

## **DRAFT POLICY TO PROTECT AGAINST RETALIATION FOR REPORTING MISCONDUCT AND FOR COOPERATING WITH DULY AUTHORIZED AUDITS OR INVESTIGATIONS**

### Introduction

1. The Organization attaches the utmost importance to securing the highest standards of integrity amongst all members of the personnel of the Organization, as provided in the Convention Establishing the World Intellectual Property Organization. In support of the Organization's established core value "Environmental, social and governance responsibility", the Organization is committed to ensuring a positive and respectful workplace free of harassment and intimidation so all members of personnel can work together with openness, dignity and respect.
2. In furtherance of these principles and objectives, the WIPO policy for the protection against retaliation (hereinafter referred to as the "Policy") is hereby established and constitutes the general framework for the protection of all personnel against retaliation for cooperation in an oversight activity, as defined in this Policy, or who make a report of misconduct.
3. The Policy aims to:
  - (a) encourage prompt notification to the Organization (through the established channels set out in this Policy) of possible misconduct so that appropriate and diligent action can be taken in the best interests of the Organization, and
  - (b) enhance protection of members of personnel who cooperate with an oversight activity as defined in this Policy or who make a report of misconduct.

### Definitions

4. For purposes of this Policy:
  - (a) "**complaint**" shall mean an assertion by a member of personnel made on reasonable and demonstrable grounds that he/she has experienced or apprehends retaliation because of cooperation in an oversight activity or because he/she reported misconduct;
  - (b) "**oversight activity**" means any duly authorized investigation, audit, inspection or evaluation authorized under the Internal Oversight Charter or oversight activity undertaken in accordance with the terms of reference of the WIPO External Auditor, the WIPO Independent Advisory Oversight Committee or any other oversight activity specifically authorized by the Director General;
  - (c) "**personnel**" or "**members of personnel**" shall, for purposes of this Policy, include all WIPO staff members and other members of personnel of any grade (or without grade) engaged under other types of contractual arrangements, interns and fellows, regardless of the type of engagement or its duration;
  - (d) "**retaliation**" or "**retaliatory action**" for purposes of this Policy means any direct or indirect detrimental action which can be shown on reasonable and demonstrable grounds was recommended, threatened or taken in whole or in part because an

individual has participated in an oversight activity or made a report of misconduct. Retaliation may include direct actions, such as by way of adverse administrative action or verbal harassment, or more indirect patterns of retaliation resulting in discriminatory treatment;

(e) “**complainant**” is a member of personnel who reports misconduct, as defined in the Policy;

(f) “**reporting misconduct**” means the reporting through established reporting mechanisms as referred to below (or subsequently established reporting mechanisms) of alleged misconduct;

(g) “**misconduct**” shall include abuse of authority, fraud, corruption, the failure of one or more members of personnel to comply with his or her obligations to the Organization including under the Staff Regulations and Rules or other relevant administrative issuances, the Financial Regulations and Rules, or the Standards of Conduct of the International Civil Service or other terms of their engagement, and any request or instruction from any member of personnel to violate the above-mentioned regulations, rules, standards, issuances or terms, and other wrongdoing.

#### General Provisions

5. It is the duty of all personnel to report that misconduct may have occurred, or any reasonable belief that such misconduct may have occurred. Failure to comply with the Organization’s regulations, rules and other administrative issuances or to observe the standards of conduct expected of WIPO personnel may amount to misconduct and may lead to the initiation of an investigation into allegations of misconduct, disciplinary proceedings and the imposition of disciplinary measures.

6. It is also the duty of all personnel to cooperate with any duly authorized oversight activity. An individual who, in good faith, makes a report of misconduct or who cooperates in good faith in a duly authorized oversight activity has the right to be protected by the Organization against retaliation in accordance with the Internal Oversight Charter and this Policy.

7. Retaliation against those individuals who have participated in an oversight activity or who have made a report of misconduct also violates the obligation of all personnel to uphold the highest standards of efficiency, competence and integrity and to discharge their functions and regulate their conduct with the best interests of the Organization in view. When established, retaliation constitutes misconduct in itself.

