for global IP governance.

⁵¹ See also Yu, *The Global Intellectual Property Order and Its Undetermined Future*, W.I.P.O.J. 1 (2009), p. 1 (2).

⁵² BIRPI is the acronym for the French term *Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle*.

⁵³ 21 U.S.T. 1581, 828 U.N.T.S. 305.

⁵⁴ S. Treaty Doc. No. 99-27 (1986), 1161 U.N.T.S. 3.

⁵⁵ 14 July 1967, as amended 18 September 1979, 21 U.S.T. 1749, 828 U.N.T.S. 3.

⁵⁶ Preamble, WIPO Convention, 21 U.S.T. 1749, 828 U.N.T.S. 3.

⁵⁷ Available at: <http://www.wipo.int/treaties/en/agreement/index.html> (last access March 15, 2012).

⁵⁸ Article 1 of the Agreement, available at: <http://www.wipo.int/treaties/en/agreement/index.html> (last access March 15, 2012).

⁵⁹ See coverage of their activities, available at: <http://www.wipo.int/about-ip/en/> (last access March 15, 2012).

⁶⁰ See sections on "Strategic Realignment" and "WIPO's IP Policy Direction."

3.2 Facts and Figures

Almost five decades after its establishment, WIPO is still based in Geneva, recently having moved to new headquarters;⁶¹ however, it also entertains external offices in New York, Rio de Janeiro, Singapore and Tokyo. At the time of writing, Francis Gurry is the Director General of WIPO. He was appointed on October 1, 2008 with his six-year term running until September 2014.⁶² Since his coming into office, he has launched an extensive programme of strategic realignment of the work and direction of WIPO.⁶³ The implementation of this programme is assisted by *WIPO's Senior Management Team*⁶⁴ which consists of four Deputy Directors General, three Assistant Director Generals and the Chief of Staff as well as over 1,200 WIPO employees from more than 100 countries.

Since its establishment WIPO has grown to a membership of 185 countries which constitutes over 90 per cent of the world's countries.⁶⁵ In addition and testifying a growing trend towards embracing non-state actors, some 284 non-governmental organizations (NGOs) – such as the *International Trademark Association* (INTA) – and 69 intergovernmental organizations (IGOs) – such as the *European Patent Organization* (EPO) – are accredited as observers at WIPO meetings.⁶⁶ WIPO itself provides funds through the *WIPO Voluntary Fund*⁶⁷ in order to allow indigenous and local communities to take an active part in the discussions of the *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (IGC). Thereby, WIPO fulfils its mission of close cooperation with its member states and stakeholders to improve understanding and respect for IP worldwide.

One of the striking features of WIPO – in comparison to other UN organizations – is that it is largely self-financing. Over 90 per cent of the budgeted expenditure of 618,8 million Swiss francs for the 2010-2011 biennium, was covered by WIPO revenues.⁶⁸ For the 2012-2013 biennium, the organization projects a coverage of 93 per-cent of its budget by revenues from the fee-paid services it provides to its customers.⁶⁹ Such revenues stem primarily from WIPO global IP services, i.e. the *Patent Cooperation Treaty* (PCT),⁷⁰ the Madrid, Hague and Lisbon systems. Further contributions stem from WIPO's arbitration and mediation services as well as contributions from its member states. In its financial activities, WIPO adheres to the principles of accountability, transparency and oversight which are guaranteed and enforced by various oversight measures.⁷¹ As a result of their self-financing mechanisms and, thus, the relevance of quality service-provision for WIPO, the organization has increasingly displayed a service-oriented stance towards its customers – primarily private companies – and has, therefore, made a substantial contribution to the emerging public-private web of global IP governance.

⁶¹ See WIPO, Inauguration of the New WIPO Building, September 26, 2011, available at:

http://www.wipo.int/pressroom/en/articles/2011/article_0023.html (last access March 15, 2012).

⁶² Available at: <http://www.wipo.int/about-wipo/en/dgo/> (last access March 15, 2012).

⁶³ See infra in this chapter the section on “Strategic Realignment.”

⁶⁴ Available at: <http://www.wipo.int/about-wipo/en/management.html> (last access March 15, 2012).

⁶⁵ WIPO, *A Users' Guide, An Introduction to the Organization*, 2011.

⁶⁶ For an overview over WIPO observers see List of Observers, available at:

<http://www.wipo.int/members/en/organizations.jsp> (last access March 15, 2012).

⁶⁷ Available at: http://www.wipo.int/tk/en/ngoparticipation/voluntary_fund/ (last access March 15, 2012).

⁶⁸ WIPO, 2010-2011 Budget, available at:

http://www.wipo.int/export/sites/www/about-wipo/en/budget/pdf/budget_2010_2011.pdf (last access March 15, 2012).

⁶⁹ WIPO, Results, Budget and Performance, available at: <http://www.wipo.int/about-wipo/en/budget/> (last access March 15, 2012).

⁷⁰ 28 U.S.T. 7645, 1160 U.N.T.S. 231.

⁷¹ E.g. the Internal Audit and Oversight Division (IAOD) and the Financial Regulations and Rules, available at: http://www.wipo.int/about-wipo/en/pdf/wipo_financial_regulation.pdf (last access March 15, 2012).

3.3 Institutional Structure

The institutional structure of WIPO is composed of its main governing bodies, its standing committees, its permanent committees and its working groups. Furthermore, WIPO entertains a close web of outside relations with the multilateral system which is introduced in the following section.

