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A Regional International Property Rights Office for the South Pacific: Cost-Benefit Analysis

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Preface

This report was prepared for the Pacific Islands Forum Secretariat (PFIS) in Suva, Fiji Islands. The report is one output of an Asian Development Bank (ADB) technical assistance project (TA 6226 REG): “Developing and Implementing the Pacific Plan for Strengthening Regional Cooperation and Integration.” The Commonwealth Secretariat provided funding to the project.

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The report is published in three volumes. Volume 1 is the Executive Summary. Volume 2 is the main report. Volume 3 contains the working papers commissioned for the report—a series of independent studies assessing potential benefits and costs of implementing a variety of possible regional initiatives. Volume 3 has been printed in hard copy in only limited numbers. However, it is available on the websites of ADB (www.adb.org) and at www.pacificplan.org.

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ABBREVIATIONS AND ACRONYMS

CEO	—	Chief Executive Officer
FICs	—	Forum Island Countries
GIs	—	Geographical indications
IP	—	intellectual property
IPO	—	intellectual property office
IPONZ	—	Intellectual Property Office of New Zealand
IPOPNG	—	Intellectual Property Office of Papua New Guinea
IPR	—	intellectual property right
PCT	—	Patent Cooperation Treaty
RFAP	—	Regionally Focused Action Plan
SPC	—	The Secretariat of the Pacific Community
SPREP	—	South Pacific Regional Environment Programme
TK	—	Traditional Knowledge
TM	—	trademark
TRIPs	—	Trade Related Aspects of Intellectual Property Rights
UPOV	—	The International Union for the Protection of New Varieties of Plants
WIPO	—	World Intellectual Property Organisation
WTO	—	World Trade Organisation

EXECUTIVE SUMMARY

In accordance with the terms of reference for this study I visited four Forum Island Countries, Samoa, Tonga, Fiji Islands and Papua New Guinea (PNG), and held consultations with senior officials responsible for the administration of intellectual property. I sought details of the current costs and resources associated with that administration, as well as constraints and particular issues faced by the individual agencies.

The Intellectual Property (IP) operations of three of the four countries studied (Fiji Islands, Samoa and Tonga) may be characterised by having limited resources in both staff and operational equipment, lacking modern administration systems and record management, and largely lacking in relevant skills and training in their personnel.

The fourth country, Papua New Guinea, differs from the other three in that it has an agency whose sole responsibility is for IP and that does not have dual responsibility for other registration systems such as companies and business names. The PNG IP office is adequately resourced and is meeting its national requirements efficiently and effectively.

Establishing a regional facility for the administration of Intellectual Property rights (IPRs) has the potential to increase the efficiency of providing protection for IPRs. Regionalism can benefit applicants for IPR protection through simpler, one-off application processes, and, depending on the option chosen, through simpler, one-off grant and renewal processes. The business, industry, research and cultural sectors will thus be assisted in the conduct and further development of their enterprises through enhanced procedures for obtaining IPR protection and enhanced standards of protection

I have noted that the protection of TK is a significant issue for Forum Island Countries (FICs). To date this has been dealt with as a separate issue from IP and there is as yet insufficient evidence to support a move to establish a regional facility that would administer both TK and IP.

In preparing the options for regional administration of IP I have assumed that copyright protection will remain an automatic right requiring only the national policy and legislation framework to be maintained, and licensing and royalties collection to be arranged according to the recommendations of the study by Ang Kwee Tiang as approved by Forum Ministers. If adequate copyright legislations and proper collective management organizations are put into place as recommended in this document, Mr. Ang estimated the income from the collective management of the rights in musical and literary works, as well as that of related rights would start in the region of half a million US dollars, rising to US\$1 million per annum. With annual costs projected at US\$100,00, an estimated sum of US\$400,000 to US\$900,000 would remain to be distributed to copyright owners whose creations are utilized by users in the forum island countries.

Four options for regional administration of IPRs in the FICs are described and their costs and benefits analysed. The options are:

- No change. National agencies continue their present functions.
- Use existing agency in region to act on behalf of FICs to receive and process IP applications to the point of grant; FICs national agency decides the grant.
- Establish new regional facility to act on behalf of FICs to receive and process IP applications to point of grant; FICs national agency decides the grant.

- Establish a regional facility (using either an existing agency or creating a new one) to receive, process and grant IPRs having effect for the region as a whole. National agencies are disbanded.

A key decision to be made in considering these options is whether or not to retain national sovereignty over the grant of IPRs. If Leaders believe that this control must be retained then the second option, using, for example, the PNG IP office as the regional agency, would deliver the efficiencies and enhanced quality of process required of a regional IP administration in the most cost effective form of any of the options, while at the same time the FICs would retain the right to grant the IPRs. If retention of sovereignty is not considered essential then option four, using an existing regional agency such as IPOPNG, would afford the most effective and efficient arrangement, although the negotiations required to establish the necessary legal framework would be lengthy and possibly complex.

I. INTRODUCTION

The principle objective of the consultancy study is to assess the costs and benefits of setting up a regional IP office that would function as a centralised agency responsible for administering IP applications on behalf of the 14 Forum Island Countries (FICs). A regional approach to Intellectual Property (IP) Administration will be assessed to determine the extent of economies of scale that might be achieved if such an approach is adopted by the FICs.

In accordance with the terms of reference for this consultancy study (see Appendix 1) I visited the national agencies responsible for IP administration in each of Samoa, Tonga, Fiji Islands and Papua New Guinea. For various reasons outside of my control the CEOs of the Samoan and Fijian agencies were unable to meet me and my consultations were limited to their deputies. Nevertheless I believe the information and advice I received from these and the other officials was as complete as their systems and resources permit. I have noted in the individual country sections where some data is particularly uncertain, and it is fair to assume that most of the data on budgets and application activity levels is approximate at best. This reflects the generally limited nature of the administration systems in place, the very limited staff resources in most agencies, and the dual responsibilities that three of the four agencies have for company registration matters as well as IP. Detailed notes of the consultations held in each country are included in Appendix 2.

II. BACKGROUND

“The premise underlying IP throughout its history has been that the recognition and rewards associated with ownership of inventions and creative works stimulate further inventive and creative activity that, in turn, stimulates economic growth. The continuum from problem → knowledge → imagination → innovation → intellectual property → solution, in the form of improved products and new technologies, continues to be a powerful driver for economic development.”¹ In his book Dr. Idris, the Director General of World Intellectual Property Organisation (WIPO), goes on to describe how in recent decades the growth in Foreign Direct Investment (FDI) has mirrored the increase in IP activity, as shown by the rise in patent applications as well as trademark and copyright activity. Dr. Idris argues that this IP driven economic benefit is realisable by developing countries as well as by industrialised ones.