8. It is the duty of the Organization to take all necessary, relevant measures to protect all personnel against retaliation in the context of an oversight activity or when they make a report of misconduct and from further acts of retaliation when retaliation has occurred in the context of such activity.

### Scope of Application

9. Protection under this Policy against retaliation is extended to any member of personnel who:

(a) has cooperated with an oversight activity or made a report of misconduct within the meaning of this Policy; and

(b) asserts, on reasonable and demonstrable grounds, that he/she has experienced or apprehends retaliation as a result of participating in such activity or making a report of misconduct.

### Requirements for Reporting Misconduct: Promptness and Good Faith

10. In order for a member of personnel making a report of misconduct to receive protection under this Policy, the following must apply:

(a) the member of personnel must make the report of misconduct as soon as possible and not later than six years after the individual becomes aware of the alleged misconduct, and

(b) the individual must make the report in good faith, in the overall interests of the Organization and not only for personal benefit and must submit information or evidence to support a reasonable belief that misconduct has occurred.

### Burden of Proof

11. This Policy is without prejudice to the legitimate exercise of management functions. However, once a complaint of retaliation is made under this Policy, the burden of proof shall lie with the Organization, which must show on the basis of clear and convincing evidence that it would have taken the same action even in the absence of the activities protected under this Policy as referred to above, or that the alleged retaliatory action was not taken for the purpose of punishing, intimidating or injuring the individual who engaged in the protected activity.

### Reports which are Intentionally False, Misleading or Made with Reckless Disregard for Accuracy Amount to Misconduct

12. Making a report or complaint or providing information for the purposes of this Policy that is intentionally false or misleading, or is made with reckless disregard as to the accuracy of the information, separately constitutes misconduct.

### Reporting Alleged Misconduct

13. Reports of alleged misconduct shall be made through any of the following established channels: to a direct or hierarchical supervisor, the Office of the Director General, the Director of the Internal Oversight Division ("IOD") or the chair of the Coordination Committee, who/which shall preserve the anonymity of the reporting staff member. In any case, reports shall be sent to the Director, IOD, who shall register such report. In the case of an outside party, reports of alleged misconduct should be made by such outside party to the Director, IOD. It is the duty of the Administration to protect the

confidentiality of the individual's identity and all communications through those channels to the maximum extent possible.

14. Protection by the Organization against retaliation or retaliation apprehended on reasonable and demonstrable grounds will be extended to an individual who reports alleged misconduct by a member of personnel to an entity or individual outside of the established internal mechanisms, where the criteria set out in subparagraphs (a), (b) and (c) below are satisfied:

- (a) Such reporting is necessary to avoid:
    - (i) a significant threat to public health and safety; or
    - (ii) substantive damage to the Organization's operations; or
    - (iii) violations of national or international law; and
  - (b) The individual has not used the internal mechanisms because there is an exceptional and demonstrable reason to indicate that the use of established internal channels:
    - (i) carries the risk of aggravation of the misconduct (including by failure to act on the report within six months or concealment of the misconduct); or
    - (ii) threatens the preservation of the individual's anonymity; or
    - (iii) leads to a justifiable apprehension of retaliation.
- and
- (c) The individual does not accept payment or any other benefit from any party for such report.

#### Making a Complaint of Retaliation to the Ethics Office

15. (a) In order to benefit from the application of this Policy, individuals who have reasonable and demonstrable grounds to believe that retaliatory action has been or may be taken against them because they cooperated with an oversight activity or made a report of misconduct shall make a complaint in writing and forward all information and documentation available to them to support their complaint to the Ethics Office as soon as possible and in any case no later than six (6) months after the date of the alleged act of retaliation (or the date of the last act of retaliation if a series of such acts is alleged to have occurred) has come to the attention of the individual making the complaint.
- (b) To facilitate requests for Protection against Retaliation, the dedicated form, available upon request or on the Intranet page of WIPO's Ethics Office, may be used.

