REPORT

Financial Sustainability Considerations for the Intellectual Property Office of the Future

by The IPO of the Future Think Tank

INTA International Trademark Association

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In 2020 a publication co-developed by a group of former and current IP office heads, called "Intellectual Property Office (IPO) of the Future Report" addressed two sets of features to help prepare an IP Office for the future: those within the core administrative mandate of the IP Office and those beyond its traditional roles. In the first set, important topics and challenges were identified, among them: harmonization, optimal pendency, adaptation of services to new technologies, human resources, financial resources, and stewardship. Within the second set, the Report addressed challenges such as the relationship of the IP Office with other stakeholders, quality of services, support for innovation, research, market efficiency, education, and IP valuation.

Subsequently, the topics addressed by the Report have been the subject of reflection by several IP offices in different regions, and led to a follow-up project called the IPO of the Future Check List Project. The Check List Project synthesized and condensed the breadth of topics from the Report into a succinct overview.

Now, a new team of current and former heads of IPOs have reflected on a specific topic addressed by the original Report: the Financial Sustainability of the IPO of the Future. The Think Tank thus comprises a team of Experts representing different regions, Office sizes, and development levels of the countries these Offices serve, including current and former heads of IP Offices:

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Introduction

This new Report looks at how IP offices can achieve and maintain financial sustainability, while recognizing the existence of different IP office operating models. The new Report is structured to answer questions such as what the strategic components of leadership are in the financial domain, and what the staff skills are that need to be built out for an IP office to become financially sustainable. The new Report aims to support IP offices in their quest to provide the best possible services to users, while taking into consideration the economic cycles and industry trends in the use of Intellectual Property Rights (IPRs). While the report explores a range of topics and strategies relating to the financial sustainability of IP Offices, it recognizes that not all issues discussed are applicable to every IPO given the differences in their financial models.

Chapter 1 describes the range of financial models currently in use across IP offices. **Chapter 2** explores the importance of financial autonomy and stability required for IPOs to remain financially sustainable and to fulfill their statutory mandates. It outlines the key features of an IPO that warrant independence for regulatory and operational reasons. **Chapter 3** explores the strategic components for successful fees and their strategic components to ensure sustainability in a dynamic environment. **Chapter 4** explores trends and forecasting in market demand and setting appropriate fees. **Chapter 5** explores the range of potential cross-subsidies an IPO may need to consider, as well as their implications. **Chapter 6** looks at how longer-term game changers such as technology, evolving preferences, and disruption are continually at play, requiring IPOs to understand and prepare for these broader challenges or opportunities. **Chapter 7** outlines some strategies to consider when adjusting fees.

The IP Office of the Future Reports are developed by current and former heads of IP offices, sharing collective experience and expertise to identify ranges of approaches and best practices in areas of strategic management. This report examines the fundamental requirements for financial sustainability, allowing IPOs to both execute existing mandates as well as plan for and thrive in future scenarios. The primary audiences for this work are both existing and future heads of office and their deputies and senior staff, to be used in effective and strategic management and, should a best practice be identified, benefit from this collective experience.

While INTA facilitated the working sessions of the IPO of the Future Think Tank, it is important to note that the content and findings presented in this report are solely the views and opinions of the Think Tank's Experts and are not necessarily endorsed or supported by INTA.

Chapter 1: Financial Models

This chapter examines various financial models that can be considered and adopted by Intellectual Property Offices (IPOs). It describes characteristics that exist in various financial models of the IPOs, including the analysis of the strengths and weaknesses of these models in relation to the ultimate objectives of an IPO in fulfilling their core mandate and beyond. The chapter considers key aspects surrounding fees, and other aspects such as budget, capital expenditure, return of equity, cash management, shared services, and cross subsidization.

Each IPO faces a distinctive set of challenges, objectives and operating environments within their countries or regions The financial landscapes of different IPOs are far from uniform, and as such, a one-size-fits-all financial model proves inadequate when attempting to accommodate to the diverse needs of these offices. With varying resources, operational structures, and legal frameworks, a customized approach is crucial for every IPO.

By exploring different financial models, IPOs can better understand how various key aspects of the different models could be applied to their offices to enhance their effectiveness, sustainability, and ability to meet the evolving needs of stakeholders and society. The Think Tank identified the models in part based on information provided by six offices representing models used in some regions and/or systems, according to the local legal and public administration framework.

Fees and Cost Recovery

Of the IPOs consulted, some initiate the process of setting or changing fees themselves, but in a process subject to approval of the relevant ministry, department or government. In these instances, it is necessary for the IPO to consult the government agency that is focused on finance regarding the need for such changes. Lawmakers, moreover, maintain the authority to regulate these fees. Apart from this, one other fee adjustment mechanism is noted, indicating that fees are not solely set by IP offices, but can also be established by law, encompassing both the setting of new fees and the updating of existing ones.

Periodicity of Fee Changes

The operational structure of most offices regarding fee management timing is segmented into annual, ad-hoc, and other categories. Some offices follow an annual system, with fees adjusted or established either yearly or at a pre-set interval of years. Should there be a requirement for new fees outside these specified periods, these offices switch to an ad-hoc approach. Some offices function under an ad-hoc system, in which fees are reviewed and updated as necessary. This is usually in response to significant alterations in costs or volumes. Uncertainties, including factors like the COVID-19 pandemic, changing monetary and fiscal policy, and economic recession, create a complex dynamic, making accurate forecasting a challenging task.

