

It's time for WIPO boss to stop shooting the messenger and deal with the message

Accusations made against him by one of his deputies have cast a shadow over WIPO director general Francis Gurry's recent unopposed re-election; while the organisation's response to coverage of what is alleged raises worrying questions about its belief in the freedom of the press to report the news

On the face of it, Francis Gurry's appointment to a second term as director general of the World Intellectual Property Organisation (WIPO) was a moment of great triumph for the Australian. Elected without opposition by the UN body's general assembly on May 8, Gurry could reflect on how different things were from the knife-edge ballot of member states in 2008 that saw him assume his current role after defeating Brazilian José Graça Aranha by just one vote.

But as the applause from the various national delegations died down on that May morning, it very quickly became apparent that a series of accusations levelled at Gurry just a month before by James Pooley, the WIPO deputy director general with responsibility for innovation and the technology sector, were not going to go away; far from it, in fact.

First to take the floor after the announcement of the result was a South Korean diplomat who, having congratulated Gurry on his re-election, asked for a transparent and independent investigation of the issues raised by Pooley. The Mission of the United States in Geneva subsequently issued a statement that called for the same thing, concluding: "We expect this investigation to

be implemented promptly and executed expeditiously."

Meanwhile, in an article published on the Washington DC-based Foreign Policy website, an unnamed State Department spokesman commented: "We are aware of the complaints made by Mr Pooley, a senior WIPO official, and believe that such complaints must be treated seriously and transparently. In that regard, the United States believes that a full, independent, and external investigation of all complaints is warranted, and is in consultation with other member states towards that end."

Bombshell

A past president of the American Intellectual Property Law Association and of the National Inventors Hall of Fame, Pooley was a partner at US law firm Morrison & Foerster when he was nominated to serve as a WIPO deputy director general by President Obama in 2009. During his time in Geneva – due to come to an end on November 30 this year – Pooley has established a reputation as a staunch advocate of strong patents and a highly competent administrator of the Patent Cooperation Treaty, a major revenue generator for WIPO, which – uniquely among UN agencies – is largely self-funding.

Although there had been rumours of a falling-out with Gurry over controversial WIPO shipments of computer equipment to Iran and North Korea, there was no indication of the bombshell that Pooley was to drop on April 2. It was then that he submitted what is termed a report of misconduct about Gurry to the chairs of WIPO's general assembly and

the coordination committee of the organisation. It began:

"I write to report what I believe is serious misconduct by WIPO's Director General, Francis Gurry. Specifically, I draw your attention to (1) the taking of DNA from senior WIPO staff members without their knowledge or consent, in violation of fundamental human rights, as well as efforts to suppress evidence and investigation of the incident; and (2) evidence of the corruption of a recent procurement that was redirected and awarded to an Australian company led by an acquaintance of Mr. Gurry, even though that company had not been selected in the competitive process. These two issues will be described in greater detail below."

The entire document runs to 13 pages and 53 numbered sections. It comes with a series of supporting exhibits. "I respectfully request that you demand immediate answers and explanations from Mr Gurry regarding the foregoing matters, and that if he fails to do that, he be required to step aside from his duties pending the outcome of an investigation by professionals chosen by, and responsible to, the Member States and completely independent of the Organization," Pooley writes in the penultimate paragraph.

Threats

Although the report has been covered by a number of media outlets and has been widely circulated, it is a risk for publications such as *IAM* to quote it at length. This is because of threats made by WIPO's legal counsel, Edward Kwakwa, to blogger Gene Quinn when he linked to the report in an article

on his widely read IP Watchdog site. Soon afterwards, Quinn received a letter (see page 6) from Kwakwa demanding that the link to what was described as "false and defamatory material" be removed. "Please be informed that if this request is not immediately acceded to, the Director General and WIPO will seek independent legal advice to bring defamation proceedings against you in any competent jurisdiction," the letter concluded.

It is a matter of fact that Pooley filed the report and that he is a very senior member of the WIPO leadership team. There is no doubt, therefore, that any allegations he has made about Gurry – essentially his boss – are highly newsworthy. Leaving aside the issue of how Kwakwa knows that what Pooley has alleged is "false and defamatory", threats of legal action against Quinn, as well as mention of possible criminal prosecution elsewhere in Kwakwa's letter, raise serious questions about the commitment that Gurry and WIPO have to press freedom.

Contacted by *IAM* and asked whether anyone from WIPO would go on the record about why the letter was written, the organisation's press office responded: "The WIPO Legal Counsel requested that Mr. Quinn remove the Report and its exhibits due to their defamatory nature. As stated in his most recent post, Mr. Quinn decided to remove the entire story. We have no further comment on the matter." Those reading the letter may see more than a 'request' from Kwakwa; instead, words such as 'intimidation' might come to mind.

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Of course, it could well be that under Swiss law, Quinn might face criminal action, as Kwakwa suggests; but he would do so only if Gurry and WIPO decided to initiate it. It is their choice to make. They would know that Quinn would find out how strong his case might be only by, at a minimum, taking legal advice and perhaps fighting it through the courts – something that costs a lot of money. Quinn’s decision that the simplest course of action was to delete the relevant blog and the links is completely understandable in such circumstances. People will draw their own conclusions as to why Gurry and WIPO reacted to Quinn’s report as they did.

