

Commission on Intellectual Property Rights

Country Case Study for Study 9: Institutional Issues for Developing Countries in IP Policy-Making, Administration and Enforcement

Jamaica, Trinidad & Tobago, St. Lucia

Dianne Daley

**Foga, Daley & Co.
Attorneys at Law
Kingston, Jamaica**

This report has been commissioned by the IPR Commission as a background paper. The views expressed are those of the author and do not necessarily represent those of the Commission.

JAMAICA

OVERVIEW OF LEGAL AND INSTITUTIONAL FRAMEWORK

RECENT HISTORY

Over the past decade the Government of Jamaica has been engaged in the modernization of its Intellectual Property (IP) regime. This has involved the passage of revised and newly introduced IP Laws, accession to IP Conventions and Treaties, the establishment of Government Departments to deal with IP Policy and Administration, the training of human resources and the establishment of complementary agencies and systems in the private sector.

The Ministry of Industry, Commerce & Technology (MICT) was established in 1998, whereupon it assumed the portfolio for all IP matters including Copyright & Related Rights and Industrial Property. Prior to the establishment of the MICT different government ministries and agencies carried out the administration of Jamaica's IP Laws. The MICT took the opportunity to streamline and centralize the administration of IP under one dedicated office with the help of the World Intellectual Property Organization (WIPO). As a result the Jamaica Intellectual Property Office, JIPO was established in January 2001 as the Government focal point for the administration of all IP laws. JIPO, which now operates as a Unit in the MICT. A draft Bill to establish JIPO as a Statutory Corporation is being considered by Parliament in October 2001.

KEY ISSUES AND CHALLENGES

Notwithstanding the progress made by Jamaica in modernization the institutional capacity for IP is still relatively weak, both at the public and private sector levels because of the dearth of skilled human resources to treat with IP matters. This is most marked in the area of Patents and a key challenge is outfitting the Patents Directorate of JIPO with qualified staff. The modernization process has required significant technical assistance and financial resources but the process is incomplete. JIPO is staffed with less than half of its intended staff complement and the short fall is at the senior, technical levels. The IP procedures are still manual and automation and digitization are capital intensive. Whereas the Government has benefited significantly from WIPO technical assistance it does not have enough financial resources at its disposal to fully modernize its key IP institution.

LEGAL FRAMEWORK

The existing laws conferring IP rights (IPRs) are in the areas of Copyright & Related Rights, Trademarks, Industrial Designs, Layout Designs and Patents (See Table 1 – IP Laws of Jamaica). Between 1993 and 2000, Jamaica revised its laws on Copyright & Related/Neighbouring Rights and Trademarks and passed a law to protect Layout Designs. At present Jamaica is finalizing draft legislation on Patents, Industrial Designs and Geographical Indications. Jamaica also acceded to critical treaties on IP and signed on to the WTO Agreement and a Bilateral IP Agreement with the USA (See Table 1).

The Government is considering accession to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty adopted 1996 (WIPO Internet Treaties). Accession is to be decided by Cabinet shortly. Further to the pending enactment of modern Patents and Designs Legislation Jamaica intends to accede to the Patent Cooperation Treaty (PCT).

MAIN PUBLIC SECTOR AGENCIES FOR IP POLICY, INFORMATION DISSEMINATION, ADMINISTRATION & ENFORCEMENT

POLICY

The MICT has the remit for policy on IP matters. Policy is determined by the Minister as supported by the Cabinet. Over the past year and a half a Special Advisor on IP has advised the Minister on policy and technical IP matters. With the establishment of JIPO the Minister recently appointed an Advisory Board whose role is to consider and advise the Minister on all matters of general policy relating to IP rights. JIPO is intended to make an input in IP policy development in the form of recommendations to the Minister. There are some inter-sectoral issues concerning IP, which involve other Ministries such as those concerned with Entertainment, Information and Education and Culture. These Ministries work together in various fora with the MICT to determine policy affecting their respective areas.

ADMINISTRATION

JIPO is the focal point for the administration of Laws on IPRs and the implementation of government policies on IPRs. JIPO's core functions include the administration of Trademarks, Geographical Indications, Industrial Designs, Copyright and Related Rights, Patents, New Plant Varieties and Lay-out Designs and all other laws, which confer IP Rights. A major part of JIPO's mission is to contribute to national economic growth and development through the proper protection, administration and enforcement of IPRs.¹

INFORMATION DISSEMINATION AND PUBLIC EDUCATION

Information dissemination is also major aspect of JIPO's mission, which is to heighten public awareness of the importance and economic value of IPRs and the need to protect these rights. The Copyright Section of JIPO, formerly the Copyright Unit focused heavily on producing simple-language literature on copyright in the form of brochures, booklets, FAQs and on organized workshops and presentations to stake holder groups at the secondary, tertiary and professional levels. National IP Week first celebrated in 1998 came out of the Government's ongoing public education program on IPRs. This has made a nation-wide impact on the importance of the field of IP to Jamaica.

¹ JIPO is focused on producing revenue for the country by providing comprehensive protection of IPRs and encouraging the proper exploitation and commercialization of IP by rights holders. The services offered by JIPO target individual creators and innovators, SMEs, corporations and institutions to enhance their capacity for wealth creation through the acquisition and maintenance of IPRs.

The Scientific Research Council, another agency of the MICT shares the mandate of information dissemination with JIPO in relation to patent information as well as conducting state-of-the art searches. SRC encourages the proper use of patent documentation and information that has become public domain.

ENFORCEMENT AND THE JUDICIARY

The principal enforcement arm is the Jamaica Constabulary Force (JCF). The Organized Crime Investigation Unit (53 officers) of the JCF is mandated to enforce the Copyright Act. The Department of Customs that deals with enforcement at the border works in conjunction with the Revenue Protection Division of the Ministry of Finance in enforcement against counterfeit activities. The Government launched an anti-piracy campaign in 1998, aimed at achieving the cooperation of the industry, members of the JCF and the Department of Customs in reducing piracy.

In 2001 a new Commercial Court was created as part of the Supreme Court of Judicature of Jamaica to deal with *inter alia* IPRs infringements. Prior to this IP cases were treated as all other Civil Cases (except for revenue matters) and were therefore subject to lengthy litigation process froth with undue delays. High Court criminal matters are dealt with by the Circuit Courts. It is anticipated that the Commercial Court will deal with IP cases more expeditiously. IP criminal and civil matters within certain jurisdictional limits are disposed of in the lower Resident Magistrates courts.

IP-RELATED COMPETITION POLICY

The MICT has the remit for competition policy however this Ministry does not have the in-house competency to address competition policy as it relates to IPRs. The Fair Trading Commission (FTC), which falls under the MICT, is a regulatory body that administers the law relating to protection against unfair competition, the Fair Competition Act of 1993.² The Consumer Affairs Commission, another agency of the MICT, has the remit for consumer protection issues.

The FTC's role is to carry out investigations in relation to business conduct to determine whether any business is engaging in anti-competitive practices contrary to the Act. The FTC sees its role as minimal in relation to IPRs based on the exemption from the operation of the Fair Competition Act of agreements relating to the use, license or assignment of rights in copyright, patent or trademark. The FTC makes an input in competition policy development in the context of the Regional Negotiating Machinery established by the Caribbean Community Countries. The FTC investigated 644 cases in the 1999/2000 financial year and 628 cases in 2000/2001 (see Tables 2 & 3). Although 37 cases between 1999 and 2001 concerned abuse of dominant position by its own interpretation FTC determined that only a few cases investigated may have had some element of IP concerns and those were not foremost considerations in determining the matters. In addition to the 4 Commissioners, the FTC has 22 persons on staff including 3

² FTC Mission Statement – to provide for the maintenance and encouragement of competition in the conduct of trade, business and in the supply of services in Jamaica with a view to providing consumers with competitive prices and product choices.

lawyers and 4 economists.³ The FTC expanded its staff between January 2000 and October 5, 2001 (See attached revised Organizational Structure).