The primary policy and decision-making bodies of WIPO are the *WIPO General Assembly*, the *WIPO Conferences* and the *WIPO Coordination Committee*. Article 6 of the *WIPO Convention*⁷² sets out in more detail the set-up, obligations and working mode of the General Assembly. It meets once in every calendar year in ordinary session. Article 7 of the *WIPO Convention*⁷³ determines the framework for WIPO Conferences. In particular, it shall “discuss matters of general interest in the field of intellectual property and may adopt recommendations relating to such matters.”⁷⁴ Further details on the WIPO Coordination Committee are set out in Article 8 of the *WIPO Convention*.⁷⁵ The Committee gives advice to “the organs of the Union, the General Assembly, the Conference, and the Director General, on all administrative, financial and other matters of common interest.”⁷⁶

In addition to WIPO’s main governing bodies, WIPO entertains standing committees which the *General Assembly* establishes for a particular purpose. Currently, there is, first, the *Standing Committee on the Law of Patents* (SCP) which is – after the adoption of the *Patent Law Treaty* (PTL)⁷⁷ – primarily concerned with negotiations on a draft Substantive Patent Law Treaty (SPLT).⁷⁸ There is, second, the *Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications* (SCT) which was established in 1998 and focuses on recommendations in the area of trademarks, industrial designs and geographical indications.⁷⁹ Third, there is the *Standing Committee on Copyright and Related Rights* (SCCR) which presently discusses, inter alia, the issue of limitations and exceptions in copyright law as well as the protection of broadcasting organizations.⁸⁰ All of the standing committees may ask the *General Assembly* to decide on the convention of a *Diplomatic Conference* to finalize negotiations on a new treaty and for the adoption of such a new treaty.

Standing committees as well as any of the assemblies can establish working groups for the in-depth examination of a particular issue. Thus, there has been a variety of working groups on a variety of areas, such as the *Working Group on the Legal Development of the Madrid System for the International Registration of Marks*. Further working groups are the *PCT Working Group*⁸¹ and the *Standards and Documentation Working Group*.

In addition to the WIPO standing committees there are permanent committees that deal with a specific sub-theme of WIPO, such as IP and development. Examples of such permanent committees are the CDIP, the IGC, the *Program and Budget Committee*, the *Advisory Committee on Enforcement* (ACE) and permanent committees on the international classification treaties.⁸² The task of the latter permanent committees is the periodical revision and update of the respective classification systems.

This internal web of governing bodies, committees and working groups is also entrusted with entertaining a close network of interrelationships with other international institutions and the multilateral system. Close relations are, for instance, entertained with the WTO. In 1996, WTO and WIPO signed the *Agreement Between the World Intellectual Property Organization and the World*

⁷² 14 July 1967, as amended 18 September 1979, 21 U.S.T. 1749, 828 U.N.T.S. 3.

⁷³ 14 July 1967, as amended 18 September 1979, 21 U.S.T. 1749, 828 U.N.T.S. 3.

⁷⁴ Article 6(2)(i), 14 July 1967, as amended 18 September 1979, 21 U.S.T. 1749, 828 U.N.T.S. 3.

⁷⁵ 14 July 1967, as amended 18 September 1979, 21 U.S.T. 1749, 828 U.N.T.S. 3.

⁷⁶ Article 7(3)(i), 14 July 1967, as amended 18 September 1979, 21 U.S.T. 1749, 828 U.N.T.S. 3.

⁷⁷ 39 I.L.M. 1047.

⁷⁸ For more information see <http://www.wipo.int/patent-law/en/harmonization.htm> (last access March 15, 2012).

⁷⁹ For more information see <http://www.wipo.int/trademarks/en/sct.html> (last access March 15, 2012).

⁸⁰ For more information see <http://www.wipo.int/copyright/en/> (last access March 15, 2012).

⁸¹ For more information see <http://www.wipo.int/pct-wg/en/index.html> (last access March 15, 2012).

⁸² E.g. Locarno (industrial designs), Nice (marks), Strasbourg (patents), Vienna (figurative elements of marks).

*Trade Organization*⁸³ which aims at establishing “a mutually supportive relationship” between the two organizations “with a view to establishing appropriate arrangements for cooperation between them.”⁸⁴ More specifically, the Agreement provides for cooperation in three main fields: first, notification of, access to and translation of national IP laws; second, implementation of procedures for the protection of national emblems;⁸⁵ and third, technical cooperation.⁸⁶ Following the 1996 Agreement, the WTO and WIPO have concluded two further technical cooperation agreements in 1998 and 2001 for the promotion of TRIPS-compliance.⁸⁷ Furthermore, the two institutions have established a Common Portal⁸⁸ for IP offices and national trade offices and entertain various other substantive co-operations, such as the *WHO, WIPO, WTO Trilateral Cooperation on Public Health, Intellectual Property and Trade*.⁸⁹ It follows that the horizontal forum-shifting of IP issues from WIPO to the WTO has not only led to increased governance competition for WIPO but also to a strong coalition between WIPO and the WTO in international IP governance.⁹⁰ The same holds true for WIPO’s relations with related international organizations.

4 WIPO’s Mission and Strategic Goals

Altogether WIPO’s institutional framework aims at the attainment of WIPO’s mission and strategic goals which had already been formulated at the time of WIPO’s establishment. However, the transformations in the global IP landscape and its governance structure discussed above have led to increasing pressures upon WIPO for strategic realignment and policy adaptations. The following section introduces and reflects upon WIPO’s mission and strategic goals in the light of the emerging public-private web of global IP governance and its expectations towards WIPO.

4.1 Core Mission

The core mission of WIPO is set out in the *WIPO Convention*⁹¹ with the member states, however, determining the strategic direction and activities of WIPO in assemblies, committees and working groups on an on-going basis.

Article 3 of the *WIPO Convention* sets out the objectives of the organization and stresses thereby the objective of WIPO “to promote the protection of intellectual property throughout the world through cooperation among States.” The tone of Article 3 of the *WIPO Convention* reflects the content of the Preamble of the Convention which stresses, on the one hand, the overarching objective of contributing “to better understanding and cooperation among States” and, on the other hand, the objective of encouraging creative activity and of promoting the protection of intellectual property throughout the world.

Building upon the Preamble and Article 3 of the *WIPO Convention*, Article 4 of the Convention entitled “Functions” sets out in even more detail the strategies to be pursued by WIPO to attain the objectives as set out in Article 3. Thus, Article 4 entrusts WIPO with the task of promoting,

⁸³ Of December 22, 1995, 35 I.L.M. 754.

⁸⁴ Preamble, 35 I.L.M. 754.

⁸⁵ Articles 2 and 4, 35 I.L.M. 754.

⁸⁶ Article 4, 35 I.L.M. 754.

⁸⁷ See e.g. Legal and Technical Assistance to Developing Countries for Implementation of the TRIPS Agreement from January 1, 1996 to March 31, 1999, WO/GA/24/5.