Fee Retention

Further data provides insights into the fee retention practices of different IPOs. Some IPOs maintain funds in a central or public bank account, having unrestricted access to these resources. In another scenario, the funds, whether directly or via the IPO, are channeled to the Public Treasury. In other IPOs, there are no access restrictions to the funds; however, the central Government reserves the right to withdraw funds, particularly when dividends or excessive surpluses occur.

An IPO that can retain fees can reinvest them into streamlining and enhancing operations. This may involve hiring more staff, upgrading IT infrastructure, and improving the application review process to increase efficiency and reduce processing time.

Fee retention can provide a steady revenue stream, making IP offices less dependent on government funding or other external

financial resources. This can make them more resilient to changes in the overall economic climate.

Office Budget

Some IPOs have the capability to formulate multi-year budgets. This allows them to estimate budgetary requirements years in advance for reporting purposes to other government agencies or branches. Some IPOs operate with a one-year budget, suggesting a short-term financial planning approach. However, they may be authorized to request additional budget, which is not contingent upon IP filings.

Multi-year budgets are beneficial because they enable long-term planning, as they provide a financial roadmap for the future, offering more stability and predictability over a longer period, which can be beneficial for large, long-term investments, such as IT infrastructure upgrades. Multi-year budgeting also reduces the administrative burden of annual budget planning and approval.

On the other hand, one year budgeting allows an IPO to adjust its budget based on the previous year's performance and the upcoming year's goals. This allows for quicker responses to changing circumstances and policies.

Capital Expenditure

Some IPOs finance capital expenditure directly from retained fee receipts. Most often, agencies seek capital funds from central ministries or departments of the government. Some IPOs follow a path whereby capital expenditures are financed through a budget approved by the central ministries, without a direct link to fee income.

Funding for capital expenditure can depend on a variety of factors. If an IPO has stable fee income and a high degree of financial autonomy, using retained fee receipts is an appropriate option given that the beneficiaries of the IT systems are also the fee-paying applicants. However, if the office's fee income is volatile or insufficient for its expenditure needs, or if the office is required to obtain approval for major capital expenditures, government funding might be more appropriate, or the only viable option.

Return of Equity

IPOs are not usually profit-driven, but rather exist to serve the public interest through the administration of the intellectual property system. Therefore, they usually do not have traditional equity holders, do not pay dividends, and do not generate profits in the same way a corporation does. There are financial considerations unique to an IPO, and its financial operations can vary depending on the policies and regulations of its country.

Some IPOs cannot obtain a commercial return on surplus and are not allowed to borrow funds commercially. Another office's surplus remains with the central government and its return is reflected in the approved budget. There may be models where an IPO is obliged to pay an annual dividend and is mandated to use government banks to offset its borrowing costs. One office may also be mandated to pay the government through dividends on profits and income that exceed a determined financial cap, and may not be permitted to borrow.

Cash Management

Cash management for the IPO of the future is an essential aspect of financial operations. The main source of cash for most IPOs is the fees they charge for their services. The effective management of these funds is crucial for ensuring the smooth and efficient operation of the IPO.

Some IPOs oversee daily and annual cash management requirements. This arrangement empowers IPOs to maintain and balance cash management activities independently. Some other IPOs are prohibited by law from managing their cash; such responsibilities are handled by the central government.

Shared Services

Some IPOs partake in corporate shared services (such as human resources, IT services and real property), gaining access to a range of resources via central ministry arrangements. In contrast, there are IPOs that do not engage in shared service arrangements, implying that these offices operate more independently or have unique resources at their disposal.

Fee Discounts

Each office has its own approach to providing fee discounts, which is influenced by a variety of factors, including the desire to promote certain behaviors while discouraging others. The data covering fee discounts highlights the complexity of managing an IPO. Offices must balance a range of competing priorities, including the need to support innovation, the desire to promote efficiency and digitization, the necessity to ensure financial sustainability, and the importance of providing equitable services.

Some IPOs allow fee discounts specifically for Small and Medium Enterprises (SMEs), aiming to encourage innovation and ease financial burdens for these smaller entities. However, some IPOs do not allow fee discounts. Also, some IPOs grant fee discounts both for patent-filing SMEs and for e-filing, promoting digital transactions and easing the process for SMEs. Finally, some IPOs may offer discounts, based on evidence that such discounts would not result in a cross-subsidy, maintaining a balance between discounted and regular fees.

Front-End Fees

Five surveyed IPOs permit the implementation of front-end fees, typically charges imposed at the initial stages of obtaining intellectual property rights. However, any shortfall incurred in processing an application is compensated with other fees related to the maintenance and management of intellectual property rights. Such compensatory fees may include those related to annuities, renewals, and assignments. Some IPOs do not allow the application of front-end fees, implying a different revenue model or cost recovery approach.