PUBLIC POLICY MAKING PROCESS AND ROLE OF PRIVATE SECTOR AGENCIES & NGOS IN IP POLICY DEVELOPMENT, ADMINISTRATION & ENFORCEMENT

PUBLIC POLICY MAKING PROCESS

The Government has an interactive consultation process in the development of its policies and the enactment of laws to implement them. Members of the public and all interested parties are invited to comment on policy documents and laws at specific junctures in the policy making process. Public consultations provide the forum for all concerns, including those of the poor to be considered in the policy process. Integration of Copyright in the National Industrial Policy and of all IPRs in the National and Regional Trade Policy is evidence of the placement of IPR policy issues in the broader context of economic development and poverty reduction. Issues relating to Public Health and IPRs have arisen recently with the debates in the TRIPS Council. Health officials have participated in an Inter-government Task Force on IP to ensure input in the Patent and Designs Law and in TRIPS Council deliberations. The Ministry of Land and Environment and the National Environmental Planning Agency has actively participated in the consultation process on the Laws (also on the Task Force on IP) especially in the areas concerning Traditional Knowledge and Biodiversity.

INVOLVEMENT OF PRIVATE SECTOR IN IP POLICY DEVELOPMENT AND ENFORCEMENT

IP policy development is a fairly recent phenomenon in Jamaica and has principally been Government driven and not private sector driven. It has also been heavily influenced by Government's international IP obligations. Private sector and NGO involvement is most marked in the area of Copyright and Related Rights, the only areas mentioned in Jamaica's Industrial Policy. Musicians, performers, book publishers and librarians lobbied for the 1993 Copyright Act and these stakeholders continue to be involved in lobby for upgrades of the Copyright legislation. Performers and musicians have lobbied for Jamaica's accession to the WIPO Internet Treaties to ensure that their rights are protected in the digital media. The Software Sector has been lobbying for proper enforcement of the Copyright Act. The Business Software Alliance of the USA (which has a presence in Jamaica through Microsoft) has also provided training to the JCF. In the area of Trademarks, local legal practitioners, representing mainly foreign businesses seeking to invest or set up franchises in Jamaica, have lobbied for proper trademark protection along with favourable administrative costs.

³ The FTC was allocated budgetary funds of \$31,500,000.00 Jamaican (or \$700,000.00US) for 2001/2002.

Traditionally, lobby in the area of Industrial Property was more against than for patent protection but more recently Universities, the Scientific Research Council, the National Council for Science & Technology and the Inventors Association of Jamaica have encouraged the development of proper patent laws and the use of patent information.

COMPETENCY IN PATENT LAW

Very few legal practitioners are involved in patent applications in Jamaica and there are no qualified Patent Attorneys active in Jamaica. Experts in the Region's Law Faculty are in related areas such as International Trade, Competition Law but not in Intellectual Property Rights Laws.

INDICATORS OF THE SYSTEM

ANNUAL NUMBERS OF IP APPLICATIONS IN THE LAST THREE YEARS

See Tables 4-6 on Trademark, Designs and Patent Applications respectively.

ANNUAL NUMBERS OF PATENTS AND OTHER IPRS GRANTED IN THE LAST THREE YEARS

See Tables 7-9 on Patents Granted, Trademarks and Designs Registrations respectively

ANNUAL NUMBERS OF OVERSEAS IPRS GRANTED IN THE LAST THREE YEARS

See Tables 10-15 indicating IPRs applications and grants to residents and non-residents. In the last three years (1998-2000) fifty-one (51) patents were granted to foreign applicants, with an additional thirty (30) up to September 2001. Between 1998 and 2000 5,415 trademarks have been registered for foreign proprietors, with an additional 1,357 up to September 2001. From 1998-2000 only 28 industrial designs were registered for foreign proprietors with an additional 6 up to September 2001.

LEVEL OF BACK LOG IN PROCESSING IPR APPLICATIONS

In relation to Trademarks a backlog exists on account of the fact that the new Trademark Act 1999 was only brought into force on September 3, 2001, so that applications pending under the repealed 1958 Trade Marks Act fall now to determination under the new Act. There were 1,468 applications pending under the old Act, the majority of which are awaiting actions from the applicants. There are no backlogs in relation to Industrial Designs. In relation to Patents there is a backlog of 707 applications, which were referred to the Bureau of Standards and the Government Chemist to be examined. Due to the inability of these examiners to deal with the backlog it was decided that the technical evaluation requirement would be waived and the applications would be recommended for grants where there was evidence that patents have been granted for corresponding applications in countries including the USA, Canada, Germany, Switzerland, Australia and other EU Countries. This is intended only as an interim measure pending the enactment of new legislation that will provide for examination by a designated "competent authority" which could be foreign IP Offices in Industrialized Countries.

MANAGEMENT AND LICENSING OF IPRS IN THE PRIVATE AND PUBLIC SECTOR

Certain rights in copyright and related rights are managed by collecting societies. Four indigenous collecting societies that were formed between 1995 and 2000 license the performing and mechanical rights, the reprographic rights and rights of producers and performers accorded under the Copyright Act 1993.⁴ Other transactional licensing and rights clearance is facilitated by the Intellectual Property Service Centre, a non-governmental entity which was created as a central rights clearance agency as well as a copyright recordation center.

There is currently no central management or licensing center for public sector entities for use of copyright material, neither is there any coordinated approach on transfer of technology arrangements or licensing in the technological or R&D fields. A few entities (1 or 2) that have internal IP policies process their own licenses and clearance requests. Some agencies send license documents to the Attorney General's Chambers or employ their own Legal Counsel. Without a uniform approach, guidelines or a central clearance facility within the public sector, Government has no assurance that its IP policy is implemented across the board. No compulsory licenses have been issued. However foreign investors wishing to sell cable programming legitimately, along with local cable operators have been lobbying the Government to make the non-voluntary licenses mechanism under the Copyright Act operational. Health Care officials are also lobbying for the broadest possible compulsory licensing regimes for pharmaceutical products.

EXTENT OF PIRACY AND IPRS INFRINGEMENT

Infringement matters in the Civil Courts are mainly in the area of Trademarks and secondly, Copyright. Two collecting societies JACAP and JMRAS have initiated infringement proceedings. The Criminal Courts have dealt with a number of matters on copyright piracy and counterfeit goods. There has been hardly any court matter relating to Patents, one or two Patent disputes have been "tried in the media". Statistics on piracy of IPRs in Jamaica are sparse. Estimates value software piracy rates in Jamaica at \$3.3US million in 1998 and to be \$5.9 million US in 2002.⁵ The Organized Crime Investigation Unit reports that three (3) trademark counterfeit matters have been investigated in 2001 and up to September 2001, nine (9) copyright complaints were filed, three (3) of which have been disposed of by the Courts. It is known that there are several occurrences of piracy particularly in relation to local music and sound recordings and local films. There are also reported incidents of bootlegging in relation to live musical and dramatic performances as well as films. Due to the absence of proper license regimes for cable

⁴(i)The Jamaica Association of Composers, Authors and Publishers (JACAP) (ii) the Jamaican Musical Rights Administration Society (JMRAS) (iii) the Jamaica Performers Administration Society (JPAS) and (iv) the Jamaican Copyright Licensing Agency (JAMCOPY).

⁵ See Contribution of the Software Industry to the Latin American Economies: A study conducted by PricewaterhouseCoopers, commissioned by the Business Software Alliance, September 1999 p. 37. Estimates were stated in terms of fiscal contribution of the software industry to the Jamaican economy. The rates are based on data for Latin America and on the assumption that relationships between software sales, employment and related economic and financial factors are similar in Jamaica to those applicable to Latin America.

retransmission of foreign programming or video rental of foreign movies it is also reasonable to assume high incidences of cable and video piracy.

