

8 August 2006

## ***<sup>1</sup>Proposal for an Observatory on Science and Intellectual Property at Inter-Governmental Organizations***

### **SUMMARY**

The International Council for Science (ICSU) [in collaboration with the American Association for the Advancement of Science and other national and international organizations] will:

- 1) Develop the capability to monitor, analyze, and publicize intellectual property (IP) issues and activities at the World Intellectual Property Organization and at other inter-governmental organizations that have a direct effect on the progress of science.
- 2) Seek to influence, as appropriate, through the direct and indirect interventions by affiliated experts those IP issues and activities that have the highest priority.

A Web site will be developed and maintained in support of the project tasks. This project will be implemented for an initial period of five years and will be evaluated after the first three years of operation.

### **BACKGROUND**

Intellectual property law and the progress of science and technological innovation are closely linked. Indeed, the national and international laws that establish intellectual property rights frequently reference the progress of science and technology as a major underlying rationale<sup>2</sup> for their adoption. Copyright and patent laws have long been used

---

<sup>1</sup> *This preliminary proposal has been prepared for ICSU by Dr Paul Uhler, whilst he was working on secondment to the ICSU Secretariat, with the generous support of the US-NAS in 2006.*

<sup>2</sup> For example, the intellectual property clause of the U.S. Constitution confers upon the Congress the power “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries...” (Article 1, section 8, clause 8).

to protect authors' and inventors' rights in their creations and to enable the commercial exploitation of their works.

Over the years, and especially in recent decades, the IP treaties, statutes, and laws have become increasingly more complex and far-reaching. Today, as is well known, the legal protections afforded to private property owners under the copyright regime extend far beyond the arena of printed texts and images, potentially covering all forms of digital data and information. In addition, novel statutes in many national jurisdictions have conferred intellectual property rights protection to parties that invest in creating databases containing compilations of information, whether it is or is not copyrightable. The patentability of inventions and discoveries now is very broadly construed, encompassing claims to information that formerly would have been deemed "facts of nature" and hence ineligible for protection; patents are issued on an unprecedented scale to inventors of research tools and techniques in many fields of science, notably in the biomedical and computer sciences. Technical information that in former times would most likely have been left in the public domain now tends to be appropriated swiftly as intellectual property. And restrictive licensing practices and increasingly effective digital rights management technologies provide additional layers of enclosure, even beyond those conferred by statutes.

As the scope of these different and new IPRs has become extended in length, breadth, and depth in different jurisdictions, the international scientific community has generally remained on the sidelines, despite the purportedly central role of the progress of science in IP policy. Nevertheless, there are many ongoing IPR issues and activities at the World Intellectual Property Organization (WIPO) and at other inter-governmental organizations (IGOs) that are directly relevant to international science and that would benefit from more proactive involvement by the international scientific community. Within WIPO, several current activities in patent, copyright, and *sui generis* (of their own kind) IP treaty activities are likely to affect national, regional, and international science. ICSU, its international scientific constituents, and the broader scientific, technical, and medical communities have little knowledge about these ongoing activities and legal developments, and consequently have little capacity to influence them, either directly or indirectly. At best, such interactions are limited to opportunities that arise on an *ad hoc* basis. There also are other treaty negotiations and other activities of IGOs, such as the World Trade Organization, of direct concern to scientific interests that could be monitored and assessed from the standpoint of public science.

It therefore is essential for ICSU and its constituent bodies to augment their capabilities to monitor, analyze, and interact with WIPO and perhaps other key IGOs directly at the international level, and indirectly through the national science agencies, development organizations, and other outlets. Such a function would help strengthen the potential influence and involvement with other existing national and international science policy mechanisms (e.g., national Academies of Science and the Organisation for Economic Co-operation and Development) and, in particular, provide a strategic and informed ability for ICSU and its constituent bodies to influence the development of IP policies directly.

ICSU has many good reasons for sponsoring this type of activity. It could help support ICSU's stated goals in international science and its new Strategic Plan for 2006-2011 in substantial ways. It would provide an opportunity for promoting involvement with its constituent bodies, such as the Scientific Unions and interdisciplinary committees, on major international science policy issues. It would give ICSU greater visibility and relevance in the global science policy community. It also would be pursuing in more depth and breadth an area of activity in which ICSU already has had some involvement (e.g., with the E.U. Directive on the Legal Protection of Databases and related discussions at WIPO).

