

**TESTIMONY OF MATTHEW PARISH**  
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**THE WORLD INTELLECTUAL PROPERTY ORGANIZATION**

**HOUSE COMMITTEE ON FOREIGN AFFAIRS**

**FEBRUARY 24, 2016**

Chairmen Smith, Salmon, and Ros-Lehtinen, and Ranking Members Bass, Sherman, and Deutch, as well as Distinguished Members of the Committee:

Thank you for the opportunity to testify today on the lack of accountability at the World Intellectual Property Organization (WIPO). WIPO plays an important role in helping oversee the international system of intellectual property rights, the protection of which is critical to American innovators and companies as well as to businesses and entrepreneurs around the world.

As you have learned from your own investigation and from the other witnesses, WIPO seems to have set a new low when it comes to accountability and management of its affairs.

I am testifying in my capacity as private legal counsel to the WIPO Staff Council. The Staff Council is the sole staff union available to employees of the organization. The Staff Council exists under purview of the rules and internal institutions that the WIPO Director-General controls, and its members come under constant pressure from the Director-General whenever they attempt to represent staff interests faithfully. It is not an exaggeration to say that members of the Staff Council live in daily fear for their jobs and their careers.

The individual members of the Staff Council themselves are effectively prohibited from testifying here today because as WIPO employees, they are banned from providing testimony on matters relating to whistleblowing or wrongdoing because their employer, in the name of the Director-General, prohibits them from doing so. I am advised that WIPO threatens staff who seek to expose wrongdoing in public fora and that its leadership has prohibited staff from testifying before Congress in the past. My understanding is that WIPO tells its staff that they are forbidden from whistleblowing to the media, due to their confidentiality obligations to their employer. But the Organization's own whistleblowing procedure involves cover-ups and charades, as I shall explain below. It seems safe to infer that WIPO takes this position because its Director-General, Francis Gurry, seeks to eliminate criticism of his own behavior. None of this is surprising in light of the grave offenses of which Mr. Gurry has been publicly accused.

As legal counsel to the WIPO Staff Council, I am most interested in sharing with you my clients' concerns about the theft of their personal effects and the subsequent extraction of those staff members' DNA, without their consent. In essence, they believe that Mr. Gurry unlawfully employed techniques ordinarily reserved solely to Swiss law enforcement agencies acting under a due warrant issued by a proper authority, in order to attempt to determine the identity or identities of one or more WIPO employees who had authored a memorandum critical of him. It is believed that he orchestrated raids of staff members' offices, while they were not present, to achieve this goal.

Some of these allegations date back to 2008 and it took substantial time before the Office of Internal Oversight Service of the United Nations (OIOS) took the matter up. WIPO is a so-called "specialized agency" of the United Nations, pursuant to treaty, and it is pursuant to this designation that the oversight mechanisms of the United Nations took jurisdiction over these allegations. Officials of the OIOS subsequently opened an investigation, reached conclusions, and prepared a provisional report. They then submitted a copy of that provisional report to Mr. Gurry for his

comment. No doubt the reason they submitted a copy of that report to him is because it contained conclusions critical of him, and they wished to provide him an opportunity to comment before said report was finalized. I am aware that he was initially provided with a period of ten days to provide his comments. He then requested a further period of ten days, with which he was duly provided.

I am informed that he in fact provided no comments to said report. Hence, after the expiration of the prolonged period of time for him to provide comments, the report was finalized without his comments and forwarded to the Chair of the General Assemblies of WIPO, Ambassador Duque of Colombia. The General Assemblies consist of the member states of the Organization - virtually every country in the world - represented by their Ambassadors to the United Nations and other international organizations in Geneva. The General Assemblies serve effectively as an organ of oversight of WIPO.

On February 17, 2016, I wrote to Ambassador Duque, on behalf of my client the WIPO Staff Council, asking for him to release the report OIOS had prepared into the conduct of Mr. Gurry. My reasoning was simple: if the report exonerated Mr. Gurry, then it is fair and proper to Mr. Gurry that it be circulated and released so that his reputation, currently sullied under the weight of accusations about which no final institutional determination has been published, might be cleared.

On the other hand, should the report prepared by OIOS assessing the veracity of these accusations be critical of Mr. Gurry, then it should be released forthwith, subject to any redaction appropriate to protect the identities of vulnerable witnesses such as whistleblowers. It should, first and foremost, be released to the member states whose role is to oversee the proper functioning of the World Intellectual Property Organization and of Mr. Gurry. Only the member states can decide to censure Mr. Gurry; dismiss him from office; waive his legal immunity from prosecution; or impose any other penalty they may consider appropriate. They cannot perform their oversight mandate without receipt of a full copy of the report which either exonerates or condemns him.

But the report should also be released to the Staff Council, so that the more than 1,000 WIPO staff, the majority of whom are naturally aware of the serious accusations levelled against their Director-General, are apprised of the investigation's outcome. They have a right to know more about whether there is a conclusion that the Director General or anyone else in management violated their rights or otherwise acted in a manner inconsistent with ethical management of an organization.

As of today, Ambassador Duque has ignored my request for release of the OIOS report, notwithstanding the urgency of this issue.