⁸⁸ See WIPO-WTO Common Portal, available at: http://www.wipo.int/wipolex/en/common_portal.html (last access March 15, 2012).

⁸⁹ See http://www.wipo.int/globalchallenges/en/health/trilateral_cooperation.html for more information (last access March 15, 2012).

⁹⁰ See also Salomon, Cooperation Between the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO), St. John’s J. Legal Comment. 17 (2003), p. 429 (430).

⁹¹ 14 July 1967, as amended 18 September 1979, 21 U.S.T. 1749, 828 U.N.T.S. 3.

creating and harmonizing measures for the protection of intellectual property throughout the world through, for instance, the conclusion of international agreements.⁹² It further allows WIPO to provide legal-technical assistance to its member states in the field of intellectual property⁹³ and to take appropriate action in the educational, informational and service-related field to facilitate the protection of IP.⁹⁴

This core mission has remained largely unchanged. It has indeed recently been reinforced in the inscription of the cupola in the new WIPO headquarters which reads: “Human genius is the source of all works of art and invention; these works are the guarantee of a life worthy of men; it is the duty of the State to ensure with diligence the protection of the arts and inventions.”⁹⁵ Nevertheless, the rise of new global challenges related to IP together with the emergence of new modes, institutions and fora of IP governance have necessitated the formulation of new directions and a strategic realignment of WIPO in recent years.

4.2 WIPO Development Agenda

The growing concern of WIPO’s developing member states about sufficient regard to development issues in the wake of the *TRIPS Agreement*, led WIPO into the incorporation of development concerns into its policies. Thus, in 2007, the WIPO General Assembly adopted the *WIPO Development Agenda*⁹⁶ with the initiative for the drafting of a development agenda having gone back to the governments of Brazil and Argentina in 2004.⁹⁷ The purpose of its adoption was to ensure that development considerations feature prominently in the work of WIPO.⁹⁸ The Agenda thereby recognizes the importance of policy space and flexibilities for nation states to implement IP systems that are most suited to national and regional circumstances and capacities.⁹⁹

The *WIPO Development Agenda* represents a set of 45 recommendations which are divided into 6 clusters. Cluster A deals with technical assistance and capacity building, Cluster B with norm-setting flexibilities, public policy and public domain, Cluster C with technology transfer, information and communication technologies (ICT) and access to knowledge, Cluster D with assessment evaluation and impact studies, Cluster E with institutional matters including mandate and governance and Cluster F with other issues.

Following the adoption of the *WIPO Development Agenda* all of WIPO’s activities are to be conducted by mainstreaming the Agenda’s principles and activities into the respective activities. Such implementation is to be directed by the newly established *Committee on Development and Intellectual Property* (CDIP) which has been mandated to develop, monitor, assess and discuss a work-programme for the implementation of the recommendations. It is composed of all WIPO Member States and is open to the participation of observers.

⁹² See Articles 4(i), 4(ii), 4(iii), 4(iv) of the WIPO Convention, July 14, 1967, as amended September 18, 1979, 21 U.S.T. 1749, 828 U.N.T.S. 3.

⁹³ See Article 4(v) of the WIPO Convention, July 14, 1967, as amended September 18, 1979, 21 U.S.T. 1749, 828 U.N.T.S. 3.

⁹⁴ See Articles 4(vi), 4(vii), 4(viii) of the WIPO Convention, July 14, 1967, as amended September 18, 1979, 21 U.S.T. 1749, 828 U.N.T.S. 3.

⁹⁵ WIPO, *A Users’ Guide, An Introduction to the Organization*, 2011, p. 19.

⁹⁶ WIPO Development Agenda 2007, available at: <http://www.wipo.int/ip-development/en/agenda/> (last access March 15, 2012).

⁹⁷ WIPO, Proposal to Establish a Development Agenda for the World Intellectual Property Organization (WIPO). An Elaboration of Issues Raised in Document WO/GA/31/11. Submission by the Group of Friends of Development, 2005 (Document IIM/1/4).

⁹⁸ Sell, Everything old is new again: the development agenda now and then, *W.I.P.O.J.* 3(1) (2011), p. 17 (19).

⁹⁹ For a related discussion on the use of flexibilities in the People’s Republic of China see Wechsler, Intellectual Property Law in the P.R. China: A Powerful Economic Tool for Innovation and Development, *China-EU Law Journal* 1 (2011), p. 3 (3-54).

To the present day, 21 dedicated projects responding to specific recommendations are under way with four having been completed. A great number of the projects have either been or are still focusing on recommendation Nr. 10 which establishes the CDIP's mandate to "develop and improve national intellectual property institutional capacity through further development of infrastructure and other facilities with a view of making national intellectual property institutions more efficient and promote fair balance between intellectual property protection and the public interest."¹⁰⁰ One project has, for instance, been a pilot project for the establishment of "start-up" national IP academies.¹⁰¹

The *WIPO Development Agenda* has received rather positive assessments. While WIPO itself hails the Agenda a "milestone"¹⁰² in its policy development, the Agenda has equally been highly recognized by academics and commentators. Yu has, for instance, seen the Agenda as representing a "New Agenda" as opposed to the "Old Agenda" of the 1960s and 1970s which had found expression in the formation of WIPO, the Stockholm Protocol, the establishment of the International Code of Conduct and the revision of the *Paris Convention*.¹⁰³ The new development agenda by contrast, reflected the extent to which IP issues had been transformed from narrow, technical domestic issues to ones that are multi-faceted and central to the international policy agenda.¹⁰⁴ Critical voices, however, pointed to the lack of resources for the provision of technical assistance in the respective IP community.¹⁰⁵ Nevertheless, the potential of the *WIPO Development Agenda* to revolutionize the international governance of intellectual property law and policy is widely recognized and extensive efforts are being undertaken to assess the success of its implementation.¹⁰⁶

4.3 Strategic Realignment

Rather than responding to the request of developing countries for consideration of a development dimension and rather than focusing on policy development in its member states, the *WIPO Strategic Realignment Programme* (SRP) has responded to a rapidly changing IP environment on a larger scale. Thereby it responded, in particular, to the greater interaction between public, private and civil society sectors in global IP governance.¹⁰⁷ It can thus be evaluated as an attempt to establish novel participatory and dynamic legal mechanisms for the global governance of IPRs.¹⁰⁸

In essence, the SRP redefined WIPO's strategic-level goals. The definition of new goals was seen as rendering WIPO a "responsive, efficient organization, equipped to achieve its strategic goals and to provide global leadership on IP issues."¹⁰⁹ Nine strategic goals were defined ranging from a "balanced evolution of the international normative framework for IP" to the "provision of premier global IP services."¹¹⁰ The new strategic goals are supported by the definition of "core values" which

¹⁰⁰ WIPO Development Agenda 2007, available at: <http://www.wipo.int/ip-development/en/agenda/> (last access March 15, 2012).