KEY NATIONAL IP INSTITUTIONS, HUMAN & FINANCIAL RESOURCES & TECHNICAL/FINANCIAL ASSISTANCE

HUMAN RESOURCES

The following is an outline of the human & financial resources of the principal IP institution in Jamaica, which is the Jamaica Intellectual Property Office. JIPO is now in a transitional phase as a Unit of the MICT. Its current staff complement is, less than half the staff required for JIPO as a Statutory Corporation (Please see attached - the JIPO organizational structure for the JIPO Corporation). The following account of the numbers of professional and administrative staff, broken down by function in the organization represents the prevailing situation with reference to the JIPO Corporation structure.

The Executive comprises of the Executive Director and two Deputy Directors, one being also the Registrar of Industrial Property. Presently the executive is not constituted as there is only a part time Registrar also acting as Executive Director and one Executive Secretary.⁶ The Registrar of Industrial Property facilitates the granting of rights in trademarks and designs within the Trademarks and Designs Directorate including the conduct of opposition proceedings.

Although there are three IP managers provided for in the JIPO Corporation structure to head the IP Directorates only the post for the Trademarks Manager has been filled. There is an acting Patents Manager and a manager is to be recruited shortly for Copyright and Related Rights. The Senior Programme Officer of the Programs and Projects Unit and a secretary as outlined in the JIPO Corporation Structure are in place.⁷ None of the four (4) posts for the Copyright and Related Rights Directorate under the JIPO Corporation Structure i.e. the Manager, Assistant Manager, Copyright Officer and a secretary are filled. The Senior Programme Officer has temporarily assumed some of the functions of the Manager, Copyright and Related Rights. The directorate deals with the administration

⁶ The Executive Director is to be employed in October. A full time registrar/deputy director, the other Deputy Director, Director of Administration and Executive Secretaries are to be recruited thereafter as resources permit.

⁷ The main responsibilities of the Senior Programme Officer are to coordinate the projects undertaken by JIPO and to develop projects for JIPO and to ensure the implementation of all public education programs, seminars, conferences and workshops.

of non-registered IPRs i.e. copyright, related rights and layout designs. The Trademarks and Designs Directorate consists of fourteen (14) persons (excluding the Registrar).⁸

The Patents Directorate deals with the registration of patents and utility models. The JIPO Corporation structure has five posts, the Manager, Assistant Manager, 2 Examination Officers and a data entry clerk. Apart from the temporary acting Patents Manager none of these posts are filled. In terms of support staff JIPO shares the services of bearer/driver with the MICT Cooperate Services Division. Only one of the two cashier positions is filled. There is currently one Office Attendant.

OPERATIONS

Granting a Patent

The Patent Act of 1857 governs the patent process. A patent application is made to the Patent Directorate of JIPO under the MICT and a patent is granted based on the report submitted by an Examiner. A new Patent & Designs Act is now in draft form and will shortly be tabled in Parliament.

Registering a Trademark

As at September 3, 2001, a new Trademark Law came into force i.e. The Trade Marks Act 1999 & Rules (2001). The Trademarks and Designs Directorate of JIPO processes trademark applications in accordance with the procedures outline in the above Act and Rules. The registration of a trademark is determined by the Manager of the Directorate and signed off by the Registrar of Industrial Property.

Registering a Design

The existing Designs Act of 1937 governs registered Designs. The Trademarks and Designs Directorate process applications and the Manager makes a ruling as to the registration of the Design, supported by the Registrar of Industrial Property. A new Designs Laws (part of the Patent and Designs Bill (above)) is to be enacted shortly, which will outline new procedures.

PROFESSIONAL EDUCATION AND TRAINING

Professional education in IP is not currently available at Local institutions. The Regional University of the West Indies (UWI) recently included a course on Copyright in its Law

⁸ The Manager, Trademarks and Designs is responsible for carrying out statutory functions in relation to trademarks and designs in accordance with the Trademarks and Designs laws and applicable International treaties. The Assistant Manager, Trademarks and Designs is responsible for carrying out statutory functions in relation to trademarks and designs in accordance with the Trademarks and Designs laws and applicable International treaties Supervisor Trademarks and Designs assists the Assistant Manager. There are 4 Registration officers responsible for examining and processing Trademarks and Designs applications, amendments and modifications, and to facilitate their registration. The JIPO Corporation structure only provides for 3 registration officers in anticipation of full automation of procedures. There are 3 Registration assistants that assist the registration officers. There are 3 Secretaries/ data-entry clerks responsible for providing general secretarial support services and related administrative duties. The JIPO Corporation structure provides for 2, but this is to be revisited. A file attendant is also assigned to this Directorate.

Faculty curricula (based in Barbados). However this course is inadequate for the proper equipping of a cadre of IP professionals in the legal fraternity. Local IP experts occasionally lecture University students at UWI and the University of Technology, Jamaica and address various professional forums. Academic training on IP has been sourced in foreign Universities and through the WIPO Academy and WIPO Training Fellowships. The US Government through USAID also offers short-term training on IP administration and enforcement, from which a few Jamaicans have benefited.

HUMAN RESOURCE CONSTRAINTS AND BOTTLENECKS

Financial resources of the Government have not permitted the recruitment of competent persons to fill key managerial and senior posts in JIPO. JIPO has no in house Finance or Information Management Department as is provided for in the JIPO Corporation structure. Presently the Cooperate Services Division of the Ministry of Industry, Commerce & Technology, carries out these functions for JIPO. None of the three positions on the JIPO Corporation Structure for the Law and Planning Division have been recruited. The posts on the JIPO Corporation Structure for the Compliance and Advisory Services Units have not yet been filled. The Patents Directorate and the Advisory Services Unit require expertise in patents, which is not readily identifiable locally. The Trademarks and Designs Directorate, the greatest revenue earner for the office, is currently the most human resource intensive operation, and may demand more staff than contemplated by the JIPO Corporation Structure, which was designed on the assumption that much of the functions would be automated and less human resource intensive. Currently two part time trainees have been deployed to assist the Directorate.

REFORMS BEING CONSIDERED

The objective is to recruit the full complement of staff for JIPO at the desired levels of competency and to fully automate the procedures of the office for optimal efficiency. The JIPO Corporation Structure will have to be realized on a phased basis as financial resources permit. The Government is seeking the help of WIPO, CIDA and the USAID generally and the support of Foreign IP Offices, in particular the UK Patent Office and the Canadian IP Office for long term attachments in the area of Patents. It is currently finalizing project proposals for assistance with HR and automation. Some level of automation of trademark procedures is currently underway with the assistance of WIPO.

FINANCIAL RESOURCES

Annual Income and Expenditure in the past 3 years *(See Table 16 attached)*

Intellectual Property administration in Jamaica has been funded from sums provided by Parliament in the annual estimates of revenue and expenditure. Up to March 2001 separate allocations were made for Copyright & Related Rights and Trademarks & Designs as these subjects were under the purview of different sections of the MICT. No specific allocation was made for Patent administration. As of April 2001 there is one allocation for JIPO provided under the MICT's Budget. All revenue generated from Intellectual Property Administration has gone to the Government's Consolidated Fund.

Projected Annual Income and Expenditure *(See Table 17 attached)*

Projections are based on actual revenues from Trademarks and Designs between April 2001 and September (approximately \$10 million) as well as the anticipated passage of new legislation in the area of Patents, Utility Models, Designs, Geographical Indications and Copyright (Anti-Piracy) Regulations.