Effective economic development is obviously essential for the general welfare and support for any community, and the role that the IP system can play in promoting this development is an important reason for committing resources to its establishment. As well as its economic role, effective IP protection can also play a role in promoting social welfare, through more orderly regulation of trade and business, the introduction of better products, and the enhancement of cultural activities. Forum Economic Ministers recognised these benefits of the IP system at their meeting in July 2000 when they agreed “that an effective system of intellectual property rights is one element which contributes to a confident and secure business environment and can lead to increased investment.”

This relevance and significance of effective IP recognition and protection to economic and social welfare has been progressively realised by the international community and culminated in the negotiation of the Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement as

¹ Intellectual Property: A Power Tool for Economic Growth by Kamil Idris, WIPO, 2003.

part of the Uruguay Round of negotiations which led to the creation of the World Trade Organization (WTO). The TRIPs Agreement has become the de facto international standard for recognition and protection of IP rights. There are presently 148 members of the WTO, including Fiji Islands and Papua New Guinea, who are bound by the terms of TRIPs. Samoa and Tonga have observer status to the WTO, indicating their interest in membership at some future stage, and therefore their undertaking to meet the TRIPs standards for IP protection.

The IP system as described in the TRIPs Agreement consists of copyright, patents, trademarks, industrial designs, circuit layouts, geographical indications, protection of undisclosed information and control of anti-competitive practices in contractual licenses. Copyright is generally protected as an automatic right, requiring no application process leading to registration. Patents, trademarks and industrial designs, on the other hand, are granted on the basis of an application and examination process, consisting of at least an assessment of compliance with formality requirements and usually also an assessment of compliance with substantive requirements for registration.

Personnel with the capacity to understand and interpret legislative provisions, to conduct analysis and research into a broad range of subject matter, with sound communication skills and proficiency in information technology as an administrative tool are required to establish a trademark administration facility that performs the full range of registration procedures. This comprises examination as to formal and substantive registration criteria. Industrial designs administration personnel require a similar set of qualifications. People with this set of qualifications are available in the region, albeit in limited numbers in some countries.

Patent administration, on the other hand, requires personnel with extensive, high level technical qualifications across a wide range of technologies, as well as the capacity to understand and apply the complex provisions of patent law. Many tertiary qualified examiners would be needed to establish a facility that covers all the technologies in which patent rights may be sought, plus support staff and operational equipment. The availability of such highly qualified personnel in the region is very limited.

III. ISSUES

Of all the elements comprising the IP system the application activity reported and the officials consulted in this study confirmed that copyright and trademarks are of the greatest significance in the various economies. Fiji Islands and PNG each receive in excess of 600 trademark applications per year, the majority of which are filed by foreign applicants. There is anecdotal evidence that a high proportion of these filings are common to the four countries studied.

Applications for patent and industrial design rights, in contrast, are miniscule. The cost of establishing a fully functional patent examination facility is far greater than that for equivalent facilities for the other IP elements, due to the extensive technical qualifications required in the staff resources. The level of activity in this part of the IP system in the South Pacific, both presently and for the foreseeable future, clearly does not justify the required expenditure of scarce funds, even if the relevantly qualified personnel could be found. The main focus for a regional IPR office should therefore be the administration of trademarks applications and registrations, with the capacity for their examination as to formality and substantive requirements, and only formal examination of what patent applications might be received.

The IP operations of three of the four countries studied (Fiji Islands, Samoa and Tonga) may be characterised by having limited resources in both staff and operational equipment, lacking

modern administration systems and record management, and largely lacking in relevant skills and training in their personnel. These countries have IP laws covering most aspects of the IP system but most laws are yet to be made compliant with world standards such as TRIPs. Although staff makes every effort, there is little scope in these countries for effective public awareness raising activities, with the result that there is limited understanding of IP and its role in economic development amongst the government, business, industry, enforcement, academic and general community sectors. As a consequence the capacity for effective IP policy and legislation development is limited, as is the capacity for these countries to participate effectively in the international IP community.

The fourth country, Papua New Guinea, differs from the other three in that it has an agency whose sole responsibility is for IP and does not have dual responsibility for other registration systems such as companies and business names. The PNG IP office is adequately resourced and is meeting its national requirements efficiently and effectively. It has a modern computerised system for administering trademarks applications and registrations and monitoring the timeframes and deadlines associated with their processing. The staff has high entry level qualifications and receive adequate training in the office operations. The Intellectual Property Office of Papua New Guinea (IPOPNG) has an arrangement with IP Australia whereby patent applications received in PNG are examined as to substance by the Australian Patent Office and the final decision to grant is made by IPOPNG. Public awareness activities are gradually increasing in conjunction with consultation with interest groups, and policy and legislation development are also informed by this consultative process. IPOPNG thus represents a significant resource of expertise and infrastructure in the administration of IP in the South Pacific region.

Issues which were raised by national officials in the course of the consultations were:

- Where a regional IPR office might be situated
Comment: to be determined by Leaders in the course of consideration of this report and other relevant matters.
- Who would fund it
Comment: to be determined, but note that ongoing operations would be based on cost recovery through fees charged
- How would revenue from administrative processes be disbursed
Comment: according to the relative functions performed by the FICs and the regional facility.
- What tasks, if any, would be retained by national offices
Comment: variable, from grant of rights, maintenance of registers, policy and legislation development, public awareness activities to none, depending on the nature of the regional facility.
- Where would applications be filed – with a national office or with the regional facility
Comment: preferably with the regional facility, for simplicity and cost effectiveness
- The need for harmonisation of the FICs' IP laws and in some instances the development of some IP laws currently absent from some FICs' IP system
Comment: noted and identified in the options described
- The concerns expressed by the legal profession over impact of a regional facility on their business

Comment: similar concerns were expressed by Australia legal practitioners and patent attorneys over Australia's proposed accession to the Madrid Protocol and its possible impact on trademark application business. After several years experience of working under the Protocol it appears that these concerns were largely unfounded. The nature of the work performed by legal practitioners may have changed somewhat but still seems to be substantial.

A further issue of relevance to the FICs' consideration of creating a confident and secure business environment is that of traditional knowledge (TK). The definition of TK used by WIPO includes indigenous knowledge relating to categories such as agricultural knowledge, medicinal knowledge, biodiversity-related knowledge, and expressions of folklore in the form of music, dance, song, handicraft, designs, stories and artwork. In 2000 Forum Trade Ministers noted the importance of effective recognition and protection of this aspect of regional culture when they supported the Forum Secretariat in its work with South Pacific Regional Environment Programme (SPREP) and the Secretariat of the Pacific Community (SPC) in developing an integrated regional policy framework and model legislation for the protection of traditional knowledge related to biodiversity, agriculture, ecological, medicinal and fragrances uses, and folklore.