¹⁰¹ WIPO, Document CDIP/3INF/2.

¹⁰² See WIPO, Overview of the Development Agenda, <http://www.wipo.int/ip-development/en/agenda/overview.html> (last access March 15, 2012).

¹⁰³ Yu, A Tale of Two Development Agendas, *Ohio N.U.L.Rev.* 35 (2009), p. 465 (471).

¹⁰⁴ Yu, A Tale of Two Development Agendas, *Ohio N.U.L.Rev.* 35 (2009), p. 465 (511).

¹⁰⁵ Trainer, Intellectual Property Enforcement: A Reality Gap (Insufficient Assistance, Ineffective Implementation)?, *J. Marshall Rev. Intell. Prop. L.* 8 (2008), p. 47 (69).

¹⁰⁶ Beer, *Implementing the World Intellectual Property Organization's Development Agenda*, 2009, p. 3.

¹⁰⁷ Chon, Global Intellectual Property Governance (Under Construction), *Theoretical Inquiries L.* 12 (2011), p. 349 (349-350).

¹⁰⁸ See Oguamanam, *Intellectual Property in Global Governance: A Development Question*, 2011, p. 2.

¹⁰⁹ WIPO Strategic Realignment Programme, Introduction, available at: http://www.wipo.int/about-wipo/en/strategic_realignment/ (last access March 15, 2012).

¹¹⁰ Further goals are "facilitating the use of IP for development, coordination and development of global IP infrastructure, world reference source for IP information and analysis, international cooperation on building respect for IP, addressing IP in relation to global policy issues, a responsive communications interface between WIPO, its member states and other

encompass, first, service orientation, second, working as one, third, accountability for results, and fourth, environmental, social and governance responsibility.¹¹¹ Following the redefinition of its strategic goals, WIPO embarked on progressively bringing the Organization's structures, processes, resources and cultural values into alignment with its new goals.

After the initial restructuring of its programme and resources, the SRP is focusing on 19 initiatives that implement the above-defined four core values.¹¹² First, in implementing service orientation, WIPO is aiming at increasing its responsiveness to global stakeholders. Second, in acting as an integrated entity, WIPO is aiming at increasing its level of efficiency and responsiveness. Third, in stressing its accountability for results, WIPO is aiming at increasing its ownership of performance. And fourth, in taking environmental, social and governance responsibility, WIPO is aiming at ethical performance and behaviour towards staff, community and environment.

The success of the implementation was measured using the *SRP Results Framework*¹¹³ in December 2011 and will undergo final evaluation in December 2012.¹¹⁴ Every individual initiative is measured with a set of 16 detailed outcome indicators to which 47 detailed indicators contribute. For instance, in relation to the PCT system, the customer satisfaction is evaluated by measuring the timeliness of formality examination, the timeliness for publication and the translation quality.¹¹⁵ While progress has already been made in achieving the SRP strategic goals, it will remain to be seen to what extent the SRP will have been successful at the end of its implementation period in December 2012.¹¹⁶

4.4 WIPO's IP Policy Directions

Closely related to WIPO's strategic realignment and an integral part of the SRP are recent adaptations in WIPO's methodological and strategic choices. On the one hand, WIPO has incorporated a more economic approach into its policymaking. On the other hand, WIPO has committed itself to a new strategic framework for "the promotion of innovation and creativity for the economic, social and cultural development of all countries, through a balanced and effective international intellectual property system."¹¹⁷

First, and in following the trend towards a more economic approach, WIPO has committed itself to promote a better understanding of the economic effects of different IPRs and has offered itself as an entry point for anyone seeking information on the economics of IP.¹¹⁸ More specifically it installed a Chief Economist in the institution in 2009 – currently Carsten Fink – who oversees the various activities of WIPO in the area of the economics of IP.¹¹⁹ One of the activities which is now entertained by the newly created division is the *WIPO Seminar Series on the Economics of IP* which invites state-of-the-art economists to present their latest research findings on IP economics.¹²⁰ However, reaching far beyond such informational and networking activities, WIPO has incorporated

(Contd.) _____

stakeholders, an efficient administrative and financial support structure to enable WIPO to deliver its programs", cf. WIPO, *A Users' Guide, An Introduction to the Organization*, 2011, p. 13.

¹¹¹ WIPO Strategic Realignment Programme, Introduction, available at: http://www.wipo.int/about-wipo/en/strategic_realignment/ (last access March 15, 2012).

¹¹² WIPO, *A Users' Guide, An Introduction to the Organization*, 2011, p. 16.

¹¹³ WIPO, SRP Results Framework, available at: http://www.wipo.int/about-wipo/en/strategic_realignment/results_framework.html (last access March 15, 2012).

¹¹⁴ See already WIPO, *Strategic Realignment Program Results Framework*, Baseline Report, March 2011.

¹¹⁵ WIPO, *Strategic Realignment Program Results Framework*, Baseline Report, March 2011, p. 8.

¹¹⁶ For progress made see WIPO, Measuring Success, available at: http://www.wipo.int/about-wipo/en/strategic_realignment/progress.html (last access March 15, 2012).

¹¹⁷ WIPO, Assemblies of the Member States of WIPO, Medium Term Strategic Work Plan for WIPO, 2010-2015, p. 3, available at: <http://www.wipo.int/about-wipo/en/pdf/mtsp.pdf> (accessed March 15, 2012).