Financial Resource Bottlenecks and Constraints

JIPO is under-budgeted, having been allocated only \$11 million from its \$50 million budget proposal. Attempts for JIPO to retain 50% of the revenue generated from user charges, have not been successful. Retention of revenues will only be achieved when JIPO becomes a Statutory Corporation (expected before the end of this year). With resources scarce other priority areas such as telecoms liberalization, information technology infrastructure and spectrum management have taken precedence over IPRs administration notwithstanding positive political will.

COST RECOVERY AND USER-CHARGES

Policy and Systems for Cost Recovery

When JIPO becomes a Statutory Organization it is to be funded from (1) sums provided by Parliament in the annual estimates of revenue and expenditure (2) revenues from charges imposed by the Office for services and use of its facilities and (3) revenue from registration and other fees charged in administration of the relevant Intellectual Property laws.

Level of User Charges

There is no discrimination between foreign and residents or large and small entities in respect of statutory fees for IPRs. Under the new Trademarks Act the statutory fees for registration have been increased by \$1,000 Jamaican dollars. The total fee for one application in one class is \$7000 Jamaican plus publication cost which is in the region of \$1,320. In a multi-class application the statutory fee for each additional class is \$1,000.⁹ There are other charges for other procedures under the Act such as application for extension of time, renewal, searches, change of name and for opposition proceedings. Under the existing Designs Act the fee for registration is \$1,500 in a single class. Under the current Patent Act (1857) the fees for Patents are \$15 for the Attorney General's Chambers \$25 for examination and \$322 for recording.

Revenues from Cost Recovery last 3 years - Not available

Projected Level of User Charges tariff and Revenues from Cost Recovery Coming Years – Refer to Table 17

TECHNICAL/FINANCIAL ASSISTANCE

Main Technical Assistance Programmes (1996-2000) and Effectiveness of Programmes - See Table 18 -Technical assistance programmes have been instrumental in fast-tracking legislative compliance with the TRIPS Agreement, increasing the

⁹ The exchange rate of the Jamaican dollar to US is approximately JA 46. 1US.

competence of staff carrying out IP administration and raising the general level of awareness about the importance and relevance of IPRs throughout the society.

Priorities for Future – See Table 19 - Although Jamaica has a relatively modern framework for IPRs protection and administration, the framework is skeletal and elements of an archaic system such as manual procedures still prevail. It is imperative to the optimal impact of JIPO that it fully automates its procedures, utilizes information technology tools to deliver its services, recruits suitably qualified staff and has adequate financial support in its formative years.

PARTICIPATION IN INTERNATIONAL RULE MAKING AND CO-OPERATION WITH OTHER

ORGANIZATIONS

Level and Nature of Participation in WIPO, WTO, FAO, UNESCO

Jamaica has been very active at the international level on matters concerning copyright and relating rights, including participation in treaty negotiations (notably the WIPO Internet Treaties), and the WIPO Standing Committees on Copyright and Related Rights and Regional Consultations, Workshops and Seminars. Jamaica's representative was elected a Vice Chairman for the Diplomatic Conference on the Protection of Audiovisual Performances in December 2000. Jamaica has been represented at all WIPO Government Bodies Meeting since 1995, however since it has not received funding from WIPO to attend these meeting it has only been represented from the home country at 3 such meetings. Jamaica was re-elected to the Executive Committee of the Berne Union at the 2001 Governing Bodies meeting. Accession to the Patent Cooperation Treaty will provide Jamaica funding to attend these meetings as well as other in the patent field. Jamaica has been actively involved in deliberations at WIPO and UNESCO concerning the protection of Folklore and Traditional knowledge, traditional cultural and copyright in the Information Age as well as discussion on development issues and IP at UNCTAD. Jamaica holds the chairmanship of the WIPO Caribbean Regional Committee on E-Commerce and IP and has actively participated in the WIPO Standing Committee on Information Technology and WIPO conference on E Commerce and the Digital Agenda. The Ministry of Agriculture is active at FAO meetings.

Support Provided in TRIPS

Jamaica did not have expert representation on IPRs during the Uruguay Round negotiations culminating in the TRIPS Agreement. However it is active in WTO TRIPS Council deliberations on Exceptions to Patentability, Compulsory Licenses, wider protection for Geographical Indications and the protection of Biodiversity, among other things.

Level of Cooperation with other IP Offices

Jamaica is building cooperation with other IP Offices particularly in the region, pursuant to regional policy directives on IP for members of the Caribbean Community (CARICOM) and hosted the first CARICOM Working Group meeting on IPRs in 2000 at which heads of IP Offices in the region were present. Regional Cooperation is significant in the area of Collective Administration of Copyright. More reliance will be placed on foreign IP Offices in Developed Countries for assistance with Patent Searches, Examination and Documentation.

TRINIDAD & TOBAGO

OVERVIEW OF LEGAL AND INSTITUTIONAL FRAMEWORK

RECENT HISTORY

Modernization of the IP regime in Trinidad and Tobago has moved at a relatively fast pace with the Republic's passage of new and revised laws on IP and its accession to international treaties concerning IP since the early 1990s. On December 1, 1997, Trinidad and Tobago established a new Intellectual Property Office to administer IP Laws. The office was established under the Patents Act of 1996 and is a department of the Ministry of the Attorney General and Legal Affairs. The IP Office evolved from the Intellectual Property Registry of the Registrar General's Department.

The Republic of T&T was the first Anglo-Caribbean Country to be reviewed by the TRIPS Council (June 26-30, 2000) and one of the few countries in the Caribbean to have already enacted legislation for the protection of New Plant Varieties (1997). Trinidad and Tobago has benefited significantly from technical assistance from WIPO in the form of Practical Training, Training Seminars, Courses, Study Visits, Workshops, Symposia and Expert Missions, over 50 courses over the past six (6) years.

KEY ISSUES AND CHALLENGES

Even with significant technical assistance the key competent IP administration office has staff constraints. This has been linked to the fact that the IP Office is within the Public Sector/Civil Service structure, which has slowed down staff appointments, lowered the level of staff recruited and slowed down budgetary approvals for key items for automation and information technology. In addition the automated systems for IPRs administration have applied obsolete technology and need to be properly adapted in order to be fully functional. Without fully automated and efficient procedures the use of the IP system in Trinidad will be hindered.

LEGAL FRAMEWORK

Laws concerning Copyright & Related Rights, Trademarks, Industrial Designs and Patents were revised between 1994 and 2000 and new laws on Layout Designs and New Plant Varieties were passed in 1996 and 1997 (See Table 1 – IP Laws of Trinidad and Tobago). The Patent Law provides for Utility Model Certificates. Trinidad and Tobago has pending amendments on Copyright and Trade Marks as well as draft regulations for the protections of New Plant Varieties. Trinidad and Tobago acceded to a dozen treaties (10 from 1994-1998) on IP and signed on to the WTO Agreement and a Bilateral IP

Agreement with the USA that was “tied” to its hopes for NAFTA parity (See Table 1). The Country is also considering accession to the WIPO Internet Treaties, the Rome Convention and the Madrid Protocol.

MAIN PUBLIC SECTOR AGENCIES FOR IP POLICY, INFORMATION DISSEMINATION, ADMINISTRATION & ENFORCEMENT

POLICY

All activities concerning IP at the Governmental level are coordinated through the Ministry of the Attorney General and Legal Affairs. The Attorney General who usually also holds the office of Minister of Legal Affairs determines IP Policy.

