1 Introduction

The World Intellectual Property Organization (WIPO) is the multi-lateral 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

¹ WIPO, *WIPO: Making IP Work* (WIPO 2014).

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),² 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

2 JIU, *Review of Management and Administration in the World Intellectual Property Organization (WIPO)* JIU/REP/2014/2 (UN Joint Inspection Unit 2014) 7.

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 structure⁴ and the organisation's history,⁵ these

3 See Carolyn Deere Birkbeck, 'Inside View: Strengthening WIPO's Governance for the Next 50 Years: A Time for Action' *Intellectual Property Watch* (26 September 2014); Nick Ashton-Hart, 'Inside Views: How to Reboot WIPO' *Intellectual Property Watch* (12 September 2014); James Boyle, 'A Manifesto on WIPO and the Future of Intellectual Property' (2004) 9 *Duke Law and Technology Review* 1–12; Nandini Kotthapally, 'From World Intellectual Property Organization (WIPO) to World Innovation Promotion Organization (WIPO): Whither WIPO?' (2011) 3(1) *The WIPO Journal* 56–71; Civil Society Coalition, 'Geneva Declaration on the Future of the World Intellectual Property Organization' (2004) <<http://www.futureofwipo.org/futureofwipodeclaration.pdf>> accessed 7 July 2015; CIEL, *A Citizens' Guide to WIPO* (CIEL 2007); Robin Gross, 'World Intellectual Property Organisation (WIPO): Institutional Overviews' (2007) *Global Information Society Watch* <<http://www.giswatch.org>> accessed 30 October 2014.

4 See, for instance, the following WIPO documents: WIPO, *Introduction to WIPO: Objectives, Organization Structure and Activities, Development Cooperation Program* WIPO/ACAD/E/94/2 (WIPO 1994); WIPO, *The Governance Structure of WIPO: Memorandum of the International Bureau* A/32/INF/2 (WIPO 1998); WIPO, *Constitutional Reform: Memorandum of the Secretariat* A/33/3 (WIPO 1998); WIPO, *Report of the WIPO Audit Committee since 2008* WO/GA/38/2 (WIPO 2009); WIPO, *WIPO Governance Structure* WO/PBC/18/20 (WIPO 2011); WIPO, *Governance at WIPO: Report Prepared by the WIPO Independent Advisory Oversight Committee* WO/PBC/19/26 (WIPO 2012). Also see WIPO, *WIPO Intellectual Property Handbook: Policy, Law and Use* (WIPO 2004); WIPO, *A Users' Guide: An Introduction to the Organization for Delegates*, Publication No. 1040 (WIPO 2012).

5 See Jacques Secretan, 'L'évolution de structure des unions internationales pour la protection de la propriété intellectuelle' in BIRPI, *Les Unions Internationales pour la protection de la propriété industrielle, littéraire et artistique, 1883–1963* (BIRPI 1962); Árpád Bogsch, *Brief History of the First*

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 IP⁶ and in the development of international IP law⁷ as well as on its response to initiatives such as the WIPO Development Agenda.⁸ Only a handful of studies, however, focus specifically on WIPO as an institution – on its evolution,⁹ internal culture

25 *Years of the World Intellectual Property Organization* (WIPO 1992); WIPO, *World Intellectual Property Organization: 1992–2007* (WIPO 2003).

6 Academic publications that reflect on WIPO's role in the governance of IP include: Frederick M. Abbott, 'Distributed Governance at the WTO-WIPO: An Evolving Model for Open-Architecture Integrated Governance' (2000) 3(1) *Journal of International Economic Law* 63–81; Frederick M. Abbott, Francis Gurry and Thomas Cottier *The International Intellectual Property System: Commentary and Materials* (Kluwer Law 1999); Graeme B. Dinwoodie, 'The Architecture of the International Intellectual Property System' (2002) 77(3) *Chicago-Kent Law Review* 993–1014; Paul Salmon, 'Cooperation between the World Intellectual Property Organization and the World Trade Organization' (2003) 17 *St. John's Journal of Legal Commentary* 429–42; Ruth L. Okediji, 'The International Relations of Intellectual Property: Narratives of Developing Country Participation in the Global Intellectual Property System' (2003) 7 *Singapore Journal of International and Comparative Law* 315–85; Ruth L. Okediji, 'WIPO–WTO Relations and the Future of Global Intellectual Property Norms' (2008) 39 *Netherlands Yearbook of International Law* 69–125; Graeme Dinwoodie and Rochelle Dreyfuss, 'Designing a Global Intellectual Property System Responsive to Change: The WTO, WIPO and Beyond' (2009) 46(4) *Houston Law Review* 1187–234.