¹¹⁸ WIPO, The Economics of IP, available at: http://www.wipo.int/econ_stat/en/economics/ (accessed March 15, 2012).

¹¹⁹ See Intellectual Property Watch, WIPO Names First-Ever Chief Economist, 2 June 2009.

¹²⁰ See http://www.wipo.int/econ_stat/en/economics/seminars.html (last access March 15, 2012).

economic thinking in all of their core activities and provides a large variety of publications in the form of *WIPO Economic Research Working Papers* and the *World Intellectual Property Report 2011*.¹²¹ Furthermore, WIPO has engaged in a close dialogue with other international governance institutions, such as the OECD and the Worldbank and participates in the creation of a *Global Network of IP Office Economists*.¹²² In consequence, WIPO is actively participating in the establishment of a close network of global IP governance that incorporates the latest methodological approaches to IP policy.

Second, and stretching far beyond a more economic approach, WIPO has defined a *Medium Term Strategic Plan* for WIPO which sets strategic directions from 2010 to 2015.¹²³ The Plan constitutes a deliberate response to the changing landscape of the knowledge and digital economy, of the geography of science and technology and of the internationalization of science and technology production. In the light of this changing landscape, the *Medium Term Strategic Plan* defines seven substantive goals and two enabling goals. The seven substantive goals are, first, balanced evolution of the international normative framework for IP, second, provision of premier global IP services, third, facilitating the use of IP for development, fourth, coordination and development of global IP infrastructure, fifth, world reference source for IP information and analysis, sixth, international cooperation on building respect for IP, and seventh, addressing IP in relation to global policy issues. The two enabling goals are, first, a responsive communications interface between WIPO, its member states and all stakeholders, and second, an efficient administrative and financial support structure to enable WIPO to deliver its programmes.¹²⁴ The attainment of these strategic goals will be measured by outcome indicators in what is termed *WIPO's Results Based Management (RBM) Framework*.¹²⁵ Thus, these overarching goals are intended to build a stable overall strategic framework for WIPO's development which relies substantially on a fruitful dialogue with WIPO's member states, stakeholders and other international organizations. Most remarkable in this regard is the ever stronger orientation of WIPO towards non-state stakeholders.

In the light of these novel policy directions, the rigor of this strategic reorientation is most striking. It resembles closely strategy formulations by private enterprises and, as such, corresponds very much so to the self-financing and service-oriented nature of WIPO. It follows that WIPO's novel policy directions testify to the changing nature of WIPO from a traditional international organization and specialized agency of the UN in the Westphalian tradition to a global governing body that efficiently and effectively merges characteristics of private and public governance.

5 WIPO's Core Activities

Ever since its establishment, WIPO has conducted a variety of activities ranging from norm creation and administration, the provision of global IP services to technical assistance, infrastructure support and awareness building. Thereby, the range of WIPO activities reflects a most diversified approach to global IP governance which entails most specific elements for a variety of stakeholders ranging from nation states to private stakeholders. The following section discusses a selection of WIPO core activities in the light of the emerging public-private web of global IP governance and its expectations towards WIPO.

¹²¹ WIPO, *World Intellectual Property Report 2011*, available at:

http://www.wipo.int/econ_stat/en/economics/publications.html (last access march 15, 2012).

¹²² Cf. http://www.wipo.int/econ_stat/en/news/2010/news_0001.html, available at:

http://www.wipo.int/econ_stat/en/economics/publications.html (last access march 15, 2012).

¹²³ WIPO, *Assemblies of the Member States of WIPO, Medium Term Strategic Work Plan for WIPO, 2010-2015*, available at: <http://www.wipo.int/about-wipo/en/pdf/mtsp.pdf> (accessed March 15, 2012).

¹²⁴ WIPO, *Assemblies of the Member States of WIPO, Medium Term Strategic Work Plan for WIPO, 2010-2015*, p. 4-54, available at: <http://www.wipo.int/about-wipo/en/pdf/mtsp.pdf> (accessed March 15, 2012).

¹²⁵ WIPO, *Assemblies of the Member States of WIPO, Medium Term Strategic Work Plan for WIPO, 2010-2015*, p. 59, available at: <http://www.wipo.int/about-wipo/en/pdf/mtsp.pdf> (accessed March 15, 2012).

Table 1: WIPO Treaties and Number of Contracting Parties

Classification	Treaty	Parties
IP Protection	1883 Paris Convention for the Protection of Industrial Property	173
	1886 Berne Convention for the Protection of Literary and Artistic Works	164
	1891 The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods	35
	1961 International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations	91
	1971 The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms	77
	1974 Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite	45
	1981 The Nairobi Treaty on the Protection of the Olympic Symbol	50
	1989 Treaty on Intellectual Property in Respect of Integrated Circuits	Pending
	1994 The Trademark Law Treaty	50
	1996 WIPO Copyright Treaty (WCT)	89
	1996 WIPO Performances and Phonogram Treaty (WPPT)	89
	2000 The Patent Law Treaty	32
	2006 Singapore Treaty on the Law of Trademarks	24
Protection System	1891 Madrid Agreement Concerning the International Registration of Marks	85
	1934/1960 Hague Agreement Concerning the International Registration of Industrial Designs	58
	1958 Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration	27
	1970 Patent Cooperation Treaty (PCT)	144
	1980 Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure	75
	1989 Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	84
Classification	1968 Locarno Agreement Establishing an International Classification for Industrial Designs	52
	1957 Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks	83
	1971 Strasbourg Agreement Concerning the International Patent Classification	62
	1973 Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks	31

5.1 Norm Creation and Administration

Norm creation and administration are two of the core activities of WIPO.¹²⁶ They are conducted in cooperation with its member states and in collaboration with other stakeholders and global governance institutions.¹²⁷ While WIPO's predecessor BIRPI administered only four international treaties at its time, WIPO administers 24 multilateral treaties today which are exhaustively listed in Table 1.¹²⁸ Through these activities, WIPO plays an important governing role in identifying and regulating policy responses to global IP challenges that reach across national borders. WIPO has, thus, assumed a role as facilitator between nation states and global stakeholders in establishing the global IP law regime.