TK is not protected under any of the international agreements but in recent years has been the subject of increased exploitation as competition for developing new products intensifies. The IPR system cannot protect TK for three reasons. First, the IPR system seeks to privatise ownership and is designed to be held by individuals or corporations, whereas TK has collective ownership. Second, this protection is time-bound, whereas TK is held in perpetuity from generation to generation. Third, it adopts a restricted interpretation of invention that should satisfy the criteria of novelty and be capable of industrial application, whereas TK is incremental, informal and occurs over time. A *sui generis*, or alternative law, is therefore necessary to protect TK. A model law relating to TK and expressions of culture has now been developed for FICs to adopt and adapt to national contexts while a regional framework on traditional ecological knowledge is still in draft form and undergoing regional consultation.

Although there are interrelationships between the IP system and TK (eg, awareness of traditional methods of medical treatment can be relevant to assessing the novelty of patent application subject matter) the fundamental differences between the two systems are such that the development of laws and administration systems for their protection has been dealt with separately. It is perhaps for this reason that the treatment of TK was not part of the terms of reference for this study and did not form part of the consultations. These differences also mean that there would be less benefit to be gained from incorporating the TK administration system into a regional facility for IPR administration. There is likely to be far more national cultural interests to be respected and taken into account in determining appropriate protection for the various elements of TK than is the case with IP, and thus greater difficulty in achieving a centralised, regional approach. Until some experience of implementing the newly developed laws for protecting expressions of culture and traditional ecological knowledge has been gained at the national level I do not believe there is sufficient reason to attempt to establish a regional facility that would deal with both TK and IPR administration.

IV. REGIONAL OPTIONS

During consultations with the four FICs the following options for delivering the functions relating to the administration of trademarks, patents and industrial designs in the region, comprising a range of combinations of national and central responsibility emerged. They are:

- No change. National agencies continue their present functions.
- Use existing agency in region to act on behalf of FICs to receive and process IP applications to the point of grant; FICs national agency decides the grant.
- Establish new regional facility to act on behalf of FICs to receive and process IP applications to point of grant; FICs national agency decides the grant.
- Establish a regional facility (using either an existing agency or creating a new one) to receive, process and grant IPRs having effect for the region as a whole. National agencies are disbanded.

The first of these options has the advantages of being cost neutral, retaining national skills and responsibility and local access to the IP office. It provides little scope, however, for concentrating and further developing IP skills and expertise, reducing duplication of work and resulting costs to applicants, and harmonising the standards for IPRs granted in the region.

The second and third options have similar benefits in terms of reducing the duplication of work in national offices, reducing costs to applicants, harmonising standards, optimising IP skills and resources. The set-up cost is the main difference with that of the third option being considerably greater. IPOPNG is well placed to take on the role of regional facility in the second option. The capacity of IP Australia to act in this role has also been considered extensively in the Regionally Focused Action Plan (RFAP) developed jointly by WIPO, the PIFS and IP Australia over the last 3-4 years.

The fourth option would be the most complex and costly to establish but once established would provide the most efficient and effective regional administration of IPRs with greatest benefits to users of the system. A single application would have effect throughout the region, with consequential simplification and cost reduction of registration, renewal, assignment and other procedural actions.

For local users of the IP system some form of regional processing of IP applications (whether option 2, 3 or 4) will bring benefits in the form of simpler application procedures (ideally a single application for the relevant IPR, which would be examined centrally and then if registrable, could result in protection throughout the region) instead of multiple applications and often varying standards of registrability for the same IP. The fourth option would bring the additional benefits for IPR owners of single granting and renewal processes instead of the multiple processes required for nationally granted and maintained IPRs.

These options are analysed more fully below, based on the following assumptions:

- Copyright will remain an automatic right requiring only the policy and legislation framework to be maintained, and licensing and royalties collection to be arranged according to the recommendations of the study by Ang Kwee Tiang as approved by Forum Ministers. If adequate copyright legislations and proper collective management organizations are put into place as recommended in this document, Mr Ang

estimated the income from the collective management of the rights in musical and literary works, as well as that of related rights would start in the region of half a million US dollars, rising to US\$1 million per annum. With annual costs projected at US\$100,00, an estimated sum of US\$400,000 to US\$900,000 would remain to be distributed to copyright owners whose creations are utilized by users in the forum island countries.

- The substantive examination of patents will be performed externally, either under the PCT or arrangements made with other IP offices such as IP Australia.
- The examination of trademarks and industrial designs, both as to formalities and substantive criteria, will be performed either by the individual FICs or by the regional facility, as described in the options below.
- There is a high level (perhaps as high as 80%) of commonality in the trademark applications filed in the region
- Enforcement of IPRs would continue to be managed at the national level
- IPRs administration should be operated on a cost recovery basis through appropriate levels of fees charged

1. No change

Cost: neutral

Benefits:

- FICs retain sovereignty over their IP system and grant of IPRs
- National cultural and moral standards can be maintained
- Skills and experience are retained in-country
- Local IPR holders have more immediate access to information and registration process
- FICs retain revenue from IP processes
- Legal firms retain present business levels

Risks:

- Diversity of standards in IPRs remains and may increase
- Duplication of effort within IPOs remains with resulting extra costs to IPR holders
- Capacity of region to increase expertise in and awareness of IP remains limited

2. Use existing agency in region to receive and process IP applications to the point of grant

Cost:

- Set-up costs to prepare computerised databases of trademarks for participating FICs for reference search purposes and recording systems to manage applications data
- Additional staff to process additional workload – for example, if IPOPNG is designated as the regional agency it is estimated that 1-2 full-time officers would be required
- Modifications of national IP laws to allow for external processing and to

harmonise standards of registrability – expected to be minimal

- Modification of application forms to allow for single application to nominate multiple FICs
- Retention of sufficient staff in FICs to manage grant of IPRs, maintenance of registers, policy and legislation development, and public awareness – at least the equivalent of 1.5 full-time trained officer in each FIC

- Benefits:**
- FICs retain sovereignty over grant of IPRs
 - FICs retain some IP skill and expertise in-country
 - FICs retain some revenue from IP processes
 - Uniform laws and standard of IPRs granted in region
 - Enhanced capacity for region to meet international standards
 - Enhanced international reputation for regional IPRs protection
 - Simpler, more cost-effective processes for applicants
 - Reduction in duplication of work and establishment
 - Optimal use made of existing regional expertise
 - Continuing role, even if modified, for legal firms

- Risks:**
- Some duplication of work
 - Cost of maintaining national capacity may not be optimal