At the same time, such an initiative should not be undertaken lightly. The issues involved in developing coherent and balanced positions on new IP laws or on the revision of existing ones are complex and require considerable expertise and effort. It also is important to emphasize that there are many other organizations, including public-interest non-governmental organizations (NGOs), as well as business interest non-governmental organizations (BINGOs) organized by special-interest trade groups, already involved in the IP debates at WIPO and in other IGOs. According to the WIPO Web site (see: <http://www.wipo.int/directory/en/admission/pdf/observers.pdf>), there are about 260 organizations that already have "Observer" status with WIPO. These organizations include 17 from the United Nations System, 10 Industrial Property, 39 Intergovernmental (10 worldwide and 29 regional), 180 international non-governmental (mostly BINGOs and IP law groups), and 13 national non-governmental ones.

The only other scientific NGO besides ICSU currently listed as a WIPO Observer is the American Association for the Advancement of Science (AAAS) in the United States. The AAAS is also engaged in monitoring and studying IP developments and disseminating them to the broader scientific community on an ongoing basis (see <http://sippi.aaas.org>). Because of the similar interests and functions of this proposed ICSU project and the AAAS activity, close collaboration with AAAS is considered both necessary and desirable [and the exact nature of that collaboration still needs to be explored fully]. Other scientific organizations that are not registered as WIPO Observers, but that have periodically focused on science and IP issues through publications and other activities include the All European Academies (ALLEA) group, the U.S. National Academies, and the U.K. Royal Society, among others. SciDevNet also provides some on-line coverage of IP issues as they relate to science in developing countries. ICSU would need to collaborate or coordinate with these other international and national scientific groups as well.

In addition, there are several other public-interest NGOs that help provide independent expert analysis of proposed IP treaties and laws through their Web sites or newsletters, and that engage in active interventions at WIPO and other relevant fora. As discussed below, ICSU will need to collaborate or coordinate closely with several of these organizations in order to avoid duplication of effort and leverage the available resources. The trade association BINGOs also provide considerable expertise, resources, and influence on different IP law activities. Understanding their positions on various IP issues is essential, since they frequently have greatest effect on the formation or revision of IP

laws. Because these groups pursue narrow special interests, however, direct collaboration in many cases will not be desirable. In all circumstances in working with these other related organizations on any IP policy initiatives, ICSU will need to be able to maintain an independent stance and autonomy of action, while at the same time leveraging respective resources as appropriate.

## **PROPOSED PLAN OF ACTION**

### **Statement of Task**

The establishment of an Observatory on Science and Intellectual Property at Inter-governmental Organizations under ICSU leadership will help fill the current void in the international scientific community's awareness, understanding, and action in this arena, and will enable ICSU to develop and promote policy positions in appropriate circumstances. ICSU [in collaboration with AAAS and other national and international organizations] will:

- 1) Develop the capability to monitor, analyze, and publicize intellectual property (IP) issues and activities at the World Intellectual Property Organization and at other inter-governmental organizations that have a direct effect on the progress of science.
- 2) Seek to influence, as appropriate, through the direct and indirect interventions by affiliated experts those IP issues and activities that have the highest priority.

A Web site will be developed and maintained in support of the project tasks [possibly in collaboration with AAAS or another suitable scientific organization]. This project will be implemented for an initial period of five years and will be evaluated after the first three years of operation.

### **Planned Activities**

As the statement of task indicates, there are four principal activities envisioned with this project--monitoring, analyzing, publicizing, and influencing IP issues and activities that have a direct effect on the progress of science at WIPO and other key inter-governmental organizations. These are elaborated further below.

***Monitoring*** of IP issues and activities will include both active and passive approaches. The project director will interact on a regular basis with WIPO and other IGO officials, independent IP experts, representatives of other NGOs and BINGOs focused on IP issues, and representatives of scientific and science policy organizations. The members of the international expert Advisory Board (see the description of this Board under the section on Organizational Structure and Functions below) will also interact with these groups and individuals during the normal course of their activities and will convey any significant developments to the project director. The project director will attend the key meetings at WIPO, other focused IP policy meetings, and key conferences as time and budget allow.

The project Web site will contain active links to the Web sites and Newsletters of other NGOs and BINGOs, which the project director will continuously monitor. The director also will be expected to research the academic literature, professional publications, and the media with regard to high-priority IP issues.

