Introduction

The World Intellectual Property Organization (WIPO) is the multilateral system’s key agency charged with intellectual property (IP). Over the past five decades, WIPO has taken a lead role in promoting the strengthening of IP rights, as well as their use and enforcement across the world. A United Nations (UN) Specialized Agency, WIPO is the administrator of 26 international IP treaties and boasts a larger budget for supporting the modernisation of IP systems in developing countries than any other single organisation, national or international. WIPO also serves as a forum for intergovernmental negotiations on new legal instruments and for debate on how IP intersects with a range of public policy goals – from public health to food security.

The World Intellectual Property Organization’s work occurs amidst a rapidly changing global economy – as evidenced by the rise of the digital economy – where markets and societies are increasingly connected, and the rising power of emerging economies has changed the dynamics of international diplomacy across global policy issues. WIPO’s work also occurs in the context of a growing array of political, economic and social debates on IP treaties, laws, policies and practices around the world. Yet, although IP policy and rules are at the heart of many high-stakes battles across the global knowledge economy, WIPO is largely unknown beyond IP experts and is generally neglected in debates on global economic governance.

In its outreach efforts, the WIPO Secretariat describes the organisation as the global forum for IP policy, services, information and cooperation. Dedicated to making IP ‘work for everyone,’ the Secretariat characterises WIPO’s work as driven by the need for an international IP system that is efficient and easily accessible worldwide, and that provides a set of international rules that ‘balance the interests of those who produce and consume the fruits of innovation and creativity.’1 WIPO’s

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pursuit of this ambitious agenda has spurred an expanding portfolio of activities – from norm-setting and policy dialogue to public-private partnerships and technical assistance.

The starting point for this Reference Guide is that the growing importance and influence of WIPO’s expanding work must be accompanied by more active and constructive engagement of governments, stakeholders and scholars with the organisation and more critical oversight of its activities. The prospects for improved oversight and deeper, wider engagement in WIPO’s work will depend, however, on greater understanding and transparency of the organisation’s governance system and action to address its shortfalls. The need to improve WIPO’s governance was underscored in 2014 by the UN Joint Inspection Unit (JIU), and a growing number of Member States and stakeholders acknowledge the array of governance challenges facing the organisation.

The governance matters that provoke debate at WIPO include: the complexity of the organisation’s governance structure; the relationship between WIPO and the treaty-based Unions it administers; the appropriate role of the Secretariat and stakeholders; decision-making practices and financial arrangements. In recent years, Member States and stakeholders alike have regularly underscored the importance of bolstering WIPO’s Member-driven nature; they have also routinely registered their dissatisfaction with inefficient and opaque decision-making processes. In addition, there are ongoing debates about the scope for plurilateral treaty negotiations at WIPO and their implications for the organisation’s multilateral character. Views on which governance challenges demand attention vary. Some stakeholders, for instance, call for attention to WIPO’s provisions for public participation and transparency, and for clarity on the private sector’s role in WIPO. The Secretariat has emphasised the need for higher-level engagement of Member States. While most Member States are in favour of improved efficiency in WIPO decision-making, they struggle to agree on concrete steps to be taken. Some Member States propose getting started on reform through incremental, practical improvements on specific procedural matters, while others insist on a more comprehensive approach to reform. The core governance priority for many developing country Member States is mainstreaming the Development Agenda.

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throughout the organisation and changing the Secretariat’s institutional culture.\(^3\)

Unlike other UN agencies, WIPO does not face one common governance challenge – lack of resources. Rather than relying on Member State contributions, WIPO earns over 95 per cent of its income through fees paid in exchange for IP registration services. As the UN’s most successful self-financing organisation, WIPO nonetheless faces a range of governance challenges that arise from these unique financial arrangements.

To date, however, there is no consolidated reference text on WIPO’s governance. In 2014, for instance, the UN JIU highlighted the absence of a clear or regularly updated overview of WIPO’s governance framework. Member States, staff and stakeholders are instead left to locate, navigate and piece together a multitude of dispersed documents, including the WIPO Convention, procedural rules for WIPO’s governing bodies, regulations and rules, working methods, and hundreds of proposals and meetings reports, as well as a suite of internal policies. Although the Secretariat and a number of WIPO committees have produced official WIPO documents that cover some aspects of WIPO’s governance structure\(^4\) and the organisation’s history,\(^5\) these

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offer a fragmented, incomplete and sometimes out-dated picture. Moreover, such documents do not capture the many informal dimensions of WIPO’s governance system, both those that arise where the formal framework is silent or ambiguous, and those that exist alongside formal processes and impact how governance occurs in practice.

In the academic literature, scholars have offered reflections on WIPO’s role in the global governance of IP and in the development of international IP law as well as on its response to initiatives such as the WIPO Development Agenda. Only a handful of studies, however, focus specifically on WIPO as an institution – on its evolution, internal culture


INTRODUCTION

and political economy.\textsuperscript{10} Although these works address some aspects of WIPO’s governance framework, and several papers analyse the process of decision-making at WIPO,\textsuperscript{11} the task of systematic analysis of WIPO’s governance system has thus far escaped the scholarly attention it deserves. As such, there has not yet been any comprehensive scholarly review of WIPO’s governance or governance reform efforts.

This book is intended to serve as a factual reference guide to WIPO’s governance system. It does not aim to assess WIPO’s governance system, analyse the political dynamics of WIPO’s governance, or critique the power politics that shape them, although it does seek to offer a much-needed foundation stone for that important work.\textsuperscript{12} The book does, nonetheless, highlight some of the key political and informal dimensions of WIPO’s governance system and notes where WIPO diverges significantly from other international organisations in terms of policies or practice, such as its self-financing business model. In describing the components of WIPO’s governance system, this book refers to recent debates where they are pertinent to understanding the relevance to governance, but it defers for future scholarship the task of assessing the merits of different viewpoints and reform options.

The book opens in Chapter 2 by introducing the origins of WIPO, its current functions and many activities, as well as the WIPO Secretariat


and its leadership. Chapter 3 presents a framework for analysing WIPO’s governance. The subsequent chapters review the core components of WIPO’s governance system in five thematic areas: legal foundations, mandate and purpose; structures and processes for decision-making and practices for Member State representation; financial arrangements (including income and budget process); mechanisms for accountability and control of the Secretariat (that is, for oversight, audit and evaluation); and transparency and external relations. Through this review, the book provides examples of how the WIPO Secretariat is both a subject of WIPO’s formal governance structure and an actor in the wider governance system that impacts what the organisation does and how. Chapter 9 concludes the book.

The primary sources for the analysis presented in this book were official WIPO documents (including Secretariat reports and minutes of intergovernmental meetings, WIPO treaties and policies, and the WIPO website), as well as informal interviews of WIPO staff and delegates undertaken by the author, and personal observations of WIPO decision-making processes for over a decade. In addition to academic works and analysis by stakeholder organisations, the research drew extensively on reporting by the independent news service Intellectual Property Watch.