3. Establish new regional facility to receive and process IP applications to point of grant – an establishment similar in size to IPOPNG would be required as a minimum

- Cost:**
- Accommodation purchase or hire, plus maintenance
 - Recruitment and training of staff – more or less costly depending on to what extent existing personnel from the region could be recruited
 - Purchase of operational equipment (computers, software, furniture, storage facilities, telecommunications, etc)
 - Creation of trademark databases and recording systems as in option 2. above

- Benefits:**
- FICs retain sovereignty over grant of IPRs
 - FICs retain some IP skill and expertise in-country
 - FICs retain some revenue from IP processes
 - Uniform laws and standard of IPRs granted in region
 - Enhanced capacity for region to meet international standards
 - Enhanced international reputation for regional IPRs protection
 - Simpler, more cost-effective processes for applicants
 - Reduction in duplication of work and establishment
 - Optimal use made of existing regional expertise
 - Continuing role, even if modified, for legal firms

- Perception of independence for a new facility
- Could be located optimally for region in terms of access to expertise, facilities, communication, transport

- Risks:**
- Some duplication of work
 - Cost of maintaining national capacity may not be optimal
 - Substantial set-up costs could be difficult to fund and require long period to recover
 - Existing trained personnel may not be prepared to re-locate, increasing overall time and cost to establish facility

4. Establish a regional facility (using either an existing agency or creating a new one) to receive, process and grant IPRs having effect for the region as a whole.

- Costs:**
- similar to options 2. or 3. above, plus:
 - Negotiation and implementation of a treaty or equivalent agreement binding the participating FICs and providing the legal authority for the facility to operate on behalf of the region
 - Modification of national IP laws to operate under the agreement
 - Personnel and systems to maintain registers of IPRs

- Benefits:**
- similar to options 2. or 3. above, plus:
 - No duplication of work or resources resulting in maximum rationalisation of resources and maximum cost benefit to IP applicants
 - Simple, transparent, cost-effective process for IPRs holders: one application having effect throughout region
 - Harmonised regional IPRs of uniform quality

- Risks:**
- similar to options 2. or 3. above, plus:
 - negotiation of a treaty or similar agreement is likely to be lengthy and sensitive
 - modification of national laws could be lengthy depending on national priorities
 - loss of national sovereignty in the grant of IPRs
 - no revenue for FICs from IPRs if fees are calculated to recover costs of the regional facility only

A key decision to be made in considering these options is whether or not to retain national sovereignty over the grant of IPRs. If Leaders believe that this control must be retained then the second option, using, for example, the PNG IP office as the regional agency, would deliver the efficiencies and enhanced quality of process required of a regional IP administration in the most cost effective form of any of the options, while at the same time the FICs would retain the right to grant the IPRs. If retention of sovereignty is not considered essential then option four, using an existing regional agency such as IPOPNG, would afford the most effective and efficient arrangement, although the negotiations required to establish the necessary legal framework would be lengthy and possibly complex.

V. ESTIMATE OF FINANCIAL COSTS OF A REGIONAL FACILITY

A. Assumptions for Calculation of Key Costs

In preparing this estimate of costs for the various options I have excluded consideration of IP Australia being designated as the regional facility. I am aware of the role IP Australia has taken in the development of the RFAP for the South Pacific, and the consideration given under that Plan for IP Australia to provide regional services in receiving and examining trademark applications on behalf of the FICs. The status of that proposal, however, is not clear to me and I am not in a position to make assumptions on IP Australia's behalf about the costs that would be associated with their provision of those services. Although its computerised systems would require extensive modification to deal with the FICs' trademark applications, given the size of its establishment it would be fair to assume that IP Australia has a greater capacity than other regional agencies to absorb the extra workload of the FICs' trademark applications, and would therefore require few extra staff to do this.

Creating a database of FICs' trademarks and adapting systems to allow for processing of FIC's trademarks data: Some time ago IP Australia estimated their cost for this exercise at approximately US\$300,000. This figure represents the extensive modifications of a large, sophisticated, computerised system that would be required to integrate the FICs' trademarks data with Australian data and allowing fully automated processing of applications. If another agency such as IPOPNG is selected as the regional facility, or if a new facility is established elsewhere in the South Pacific, it is reasonable to assume that these costs would be significantly less, given that the systems to be modified or created would be less extensive and less complex, and would handle smaller volumes of data. For the purpose of making a quantitative estimate cost of the various options I am assuming a systems re-development cost of US\$120,000 and a new systems development cost of US\$300,000.

Staff resources: for the options that provide for retention of national grant of IPRs I am assuming that a minimum of 1.5 full-time officers would be required in each FIC to perform this function as well as the maintenance of registers, administration of renewals and other notifications, and provide IP policy and legislation development services. For the fourth option, with a full processing regional facility, there would be no national IP establishment in the FICs. The regional facility would be responsible for providing IP policy and legislative advice to the FICs for the purpose of national laws being maintained appropriately.

An average regional salary figure has been calculated from the national data provided, and is used for the estimation of staff costs for the various forms of regional facility postulated. The respective national salary data is used for estimation of national costs. 50% of the salary figure has been added to the staff costs as an estimate of the on-costs.

I have assumed that a regional facility equivalent to IPOPNG plus two extra staff (17 staff in total) would be required to receive and process the trademark and patent workload of the region as currently assessed and as it is likely to develop in the medium term. For a regional facility performing the full range of IP receipt and grant functions I estimate that an additional 3 staff would be required.

Office equipment: Based where possible on the data provided by the offices visited or on my own knowledge I have estimated average costs for computer and telecommunications equipment and essential office furniture as follows:

- US\$3000 per person for computer equipment, plus an allowance for telecommunications where appropriate

- US\$3000 per person for furniture and fitout

On the basis of these assumptions I have prepared a calculation of the quantitative costs of the options for regional administration of IP described above. This is shown in detail below. As I have already noted elsewhere it was not possible to obtain full and accurate details of the costs of the present IP administration systems in the region. For this reason the costs analysis has been based on identifying only the marginal benefits and costs.

VI. COST RECOVERY PERIOD

Based on the costing figures set out below the cost recovery period for each of the options is as set out in the following table.