**Analyzing** the key IP issues and activities at WIPO and other IGOs will be based on the results of the project director's monitoring function and on consultations with the Advisory Board. Through this monitoring and consultations, the project director will determine which issues have the highest priority for the attention of ICSU and the international scientific community. A set of criteria will be established for making such determinations. The issues and activities that are selected will be researched and analyzed in more detail by the project director, by individual members of the expert Advisory Board, or by independent experts on either a volunteer or remunerated basis. Workshops and seminars of experts and stakeholders may be convened, depending on the perceived need and resources available. The analytical white papers may include both in-depth substantive reviews and/or strategic plans for influencing their outcomes. The substantive reviews may be written for public dissemination, while others, such as the strategic planning documents, will be for internal ICSU use only.

**Publicizing** of key IP issues and activities will be done primarily through the project Web site. Since there already are many other organizations involved in actively monitoring the IP landscape, much of the project Web site activity will involve maintaining appropriate links to these other online resources. Other important Web functions performed by the project director and the administrative assistant for the project will include: keeping the information on the Web site up-to-date and accurate on at least a weekly basis; soliciting material from related community experts; posting relevant news items; facilitating an on-line community through the dissemination of a periodic (e.g., monthly or quarterly) Newsletter and the implementation of a user suggestions mailbox; gathering feedback on the use of the Web site; and interacting with the users in other ways, as appropriate. This Web site may be done either jointly or in close consultation with AAAS or another scientific organization, as appropriate.

In addition to the use of the project Web site, the publicity function will include periodic media advisories and press conferences; the convening of short, focused symposia that are Webcast and result in publications; and presentations by the project director, ICSU staff, and expert Advisory Board members in major conferences.

**Influencing** the formation or revision of IP laws and polices with substantial interest to international science. Such influence can be exerted indirectly, though the monitoring, assessment, and publicizing functions described above. There also are more direct approaches that can be implemented. These include: developing appropriate liaison relationships with officials at WIPO and the key IOs, as well as with other interest groups that interact with those IOs; formally recommending positions both verbally at IGO meetings and through direct written interventions to those IGOs, and coordinating on positions with other like-minded public-interest or business-interest groups. Because of the sensitive nature of such direct policy interventions, such actions will need to be

undertaken in close consultation with the Advisory Board, senior ICSU staff, and other trusted experts.

### **Organizational Structure and Functions**

ICSU will appoint an *international expert Advisory Board* of approximately 8 members. This body will initially assist ICSU on the substantive aspects of the proposed project, including advising on the scope and structure of the proposed project, and on fund raising and selection of the project director. Following the receipt of project funding and the hiring of the project director, the Advisory Board will assist ICSU and the director on a continuing basis on selection of IPR issues and activities for monitoring, analysis, and policy intervention (including the criteria for such prioritization), on interactions with WIPO and other relevant forums, and on other strategic objectives. The Board will also monitor the progress of the project and provide advice on its operational aspects.

The Advisory Board will meet once per year in conjunction with an annual symposium that will publicize the activities of this project and help focus the agenda for the next year. The Board will interact with the project director throughout the year on an as-needed basis, both collectively and individually.

After the project is funded, ICSU will hire the project director and a part-time administrative assistant. The *project director* will be either a full-time or part-time professional (depending upon available funding) with broad expertise in public international research and intellectual law policy, preferably with a background in intellectual property law or related law and economics fields. The project director can be co-located either at ICSU headquarters in Paris, within one of ICSU's European Member organizations, or at a remote site in Geneva, Switzerland. The project director will be responsible for:

- Strategic planning and program development in consultation with the international expert Advisory Board, the ICSU staff, and other representatives directly affiliated with the project;
- Performing an initial survey and assessment of WIPO and other IGO IP issues and activities of direct concern to the sponsors' and ICSU's priorities, and to the international community more broadly;
- Implementation and annual updating of the project plan, including primary responsibility for the monitoring, analysis, publicity, and the direct and indirect interventions at WIPO and other IGOs, as described in Planned Activities section of this proposal;
- Management of operations and personnel;
- Fund raising;
- Outreach and public relations;
- Web site editing on a weekly basis, including the functions described in the Planned Activities above; and
- Any other tasks as determined by the Advisory Board.

The part-time *administrative assistant* will work directly with the director to provide clerical and administrative support for the project, to perform research, and to help administer and edit the Web site.

### **Project Budget**

[To be developed]