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James Pooley
325 Sharon Park Drive, Suite 208
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April 29, 2016

Hon. Christopher Smith
2373 Rayburn House Office Building
Washington, D.C. 20515

Re: World Intellectual Property Organization

Dear Chairman Smith,

Thank you again for holding the February 24 hearing to gather testimony about WIPO and the way that whistleblowers are being treated at the UN. Those of us who have made the decision to come forward are deeply gratified that so many Members have voiced not only their willingness but also their determination to see this through to a just and sensible outcome.

I write to you today because that outcome is in serious jeopardy. Since the hearing two months ago, the formal report of OIOS into the allegations of misconduct by Director General Gurry has been delivered to Gabriel Duque, the Ambassador of Colombia, who acts as Chair of the WIPO General Assemblies. We understand that the report runs to almost a thousand pages of facts, analysis and exhibits. But rather than giving it to the Member States of WIPO, Amb. Duque has issued only a two-page document that he describes as a "summary." (I have enclosed a copy that has been published by news media.)

This brief document, which was prepared by WIPO and not OIOS, is part of a cynical manipulation designed to keep the OIOS report secret from the public, even though it reveals misconduct by a high public official. To begin with, the 2-page "summary" carefully skirts the most critical issues, and tries to diminish the significance of others. For example, my allegation was that Mr. Gurry arranged for someone to break into the offices of senior WIPO staff and take samples of their DNA that somehow found their way to the Swiss police. The 2-page document, however, reports only that there was "no evidence" that Mr. Gurry was involved in "the taking" of the DNA. We don't know what the OIOS report says about Mr. Gurry's involvement in arranging for someone else to do the taking, or whether and how he convinced the Swiss authorities to include this illegally obtained evidence in their official analysis of other, properly-obtained, samples. And of course when it claims there was "no evidence," we don't know whether that was because he, or the Swiss, or both, refused to provide any.

As to the procurement corruption, the WIPO “summary” points out that there was no evidence that Mr. Gurry received a financial benefit. But we are denied the details of exactly how he managed to interrupt this competitive process to favor his friend, so that the seriousness of his abuse of power can be assessed.

Amb. Duque has steadfastly refused to publish the full report, even in a redacted form that protects witness names. Instead, he has been urging delegations in Geneva to accept the 2-page substitute as sufficient, and to embrace his personal conclusion that there is no issue on the DNA theft and that the procurement corruption, while confirmed, doesn’t really matter because there was no kickback.

This is like a railroad putting a translucent screen in front of a train wreck and telling the NTSB investigators to move on because there’s nothing there to see.

I have discovered that there is a name for this sort of manipulation; it’s called “contextomy” and refers to pulling selected information out of its important context, in order to win an argument by misleading the listener. It can be amusing when we see a review that pans a movie because it’s a “terrific bore” and then see the studio advertisement quoting the critic that the movie was “terrific.”

But the situation at WIPO is not funny, it’s revolting. We know with absolute certainty – since the WIPO document admits it – that the OIOS investigators found Mr. Gurry guilty of misconduct that would justify disciplinary action. So it’s baffling why anyone could possibly expect the Member States of WIPO to make a decision about what to do based on a WIPO-generated “summary,” rather than on the report itself. Only the original OIOS report contains all the facts, all the professional analysis, and all the “context” that has been so carefully whitewashed from the 2-page document.

By trying to hide this critical information from public view, Amb. Duque – who owes his position as Chair to Mr. Gurry’s political support – is acting to protect Mr. Gurry. The process has now become fatally tainted by this farce, and the only way for the U.S. to know what OIOS actually found is to get the report directly from that agency. Only then can we be assured that the document has not been tampered with for political reasons.

I recall vividly Congressman Sherman’s observation at the hearing that “WIPO is the FIFA of UN agencies.” It turns out that the comparison is more apt than we realized at the time. In 2012 FIFA appointed Michael Garcia, a former United States Attorney, to investigate suspected corruption in the award of future World Cup games to Russia and Qatar. His report was submitted two years later, along with his call to publish it, with only witness names redacted. The organization refused for “legal reasons,” releasing only a “summary,” and Mr. Garcia resigned in protest, noting that the summary was seriously misleading. Later FIFA promised to provide the full (properly redacted) version, but only after several

other investigations were completed. As of now, a year and a half later, the full report remains buried.

This is the danger we now face at WIPO. Mr. Gurry and his political friends will do whatever is required to keep the public from knowing what the professional investigators have concluded about his behavior as a WIPO official. As FIFA did, they will claim "legal" reasons, probably having to do with the agreement that was negotiated by WIPO (with Mr. Gurry still in charge) with OIOS, which he undoubtedly designed in a way to keep the eventual results away from public scrutiny. That kind of self-dealing is nothing more than another form of corruption, in my opinion. It would be outrageous to have the OIOS report remain hidden and unavailable to Congress or the public, merely because Mr. Gurry deftly arranged for that in advance.

Time is of the essence. It was four years ago when this Committee last confronted Mr. Gurry over his poor judgment, and he ducked and delayed (apparently with the help of a highly-paid lobbyist) until the proceedings were overtaken by the presidential election and other events.

We face exactly the same risk today. It has been over two years since I blew the whistle on these issues. It has been over four months since OIOS completed its investigation. Left to their own self-adjusted timetable, the diplomats in Geneva will continue to have occasional private meetings and to chew on various positions and half-measures, keeping the report effectively shrouded, until the clock runs out because of diplomatic fatigue or diversion due to other events. This is clearly what Mr. Gurry hopes will happen.