Cross Subsidization

The practice of cross-subsidization refers to the revenues from one area of IP rights being used to subsidize costs in another area of IP Rights. Some IPOs permit cross-subsidization, basing their financial balance on all intellectual property rights without distinction. Some IPOs prohibit cross-subsidization, indicating a stricter delineation of financial management across different areas of IP rights. For an IPO, cross-subsidization may occur in certain situations. For instance, if the marginal costs in one area become larger than the marginal revenues, there may be some cross-subsidy until the balance is corrected through a fee adjustment process.

Selecting an appropriate financial model is crucial for an IPO to fulfill its core mandate and address the evolving needs of stakeholders. Each financial model has its strengths and weaknesses, and a balanced approach may involve a combination of funding sources. Ultimately, the chosen financial model should enable IPOs to achieve optimal pendency, adopt new useful technologies, effective human resource management, stakeholder engagement, international engagement, quality services, support for innovation, research, market efficiency, and IP-related education. It is important to note that this section was largely based on six surveyed offices, a broader survey may reveal additional models or features.

Chapter 2: The Importance of Financial Autonomy

> "Autonomy" can have different meanings in the context of an IPO. There is regulatory autonomy, which covers the autonomy of an IPO from political interference. And there is financial autonomy, which pertains to the control and management of financial resources by an IPO.
>
> This chapter will focus on financial autonomy.

As is the situation today, IPOs of the Future will confront diverse scenarios regarding financial models and levels of autonomy and independence. Some will remain, as they are today, financially autonomous, with substantive control over the fees they charge to fund the services they provide. In other countries, IPOs have varying levels of financial autonomy, relying on allocations from a more general government treasury to fund their operations. Financial autonomy enables the IPO to rapidly respond to evolving markets and stakeholder demands, to marshal its resources for the long term, to adjust fees to account for the costs of performing services, to self-manage operations with confidence, to incentivize positive interactions with stakeholders, and to buffer itself from the politics and variability of funding coming from other organs of government (as compared to those that are required to fund their operations as when government organizations mandate financially dependent IPOs to collect more fees in order to fund other government priorities). Whatever funding approach is adopted, the IPO of the Future will put in place mechanisms enabling it to weather the up-and-down cycles of incoming IP applications, to ensure it has sufficient funding and resources to accomplish its mission, to obtain supplemental funding quickly if needed, and to manage excess funding as appropriate.

That being said, while having some degree of financial autonomy is important for an IPO to achieve financial sustainability, it is recognized that there are other strategies, as described in the subsequent chapters, that may be deployed to contribute to an IPO's financial sustainability.

IPOs have several common features and statutory duties that involve responsibility for strategic financial management. One such responsibility is to ensure financial sustainability for both the short- and long term, which is crucial so that IPOs can serve stakeholders in an ever-changing global IP environment. While financial models vary by jurisdiction, to remain financially sustainable and to fulfill their statutory mandates, IPOs must have a certain degree of financial autonomy along several key dimensions, including maintaining independence of statutory decision-making; operating in a self-contained system; managing over the length of a business-cycle; and being responsive to shifts in client demand. Financial autonomy enables a more effective IPO operating and management paradigm. Financing the statutory mandate across an entire business cycle or across fiscal years allows for financial certainty.

Maintaining Independence to Deliver on Mandate

IPOs operate under statutory authorities, requiring regulatory independence, free from real or perceived influence. Financial autonomy is crucial to avoid any unintended control or influence that may affect an IPO's ability to carry out its responsibilities. Attenuated financial autonomy can introduce inadvertent control or influence on the ability of IPOs to exercise their fundamental statutory responsibilities. For instance, requesting permission to spend fees or short-term financial constraints to address external, economic priorities may hinder an IPO's ability to invest in productive capacity, capital equipment, policy development, and international collaboration, thus affecting its long-term ability to deliver on its obligations.

Operating in a Self-Reliant System Independent of Other Government Priorities

The IP system, particularly patents, incentivizes research and innovation through the disclosure of information. This disclosed information also increases transparency in the marketplace and helps actors understand their freedom to operate. In the first instance, however, a patent and other forms of IP confer a private right to owners. As such, charging applicants the full IPO administrative cost for IP rights recognizes the private benefit and thus reduces or eliminates taxpayer burden. This self-contained system justifies the establishment of an autonomous operational model with a degree of independence from external, public-sector influences.

Managing Funds on a Multi-Year Basis Over a Business Cycle

Autonomy allows IPOs to marshal resources for the long term. IPOs are likely distinct, self-sustaining organizations that provide stakeholder services. IPOs benefit tremendously from a multi-year focus for revenues and expenditures. While surpluses or deficits may occur from year-to-year, these are expected to balance over a business cycle, providing the flexibility needed to deal with changes in the level and timing of revenue receipts, and expenditures, and manage substantial capital investments. Operationally, many IPOs receive revenues in advance of performing duties, sometimes for several months if not years. This puts an IPO in the stewardship of unearned revenues and can be a liability for future service. Some IPOs also accumulate surpluses to make long-term infrastructure investments that are amortized over multiple years. In light of this multi-year operational environment, an accrual basis of accounting is used for financial management, and this is largely unique for public-sector organizations. This multi-year operational environment also justifies the need for autonomy to appropriately manage across the entire business cycle.[1]

Responding to and Serving Market Demand

Autonomy in financial planning allows IPOs to self-manage very complex operations, ensuring that revenues remain commensurate with the costs of performing services and that resources can readily and effectively be deployed to rapidly respond to evolving markets and evolving stakeholder demand. Operating in rigid financial appropriations structures may not allow for responsiveness to market demand fluctuations. Revenues and expenditures must be closely related. This means that if demands are unexpectedly high, higher service levels and expenditures will be financed through increased revenues. The reverse is also true: a decline in demand is expected to reduce expenditures and revenues. It is important to note that supply and demand do not adjust instantaneously. Given that capacity building requires significant lead time to ensure that employees are trained in a highly technical area, expenditures and investments must adequately precede increased demand.