<u>Option</u>	<u>Cost Recovery Period</u>
One	Not applicable
Two	4 years
Three	36 years
Four	4 years (7 years for new facility)

Marginal Cash Flow (US\$)

(Negative values represent additional costs, Positive values represent additional savings)

		Option 1		Option 2		Option 3		Option 4			
		No change		Existing agency for receipt and examination		New agency for receipt and examination		Existing agency for full process		New agency for full process	
		Man years	US\$	Man years	US\$	Man years	US\$	Man years	US\$	Man years	US\$
Samoa	Staffing	nil		1.5	17,235	1.5	17,235	3	34,470	3	34,470
	Operations				5,745		5,745		11,490		11,490
	Equipment				4,500		4,500		9,000		9,000
	Policy			-0.25	-2,873	-0.25	-2,873	-1.5	-17,235	-1.5	-17,235
Tonga	Staffing	nil		2	10,515	2	10,515	3.5	18,401	3.5	18,401
	Operations				3,005		3,005		5,260		5,260
	Equipment				6,000		6,000		10,500		10,500
	Policy			-0.25	-1,314	-0.25	-1,314	-1.5	-7,886	-1.5	-7,886
Fiji	Staffing	nil		1	11,265	1	11,265	2.5	28,163	2.5	28,163
	Operations				9,420		9,420		23,555		23,555
	Equipment				3,000		3,000		7,500		7,500
	Policy			-0.25	-2,816	-0.25	-2,816	-1.5	-16,898	-1.5	-16,898
PNG	Staffing	nil		13.5	76,748	13.5	76,748	15	85,275	15	85,275
	Operations				34,110		34,110		37,900		37,900
	Equipment				40,500		40,500		45,000		45,000
	Policy			-0.25	-1,421	-0.25	-1,421	-1.5	-8,528	-1.5	-8,528
Existing FIC Agency	Staffing			-15	-103,950			-20	-138,600		
	Operations				-40,000				-45,000		
	Establishment										
	System Redev.				-120,000				-150,000		
	Equipment				-9,000				-60,000		
	Policy										
New Agency	Staffing					-17	-117,810			-20	-138,600
	Operations						-42,000				-45,000
	Establishment						-75,000				-90,000

APPENDIX 1: STUDY TERMS OF REFERENCE

The Consultant will undertake the following tasks:

1. Visit Fiji Islands, Samoa, Tonga and Papua New Guinea and consult with national IPR office personnel.
2. Prepare a report on the costs and benefits of establishing a regional IPR office. This report should address, at a minimum:
 - The present performance of national IP office addressing key constraints and running costs, including:
 - resource allocation (budget, training, equipment) by government (and other sources) to the national IP office and its impact on capacity and efficiency issues;
 - extent of capacity and function of national office to foresee and contribute to the formulation of national IP policy, legislation and enforcement affecting it;
 - any other issues raised by national IPR personnel during the consultations.
 - The quantitative and qualitative costs of establishing a regional IPR office, including:
 - staffing and infrastructure needs both at the regional and at the country level;
 - length of time involved in recovering costs of establishing a regional IPR office.
 - The quantitative and qualitative benefits of establishing a regional IPR office, including:
 - the short-run benefits of relieving the national constraints and costs addressed above;
 - the longer-run benefits from improved planning and surveillance, based on clearly laid out assumptions and analytical frameworks.

APPENDIX 2: COUNTRY DATA

I visited the agencies responsible for IP administration in the four FICs, Samoa, Tonga, Fiji Islands and Papua New Guinea, as required by the terms of reference for this study, and held consultations with available senior officials. Due to the variation in the type of records kept, and the dual nature of the official functions of three of the four agencies, much of the data provided by the officials consisted of estimates and general information rather than exact figures. Nevertheless I believe the consultations have provided sufficient information to prepare the cost benefit analysis required for the study. The details follow.

Samoa

The IP Office is within the Ministry of Commerce, Industry and Labour. It has dual responsibility for intellectual property and companies registration. The resources are shared approximately equally between these responsibilities. Its IP responsibilities extend to patents, trademarks, industrial designs and copyright. My discussions were with Ms. Margaret Fruen, Assistant CEO and Deputy Registrar, and Ms. Alataua, Principal Officer.

Staff

CEO

Assistant CEO

Principal Officer

Two Senior Officers – one full time on IP, the other full time on companies work
Officer

Clerical officer

This represents approximately 3.5 officers working full-time on IP administration.

Budget

Approximately Samoa tala (ST)110,000, made up of ST60,000 on staff salaries, ST20,000 on training and ST30,000 on operational costs. The operational budget covers furniture, equipment, including computers, consumables, and public awareness activities. Other running costs, such as premises, electricity, water, come under the Ministry's corporate services budget. The office has received some external support in the form of computer equipment from WIPO and staff training from WIPO and Australia.

Revenue

Fees are charged for most activities associated with the receiving and processing of applications. Revenue from these fees is in the order of ST80,000 annually, and is paid into Treasury funds.

Staff Training

Entry level for staff at the senior officer level and above is currently first year university or university graduate. On the job training in IP matters is provided by the assistant CEO and Principal Officer, and consists principally of trademark examination procedures. Additional training in trademark examination principles and the broader IP system generally is provided occasionally as indicated above by WIPO and Australia. More general IP training is coordinated

by the Public Service Commission and involves other agencies responsible for aspects of the management of IP, such as enforcement and border control.

Application Activity

Trademarks: approximately 100-150 applications per year, of which 90-95% come from overseas. Currently there is a delay of around 12 months in processing these applications; those filed in early 2004 are now being examined. Applications are examined both as to formality requirements and to substantive registration requirements. Only trademark applications in respect of goods are receivable; there is as yet no provision for marks in respect of services. There are approximately 5000 trademarks recorded but it was not clear how many of those are active registrations.

Patents: Approximately 5 per year, all from overseas. If filed within 12 months of a corresponding grant elsewhere the patent is granted in Samoa, subject only to formality requirements being met. There is no capacity in the IPO to conduct substantive examination of patent applications.

Industrial designs: no applications received in last 8-10 years; small number of live registrations.

Copyright: automatic grant of rights with no application or registration process required.

Status of IP Laws

The trademarks, patents and designs laws all need review and amendment to make them TRIPs compliant. The current trademarks law does not provide for service marks or multi-class applications. The copyright law is essentially TRIPs compliant. WIPO has provided Samoa with copies of its model laws for IP which are being assessed by the Attorney-General's department. Any legislative changes are likely to take some time given Attorney-General's priorities and resources. The WTO Working Committee (see below) has decided that Samoa should prepare specific legislation to protect GIs, and may use the draft Tongan law as a model.

Public Awareness Activities

Samoa has undertaken a number of public awareness activities aimed at increasing the level of knowledge and understanding of IP amongst the business, student and general public. The IP office produced a video for World IP Day (26 April), has participated in TV interviews and conducted face-to-face sessions on various aspects of the IP system. Approximately 15,000SOT plus staff costs have been expended on these activities which are delivered in the local language and in English. The bulk of these activities focus on copyright and trademarks as these elements of the IP system are of greatest relevance to the Samoan community.