Until the 1990s, WIPO's engagement in norm creation and administration was largely confined to establishing the legal and administrative framework for the transnational protection of patents, trademarks, designs, appellations of origin and protection of state emblems.¹²⁹ It facilitated cooperation between nation states in setting up an efficient system for the international registration of IP. Thereafter, however, the nature of WIPO's norm creation and administration has changed by drawing more substantially on the involvement of non-state actors and by driving substantive global IP law standards and their enforcement in collaboration with both public and private actors.

Testifying to this development, one of the most recent milestones in WIPO's norm creation and administration is WIPO's rising role in regulating ICT and Internet policies. Until the 1990s and as a result of the minimal role IP law played in regulating the digital era until the 1990s, WIPO did not feature in norm creation and administration in the area of ICT. However, fostered by an increasingly transnational business environment and the need for global regulation, WIPO initiated – at the request of IP right-holders – the so-called “Internet Treaties” in the early 1990s. Both the *WIPO Copyright Treaty* (WCT)¹³⁰ and the *WIPO Performances and Phonograms Treaty* (WPPT)¹³¹ were adopted in 1996. They allowed for the first time in the history of IP law the use of technological measures for the protection of copyrighted works in digital media. Through their implementation in the form of the *Digital Millennium Copyright Act* (DMCA)¹³² in the United States (US) and the *Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society*¹³³ both treaties have substantially determined and shaped national policy directions worldwide.

Following up on these two treaties, WIPO has continuously engaged in attempts to further structure and regulate transnational ICT relations. Thus, the *Standing Committee on Copyright and Related Rights* has persistently been working on a *Treaty on the Protection of Broadcasting Organizations*.¹³⁴ With negotiations having stalled in 2007 because of differences on the treatment of webcasting, treaty negotiations were revived in 2011 with the aim of scheduling a Diplomatic Conference in 2012 for the final adoption of the treaty.¹³⁵ While the success of these initiatives is yet to be seen, WIPO's engagement clearly testifies to its continued interest in establishing itself as a major player in global ICT regulation.

¹²⁶ For a critical stance on the democracies of norm creation at WIPO see Visser, *The Policy-Making Dynamics in Intergovernmental Organizations: A comment on the Remarks of Geoffrey Yu*, *Chicago-Kent Law Review* 82 (2007), p. 1457 (1457-1466).

¹²⁷ WIPO, *A Users' Guide, An Introduction to the Organization*, 2012, p. 5.

¹²⁸ WIPO, *WIPO Treaties – General Information*, available at: <http://www.wipo.int/treaties/en/general/> (last access March 15, 2012).

¹²⁹ See Table 1.

¹³⁰ S. Treaty Doc. No. 105-17, at 1 (1997), 36 I.L.M. 65.

¹³¹ S. Treaty Doc. No. 105-17, at 18 (1997), 36 I.L.M. 67.

¹³² 17 U.S.C. §§ 1201-1205.

¹³³ OJ L167, 2001-06-22, p. 10.

¹³⁴ See Revised Consolidated Text for a Treaty on the Protection of Broadcasting Organizations, SCCR/12/2, October 4, 2004 available at: http://www.wipo.int/edocs/mdocs/copyright/en/sccr_12/sccr_12_2.pdf (last access March 15, 2012).

¹³⁵ Intellectual Property Watch, *WIPO Sees Progress on Broadcaster Rights, Library Exceptions; Treaty for Blind Readers Slips*, 5 December 2011, available at: <http://www.ip-watch.org> (last access March 15, 2012).

The same holds true for WIPO's interest in establishing itself as an important player in Internet governance. This interest is reflected in a multiplicity of initiatives. First, WIPO is closely cooperating with the *International Corporation for Assigned Names and Number* (ICANN)¹³⁶ in setting up its *Uniform Domain-Name Dispute-Resolution Policy* (UDRP).¹³⁷ Second, WIPO participated in larger UN initiatives for Internet governance, such as the *UN World Summit on the Information Society 2003-2005* (WSIS), and has been given a seat on the *UN Working Group on Internet Governance* (WGIG).¹³⁸ Nevertheless, it has been pointed out that WIPO has not taken full responsibility for appropriately regulating IP issues in the construction of global Internet governance as it has only played a minor role in the *UN Internet Governance Forum* (IGF).¹³⁹ Therefore, it remains to be seen whether WIPO's strategic realignment will also lead to a more intense engagement in the realm of Internet governance.

5.2 Provision of Global IP Services

In response to the assumption of global responsibility in global IP law-making, WIPO is now providing a variety of global IP services for private entities. The type of such services is twofold: on the one hand, WIPO supports the international protection of patents (PCT), trademarks (Madrid system), designs (Hague system), appellations of origin (Lisbon system), protection of state emblems (Article 6ter), domain name dispute resolution (cf. ICANN) and international classification by entertaining the respective administrative services. On the other hand, WIPO provides arbitration, mediation and other alternative dispute resolution (ADR) services. As the latter IP services are growing substantially in importance and testify to a growing trend towards private dispute resolution, the following section introduces those latter services in more detail.¹⁴⁰

In 1994, the *WIPO Arbitration and Mediation Centre* (the Centre) was established and has ever since been based in both Geneva and in Singapore. In the beginning, the driving force behind the creation of the *Arbitration and Mediation Centre* was an informal working group composed of representatives of largely private associations: the *International Federation of Industrial Property Attorneys* (FICPI), the *International Association for the Protection of Industrial Property* (AIPPI) and the *Licensing Executives Society International* (LESI).¹⁴¹ In response to the private impetus provided by these associations, WIPO convened a *Working Group of Non-Governmental Organizations on Arbitration and other Extra-Judicial Mechanisms for the Resolution of Intellectual Property Disputes Between Private Parties*,¹⁴² composed of a multiplicity of stakeholders from 1992-1993. Building upon the work done by the *Working Group*, the *WIPO General Assembly* established WIPO dispute resolution services and the Centre in September 1993.¹⁴³

One of the first tasks of the newly established Centre was the drafting and adoption of the *WIPO Mediation, Arbitration and Expedited Arbitration Rules*, which entered into force on October 1,

¹³⁶ For the organizations' website see: <http://www.icann.org/> (last access March 15, 2012).