Recognizing the Counter-Cyclical Nature of IPOs

In times of economic downturn, there is often a general constraint in government finances, and IPOs are asked to equally reduce expenditures. While this solidarity for reductions across government may seem astute, the interests who would be adversely affected are those who have already paid for services. As such, short-term demand for austerity measures may lead to long-term negative implications. Finally, maintaining capacity through an economic downturn even if demand has temporarily tapered off allows IPOs to serve applicants that may be at the cusp of entering the market, helping these companies directly contribute to economic recovery. This also allows IPOs to reduce any unwanted backlog such that, when activity picks back up, the overall service standards, regarding how long it takes to deliver services, do not become longer than prior to the downturn. Also, given the amount of time it takes to hire and train examiners this activity needs to continue and be targeting the long-run expected demand profile.

Understanding Complex Production Models

The subject matter of administering IP rights has very complex production models that require a detailed costing knowledge and tracking to understand and forecast the various streams of income over the life of a patent. IPOs must develop the expertise to understand the net present value of patent applications already in stream and whether revenues generated will ensure that IPOs remain solvent. They must also be able to assign resources in a manner that anticipates demand shifts mid-

[1] https://www.uvic.ca/research/centres/globalstudies/assets/docs/publications/ExpenditureManagementLessonsLearned.pdf

stream in the term of a patent.

Ensuring Quality of IP Rights Provided is Paramount

High-quality IP rights offer a firm and reliable foundation for innovation and economic growth. Autonomy of the IPO plays a significant role in this context. Autonomy allows the office to maintain a focus on the quality of the IP rights it grants. It ensures that quality is not sacrificed as offices also pursue productivity, efficiency, cost controls, etc.

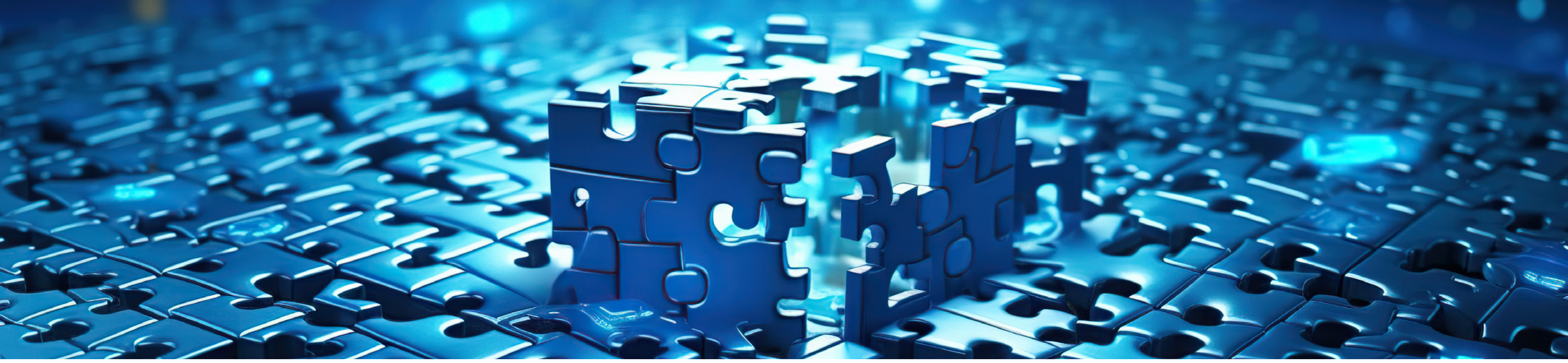
Ensuring Autonomy is Commensurate with Complexity and Risk

An IPO can better manage risk and complexity if it has autonomy in its financial management and fee setting. The less control an IPO has to manage cost changes or IP rights demand levels, the higher its fees will be or the more it must rely on the general taxpayer to manage its financial risk. The greater the complexity and risk an IPO is asked to manage, the more autonomy it should have in financial management to properly address this risk efficiently. If an IPO knows it is responsible to fund its own information and communications technology (ICT) project costs from the receipts from IP Rights applications/annuities, it will factor these costs into its long-term budget projections and account for these when setting fees. It is best to place the risk and the control in the same authority, for the most efficient and effective outcome.

Autonomy and Required Skills

The greater the complexity of the task assigned to the IPO, and the more autonomy and responsibility that is assigned to it, the greater the skill sets and accounting system requirements. The Head of an IPO must have access to the full range of skills needed to plan for the level of complexity and risk involved in managing the variability in demand. This is essential if fees are to reflect efficient and effective administration of IP Rights. The head of an IPO responsible for maintaining a healthy cash reserve, while running an office funded alone by the receipts from IP Rights applications and annuities, must have reliable economic projections available. Add the responsibility for planning long-term ICT investments and the head of office must have access to skilled senior staff in the form of CFO, CIO, Chief Economist, Chief Data Officer, and data scientists. There are many variables to consider, and many skillsets needed, to develop a sound strategy when setting fees.