In the absence of any meaningful response from the Chair of the WIPO General Assemblies, I have shared my correspondence to him with three out of the five Permanent Representatives to Geneva of the five permanent members of the United Nations Security Council, namely the United States, the United Kingdom, and France. I understand that the offices of the US and British Ambassadors have been in contact with OIOS and Ambassador Duque respectively, requesting copies of the report into the accusations against Mr. Gurry. But still, at the time of writing, that report appears not to have been distributed to member states. I do not know of the position of the French Ambassador at the current juncture, but I would imagine that her position will be much the same as those of the US and British Ambassadors. They will, very surely, want to see the report: as do my clients, and as, no doubt, will this Committee.

I can conceive of no imaginable legal or policy reason why the OIOS report should be withheld.

The sole reasonable inference I can draw from the foregoing extraordinary state of affairs is that the report is critical of Mr. Gurry in at least some substantial respect, and that therefore he is taking measures to suppress its distribution, cognizant of the detrimental consequences circulation of a critical report might have for his career, his reputation or his liberty.

There is one other issue I wish to share with the Committee today. The former Chair of my client the WIPO Staff Council, Mr. Moncef Kateb, was renowned as a severe critic of Director-General Gurry over several years. Unfortunately, he cannot be here today. But I would like to say a few things about his situation.

WIPO used to have a disciplinary regime for staff accused of misconduct. Where a colorable accusation of wrongdoing was leveled against a staff member, an internal oversight agency would investigate the matter. If they made a finding of misconduct, they would refer the matter to a "Joint Advisory Committee": essentially a trial chamber, that would assess the indictment. They would receive submissions, and then they would decide whether to recommend acquittal of the accusation, or a finding of guilt; and if they made a finding of guilt, they would make a recommendation about the appropriate sanction to be imposed upon the staff member. The final decision about the penalty to be imposed would be decided by the Director-General, but he was restrained by law from departing from the recommendations of the committee save for good reasons or exceptional circumstances.

Last year, this entire system was dismantled by Mr. Gurry and he replaced it with a system permitting him to suspend a staff member without pay upon an accusation leveled by him; he could then give a staff member seven days to respond in writing to his accusations; and then he could decide, unilaterally, whether or not to terminate their employment without compensation. Reaching into my British historical background, I respectfully suggest that it might be fair to classify this new system as a "Court of Star Chamber", particularly where the sin of the staff member in question is criticism of the Director-General himself.

It may come as no surprise to you to learn that amongst the first, if not the very first, victims of this new regime was Mr. Gurry's most formidable critic, Mr. Kateb. He was dismissed upon seven days' notice upon an absurd technicality, namely that he had a conflict of interest between representing staff interests and also serving as a member of the (by then disbanded) Joint Advisory Committee. This was a particularly ludicrous ground for criticism of him, given that the committee's constitution expressly mandated staff representation as well as that of management. He had served in the position for a number of years. The committee was abolished, and then he was fired, on seven days' notice, for his participation in it.

I am obliged to state for the record that I have not consulted in any way with Mr. Kateb about the contents of this testimony before preparing it, because I fear that should I have done so, and should Mr. Kateb be accused of facilitating my testimony in any way, then Mr. Gurry may seek to retaliate against him even though he is no longer an employee of WIPO, having been summarily dismissed by Mr. Gurry without proper grounds.

After Mr. Kateb's dismissal, a new Staff Council was constituted. Another arch-critic of Mr. Gurry was installed as Mr. Kateb's successor, upon the election of members of the Staff Association. Now Mr. Gurry is unilaterally changing the rules for Staff Council elections, in order to force a new election of staff members to the Staff Council in an attempt to dislodge the new Staff Council.

In view of the considerable power that the Director-General has over WIPO staff in terms of their job security, I decided not to share any drafts of my written testimony with WIPO staff so that Mr. Gurry can't consider them to have taken any individual actions that would lead him to terminate them summarily from their jobs with WIPO, as he did to Mr. Kateb, or threaten them in other ways. Rather than risk Mr. Gurry's outrage that an individual WIPO Staff Council member authorized my testimony in contradiction to his perception that they are obliged to remain silent, I have gleaned what I could from my ongoing legal representation, discussions with other parties, and prepared the text I submitted to your Committee.

The old adage that "sunlight is the best disinfectant" is appropriate for the issues surrounding WIPO. The Congress is well-positioned to help generate the release of the OIOS report and to provide greater transparency and accountability. Many hardworking men and women who

comprise the Staff Council would like nothing more than to continue to immerse themselves in the intellectual property matters that are in WIPO's purview, rather than have to sit in fear of reprisals from the Director-General.

In conclusion, if we are to have a United Nations system responsible for upholding international standards in areas of common concern to nations, including the global protection of intellectual property rights, then it is imperative that such a system upholds the highest standards of integrity, transparency and accountability. Allegations of wrongdoing, where they do occur, must be subject to a due and proper process of investigation and, where findings of wrongdoing are upheld, those responsible are held accountable through censure, dismissal from office, and/or the sanctions of criminal law, wherever that may be appropriate. Otherwise the evil we suffer is not just that public funds are bound to be wasted in the pursuit of corrupt or ineffective bureaucracy. Rather the very goals that international cooperation purports to stand for may be compromised or lost altogether in the undergrowth of international public wrongdoing. Whatever the OIOS report says about Mr. Gurry, in my opinion it should be made public; and if it is critical of him, then a due penalty should be imposed upon him. I am grateful for your consideration of my remarks today.