ADMINISTRATION

The IP Office is the competent national office concerned with the administration of Intellectual Property Rights laws. The Mission Statement of the Office is “to stimulate research and creativity...by providing intellectual property rights and the legal means for their protection and encouraging the public disclosure and the effective use of accurate information on creative effort thereby enhancing the competitiveness and contributing to the economic and social development of the people of Trinidad and Tobago.” The IP Office regards its role in development as one, which focuses on linking science and technology research with commercial and industrial competitiveness. It also sees its goals as impacting on industry, commerce and international trade and national economic growth in terms of revenue from processing applications for IP Rights.¹⁰

INFORMATION DISSEMINATION AND PUBLIC EDUCATION

The IP Office has positioned itself to be a source of information for “scientific and industrial research and development, trade and investment decisions” through its Industrial Property Information Service Unit and seeks to increase public awareness on the IP rights system in Trinidad & Tobago by among other things providing information from patent documentation and other IP Databases as well as general and procedural information on rights acquisition. Public education in schools at the secondary and tertiary levels, industry groups and other commercial stake holders has been addressed by question and answer brochures on IP Rights and a booklet on IP. The IP Offices also conducts state of the art searches through WIPO and locally.

ENFORCEMENT AND THE JUDICIARY

The principle enforcement arm in Trinidad & Tobago is the Police Service. The Customs and Excise Division is in charge of enforcement at the border. The Police have been involved in enforcement particularly in the area of Copyright and the piracy of music products. Special Training on IP in the form of seminars and training courses has been directed at Police, Customs Officers, and Members of the Judiciary, Resident Magistrates and the Office of Public Prosecutions.

¹⁰ The Office sees itself playing a role in improving interaction and communication between key relationship groups such as creators and users of IP, the staff of the IP Office and other National IP Offices.

IP-RELATED COMPETITION POLICY

Legislation concerning the protection against unfair competition is administered by the Ministry of the Attorney General and Legal Affairs. Competition policy is determined by the Ministry with portfolio for trade and the Ministry of Attorney General and Legal Affairs addresses IP related competition issues.

PUBLIC POLICY MAKING PROCESS AND ROLE OF PRIVATE SECTOR AGENCIES & NGOS IN IP POLICY DEVELOPMENT, ADMINISTRATION & ENFORCEMENT

PUBLIC POLICY MAKING PROCESS

Trinidad and Tobago has an interactive consultation process in the development of its policies and the enactment of laws to implement them. The process involves national consultations and consultations with interested parties. The government uses the public education program on IP to reach the poor with a simple message on the importance of IP.

INVOLVEMENT OF PRIVATE SECTOR IN IP POLICY DEVELOPMENT AND ENFORCEMENT

In terms of IP policy development, the government interacts with other relevant Ministries and facilitates the involvement of interest groups from the private sector such as the Manufacturing Association, the Chambers of Industry and Commerce, Banking and Business Institutions, R & D and Educational institutions. An Ad Hoc Committee set up to review IP Laws in Trinidad & Tobago was convened to work on the revision of Intellectual Property Laws consequent on Trinidad's signature to the Bilateral Agreement with the USA on IP. Members of the private sector and in particular the legal fraternity were appointed to the Task Force. WIPO has also had a critical influence in policy on IP in Trinidad albeit indirect.

In terms of enforcement the national collecting society for music composers, authors and publishers, Copyright Organization of Trinidad and Tobago (COTT) has been active in raising awareness about copyright obligations and also in enforcement of its members' rights. The Business Software Alliance of the USA is also active on enforcement issues. In collaboration with the IP Office the BSA created a brochure on Software Piracy to raise awareness in an effort to address piracy. Police and Customs officers benefit from a Training Module on IP.

COMPETENCY IN PATENT LAW

Expertise on Patent Law in Trinidad is sparse. This subject area is not taught at the tertiary level institutions in Trinidad or in the rest of CARICOM but efforts are being made to introduce a course at the UWI and the Law School based in Trinidad. The IP Office has a few Patent Examiners on staff. Very few attorneys practice in the patent field.

INDICATORS OF THE SYSTEM

ANNUAL NUMBERS OF IP APPLICATIONS IN THE LAST THREE YEARS

In 2000, 1135 Trademark and 158 Patent applications were filed, 5 filed by nationals. There were 8 applications with respect to industrial designs, 3 filed by nationals. No applications for Geographical Indications or Layout Designs (also a registration system) have been filed. In 1999 nationals filed no applications for patent protection. See Tables 2-4 on Trademark, Designs and Patent Applications respectively. See also WIPO Statistics at www.wipo.int/ipstats/en/publications/, which break down applications by country and classification. WIPO statistics also indicate that non-residents filed some 41,238 applications under the Patent Cooperation Treaty.

ANNUAL NUMBERS OF PATENTS AND OTHER IPRS GRANTED IN THE LAST THREE YEARS

The IP Office granted no Patents in 1999. It was felt that in light of the new examination process patents would be granted starting the first half of 2000. See Tables 5-7 on Trademarks and Designs registrations and Patents granted, respectively. See also WIPO statistics at the above noted website which breaks down grants and registrations by country and classification and indicators applications for Patents which have not yet reached the National phase.

ANNUAL NUMBERS OF OVERSEAS IPRS GRANTED IN THE LAST THREE YEARS

Tables 2-7 indicate IP Rights applications and grants to residents and non-residents.

LEVEL OF BACK LOG IN PROCESSING IPR APPLICATIONS

Backlogs exist in every Unit of the IP Office due to the absence of full staff complement.

MANAGEMENT AND LICENSING OF IPRS IN THE PRIVATE AND PUBLIC SECTOR

The Copyright Organization of Trinidad and Tobago licenses performing and mechanical rights in music. There are currently no copyright clearance facilities in the country. Individual organizations or institutions deal with licensing in the technology field. No compulsory licenses have been issued.

EXTENT OF PIRACY AND IPRS INFRINGEMENT

Although statistics on piracy of IPRs in are sparse, copyright piracy is known to be prevalent particularly in relation to sound and video recordings. The National Carnival festivities account in part for the vigilance in policing piracy. Estimates value software piracy rates in Trinidad & Tobago at \$2.7US million in 1998 and to be \$4.9 million US in

2002.¹¹ Infringement matters in the Civil Courts are mainly in the area of Trademarks. Copyright matters tend to be resolved out of court.

KEY NATIONAL IP INSTITUTIONS, HUMAN & FINANCIAL RESOURCES & TECHNICAL/FINANCIAL ASSISTANCE

HUMAN RESOURCES

The Controller heads the IP Office. On the earlier organizational structure (attached hereto) the IP Office staff complement was 23 and at that time 6 positions were vacant. According to a revised structure the full staff complement is to be increased to 54. On the revised structure (attached) there is one Deputy Controller and a Chief Technical Examiner, 2 Patent Examiners and 2 Assistants. In relation to Copyright there are 2 Assistant Copyright Directors and an Enforcement Unit, which is intended to be staffed by a Police and Customs Office. In terms of Trademarks there is an Assistant Controller, a Senior Trademark Examiner, a Trademark Examiner and 2 Assistants. There is a Manager of Information Systems who supervises a Systems Administrator Database Administrator, Network Technician, and 4 Data Entry Clerks. The Structure also has the Head of Administration, Accountant, Procedures Assistant, Head Registry, Correspondence Clerk, Vault Attendants and other support staff. The organizational structure has undergone a further revision and has recently acquired the necessary approvals.

OPERATIONS

Granting a Patent

The Patent Act of 1996 governs the patent process. A patent application is made to the IP Office and a patent is granted based on a full examination system, which grants the patent on the fulfillment of international criteria of novelty, inventive step and industrial applicability. Decisions of the Controller of IP are subject to appeal to the High Court.

Registering a Trademark

The IP Office processes trademark applications in accordance with the procedures outlined in the Trade Marks Act (Ch. 82:81) and subsequent amendments. The Controller of IP determines the registration of a trademark.

¹¹ See Contribution of the Software Industry to the Latin American Economies p. 43. Estimates were stated in terms of fiscal contribution of the software industry to the Trinidad and Tobago economy. The rates are based on data for Latin America and on the assumption that relationships between software sales, employment and related economic and financial factors are similar in Trinidad and Tobago to those applicable to Latin America.