In conclusion, as seen from the above, there is potential for some short-term, external pressures that may run counter to the effective management of an IP office. While applying robust financial management and accounting practices is vital for financial stewardship, transparency, and accountability, there is the potential concern of external pressure or overreach that may inadvertently limit the financial control or prioritize short-term, tractable performance measures over longer-term, more strategic or mandated outcomes. For some IPOs, this is a continual tension the much-needed financial autonomy outlined above and external pressures. The level of risk taken on by an IPO for the financial sustainability of the office must be matched by suitable autonomy in managing revenues and expenditures.



Chapter 3: The Strategic Components of fees

This chapter addresses IPO fees, taking into consideration different IPO financial models, and addresses the strategic components of fees. Some of those components are further studied in other chapters as well. Many factors explored throughout this Report inform how an IPO can structure its fees, which represents the IPO's greatest challenge in the area of budget and finance. Key considerations include the following:

How reliable are fee estimates?

- Filing rates for patents and trademarks are subject to the economy. Specifically, during a recession, filings and registrations typically go down. But, if fee adjustments take more than one or two years for an IPO, the operating reserve can become a critical issue, since the IPO cannot adjust quickly and can easily spend more than it collects.

How large should the operating reserve be?

- Based on general accounting practices, an IPO's reserve should cover the immediate cash needs of the IPO and account for the funding model and magnitude of liabilities such as leave balances carried by staff, supplier payables, and the like. One IPO surveyed suggests that a reserve on the order of three-four months of operating revenues is required, but this may equate to a very substantial sum, which may require significant engagement with the user community and other parts of the government.

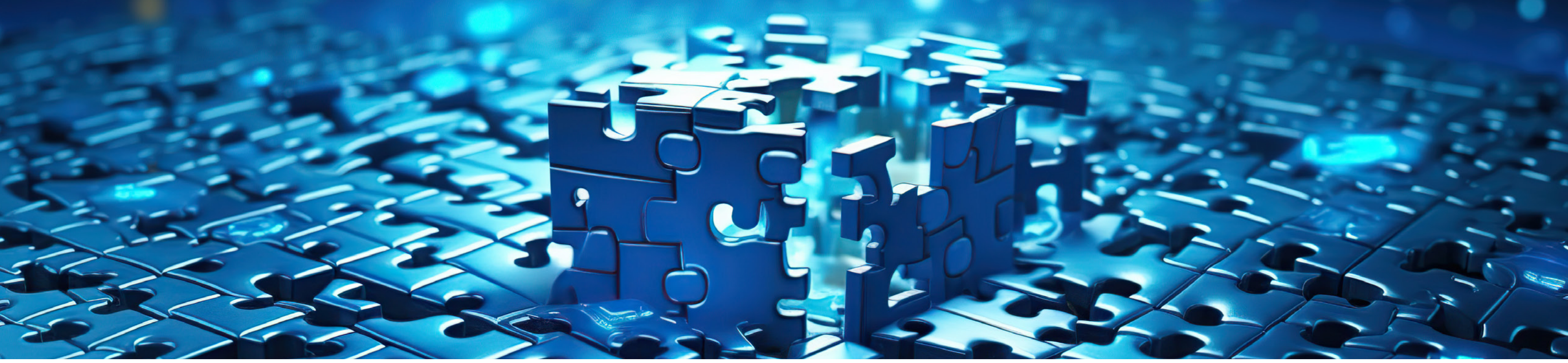
- A best practice among IPOs surveyed is to apply a risk-based approach to defining the size of an IPO's operating reserve. For example, a likelihood and consequence calculation can be applied to revenue and spending risk factors that contribute to financial volatility and influence financing the IPO. Some of the risk factors are fee structure balance, percentage of fixed costs, and economic uncertainty. For example, the revenue forecast during the COVID-19 pandemic was or even has been volatile. A best practice would be to increase the minimum operating reserve thresholds to mitigate the risk of a revenue shortfall not predicted by the econometric forecast. As volatility recedes, minimum thresholds would be reduced.

How much money should be invested in information technology annually?

- Information communication technology is the largest expenditure after salaries for many IPOs, and the "needs" are seemingly endless as technology evolves, new tools become available, and the evolution of cybersecurity and its related threats continues. Upfront and maintenance costs can be substantial and challenging to explain or to justify. Likewise, while automation and new tools may help improve the overall quality and efficiency of executing statutory duties, this may raise concern should it also result in reducing certain staff. Other important strategic questions include: how would ICT provide better service to clients; how much should be spent on new technologies like AI when fees collected are technically attributable to the cost of examining applications; and, how much should be invested on legacy systems to avoid fatal errors or cyberattacks? It is also important for Offices to develop long term ICT investment roadmaps that go beyond annual budget cycles and maintenance.

What level of autonomy should an IPO have in fee setting?