Enforcement

The IP laws make provision for rights holders to enforce their IP, but lack of resources and training for police and other enforcement officials means that there is little or no *ex officio* enforcement action.

Policy and Legislation Development

The Ministry of Commerce, Industry and Labour, and hence the IPO, has primary responsibility for input to IP policy development, but the Ministry for Foreign Affairs has a role in respect of WTO accession and TRIPs obligations. Ms Fruen is a member of the WTO Committee presently engaged in considering Samoa's accession to the WTO. Other agencies represented are Foreign Affairs, Customs, Attorney-General's, Agriculture, and the private sector. Ms Fruen expressed some concern over the capacity of the IPO to provide appropriate input to IP policy development, due to limited exposure to relevant training and experience in such activities.

Attorney-General's has primary responsibility for the preparation of legislation,

and the IPO provides advice and works with AG's in reviewing IP laws.

General Comments

The IPO has limited staff and limited access to and use of modern administrative technology. Computers are being used to record some application data, but most records are hand written in ledger books which form the principal means of referencing IP information. The individual case files are the only records of the current status of trademark or patent applications or registrations. It is difficult for a comprehensive search of these records to be made efficiently.

Ms. Fruen indicated that Samoa would support the concept of a regional IP facility, recognising the potential for benefits from the pooling of resources and using regional expertise. She noted that current Samoan budgetary constraints limit the capacity to modernise the IPO and to train staff effectively.

Tonga

In Tonga IP is administered within the Intellectual Property and Company Registration Office (IPCR) within the Ministry of Labour, Commerce and Industry. I held consultations with Mr Pene Latu, Deputy Registrar of Trademarks and Head of IPCR, and with the Secretary of the Ministry.

Staff Resources

In addition to Mr Latu there are 5 other staff, 3 of whom work full-time on IP. Another member of staff is due to join the office shortly. The structure is:

Deputy Registrar

Assistant Registrar (2)

Trademarks/Designs Officer

Company Inspector

Assistant Secretary (about to join)

Technical Support Officer

This represents approximately 3.5 officers working full-time on IP administration.

Budget

The total budget for the IPCR is approximately Tonga pa'anga (T\$)67,000, of which approximately 70% covers staff salaries and 30% goes to operational costs. Pro rata the budget for IP would be approximately T\$33,500. Mr. Latu described the scope of activities provided for by this budget as limited, particularly in the operational area. Implementation of the new copyright law has been delayed due to lack of sufficient staff, and public awareness activities are limited for similar reasons.

T\$46,000 worth of computer equipment was provided by IP Australia in 2003, and two computers with printers and scanner equipment were provided by WIPO in 2004.

Revenue

Revenue from fees charged for receiving and processing IP applications amounts to approximately T\$65,000 annually. Given the small number of new applications per year, the bulk of this revenue comes from renewal fees for existing registrations and other processing fees.

Training

Apart from in-house training there is no specific training in IP administration or examination. External training in trademark matters has been provided by IP Australia and IPONZ, and

WIPO has provided general IP training sessions.

Application Activity

Trademarks: approximately 50-60 per year. When the present Trademarks Act came into force in 2000 there was a large workload of 1600 trademarks to be re-registered. Approximately 1400 of these have been processed and the remaining 200 are expected to be finished this year.

Patents: approximately 5 per year. IP Australia provides substantive examination services free of charge and Tonga conducts the formalities examination and makes the final decision to grant the patent.

Industrial designs: no applications have been received and there are no entries in the Designs Register.

Utility models: no applications.

Copyright: awaiting entry into force of new law.

Status of IP Laws

The Industrial Property Act 1994 came into force in 2000, and provides for patents, utility models, trademarks and industrial designs. This Act has been under review for compliance with TRIPs obligations and is presently with the Law Reform Committee. Mr. Latu expects that it will come before parliament in its next session and be passed this year.

The Geographical Indications Act 2002, Copyright Act 2002, Protection of Layout-Designs (Topographies) of Integrated Circuits Act 2002 and Protection Against Unfair Competition Act 2002 are yet to be implemented. There is an Enforcement and Border Measures Bill in the final stages of processing before parliament, and a request has been made for drafting assistance from WIPO/UPOV for a Plant Variety/Seed and Seedlings Bill. When this legislation has been completed and takes effect Tonga will complete its TRIPs obligations.

Public Awareness Activities

Virtually no public awareness activities are possible due to the limited resources available to the IPO. A few articles on radio and in the newspapers on World IP Day is the extent of activity.

Enforcement

The IP laws make provision for rights holders to enforce their IP, but lack of resources and training for police and other enforcement officials means that there is little or no capacity for *ex officio* enforcement action.

Policy and Legislation Development

Mr Latu is the main officer responsible for providing IP policy advice and for managing IP legislation development. He relies on support from WIPO in developing and drafting IP laws, then consults with other relevant Tongan agencies in finalising those laws.

General Comments

The human and operational resources of the Tongan IPO are very limited and constrain the capacity of the office to contribute to the effective use of the IP system in the further development of the Tongan economy. Mr. Latu identified the following as immediate needs for improvement:

- An up to date and appropriate database for IP
- An appropriate computerised IP system
- Storage facilities for IP information

The Secretary expressed the view that Tonga would agree with the concept of a

regional IP facility, and noted that it made sense from the point of view of enhanced use of regionalism in the Pacific. He noted that the Government of Tonga is currently holding discussions on accession to the WTO and that if that happened the TRIPs obligations would add to the burden on the IP administration. He also raised the matters of how a regional facility would be funded, how IP revenue would be disbursed and how IP enforcement would be handled regionally.

Fiji Islands

In Fiji Islands IP is administered by the Office of the Attorney General and Ministry of Justice. Trademarks and patents are handled within the Registration of Companies, Business Names, Patents and Trademarks Office, and copyright comes under the Solicitor General's responsibilities. There is no industrial designs law currently in Fiji Islands. I held consultations with Ms Kelera Vuibau, Acting Registrar of Trademarks, Ms Janet Maughan, a Justice Agencies Support Advisor under the Australia/Fiji Islands Law & Justice Sector Program, and Mr Nainendra Nand, Solicitor General.

Staff Resources

The office has two staff working full-time on trademarks and patents. One is an examiner and the other is a clerical assistant. Ms Vuibau, although responsible for supervising these staff and holding statutory functions in the administration of IP, in practice has little capacity within her overall duties in the Companies Office to devote to IP.

Budget

Ms Vuibau was unable to give me specific figures on the budget allocation for IP. The material she gave me covered details of expenditure for the whole of the Office of the Attorney General and Ministry of Justice. The pro rata calculations I have made for IP expenditure are therefore very rough. Based on these calculations the expenditure on staff salaries is in the order of Fiji dollars (F\$)31,596 and the operational budget for IP is in the order of F\$39,640.