(c) A person who files a written complaint of retaliation or apprehended retaliation must substantiate the claim with factual information or documentation to show that he or she:

- (i) cooperated in an oversight activity or made a report of misconduct; and
- (ii) suffered thereafter an unjustified, unfavorable or discriminatory action, or has reasonable and demonstrable grounds to apprehend such unjustifiable or unfavorable action; and
- (iii) has reasonable grounds to believe that the alleged retaliatory act resulted from participating in an activity protected under this Policy.

(d) A member of personnel may in addition to, but not as a replacement for, making the complaint to the Ethics Office, choose voluntarily to raise the matter with his or her immediate or hierarchic supervisor.

16. The functions of the Ethics Office with respect to protection against retaliation for cooperating in an oversight activity or making a report of misconduct are as follows:

- (a) to receive complaints of retaliation;
- (b) to record the complaint and keep a confidential record of all complaints received, which complaints shall in no event be disclosed except to the extent required to take action on the complaint;
- (c) to conduct a preliminary review of the complaint to determine if there is a *prima facie* case of retaliation for cooperation with the oversight activity or making a report of misconduct, namely by:
  - (i) determining if the complainant participated in the oversight activity or made a report of misconduct;
  - (ii) establishing that the basic elements to constitute retaliation have been made out;
  - (iii) identifying any inconsistencies or outstanding questions; and
  - (iv) determining either the need for a formal internal investigation into whether the activity protected under this Policy was a contributing factor in causing the alleged retaliation or leading to the threat of retaliation or for an alternative option, such as informal resolution by line management, referral to HRMD, or the Ombudsman; or no further action.
- (d) to recommend to the Director General if and when required and relevant, in consultation with the Director IOD, adequate protection to the staff member concerned. This could mean *inter alia*, with the consent of the individual member of personnel, and in exceptional circumstances, placing the person on special leave with full pay during the preliminary review and/or

investigation by IOD, or the temporary suspension of the implementation of the action reported as retaliatory.

17. The Ethics Office will complete its preliminary review within sixty (60) working days of receiving the complaint of retaliation, which period may be extended under exceptional circumstances by the Director General at the request of the Ethics Office when there are reasonable grounds to do so, in the best interests of the Organization. In such a case, the complainant will be duly informed by the Ethics Office of such extension.

18. For the performance of its duties, the Ethics Office shall have unrestricted, unlimited, direct and prompt access to all WIPO records, personnel holding any WIPO contractual status, and to all the premises of WIPO. All personnel shall cooperate with the Ethics Office and provide access to all records and documents requested by the Ethics Office, except for medical records that are not available without the express consent of the member of personnel concerned, IOD and the Office of the Legal Counsel (OLC) records that are subject to confidentiality requirements and the records of the Staff Association.

19. If the Ethics Office finds that there is a *prima facie* case of retaliation or threat of retaliation (including by way of intimidation), it will refer the matter in writing on a confidential basis to IOD for investigation and will promptly notify the complainant in writing that the matter has been so referred.

20. Such investigation shall be undertaken by IOD, as a fresh and independent investigation and no reliance shall be placed for the purposes of such investigation on the preliminary review of the Ethics Office. IOD will seek to complete its investigation and submit a copy of its confidential report to the Director General within sixty (60) working days of receipt of the referral. The 60-day period may be extended by the Director General at the request of IOD under exceptional circumstances when there are reasonable grounds to do so, in the best interests of the Organization. In such a case, the complainant will be informed by the Director, IOD of such extension.

21. The Ethics Office shall maintain the confidentiality of all communications exchanged between it and complainants who request protection against retaliation, and of all communications exchanged with relevant third parties. The Ethics Office may be required to cooperate with requests for information under compulsion of law from judicial bodies.

#### Interim Protective Measures

22. The Director General may exercise discretion under this Policy to take such provisional protective measures as may be appropriate to safeguard the interests of individuals who cooperate with an oversight activity or make a report of misconduct. Such measures may be taken at any time before all related internal formal proceedings are complete, and may be based on the recommendation of any relevant official or at the request of the individual concerned. They may include, in exceptional circumstances, placing the person on special leave with full pay (with the consent of the individual) or the temporary suspension of the implementation of the action reported as retaliatory.