¹³⁷ See below "Relations with other IP Governance Institutions" for a more detailed account of WIPO's Internet cooperation.

¹³⁸ For the website of the forum see: <http://www.wgig.org/> (last access March 15, 2012).

¹³⁹ For criticism see Global Information Society Watch, *World Intellectual Property Organization* (WIPO), 2007, available at: <http://www.giswatch.org/institutional-overview/civil-society-participation/world-intellectual-property-organisation-wipo>. For the website of the forum see: <http://www.intgovforum.org/cms/> (last access March 15, 2012).

¹⁴⁰ For further information on the IP services relating to patents (PCT), trademarks (Madrid system), designs (Hague system), appellations of origin (Lisbon system), protection of state emblems (Article 6ter), domain name dispute resolution and international classification, see: <http://www.wipo.int/services/en/> and WIPO, *The Guide To WIPO Services*, available at: http://www.wipo.int/export/sites/www/freepublications/en/general/1020/wipo_pub_1020.pdf (last access March 15, 2012).

¹⁴¹ For an overview over the developments see <http://www.wipo.int/amc/en/history/> (last access March 15, 2012).

¹⁴² See <http://www.wipo.int/amc/en/history/> (last access March 15, 2012).

¹⁴³ Document WO/GA/XIV/1 and 4.

1993.¹⁴⁴ Ever since, WIPO has adopted a variety of rules for a variety of purposes: first, the *WIPO Arbitration Rules*,¹⁴⁵ second, the *WIPO Expedited Arbitration Rules*,¹⁴⁶ third, the *WIPO Mediation Rules*,¹⁴⁷ and fourth, since 2007 the *Expert Determination Rules*.¹⁴⁸ Furthermore, WIPO has provided for the *Recommended WIPO Contract Clauses and Submission Agreements*¹⁴⁹ which could govern submission of disputes to the Centre. Yet two further areas that the Centre focuses on is the resolution of domain name disputes and the provision of alternative dispute resolution (ADR) for specific sectors, for instance, art and cultural heritage and sports.¹⁵⁰

In acting on these Rules and procedures, the Centre has advised numerous clients and parties and administered more than 270 mediation and arbitration cases with an ever faster growth rate in case adoption.¹⁵¹ 42% of the WIPO Mediation and Arbitration Cases were thereby in the realm of patent law, 23% in IT law, 12% in trademarks, 6% in copyright and 17% in other areas. Remedies varied substantially between 20,000 USD and several hundred million USD with a settlement rate of 68%.¹⁵² In the area of domain names, a total number of 22,840 cases has been filed since 1999, again with an impressive growth rate in recent years.¹⁵³

By entering the market of mediation, ADR and arbitration, WIPO has strategically positioned itself in an ever-growing commercial market of non-judicial dispute resolution.¹⁵⁴ This positioning of WIPO has clearly required an adaptation of WIPO to its now primarily private clients which partially explains the move towards service-orientation in WIPO's strategic realignment. Furthermore, the positioning in a market of non-coercive enforcement mechanisms flows logically from the lack of coercive enforcement mechanisms on the part of WIPO – as opposed to the possibilities of the WTO Dispute Settlement Body.¹⁵⁵ And finally, the positioning in the market of voluntary compliance dispute resolution flows rather logically from the nature of WIPO as governing body based on voluntary and reputation-based compliance models.¹⁵⁶

5.3 Technical Assistance, Infrastructure Support and Awareness Building

In addition to the above-discussed core activities of norm creation and administration, on the one hand, and of provision of global IP services, on the other hand, WIPO has defined two further core areas for its activities: first, technical assistance and infrastructure support, and second, awareness building.¹⁵⁷

¹⁴⁴ WIPO Publication No. 446.

¹⁴⁵ WIPO Publication No. 446.

¹⁴⁶ See <http://www.wipo.int/amc/en/arbitration/expedited-rules/index.html> (last access March 15, 2012).

¹⁴⁷ See <http://www.wipo.int/amc/en/mediation/rules/index.html> (last access March 15, 2012).

¹⁴⁸ See <http://www.wipo.int/amc/en/clauses/> (last access March 15, 2012).

¹⁴⁹ See <http://www.wipo.int/amc/en/clauses/> (last access March 15, 2012).

¹⁵⁰ See <http://www.wipo.int/amc/en/center/specific-sectors/sports/> (last access March 15, 2012).

¹⁵¹ For a WIPO caseload summary see <http://www.wipo.int/amc/en/center/caseload.html> (last access March 15, 2012).

¹⁵² For a WIPO caseload summary see <http://www.wipo.int/amc/en/center/caseload.html> (last access March 15, 2012).

¹⁵³ For domain name dispute resolution statistics see <http://www.wipo.int/amc/en/domains/statistics/cases.jsp> there was one case in 1999, 1100 cases in 2003 only and in 2011 there were 2764 cases (last access March 15, 2012).

¹⁵⁴ Petersmann, Justice as Conflict Resolution: Proliferation, Fragmentation, and Decentralization of Dispute Settlement in International Trade, U.Pa. J. Int'l Econ. L. 27 (2006), p. 273 (273-276).

¹⁵⁵ Davey, The WTO Dispute Settlement System: The First Ten Years, *Journal of International Economic Law* 8(1) (2005), p. 17 (17-50).

¹⁵⁶ Cf. Hathaway/Shapiro, Outcasting: Enforcement in Domestic and International Law, *Yale Law Journal* 121 (2011), p. 252.

¹⁵⁷ WIPO, *A Users' Guide, An Introduction to the Organization*, 2011, p. 7.