7 For a concise recent study of the evolution and future of WIPO's role in the development of IP treaties, see Daniel Gervais 'Rethinking the International Intellectual Property System: What Role for WIPO?' in *Rethinking International Intellectual Property Law: What Institutional Environment for the Development and Enforcement of IP Law? Global Perspectives and Challenges for the Intellectual Property System, Issue 1* (Geneva and Strasbourg: ICTSD and CEIPI 2015). Also see various contributions in Daniel Gervais (ed.), *International Intellectual Property: A Handbook of Contemporary Research* (Cheltenham, UK: Edward Elgar Publishing 2015).

8 See Carolyn Deere, 'Reforming Governance to Advance the WIPO Development Agenda,' in Jeremy de Beer (ed.), *Implementing WIPO's Development Agenda* (Wilfrid Laurier University Press 2009); Susan K. Sell, 'Everything Old Is New Again: The Development Agenda Now and Then' (2011) 3(1) *The WIPO Journal* 17–23; Peter K. Yu, 'A Tale of Two Development Agendas' (2008) 35 *Ohio Northern University Law Review* 466–573; Francis Gurry, 'The Dispute Resolution Service of the World Intellectual Property Organization' (1999) 2(2) *Journal of International Economic Law* 385–98, 385.

9 Scholarly works on the history of WIPO include: Ulf Anderfelt, *International Patent Legislation and Developing Countries* (Martinus Nijhoff 1971); F-K Beier, 'One Hundred Years of International Cooperation: The Role of the Paris Convention in the Past, Present and Future' (1984) 15(1) *International Review of Industrial Property and Copyright Law* 1–20; Debora J. Halbert 'The World Intellectual Property Organization: Past, Present and Future' (2005) 54(1) *Journal of the Copyright Society of the USA* 253–84.

and political economy.¹⁰ Although these works address some aspects of WIPO's governance framework, and several papers analyse the process of decision-making at WIPO,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.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 views points 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

¹⁰ See James Boyle, 'A Manifesto on WIPO and the Future of Intellectual Property' (2004) 9 *Duke Law and Technology Review* 1–12; Christopher May, *The World Intellectual Property Organization: Resurgence and the Development Agenda* (Routledge 2006); Alexander Stack, *International Patent Law: Cooperation, Harmonization and an Institutional Analysis of WIPO and the WTO* (Edward Elgar Publishing 2011); Andrea Wechsler, 'WIPO and the Public–Private Web of Global Intellectual Property Governance' in Christoph Hermann, Markus Krajewski and Jörg Philipp Terhechte (eds), 2013 *European Yearbook of International Economic Law* (Springer 2013) 413–40. In addition, two notable critical assessments of WIPO's governance have been published by NGOs. See Sisule F Musungu and Graham Dutfield, *Multilateral Agreements and a TRIPS-Plus World: The World Intellectual Property Organisation* TRIPS Issues Paper 3 (Quaker United Nations Office (QUONO) and Quaker International Affairs Program (QIAP) 2003) and CIEL, *A Citizens' Guide to WIPO* (CIEL 2007).

¹¹ Edward Kwakwa, 'Some Comments on Rule Making at the World Intellectual Property Organization' (2002) 12(1) *Duke Journal of Comparative and International Law* 179–95; Geoffrey Yu, 'The Structure and Process of Negotiations at the World Intellectual Property Organization' (2007) 82 *Chicago-Kent Law Review* 1443–53, 1452.

¹² For political assessments of the current challenges facing WIPO's governance and the reform process to date, see Carolyn Deere Birkbeck, *Governing the World Intellectual Property Organization: The Power Politics of Institutional Crisis and Reform* (Routledge forthcoming 2016). Also see Carolyn Deere Birkbeck, 'Inside View: Strengthening WIPO's Governance for the Next 50 Years: A Time for Action' *Intellectual Property Watch* (26 September 2014).

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*.