- Some fundamental questions include: Who manages the review and approval process for setting fees, and how are changes implemented? While full autonomy would be preferred, it is unlikely. Most IPOs require consultation with lawmakers and stakeholders as part of the fee setting process. Autonomy in fee-setting, or in what the quantum of fee changes should be, and the regularity of the process, is closely tied to the issues of access to funds and capital costs, discussed below. The issue is more often one around mission fit, IPO financial management acumen, and transparency, as well as IP application volumes and the regulatory settings within the government. The more financial acumen and transparency an IPO has within the system, the more autonomy it is likely to be granted.



What are the cost recovery rules?

- Is there a requirement to keep funds separate between office functions? The cross-subsidy issue is discussed below, but it is important to note that a subsidy can work across IPRs—for example, higher trademark fees to pay for a larger patents examination workforce. Or a subsidy can work across time—for example, lower application fees and higher annuity fees. The broader policy discussion on cross-subsidy is explored below.

Do the applicable laws and rules allow for fee subsidies?

- Is the IPO able to charge different fees for different applicants? Some IPOs do not permit fee subsidies, maintaining uniform fee structures for all applicants. Other IPOs might allow fee subsidies or discounts for certain groups on a case-by-case basis, such as for small and medium-sized enterprises (SMEs).

What level of access does the IPO have to the funds raised?

- Some IPOs are funded through a mix of general taxation funding and receipts from applications or annuities for IPRs. The general taxation funding requirements are set by the central government and tend to be less flexible and not reflective of changes in demand for IPRs, set instead as part of a fixed annual budget cycle. ‘

- Some IPOs are able to retain annual surpluses for use in future financial years, or to offset subsequent operating losses and even to fund capital investments. Some IPOs have full access to all revenues received and surpluses or deficits may be carried over several years in a normal business cycle. Some IPOs are funded entirely from receipts from applications or annuities for IPRs and still lack autonomy because an authorization is required as a part of a fixed annual budget cycle to spend fees collected. If funded directly from receipts, an IPO is more likely to link available funds to the future level of demand for IPRs.

Should lifecycle fee structures be retained?

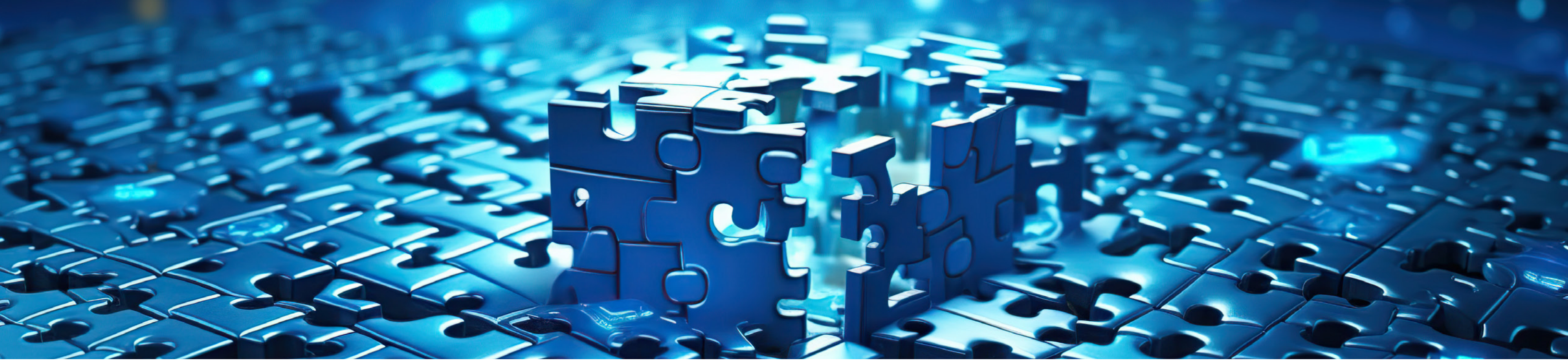
- The existing fee collection model that includes fees across the patent and trademark lifecycle (application, examination, issuance, and renewal) is a proven, successful model that should be retained. It provides the necessary financing for IPO operations, without being prohibitively expensive up front. Fees can be adjusted across the lifecycle to provide for maximum financial certainty and to mitigate risks from financial volatility.

Can IPOs manage fees to avoid gaming?

- IPOs need to carefully manage fees to prevent gaming or abuse of the system. This involves setting fees at appropriate levels to discourage strategic behaviors, such as filing unnecessary applications or excessively dividing claims. Regular monitoring and adjustment of fees, coupled with effective enforcement mechanisms, can help deter gaming and maintain fairness in the IP system.

What is the concept of value-based annuity fees?

- This is a system where annuity fees are set based on the value of the protected product. This approach aligns the costs of maintaining IPRs with the value derived from them. The concept of factoring the economic impact and value creation associated with IP into its maintenance cost can provide a more equitable fee structure.



Can high-administration-cost fees be eliminated?