Rather distinct from most of the global IP services provided to private parties is the technical assistance and infrastructure support offered by WIPO.¹⁵⁸ As opposed to the provision of global IP services, the pledge to the construction of a global IP infrastructure is mainly directed at IP institutions and authorities and capacity building and support centres and, thus, member states and other stakeholders. WIPO has committed itself to the establishment of a sustainable infrastructure for the global protection of IPRs. More specifically, for instance, WIPO provides technical assistance to support the efficient establishment of online services in national and regional IP offices and supports the integration of regional and international networks of IP offices. These initiatives correspond to WIPO's overarching strategic goal IV, to the mandate in Article 4(v) of the *WIPO Convention*,¹⁵⁹ to the *WIPO Development Agenda*¹⁶⁰ and to the provisions of further WIPO-administered treaties, such as the PCT.¹⁶¹ In so taking responsibility for the development of the global IP infrastructure, WIPO has committed itself to becoming a most relevant transnational actor in global IP governance that aims not only at services provision to private parties but also to narrowing the knowledge gap and the empowerment of developing countries.¹⁶²

Another prominent role is played by WIPO in the area of awareness building which is largely directed towards civil society. Awareness building entails elements such as building respect for IP as laid out in the Strategic Goal VI.¹⁶³ Awareness building is thereby seen as a concept related to enforcement – as a result of which it is also dealt with in the *Advisory Committee on Enforcement* – albeit one that is more encompassing than a narrow enforcement conception.¹⁶⁴ In December 2011, the *Advisory Committee on Enforcement* was presented with a list of recent activities in the area of building respect for IP by the secretariat.¹⁶⁵ Closer inspection of the list demonstrates, however, the strong focus of the initiatives on combatting counterfeiting and piracy and upholding IPRs rather than a more comprehensive and balanced approach to awareness building.¹⁶⁶ Yet, another and more balanced approach to awareness building is reflected in the activities of the *WIPO Academy* which was founded in 1998.¹⁶⁷ The *WIPO Academy* offers a wide range of learning and development opportunities in the form of distance learning, summer schools, professional trainings, executive programmes and startup academies.¹⁶⁸ Through its enhancement of human capital worldwide, the *WIPO Academy* has contributed substantially to awareness and knowledge building as well as global networking in the relevant global community.

In consequence, this brief introduction to the core activities of WIPO in the areas of technical assistance and infrastructure support, on the one hand, and awareness building, on the other hand, has shown that WIPO aims at global IP infrastructure building through interaction not only with private stakeholders but with a large variety of global actors in the IP landscape and civil society. As such, the

¹⁵⁸ See http://www.wipo.int/global_ip/en/ (last access March 15, 2012).

¹⁵⁹ 14 July 1967, as amended 18 September 1979, 21 U.S.T. 1749, 828 U.N.T.S. 3.

¹⁶⁰ WIPO Development Agenda 2007, available at: <http://www.wipo.int/ip-development/en/agenda/> (last access March 15, 2012).

¹⁶¹ 28 U.S.T. 7645, 1160 U.N.T.S. 231.

¹⁶² For WIPO's efforts to close the knowledge gap see also: http://www.wipo.int/global_ip/en/knowledge_gap.html (last access March 15, 2012).

¹⁶³ WIPO, Assemblies of the Member States of WIPO, Medium Term Strategic Work Plan for WIPO, 2010-2015, available at: <http://www.wipo.int/about-wipo/en/pdf/mtsp.pdf> (accessed March 15, 2012).

¹⁶⁴ For the activities of the Committee see: http://www.wipo.int/meetings/en/details.jsp?meeting_id=22170 (accessed March 15, 2012).

¹⁶⁵ WIPO, Advisory Committee on Enforcement, Seventh Session, November 30-December 2, 2011, Recent Activities of WIPO in the Field of Building Respect for Intellectual Property (IP), WIPO/ACE/7/2.

¹⁶⁶ For a critical stance see also Drahos, Securing the Future of Intellectual Property: Intellectual Property Owners and Their Nodally Coordinated Enforcement Pyramid, Case W. Res. J. Int'l L. 36 (2004), p. 53 (55).

¹⁶⁷ See <http://www.wipo.int/academy/en/> (last accessed March 15, 2012).

¹⁶⁸ For the full 2012 portfolio see WIPO, *WIPO Academy Education and Training Program Portfolio*, 2011.

core activities of WIPO today show a tremendous evolution from the initial rationale for the foundation of BIRPI.

6 Conclusion: WIPO in a New Pluralist IP Order

In conclusion, the above introduction of WIPO as international economic institution in the public-private web of global IP governance has shown the changing mission and strategic goals of the organization. It has further shown how its mission and strategic goals have changed in an ever more rapidly evolving IP landscape and have eventually translated into a large variety of activities which are directed at various IP stakeholders. The discussion has further shown how the changing mission, goals and activities are slowly transforming WIPO from a traditional international economic institution corresponding to Westphalian notions of international governance into a service-oriented governing body that combines elements of public institutions and private entities. In fact, it is in particular the evolving type of activities that WIPO conducts and its increasing role in the provision of diverse IP services for IP right holders that has led it to draw in perspectives not only from all of its member states but private actors, international organizations, interest groups and civil society.

It is at this transformation that some of the criticism can be directed. The overriding importance that WIPO has given to private interests as opposed to the public interest in recent years should be closely monitored and corrected if needed. Closely related to this criticism is the unique and somewhat detached role that WIPO places within the larger UN governing framework. While profitability should certainly be retained, closer alignment with the overarching goals of the UN would be of great benefit to the global public interest. Moreover, WIPO should broaden its perspectives to a more critical stance towards IP protection. For instance, awareness building should no longer be associated or even be governed by enforcement circles. Rather it should be focused upon the larger interest in spurring and promoting creativity and innovation. Moreover, further reciprocity and mutuality with developing countries should be on WIPO's Agenda for the 21st century. Instead of focusing primarily on the one-way provision of assistance and support for developing countries, WIPO should actively solicit views, suggestions and policies from developing countries and new global players such as China, India and Brazil.

If WIPO is to face the global IP challenges of the 21st century, it must – as any other institution of global governance¹⁶⁹ – look out for novel avenues, novel partnerships and novel modes of governance for the establishment of a balanced and sustainable global IP environment. It should take up the challenge of constantly realigning itself as an international actor that contributes meaningfully to the rational, just and sustainable management of our world. Furthermore, it should take an active role in constructing a new pluralist IP order which represents the diversity of all global IP interests in an ever more fragmented international IP order.

¹⁶⁹ Compare, Alvarez/Charnovitz, *Triangulating the World Trade Organization*, *Am. J. Int'l L* 96 (2002), p. 28 (28-30).

