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The United States and the Global Intellectual Property System: Leadership and Responsibilities

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The Global System Comes of Age

For more than 200 years, American products of the mind have been a source of national wealth and pride, emblems of a creative and inventive people. As early as 1831, Congress recognized the need for “the United States ... to be foremost among the nations in encouraging science and literature, by securing the fruits of intellectual labor.”¹

In today’s global economy, the fruits of American intellectual labor reach around the world. From patented AIDS therapies to copyrighted films, music and books, the products and services of American intellectual property-based industries bring hope and joy to people around the globe. American intellectual property also is the engine that is driving the U.S. economy in the 21st century — creating new jobs, expanding the gross national product, and leading other major industry sectors in foreign sales and exports.

To stay on the path of growth and prosperity, Congress has understood the importance of U.S. leadership in strengthening the global intellectual property system. In 1994, the United States played a key role in the successful negotiation of the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), which provides for minimum standards for the global protection of intellectual property rights.

In 1996, as Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, I was proud to lead the U.S. delegation at a Diplomatic Conference in Geneva that resulted in the adoption of the World Copyright Treaty and the World Performances and Phonograms Treaty by members of the World Intellectual Property Organization (WIPO), the world’s preeminent intellectual property organization.

In 1998, Congress again affirmed its belief that the United States must assert “its position as a world leader in the protection of intellectual property.” But U.S. leadership in the global intellectual property community carries with it important responsibilities.

¹ House of Representatives Committee on the Judiciary, 21st Cong., 2d Sess., Copyright (1830), in 7 Cong. Deb., App. at 119(1831).

U.S Leadership and Responsibilities

When I left government service in 1998, I looked back on period of significant accomplishments for the global intellectual property community, including the TRIPS Agreement and two new WIPO copyright treaties. Nonetheless, I recognized that the real work was only beginning. Developing countries had achieved significant gains during the Uruguay Round by obtaining increased market access to developed world markets in exchange for promises to upgrade their intellectual property systems. But I also realized that promises made at the negotiating table would be difficult to implement at home unless there was a domestic constituency for intellectual property reform.

Toward that end, the United States and other developed countries assumed a legal and ethical obligation to assist the developing and the least developed countries of the world to build their intellectual property infrastructures. Regrettably, as I demonstrate below, the United States does not appear to be shouldering this important responsibility.

WIPO. With over 170 member states, WIPO administers 20 international treaties, which together comprise the architecture of the global intellectual property system. Under these treaties, patented, copyrighted and trademarked U.S. products are protected abroad on a nondiscriminatory basis. The WIPO treaties also play a critical role in assisting U.S. companies to implement their global business strategies by facilitating the filing of intellectual property applications around the world. In 2000, for example, American companies filed over 38,000 patent applications through the WIPO Patent Cooperation Treaty (PCT), making the United States the largest user of the PCT system.

Unlike other specialized agencies of the United Nations, the operations of WIPO are funded almost entirely on fees generated from its treaty programs. In fact, fee surpluses from the PCT system have permitted WIPO to progressively reduce the mandatory contributions of Member States. Over the years, fee surpluses also have allowed WIPO to expand its technical assistance and training activities for developing countries. Unfortunately, even as the global intellectual property system has come under assault, recent budgetary constraints have forced WIPO to drastically reduce its training and technical assistance programs.

To meet the widening gap between global training needs and available WIPO resources, a number of Member States have begun to make voluntary contributions to WIPO. Such voluntary contributions, which may be earmarked for expenditure for specific projects in specific countries, are held in trust accounts maintained by WIPO. The following chart summarizes the mandatory and voluntary contributions, in US dollars, of selected countries in FY 2000:

<u>Country</u>	<u>Mandatory</u>	<u>Voluntary</u>
• Argentina	56,974	183,903
• Bhutan	890	16,736
• Brazil	56,974	1,952,912
• France	712,172	154,741
• Japan	712,172	2,101,558
• United States	712,172	0

The United States, as evidenced by its lack of financial support for critical training needs, is failing to assert its position as a world leader in the protection of intellectual property. However, a voluntary U.S. contribution to the WIPO in support of training around the world provides an unparalleled opportunity for the United States to demonstrate such leadership.²

TRIPS Article 67. Under Article 67 of the TRIPS Agreement, the United States and other developed countries agreed to provide technical and financial cooperation to both developing and the least-developed countries to assist them in building modern intellectual property systems.³ Multinational organizations such as the World Trade Organization (WTO) and WIPO have an important role to play in assisting developing countries to come into compliance with treaty obligations. But they cannot accomplish the task alone.

Article 67, moreover, squarely places the burden on developed countries themselves. It expressly states that “developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country members.” Again, the United States does not appear to be living up to its obligations of the TRIPS Agreement.⁴ However, a voluntary contribution to WIPO earmarked for specific training and development programs will go a long way in assisting the United States to discharge its Article 67 obligations.

At the dawn of the 21st century, the United States can be proud of its accomplishments in “securing the fruits of intellectual labor” not only for its citizens but also for the citizens of all nations that participate in the global intellectual property system. To stay on this path of growth and prosperity, the United States must now take the actions necessary to affirm its position as a world leader in the protection of intellectual property.

² There is precedent for such a contribution. The United States has pledged a \$650,000 voluntary contribution to the WTO in support of technical assistance.

³ Technical and financial cooperation may include assistance in preparing legislation, assistance in enforcement of rights, exploiting intellectual assets and support in establishing or improving domestic offices responsible for enforcement, including the training of personnel such as judges, attorneys, and customs officials.

⁴ The current patchwork of U.S. programs and activities are conducted principally through USAID, U.S. Patent and Trademark Office and the U.S. Copyright Office.