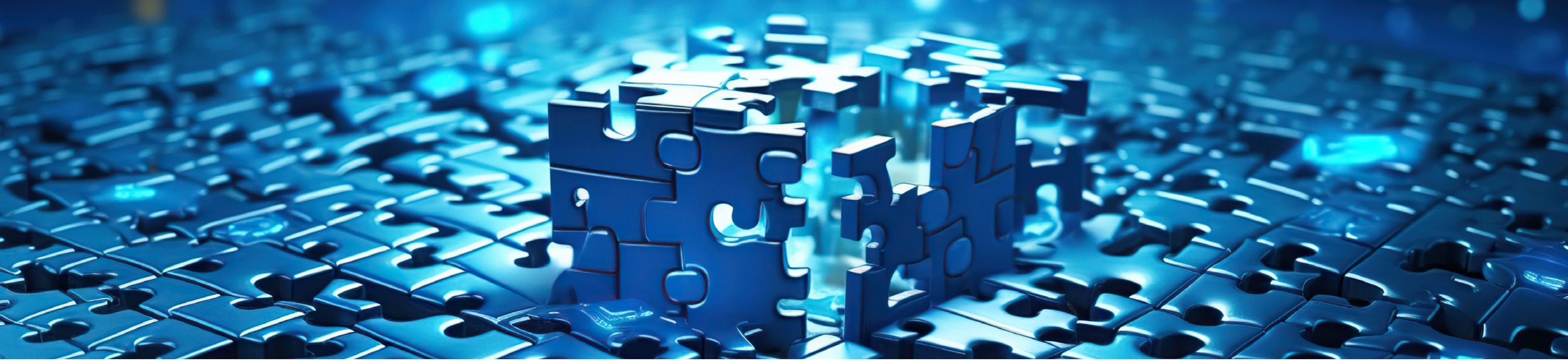
- It is essential for IPOs to regularly review and assess the administrative costs associated with specific fees. When the cost to administer a fee exceeds the fee itself, it becomes necessary to reevaluate its relevance and consider its elimination. This ensures that fees remain aligned with the actual costs incurred by the IPO, enhancing transparency and efficiency.

- IPOs should regularly review fees to ensure they are aligned with their justification and reflect the costs and value associated with the services provided. Keeping fees current and regularly evaluating their appropriateness helps maintain a fair and appropriate fee structure, supporting the long-term sustainability and effectiveness of the IPO.

How can IPOs benefit from electronic payment of fees?

- The adoption of electronic payment systems can streamline fee collection, enhance efficiency, reduce administrative burdens, and provide greater convenience to applicants. However, consideration should be given to data security, accessibility, and ensuring that electronic payment methods are inclusive and accessible to all users.

In conclusion, effective fee management is a critical aspect of the future of IPOs. Considering factors such as autonomy, subsidy management, gaming avoidance, price sensitivity, value-based fees, administrative costs, electronic payment, cross-subsidies, and regular fee reviews can contribute to the successful operation and fulfillment of the IPO's objectives.



A Focus on Strategic ICT Investments and the Importance of Autonomy to Achieve Success

ICT investments and other large, long-term, and risky investments can be thought of by IP offices as being in a unique category. They require multi-year funding, strategic explanation, express "change initiative" leadership (including communication), preparing of stakeholders regarding the possibility of unexpected events (including delays, overruns, false-starts, setbacks). To optimize these strategic investments, the IP Office of the Future will put a specific focus on them, ensuring strong ongoing management and communications.

The management component of a strategic investment includes regular reviews (at least monthly, sometimes referred to as "cadence meetings") with the senior most leader of the Office, including that leader's active engagement and responsibility for the success of the project. It also includes putting full-time operational leadership in place, whose entire job it is to make sure the project stays on schedule, has the resources it needs to succeed, and uses those resources effectively. It is also the operational leader's job to "sound the alarm" if anything goes wrong, and to flag small misses proactively while they can be corrected, rather than waiting until small misses become big ones that are much more difficult to fix. The role of both the senior-most leader of the office, and the operational leader of a strategic investment, can be analogized to that required to bring about culture change to the IPO, and the culture-change component of strategic investments should not be under-estimated. Often such investments fail not because they are technically impossible, or under-resourced, but because the people who must adopt new behaviors required to benefit from the output of the strategic investment are not brought along through a change initiative that persuades them the new behaviors are worth learning and adopting in order to obtain the benefits of the strategic investment. This "people factor" is key, and present prominently in most strategic investments.

The second part of the IPO of the Future undertaking a strategic investment is the communication component. This again requires the regular and active involvement of the senior leader of the IPO, to set the tone, envision the key communication messages, help craft the narrative, and communicate the narrative regarding the investment—what it is about, why it is important, how long it will take to complete, what is being done to ensure it succeeds, how much will it cost, why the investment is "worth it". Only the senior leader of the IPO can do these things; they cannot be delegated. However, the operational leader of the strategic investment must marshal the communications resources of the IPO to handle the details of messaging, ensure it is relentless and consistent as inevitably required to reach all appropriate stakeholders.

Communications in connection with a strategic investment should be as transparent as possible, and as timely as possible. Especially when the communication involves bringing a problem to light—funding overruns, schedule delays, failures, etc. Explaining the issue is much less problematic when there is not also a need to explain why the issue wasn't surfaced earlier, or why it was not explained more objectively. Communications also must take into account all applicable audiences—senior members of the government, ministries of oversight or influence, the business community having interest in the work of the Office, user groups such as attorneys who interact with the Office and the organizations that represent them, individual users of Office services, including especially under-represented groups and users who are the most likely to miss the communication if not specifically targeted, and the most likely to be adversely affected.