Registering a Design

In accordance with the Industrial Designs Act of 1997, applications are approved on the basis of universal originality. The Controller examines the application as to formality and makes a ruling as to the registration of the Design.

Registering Geographical Indications

The Act provides for the registration of Geographical Indications, examination as to formal application requirements and not to substantive requirements, advertisements, and oppositions.

PROFESSIONAL EDUCATION AND TRAINING

Professional education in IP is not currently available at local academic institutions. (See section on Jamaica for the situation at the Regional University). Academic training on IP has been sourced in foreign Universities and through the WIPO Academy and WIPO Training Fellowships. The Canadian and US Governments through various modalities such as CIDA or USAID also offer short-term training on IP administration and enforcement, in respect of which some staff members from the Trinidad IP Office have benefited.

HUMAN RESOURCE CONSTRAINTS AND BOTTLENECKS

Although some staff is in place at the IP Office and Cabinet approved an organizational structure since 1996, members of staff have not actually been appointed under the approved structure. This has created problems. A small skeleton staff runs the IP Office with a lacuna in technical positions. The lack of scientific and technical staff has placed a strain on the existing staff and has created backlogs in the administration of IP. It is felt that if the staff constraints are not timely addressed there will be a reduction in the use of the IP systems and a consequent loss of revenue. As a part of the public service structure the IP Office is hindered in its maturity as a technical and specialized department. Skilled officers are given acting appointments and may be replaced by unskilled officers. Some offices are assigned temporarily (3 months) through an unemployment levy scheme, but the Office loses that staff when the rigorous training process is just about complete.

REFORMS BEING CONSIDERED

The 1996 approved organizational structure for the IP Office is no longer adequate to address the growing demands for services. The Government has been assisted by WIPO with the development of a revised staff structure (described above) more suited to the needs of the system. It is anticipated that the approved revised structure will be in effect shortly.

FINANCIAL RESOURCES

Annual Income and Expenditure in the past 3 years (see Table 8)

Financial resources are obtained primarily from the Government through the annual budget process.

Projected Annual Income and Expenditure

The projected total revenue for the IP Office is \$2 million TT in 2002.

Financial Resource Bottlenecks and Constraints

The IP Office is hindered by the lack of budgetary approval for full automation of the IP Office and delays in granting approvals for the purchase of basic IT infrastructural items.

COST RECOVERY AND USER-CHARGES

Policy and Systems for Cost Recovery

All revenue generated by the IP Office goes to the Government's Consolidated fund and therefore does not directly benefit the office.

Level of User Charges and Revenues from Cost Recovery last 3 years – Not available

Projected Level of User Charges tariff and Revenues from Cost Recovery Coming Years – not available

TECHNICAL/FINANCIAL ASSISTANCE

Main Technical Assistance Programmes (1996-2000) and Effectiveness of Programmes - See Table 9

The majority of technical assistance programmes have been provided by WIPO in the form of WIPO Expert Missions, WIPO Fellowships Award Scheme, Training Seminars and Workshops and Study Visits and Short Term Attachments to the IP Office. Assistance has also come from Canada, the USA and the United Kingdom. The programs geared towards developing the IP Office have been the most effective. Training programmes have only partially met their objectives. Assistance with automation has not yet produced the desired results. The country has also benefited from funding through other agencies such as the IDB. Such funds have been administered by WIPO and the developmental programmes also implemented by WIPO.

Priorities for Future - See Table 10

PARTICIPATION IN INTERNATIONAL RULE MAKING AND CO-OPERATION WITH OTHER ORGANIZATIONS

Level and Nature of Participation in WIPO, WTO, FAO, UNESCO

Because of Trinidad's accession to several treaties administered by WIPO it has been funded to many international meetings and regional consultations organized by WIPO. It is most active in the area of Trademarks and Patents. Trinidad has actively participated in many WIPO Government Bodies Meeting since the 1990s and in WIPO regional consultations, meetings and workshop in respect of which representation has been funded by WIPO. Trinidad has also been invited to discussions by WIPO and UNESCO concerning the protection of Folklore and Traditional Knowledge at the regional and

international levels. Trinidad and Tobago is also represented on the Regional Negotiating Machinery's negotiating team for IPRs.

Support Provided in TRIPS

Trinidad and Tobago was represented during the TRIPS review through its Mission in Geneva and the Minister of Enterprise Development and Foreign Trade and his advisors. The country participates in WTO TRIPS Council deliberations on various issues of importance to developing countries.

Level of Cooperation with other IP Offices

Trinidad is building cooperation with other IP Offices particularly in the region, pursuant to regional policy directives on IP for members of CARICOM. Trinidad hosted the first WIPO Caribbean Ministerial level meeting and Heads of Intellectual Property Offices meeting sponsored by WIPO. Trinidad holds the chairmanship of the WIPO Caribbean Regional Committee on Collective Management of Copyright. Trinidad has also hosted a WIPO Regional Workshop on Trademarks. Trinidad received 2 study visits to its IP Office from another Caribbean country in an effort to share information on modernization efforts.

SAINT LUCIA

OVERVIEW OF LEGAL AND INSTITUTIONAL FRAMEWORK

RECENT HISTORY

As a smaller Caribbean economy and a member of the Organization of Eastern Caribbean States (OECS) St. Lucia is most advanced in its process of IP modernization, having updated IP Laws and its administrative regime only in the past 5-6 years, having a record participation in International IP Agreements among the OECS. St Lucia adopted most of its IP legislation and established its Companies and Intellectual Property Registry in 2000. The Registry of Companies and Intellectual Property (ROCIP) was established in September 2000 assuming the functions of administration of IP formerly carried out by the High Court Registry. St. Lucia had a successful TRIPS Council review of its IP legislative framework in April 2001.

KEY ISSUES AND CHALLENGES

A major challenge for St. Lucia is in the area of strengthening institutional and capacity building in terms of training human resources and the recruitment of competent staff to carry out IP administration procedures. As all procedures are manual, automation of the ROCIP is a priority for St. Lucia. At the moment data is not easily ascertained and the search process is tedious and time consuming. St. Lucia requires assistance in establishing electronic databases for IPRs administration and information.

LEGAL FRAMEWORK

St Lucia has modern laws on Copyright, Layout Designs (Topographies) of Integrated Circuits, Geographical Indications, Trademarks, Patents and most recently Industrial Designs (See Table 1). The Laws on Trademarks, Patents and Industrial Designs are not yet in force. St Lucia is a member of 10 international treaties and agreements on IP including the WIPO Internet Treaties. It is considering accession to the Washington Treaty on Intellectual Property in Respect of Integrated Circuits (1989).

MAIN PUBLIC SECTOR AGENCIES FOR IP POLICY, INFORMATION DISSEMINATION, ADMINISTRATION & ENFORCEMENT

POLICY

The Attorney General, also the Minister responsible for Intellectual Property has the remit for policy on IP matters. The Minister as supported by the Cabinet determines policy.

ADMINISTRATION

The Registry of Companies and Intellectual Property under the Attorney General's Department is the competent authority concerned with the administration of laws on IP Rights. In addition to registering companies, business names and partnerships the ROCIP has as its primary function, the administration of trademarks, patents, industrial designs, geographical indications, layout designs, and copyright. In relation to its IP functions the ROCIP is also focused on public education on IP. It also is responsible for making recommendations to the Minister responsible for IP on matters relating to IP.

INFORMATION DISSEMINATION AND PUBLIC EDUCATION

The ROCIP has also assumed responsibility for public education and information dissemination on IP. The office hosted a Copyright Awareness Week addressing issues such as piracy and enforcement. It also uses the Government Information Service to disseminate information on IP laws.

ENFORCEMENT AND THE JUDICIARY

There has not been enough Police and Customs involvement in IP issues and these officials have received very little training in the area. The Judges of the High Court received some IP training in 2001.