Revenue

Again, the figure provided by Ms Vuibau was an approximation only, as it appears that there is no accurate calculation or breakdown of IP revenue. The estimated revenue from trademarks and patents processing for 2004 was about F\$18,000. It is worth noting that the fees schedule in Fiji Islands has not been reviewed for many years and the fees charged are very low in comparison with the other IP offices surveyed.

Training

Very limited training is available to IP staff as there is no government funding for such activities. Staff have attended a WIPO course and receive some general on-the-job instruction. While Ms Vuibau is a law graduate, the other IP staff are high school graduates. Ms Vuibau identified more highly qualified and trained staff as a high priority requirement for IP administration.

Application Activity

Trademarks: approximately 600-700 per year. Trademarks have been registered in Fiji Islands since the 1890's, and there are some 34,000 entries in the Register. There are in the order of 1000 renewals processed annually but it is unclear as to how many active registrations are current. The office examines applications both formally and substantively, and there is currently no delay in processing. Due to lack of appropriate staff there is currently a backlog of around 100 cases of opposition to registration of trademarks, representing about 10 years delay in this area.

Patents: 1-2 applications per year. Fiji Islands has had patent grant since 1800's, and around 1000 patents have been granted in that period. No substantive examination is conducted locally; IP Australia currently provides examination services free of charge and the Fiji Islands office performs formality examination and decides on the grant or otherwise.

Copyright: rights are granted automatically with no application and registration required. There is an active Performing Rights Association and Collecting Society for composers and musicians. Consideration is being given to extending the scope of this Society to include other copyright holders.

Status of IP Laws

The trademark law is old (1972) and out of date. It does not meet TRIPs obligations, such as service marks and multi-class applications. The classification system used in the office is also out of date and does not comply with international standards such as the Nice classification of goods and services. Similarly the patents law is old and not TRIPs compliant. There is no industrial design law in Fiji Islands.

Draft legislation for new patents, trademarks and designs law has been prepared (1999) but has not progressed due to lack of relevant resources. While the draft laws have been assessed as TRIPs compliant, they have been modelled on Singapore IP laws and may be more complex in their provisions than is required by a small developing economy such as Fiji Island's. There are currently no implementing regulations prepared for the new laws.

The Fiji Islands Copyright Act is TRIPs compliant and consistent with international standards. Consideration is currently being given to amendment of the law to accommodate the latest WIPO copyright treaties. Fiji Islands has a three person Copyright Tribunal to deal with copyright disputes, headed by a High Court Justice and supported by two staff. So far only one dispute has come before the tribunal but it provides advice and consultation on copyright issues. The tribunal liaises closely with its Australian counterpart.

Public Awareness Activities

There is no budget and no resources for public awareness activities in respect of trademarks and patents in Fiji Islands. In respect of copyright the two staff members who support the Copyright Tribunal also provide secretariat support for a Copyright Awareness Committee which consists of representatives of the Attorney General's office, the police, the DPP, consumers, commerce and industry, the University of the South Pacific and business. The Committee meets every 4-6 weeks to discuss current issues and exchange information. World IP Day is celebrated each year and twice yearly publicity for copyright is promoted through radio, television and newspapers.

Enforcement

The IP laws make provision for rights holders to enforce their IP, but lack of resources and training for police and other enforcement officials means that there is little or no *ex officio* enforcement action. This observation applies even to copyright despite the apparently much greater level of sophistication and activity associated with its administration.

Policy and Legislation Development

The two CEO's responsible for the administration of IP are the primary officials responsible for preparing policy advice and developing legislation related to IP. The Trade section of the Ministry of Foreign Affairs has a role in respect of WTO and TRIPs matters, and Customs is responsible for border control issues.

General Comments

While the resources available for the administration of trademarks and patents are very limited, the staff appear to be meeting the immediate needs of trademark applicants. The

principal constraints are accurate record keeping, easy access to records for the purpose of reference searching, expertise in dealing with disputes over trademark rights, delivery of public awareness activities and training of enforcement officials.

The officials I met indicated that they recognised the potential advantages of a regional facility in addressing these constraints, but were unsure of what model of regional IP administration would best suit the needs of the South Pacific community. Ms Vuibau also noted that the legal profession in Fiji Islands has registered its concerns about, and opposition to, the establishment of a regional facility.

Papua New Guinea

IP is administered in Papua New Guinea by the Intellectual Property Office of Papua New Guinea (IPOPNG) within the Investment Promotion Authority (IPA). IPOPNG is located in Port Moresby and is responsible for all elements of the IP system. I held consultations with Mr Gai Araga, Registrar, and his senior management staff, and with Mr Ivan Pomaleu, Managing Director, IPA.

Staff Resources

There is a staff of 15 officers in IPOPNG, in a structure shown in the annex to this section. This substantial establishment provides for comprehensive and efficient administration of most elements of the IP system, including substantive examination of trademarks but only formalities examination for industrial designs and patents. IP Australia provides substantive patent examination services to IPOPNG.

IPOPNG has only recently acquired responsibility for copyright administration and the newly appointed copyright officer is undergoing training (largely externally provided) in this element of the IP system.

Operational Resources

IPOPNG has spacious and modern facilities in a centrally located office block in Port Moresby. All staff have a personal computer linked to the automated system that supports the office operations. Most of the IP administration is computerised with expiry and renewal notices, certificates, assignments, change of name and so on automatically generated.

The public has access to the relevant records to conduct searches.

Budget

Staff salaries are expected to amount to approximately Papua New Guinea kina (K)180,000 for 2005. The operational budget is approximately K120,000.

Revenue

Actual revenue for 2004 was K560,000.

Training

The Registrar and Deputy Registrars and most of the examination staff have university degrees. The remainder of the staff have senior high school or post high school diplomas. On the job training in the administrative systems and examination procedures is provided by the senior staff, and external training in broader aspects of the IP system is provided by WIPO, IP Australia and the Japanese IP office.

Application Activity

Trademarks: approximately 800 applications per year and 3000 renewal notifications per year. About 30% of filings are local and this proportion is increasing. There are in excess of 12,000 trademarks currently entered in the Register.

Patents: PNG joined the Patent Cooperation Treaty (PCT) in 2002 and has received 940 notifications so far, of which 4 have entered the national phase. About 20 local patent applications have been filed and 2 have been granted.

Industrial designs: 4-5 applications per year, all foreign filings; 3 currently registered.

Copyright: automatic rights. The Registrar is planning to prepare guidelines to help copyright holders to register licenses and collect royalties.