23. If retaliation is established, the Director General may, based on the recommendation of the Ethics Office or any other concerned office, or at the instance of the Director General, take appropriate measures aimed at correcting negative consequences suffered as a result of the retaliatory action.

#### Conflict of Interest

24. Where the Ethics Office determines that a significant and material conflict of interest (potential, perceived or real) would prevent IOD from conducting an investigation into retaliation under this Policy, it shall report such conflict to the Independent Advisory Oversight Committee which shall recommend such actions that may be needed to mitigate and reduce the undesirable effects of any potential, perceived or real conflict of interest.

25. In case the Chief Ethics Officer has a potential, perceived or real conflict of interest preventing the exercise of his or her functions under this Policy in a particular matter, he or she shall recuse him/herself therefrom, and designate another appropriate WIPO staff member to act in his or her stead.

26. In case the Director General has a potential, perceived or real conflict of interest preventing the exercise of his or her functions under this Policy in a particular matter, he or she shall recuse him/herself therefrom, and designate another appropriate WIPO staff member to act in his or her stead.

#### Review of a Determination by the Ethics Office

27. If, following a determination by the Ethics Office pursuant to paragraph 16(c)(iv) of the Policy, the complainant wishes to have the determination reviewed further, he or she may, within thirty (30) days of notification of the determination, refer the matter in writing to the Chair of the Ethics Panel of the United Nations.

#### Recourse to Services of Ombudsman

28. If the Ethics Office finds that there is no *prima facie* case of retaliation but considers that there is an interpersonal problem within a particular office, it may encourage the complainant to consider using the services of the Office of the Ombudsman and any other informal means of conflict resolution in the Organization. The complainant may use the services of the Office of the Ombudsman at any time before, during or after the conduct of any preliminary review and without prejudice to the use of legal proceedings as provided in Chapter XI of the WIPO Staff Regulations and Rules.

#### Managerial Problem

29. If the Ethics Office considers that there is a problem related to the management of personnel (short of retaliation or other misconduct), based on the preliminary review of the complaint or the record of complaints relating to a particular department or office, it will advise the Director General, HRMD and the head of department, sector or office concerned.

### Recourse through Internal Mechanisms and Related Timelines not Affected

30. The procedures set out in the present Policy are without prejudice to the rights of an individual who has suffered retaliation to seek redress through the internal recourse mechanisms in accordance with Chapter XI of the Staff Regulations and Rules, entitled "Conflict Resolution". An individual may raise a violation of the present Policy by the Administration in any such internal recourse proceeding.

31. This Policy does not have the effect of waiving or suspending the time limits for filing any process under Chapter XI of the WIPO Staff Regulations and Rules, including a request for review, a workplace-related grievance, a rebuttal of a performance appraisal, an appeal to the WIPO Appeal Board, or a complaint to the International Labour Organization Administrative Tribunal.

### Action against the Individual Who Engaged in Retaliation

32. A finding of retaliation by a member of personnel against an individual because that individual has participated in an oversight activity or made a report of misconduct constitutes misconduct which will lead to appropriate administrative action, including the possibility of disciplinary proceedings.

### Retaliation against Outside Parties

33. Any retaliatory measures by a member of personnel against a WIPO contractor or its employees, agents or representatives or any other individual engaged in any dealings with WIPO because such individual has cooperated with an oversight activity or made a report of misconduct as defined in this Policy may be considered misconduct that, if established, will lead to appropriate administrative action, including the possibility of disciplinary proceedings.

### Review of the Policy

34. The Policy shall be reviewed on a periodical basis, as needed.

35. This Policy shall enter into force on the date of its issuance and replaces the Policy to Protect against Retaliation for Cooperating in an Oversight Activity or Reporting Misconduct or Other Wrongdoing ("Whistleblower Protection Policy"), Office Instruction No. 58/2012.

[End of Annex]