IP-RELATED COMPETITION POLICY

The competent body which determines policy on fair competition and which implements the policy is the Ministry of Commerce, Industry and Consumer Affairs. Not much consideration has been given to IP-related issues.

PUBLIC POLICY MAKING PROCESS AND ROLE OF PRIVATE SECTOR AGENCIES & NGOS IN IP POLICY DEVELOPMENT, ADMINISTRATION & ENFORCEMENT

Policy making for IPRs mainly takes the form of consultation between the Attorney General, Minister responsible for IP and the Registrar of Companies & Intellectual Property. On some occasions consultations with the relevant stakeholders take place especially on legislative changes. Legal Practitioners and the Chamber of Commerce

have been actively involved in the IP policymaking process. The policy making process in general is occasionally interactive involving wide consultations with interested parties. In terms of the interests of poor people in IP policy development no emphasis has been placed on such considerations.

COMPETENCY IN PATENT LAW

There are no Patent Attorneys in St. Lucia and there is a dearth of expertise on Patent Law. This subject area is not taught at the tertiary level institutions in CARICOM Countries.

INDICATORS OF THE SYSTEM

ANNUAL NUMBERS OF IP APPLICATIONS IN THE LAST THREE YEARS

See Tables 2 - 6 on Trademark and Patent applications respectively.

ANNUAL NUMBERS OF PATENTS AND OTHER IPRS GRANTED IN THE LAST THREE YEARS

ROCIP data indicate that between 1998 and 2000, 1335 Trademark applications were filed, 84 by St. Lucian nationals, and a total of 26 patents applications were received all filed by non-residents. See Tables 4 - 6 on Patents granted and Trademarks registrations respectively. See also WIPO Statistics at www.wipo.int/ipstats/en/publications/ which breaks down applications by country and classification and indicate some patent applications designated for St. Lucia which have not yet entered the national phase.

ANNUAL NUMBERS OF OVERSEAS IPRS GRANTED IN THE LAST THREE YEARS

Between 1998 and 2000, 1034 trademarks were registered for foreign proprietors and 26 patents were granted to foreign applicants. See Tables 4 & 5 indicating IP Rights applications and grants to residents and non-residents. See also WIPO statistics at the above noted website.

LEVEL OF BACK LOG IN PROCESSING IPR APPLICATIONS

A backlog exists in processing approximately 47 patent applications under the PCT.

MANAGEMENT AND LICENSING OF IPRS IN THE PRIVATE AND PUBLIC SECTOR

The Hewannara Society is the only collecting society for Copyright in St. Lucia. It licenses performing rights in music and has been very active in this area. Collecting Societies have to be registered under Copyright Regulations in order to operate. It is not

clear whether any organizations or institutions treat with licensing in the technology field. No compulsory licenses have been issued.

EXTENT OF PIRACY AND IPRS INFRINGEMENT

Statistics on piracy are unavailable at this time. However copyright holders have complained to the Government about the existence of copyright piracy. There have been no prosecutions or civil cases with respect to piracy of IPRs in Saint Lucia.

KEY NATIONAL IP INSTITUTIONS, HUMAN & FINANCIAL RESOURCES & TECHNICAL/FINANCIAL ASSISTANCE

HUMAN RESOURCES

The following is an outline of the human & financial resources of the principal IP institution in St. Lucia the Registry of Companies and Intellectual Property. The organizational structure of the ROCIP provides for the following staff:

- The Registrar
- Deputy Registrar
- Assistant Registrar
- Secretary
- Accounts Clerk
- Clerk III
- Clerk/Typist
- Vault and Attendant
- Office Assistant

The post of Registrar and Deputy are legal posts. The Organizational Diagram is currently being prepared by the ROCIP.

PROFESSIONAL EDUCATION AND TRAINING

In St. Lucia similar conditions apply as in other Caribbean Countries in that education on IP has been sourced from abroad and mainly from WIPO (Refer to previous sections on Jamaica and Trinidad & Tobago). St. Lucia has not been able to fully benefit from WIPO Training Fellowships and other opportunities because of the lack of human resources within the ROCIP.

HUMAN RESOURCE CONSTRAINTS AND BOTTLENECKS

The post of Deputy Registrar is not at present filled. The post has been advertised but no one has been appointed as yet. Given the increase in workload, there is need for a Deputy especially to help with areas that require research.

OPERATIONS

Granting a Patent

The existing patent process is governed by the Commercial Code based on 1938 United Kingdom Laws. Although St. Lucia is a member of the PCT, the Patent Act implementing the PCT is not yet in force. A patent application is made to the ROCIP and a patent is granted based on novelty, no substantive examination is conducted.

Registering a Trademark

The ROCIP processes trademark applications in accordance with the procedures outlined in the Commercial Code, as the new Trade Marks Act is not yet in force. The registration of a trademark is determined by the Registrar on the basis of the mark's distinctiveness and capability to distinguish.

REFORMS BEING CONSIDERED

The ROCIP is seeking to recruit and train staff as well as to fully automate the office.

FINANCIAL RESOURCES

Financial resources are obtained primarily from the Consolidated Fund of Government through the annual budget process.

Annual Income in the past 3 years - Approximately \$165,000.00

Expenditure data - Not available

Projected Annual Income and Expenditure – An estimated \$120,000 per quarter, which is expected to increase as the fees for trademark applications and patents will be increased and regularized.

Financial Resource Bottlenecks and Constraints

There are financial constraints for IP administration.

COST RECOVERY AND USER-CHARGES

Cost recovery and user charges of the Registry of Companies and Intellectual Property are managed through a request and approval system. In addition, the Department is responsible for setting up systems to ensure the collection of revenue for the services offered. The ROCIP charges \$60.00 (EC) for the registration of a Trademark with additional fee of \$50 for publication and certificate. Patents cost \$100.¹²

¹² The rate of the EC dollar to the US is \$2.67:1.

Level of User Charges and Revenues from Cost Recovery last 3 years – Not available

Projected Level of User Charges tariff and Revenues from Cost Recovery Coming Years – Not available

TECHNICAL/FINANCIAL ASSISTANCE

Main Technical Assistance Programmes, (1996-2000) and Effectiveness of Programmes and Priorities for Future - See Table 7.

PARTICIPATION IN INTERNATIONAL RULE MAKING AND CO-OPERATION WITH OTHER ORGANIZATIONS

Level and Nature of Participation in WIPO, WTO, FAO, UNESCO

St Lucia has been afforded the opportunity to participate in WIPO activities because of its accession to several treaties administered by WIPO. It is most active in the area of Trademarks and Patents. St. Lucia has participated in at least 3 WIPO Government Bodies Meeting since the 1990s and has attended regional WIPO meetings, the Ministerial Meetings and the Heads of IP Offices Meetings whenever WIPO funding has been provided. St. Lucia hosted the third WIPO Ministerial Meeting and Meeting of Heads of IP Offices as well as the second CARICOM Working Group on IPRs. It is also represented on the Regional Negotiating Machinery's negotiating team for IPRs and is active at the FTAA negotiations on IPRs. The Ministry with portfolio for Agriculture sends representatives to the FAO meetings.

Support Provided in TRIPS

St. Lucia did not have expert representation on IPRs during the Uruguay Round negotiations culminating in the TRIPS Agreement.

Level of Cooperation with other IP Offices

St. Lucia has been sharing information with other IP Offices in the region and has the continued opportunity for information gathering and consultations through WIPO organized regional meetings and seminars for Caribbean Countries.