None of this should be read as criticism of the position taken by our government on this matter. I am very grateful that the State Department has made strong public statements demanding release of the full OIOS report about Mr. Gurry's misconduct. But our diplomats in Geneva act in an environment that too often demands compromise on important matters. We need to help them and back them up, with clear and repeated actions from Congress that reflect its concern and insistence that there be a halt to the delays and that the United States immediately obtain and publish a copy of the original OIOS report, with only the witness names redacted.

There can be no legitimate objection to this outcome, because the U.S. and other Member States own WIPO. They have plenary power over its management. What they face now is the profound embarrassment of the accused wrongdoer remaining in his position of power while he pulls political strings to keep everyone distracted. That should be unacceptable to the United States, which always insists on transparency and good governance in international institutions.

Back in 2007 Mr. Gurry's predecessor, Kamil Idris, was ultimately forced to resign because he admitted having misrepresented his age when he first came to WIPO. Without the full OIOS report, the Member States are in the dark and unable to compare the culpability of Mr. Idris' behavior to that of Mr. Gurry. Of course, the test that they should apply is clear enough. As U.S. Ambassador Warren Tichenor said in 2007, "The member states and the employees of WIPO deserve to have an organization that is led with the highest professional and ethical standards."

There is simply no way under current circumstances that the Member States can make a rational judgment about whether Mr. Gurry fails that test, without having copies of the report supplied directly by OIOS, so they can be carefully studied and assessed. The clock is ticking, and those of us who put this process in motion need your help to get the job done now.

Thank you for your support and assistance.

Best regards,

A handwritten signature in blue ink that reads "Jim Pooley". The signature is fluid and cursive, with a large initial "J" and "P".

James Pooley

cc:

Hon. Ileana Ros-Lehtinen

Hon. Matt Salmon

Hon. Karen Bass

Hon. Ted Deutch

Hon. Brad Sherman

[X]. FINDINGS

A. THE "DNA CASE"

[x]. The investigation revealed that:

- i. DNA samples were taken by unidentified persons from three WIPO staff members, [...], without their knowledge and consent.
- ii. Although there are strong indications that Mr. Gurry had a direct interest in the outcome of the DNA analysis, there is no evidence that he was involved in the taking of DNA samples.
- iii. There is no evidence that Mr. Gurry attempted to suppress an investigation into the taking of DNA samples.
- iv. There is no evidence that the settlement agreement entered into with [...] violated WIPO's regulations, rules or policies.

B. THE PROCUREMENT CASE

[x]. OIOS finds that Mr. Gurry, in his capacity as Director General and Chair of the ICT Board, directly influenced both subject procurement processes [.x1.] and [.x2.] in order to facilitate the award of a WIPO contract to [the Contractor]. In support of this finding, OIOS notes that:

- i. Mr. Gurry, through [...], instructed PTD to stop the procurement process for [.x1.] and include [the Contractor] to the list of invitees.
- ii. The comparison between the ToRs of the two procurement processes showed that minor changes were made to the ToR for [.x2.] after [.x1.] had been cancelled;
- iii. Mr. Gurry directly influenced the evaluation process of the procurement process for [.x2.] by instructing the Chair of the Evaluation Team to base their recommendation purely on the technical evaluation, which would see [the Contractor] being the recommended vendor, notwithstanding, that their technical evaluation score was less than one point better than their nearest competitor but their costs were nearly double that of the same competitor;
- iv. Mr. Gurry's recommendation to the Evaluation Team to disregard the financial weight of the evaluation was contrary to WIPO's Procurement Instructions, which state that the evaluation process should be based on pre-established criteria. In the instant case, the pre-established criteria required evaluating the various bids against a list of four pre-set technical criteria bearing a maximum weight of 70 per cent of the overall score, with the financial component bearing the balance weight of 30 per cent.

[x]. OIOS notes that the general principles and framework for WIPO procurement provide that where a formal RFP [Request For Proposal] has been issued, the procurement contract shall be awarded to the qualified proposer whose proposal, all factors considered, including value for money and the best interest of WIPO, is evaluated to be the most responsive to the requirements set forth in the solicitation documents. In this regard, OIOS takes note that Mr. Gurry firmly believed that [the Contractor] was the most responsive to WIPO's requirement for a proposal to strengthen its information technology operational security.

[x]. Nonetheless, OIOS finds that in disregarding the financial weight of the predetermined evaluation criteria, Mr. Gurry acted in non-compliance of WIPO's Procurement Instructions.

Although Mr. Gurry and [the Contractor's founder] have been professionally acquainted since 1997, there is no evidence that Mr. Gurry directly or indirectly gained any financial or personal benefit from the procurement processes for [.x1.] and [.x2.], and the eventual contract award to [the Contractor].

[X]. CONCLUSIONS

[x]. The established facts constitute reasonable grounds to conclude that the conduct of Mr. Francis Gurry may be inconsistent with the standards expected of a staff member of the World Intellectual Property Organization.

[X]. RECOMMENDATIONS

Based on the foregoing, OIOS recommends as follows:

Recommendation 1: It is recommended that the Chair of the General Assembly of the World Intellectual Property Organization consider taking appropriate action against Mr. Francis Gurry (Rec. No [...])

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