Politics

Some have speculated that Pooley’s report was motivated by his disquiet over the technical assistance supplied by WIPO to Iran and North Korea. The organisation was strongly criticised by both the US government and a group of congressmen and women for providing computer equipment to the two countries in alleged violation of UN-imposed sanctions. While an independent report completed in September 2012 found no evidence of deliberate WIPO wrongdoing, it did identify a number of problematic issues and stated: “We simply cannot fathom how WIPO could have convinced itself that most Member States would have supported the delivery of equipment to countries whose behaviour was so egregious it forced the international community to impose embargoes, and where the deliveries, if initiated by the recipient countries, would violate a Member State’s national laws.”

There have also been long-standing accusations against Gurry – always denied – in relation to the unauthorised collection of DNA belonging

to WIPO staff members. That it was the South Koreans (no friends to the regime to their north) and the Americans who referred to Pooley’s allegations after Gurry’s re-election may indicate that there is something in the idea of a back-story at play here. Pooley could be wrong. He might be driven by personal animus. Perhaps he is part of a group that has decided it wants to get rid of Gurry by fair means or foul. But the fact remains that the report was filed.

Investigation

Because of their seriousness, there is no doubt that Pooley’s allegations must have caused Gurry deep distress. To be accused of breaching human rights and corruption would be a profoundly unpleasant experience – potentially triggering all kinds of negative emotions, mental stress and perhaps even physical illness. If Gurry is innocent of the

charges, then all of that is to be hugely regretted. But he is also the director general of a UN organisation, and the charges have been made not by an anonymous whistleblower, but on the record by someone who is extremely senior in the same organisation and has a long, distinguished career in the top echelons of international intellectual property. What Pooley alleges cannot just be ignored – by Gurry, by WIPO member states or, indeed, by the press.

Given that, what would now best serve Gurry’s interests is that transparent and independent inquiry suggested by the Americans and the Koreans. Such an investigation could be conducted by someone whose appointment had been agreed by all of the key players – including Gurry himself – and whose remit had been similarly agreed. Potentially, part of the inquiry could be how and why

Pooley’s allegations came to be made in the first place.

Such an investigation would give Gurry the opportunity to set out his case in full and to answer all of the allegations that have been made against him. If there is no basis to them, that should very rapidly become apparent. As an honourable man, Pooley could then make a full public apology and the whole unpleasant episode could be consigned to history.

Gurry was inducted into the IP Hall of Fame in 2009 and has made a number of hugely important contributions to the development of the global IP system. That is what his time in charge of WIPO could still be remembered for. But this can happen only once the shadow that currently hangs over his leadership of the organisation has been removed. In this matter it is that, rather than threatening bloggers with legal action for reporting the news, which should be his focus.

WIPO’s letter to leading blogger threatens legal action over Pooley allegations

Blogger Gene Quinn, who has run several stories critical of the leadership of WIPO by Francis Gurry, published an article on his IP Watchdog site on April 8 entitled “WIPO Deputy Director Alleges Gurry Misconduct”. In this article, Quinn reported on Pooley’s allegations and linked to a copy of his report of misconduct. Shortly afterwards, Quinn received a letter from WIPO legal counsel Edward Kwakwa which led him to delete the blog and the link. He did, however, publish the letter in full:

I am writing to you in my capacity as Legal Counsel of the World Intellectual Property Organization (WIPO), in relation to a report and its accompanying exhibits (“WIPO Deputy Director General Alleges Gurry Misconduct”) that are posted on your website IP Watchdog.

I should like to express my grave concern over the contents of this report, which is both

insulting and defamatory, as it contains false statements that harm WIPO and the reputation of WIPO’s Director General, Mr. Francis Gurry.

As at Friday, April 11, 2014, we have noticed that the Report itself has been removed from the website. We are, however, very concerned to see that the annexes to the Report (the so-called “exhibits”) are still posted on your website. As you will no doubt know, the said Report and its exhibits or annexes constitute defamatory material which, inter alia, suggest corruption, concern DNA allegations, and are a republication of rehashed allegations.

In addition, I should like to remind you that under Swiss law, the publication of such false and defamatory material could constitute a criminal offence. This is, of course, without prejudice to the laws of any jurisdiction to which you may be subject.

We hereby request that you immediately remove the Report and all its exhibits or annexes from the website.

We hereby further request that you publish an apology to the Director General of WIPO for the publication of false and defamatory material on the website.

Please be informed that if this request is not immediately acceded to, the Director General and WIPO will seek independent legal advice to bring defamation proceedings against you in any competent jurisdiction.

We thank you for your anticipated cooperation.

*Sincerely,
Edward Kwakwa
Legal Counsel / World Intellectual Property Organization*

Source: IP Watchdog blog, <http://www.ipwatchdog.com/2014/04/08/wipo-deputy-director-alleges-gurry-misconduct/id=49010/>