CONCLUSION

COMPARATIVE REVIEW

Legal and institutional framework

All three countries have significantly upgraded their legal and institutional framework on IPRs. Changes have been focused on the revision of laws, accession to international treaties and the modernization of IP administration systems. Trinidad and Tobago is the most advanced in the area of Industrial Property even though its laws on Integrated Circuits, Plant Varieties and Geographical Indications have not been utilized by potential right holders. Jamaica has draft legislation still to be passed and St. Lucia's new laws are not yet in force.

The main area of emphasis in terms of institutional strengthening has been the modernization of the key competent authority for the administration of IP laws. Trinidad has been the greatest benefactor of technical assistance programmes offered mainly by WIPO. St. Lucia has the weakest institutional framework. All three IP Offices are still being upgraded particularly in terms of automation and training of staff.

The other area of focus on institutional strengthening has been collective management of copyright. Each country has at least one established copyright collecting society in music performing rights and in house staff have benefited from technical assistance and training through WIPO. Jamaica has 4 collecting societies covering the rights of composers, authors, publishers of music, literary authors and publishers, record producers and performers however, assistance has mainly been directed to the music performing rights society.

Public education and information dissemination is a priority for all three IP Offices, which have each taken the lead in this area, and have been successful at increasing the levels of IP awareness. These countries have vibrant public education efforts on IP particularly focused on informing right holders about their rights under IP Laws. More public education needs to be directed at the user community.

Enforcement has also received some institutional attention, mainly in Jamaica and Trinidad & Tobago as police and customs officers as well as members of the judiciary have received training on IP, an area which has heretofore been uncharted territory for them. More training at the specialized levels for legal practitioners, Judges, academics and IP related industry players is needed in all three countries.

Policy Development on IPRs

The Governments have been recognizing the economic importance of IPRs. In all three countries policy on IP has been developing over the past decade with the Governments

taking an interventionist approach in the policy development process, mainly driven by their international obligations. St. Lucia's policymaking process is the least interactive with private sector.

Traditionally IP was relegated to administrative processes with little policy import. Copyright has been the only exception. Copyright is viewed as essential for local cultural and entertainment industries and for developing countries has been the area of comparative advantage. Copyright has been at the forefront of Jamaica's policy framework and has been used to place IP as a whole on the political agenda. This is no doubt linked to the fact that Jamaica sees its copyright industries (music in particular) as its area of competitive advantage in IP. St Lucia has had a similar experience as its Copyright Law was the first to be revised and it is so far the only Caribbean Country to have acceded to the WIPO Internet Treaties.

For Trinidad, Industrial Property has led the policy development process particularly in the area of patents with an emphasis on scientific research and development. The fact that the Engineering and Agriculture Faculties of the UWI are based in Trinidad and Tobago may account in part for this situation. Trademarks and Copyright have also now received policy attention in Trinidad and Tobago.

The Trademark system is seen as essential to stimulating development of local businesses and foreign direct investment as it facilitates foreign companies in expanding their businesses locally.

IP related competition policy has developed only minimally in these countries. Jamaica has the most advanced institutional framework to facilitate more focus on this area and the FTC is regarded as a model for other Caribbean Countries.

Operations

All three countries have improved operations for the acquisition and maintenance of IPRs. However financial and institutional constraints hinder the full modernization of the IP Offices. Without some degree of financial autonomy the policies and systems for cost recovery from user fees are not developed and are not very relevant to the current financial framework within which these offices operate. The attached comparative tables indicate the varying degrees of usage of the IPRs systems in these Countries. For all three countries the Trademark process is the largest revenue earner. Trinidad has the highest degree of activity in the area of Patents and Jamaica in the area of Trademarks. Both countries have low levels of activity in relation to Industrial Designs.

International Involvement and Regional Collaboration

Participation by these Countries at the international or regional level has in large part been determined based on the availability of foreign sources of funds, particularly from WIPO. Hence the Countries have not been able to attend all the meetings of interest to their national economy. However, Jamaica and Trinidad and Tobago have overall been the most active CARICOM countries on IPRs at the international and hemispheric fora.

CARICOM, its Council for Trade and Economic Development (COTED) and Caribbean Ministers responsible for IPRs in collaboration with WIPO and UNESCO initiated the creation of a regional approach to IP protection, policy and administration in the late 1990s. Intellectual Property considerations were for the first time, engrafted in a 1998 amendment of the Treaty Establishing the CARICOM. Article 44 of Protocol III Industrial Policy of the Treaty of Chaguaramas (1998) provides that COTED shall promote the protection of intellectual property rights within the Community by, among other things:

- participation by Member States in international regimes for the protection of intellectual property rights,
- establishing a regional administration for patents, trademarks and copyright,
- public education,
- the identification of mechanisms to ensure the use of protected works and industrial property for the enhanced benefit of Member States,
- the preservation of indigenous populations in the Community and the legal protection of folklore, traditional knowledge and national heritage of indigenous populations in the Community and
- the increased dissemination and use of patent documentation as a source of technological information.

Trinidad & Tobago, St. Lucia and Jamaica have been the only three countries to host the WPO Caribbean Ministerial Level meeting on IP, the first hosted by Trinidad & Tobago, the second by Jamaica and the third by St. Lucia. The WIPO Ministerial Resolutions on IP reflect regional cooperation in the areas of policy, administration and enforcement. Regional collaboration has also been growing on the subject of Legal Protection of Folklore and Traditional Knowledge in respect of which Jamaica and Trinidad & Tobago have a keen interest and have hosted fact-finding missions conducted by WIPO and UNESCO.

A Regional Committee on Collective Management of Copyright and Related Rights established in June 1999 by resolution of Caribbean Ministers responsible for Intellectual Property led to the formation of a regional office called the Caribbean Copyright Link (CCL) to distribute royalties with respect to music. The regional entity received technical support from a similar Latin American body called LATINAUTOR with assistance from WIPO. CCL is a regional “back office” for music collecting societies in the Caribbean. Its mandate includes lobbying for the interests of collecting societies at the regional level and may extend to other areas of copyright administration in future. CCL is based in Trinidad & Tobago and collecting societies from St. Lucia and Jamaica are represented on the CCL Board.

The Caribbean Ministers responsible for IP also by Resolution in June 1999 established a Regional Committee on E-Commerce and IP, to examine the regimes that Governments may need to have in place to promote e-commerce without compromising copyright and other rights over the Internet. Jamaica is the chairman of this Committee and by virtue of

the 2000 Resolution adopted in St. Lucia by the WIPO Ministerial Jamaica is expected to host the Regional Secretariat on E-Commerce and IP.

A CARICOM Working Group on IPRs was first convened in 1999 to further regional cooperation between Caribbean Governments and their IP Offices in the development and implementation of regional IP policies. The Working Group also made input into policies affecting the negotiation of the Free Trade Area of the Americas. The first meeting, which was attended by heads of IP Offices in the region, was hosted by Jamaica. St. Lucia hosted the second meeting. Regrettably funding for the CARICOM Working Group on IPRs has been withdrawn.

The RNM was set up by Heads of CARICOM Governments as the machinery for negotiations on converging areas such as trade, investment, competition, IP and services in the hemispheric and international fora. Jamaica currently heads CARICOM and is also the Chairman of the RNM, which is now conducting FTAA negotiations. Jamaica, Trinidad & Tobago and St Lucia are the only countries on the negotiating team of the RNM in the area of IPRs. Jamaica is the lead negotiator on this team for IPRs. Jamaica was the most actively involved Caribbean Country in the IPRs Working Group during the pre-negotiation phase of the FTAA.

Regional collaboration has also been significant in the development of an Anti-Piracy System for Sound Recordings, in respect of which Trinidad, Jamaica and Barbados have been involved. Jamaica and Trinidad and Tobago requested and benefited from WIPO and UNCTAD studies on the potential of the local music industries to generate growth and development through IPRs. Caribbean IP Offices are sharing information with other IP Offices in the region but the level of regional cooperation among Caribbean Countries needs to be improved across the board.