Status of IP Laws

I was advised by the Registrar that all the IP laws in force presently are TRIPs compliant. Amendments are currently being processed to provide for the latest WIPO copyright treaties, the Madrid Protocol for the international registration of trademarks and for protection of geographical indications.

Public Awareness

IPOPNG started a public awareness program last year with a budget of approximately K50,000, largely covering travel costs. The program targets research institutions, universities, agricultural institutes and recording studios. Other activities have included radio talk-back programs, newspaper articles and brochures produced in-house on various aspects of the IP system.

The Registrar is currently considering holding a workshop for local law firms to increase the level of IP expertise in the local community. Some support for this activity may be sought from Australian legal firms already represented in PNG.

Enforcement

Enforcement of IP rights in PNG is a matter of concern with much infringement and counterfeit activity in the community. There is a border control measures Bill still in preparation under the primary responsibility of the Customs ministry. The trademarks legislation also contains enforcement provisions and IPOPNG hopes to further develop proposals for enhanced enforcement measures in consultation with the National Intellectual Property Committee (NIPC).

Policy and Legislation Development

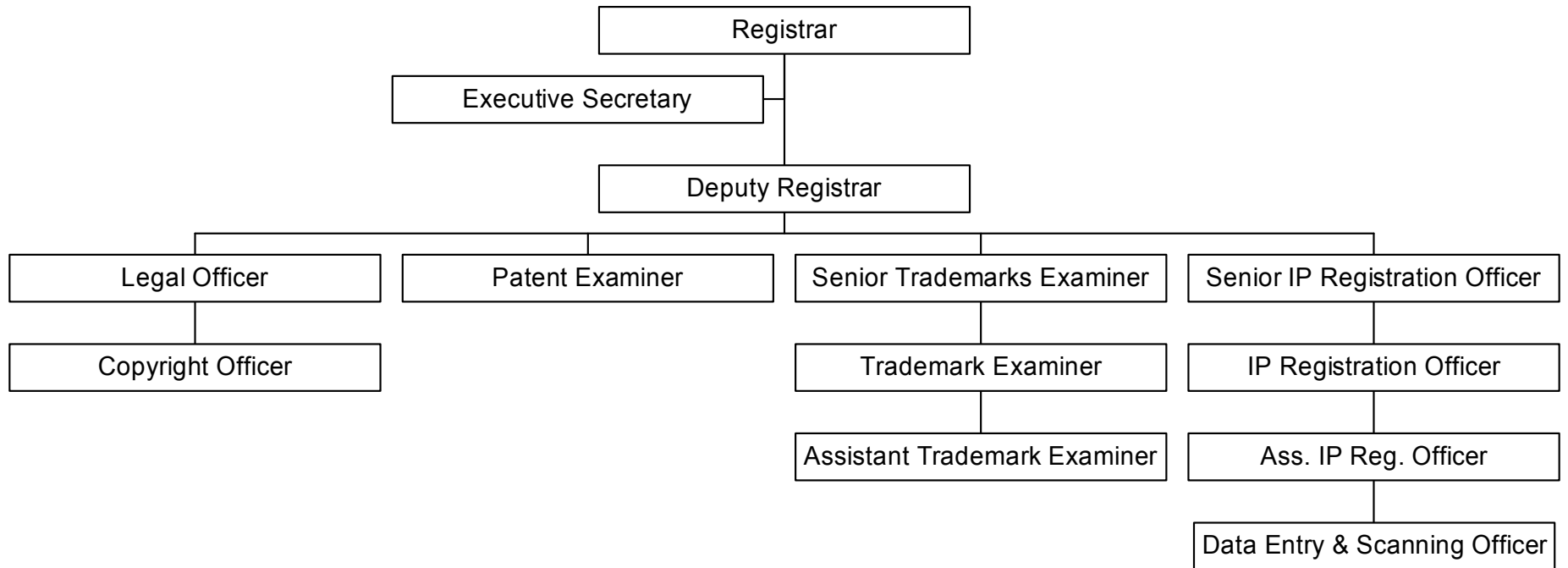
The Registrar and his senior staff have a primary role in the preparation of IP policy advice. They hold consultations with relevant interest groups through the NIPC, which is chaired by the Registrar. Feedback from the consultations held in the public awareness program also contributes to policy formulation.

The Legal Officer position within IPOPNG is responsible for preparing drafts for IP legislation and general legal advice on IP issues. This in-house resource provides valuable interaction with IPOPNG policy development as well as liaison with general government legislative procedures.

General Comments

The operations of the IPOPNG are significantly more sophisticated and comprehensive than those of the other target countries in this study. The staff are highly motivated, well trained and experienced in IP administration, and their activities are well supported and resourced by the IPA management. The presence in Port Moresby of several patent attorney firms and laws firms active in the IP area adds to the effectiveness and efficiency of the administration of IP in the country.

**INTELLECTUAL PROPERTY OFFICE OF PNG
STAFF STRUCTURE - 2005**



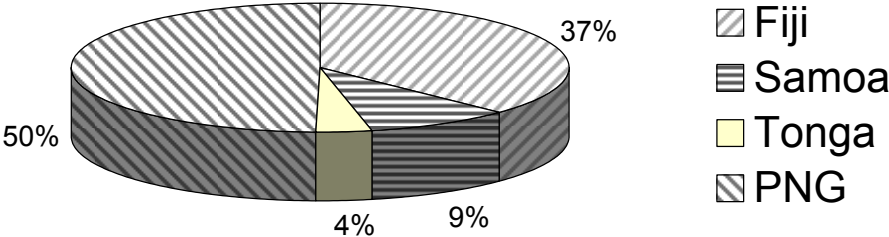
APPENDIX 3: ANNUAL INTELLECTUAL PROPERTY APPLICATION ACTIVITY

Country	Trademarks	Patents	Industrial designs
Fiji Islands	600	2	-
Samoa	150	5	-
Tonga	60	5	-
Papua New Guinea	800	6 ^a	5
Total	1610	18	5

Note: figures are approximate.

^a PNG is a member of the PCT and has received 940 notifications since 2002 of which 4 have entered the national phase

Relative Distribution of Trademark Activity



APPENDIX 4: BUDGET AND STAFF STATISTICS

Country	Staff Numbers	Staff Salaries (US\$)	Operational Budget (US\$)	Training (US\$)	Total Budget (US\$)	Revenue (US\$)
Samoa	3	22978	11489	7659	42127	30368
Tonga	3.5	12272	5259		17532	34018
Fiji Islands	2.5	18776	23556		42332	10702
PNG	15	56850	37900		126334	176868
Total	24	110876	78204		228325	251956

Average salary: US\$4,620

REFERENCES

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Study on Collective Management of Copyright: by WIPO consultant Ang Kwee Tiang