Chapter 4: Identifying Trends and Anticipating Economic Cycles

The IPO of the future must be more than a passive administrator of intellectual property rights, but also an active participant in identifying market and industry trends and anticipating emerging industries. This requires a deep understanding of technological, economic, and societal trends, as well as an ability to forecast how these trends might influence the demand for and usage of intellectual property rights.

Forecasting with Internal Production Dynamics

IPOs work to forecast applicant behaviors regarding such actions as keeping patents in force along the entire patent life span. For IPOs that collect annuities, the longer the patent is in force, the greater the revenues received by the IPO. At the same time, many IPOs share the policy of maintaining a low barrier to entry. In other words, the IPO charges less than it costs to examine an application, thereby “losing” money on every application, regardless of whether the application is from a large, small, or micro entity. The premise is that successful applicants will supplement the cost with issuance and annuity fees over the years that follow grant of the patent.

To ensure that an IPO fully recovers its costs, it is imperative to maintain a fee structure that balances applications with grants. For example, if the number of IPR applications suddenly increased by 10 percent in a year, while the number of IP rights in force declined by the same percentage, the IPO would find itself out of balance in a situation where a revenue shortfall is created for that year. There would be fewer fees collected for the patents at later stages of their life cycle to offset the costs of the additional applications. Similarly, if the applications are allowed at a rate significantly different than forecasted, the IPO would find itself out of balance.

Of course, if the scenarios above were to occur in the opposite direction, the IPO would see a surplus quickly develop. Any surplus fees that are not spent each year may go into the IPO reserve if the IPO has such a mechanism. The applicant communities and certain governmental agencies or departments may have concerns regarding this reserve. So it is likely the IPO cannot operate a fee structure out of balance for long without sentiment for lower fees being expressed. The autonomy to adjust fees to mitigate these scenarios is an important element for maintaining sustainability in a dynamic environment.

Given the complexities associated with forecasting the dynamic operating environment, it is also important to prepare business break-even analyses isolating aspects of the fee structure to understand solvency given certain demand behaviors. For example, understanding the break-even point for maintenance fees and then using a sensitivity analysis to set thresholds for when the renewal rates are problematic with regard to solvency helps to understand the risks with the fee structure balance.

Forecasting with Evolving External Economic Drivers

It is challenging to forecast overall demand in the best of circumstances, and new or compounding factors may throw off an otherwise effective forecasting model. For example, traditionally, trademark filings are closely linked to changes in gross domestic product, however, this trend did not materialize during the COVID-19 pandemic given government stimulus spending and the demand by trading platforms for users to prove their trademark ownership. Patent trends are even more difficult to predict and are driven by a multitude of pipeline factors and other innovation-ecosystem conditions.

Understanding Dynamics Across Applicant Cohorts

During a recession the number of patent applications does not immediately fall with decreases in GDP; this is primarily because research has already occurred and inventors are working with their IP attorneys to complete their applications and there are IP applications in the pipeline. Only after that pipeline starts to deplete, in one or two years, will applications potentially taper off. This is why patent applications are seen as a lagging indicator of economic downturn. However, the payment of maintenance fees (annuities) is a more accurate indicator of economic downturn, because patent owners, facing economic pressure, often cull their portfolios. Further, while maintenance fees are responsive to the downturn, a harmonizing factor is the continuous growth in the size of patent cohorts. Therefore, the decline in renewal rates tends to be slow over the course of 18- to 36 months, yet overall maintenance fee revenue may not decline as it is offset by the growth in the size

of patent cohorts. The calculus becomes even more complex as there are, essentially, 20 cohort years of patents advancing through the system at any given time, and sensitivity differs between early term patents and those closer to their 20-year anniversary. Early-term patents hold hope and potential, while mid-term patents with less useful lives may be abandoned or its maintenances fees not paid if they are not performing. For IPOs charging higher annuity fees for older patents, patentees may prioritize abandonment of their older patents to achieve higher cost savings per patent. And finally, patents that are known by their owners to be in-use are more likely to be maintained for their full term regardless of macroeconomic conditions.

Dampening Perceived Short-Term Ebbs and Flows Versus the Longer-Term Economic Business Cycle

It is not uncommon for finances to fluctuate within a normal business cycle, where sudden changes in economic conditions or changes to rules may lead to an abrupt advance of unearned revenues or decrease in demand. Operating on a short-term or cash basis may make the finances look better or worse than they actually are, leading to short term decisions that can have very severe reverberations on productive capacity, and can become difficult to manage. IPOs must maintain a long-term view to dampen perceived ebbs and flows of revenues.

Financial Implications of Fluctuating Demand

Anticipating Demand for IP Rights has Direct Implications on Financial Planning

The ability to estimate demand for IPR filings and annuities is critical in financial planning for an IPO. It drives resource allocation decisions and related costs. Self-reliant funding models are intrinsically linked to fee setting. In simple terms, higher demand for IP rights will require increased levels of search activity, increased office actions, and higher staffing costs (depending on pendency policy, existing backlogs, etc.). The rate at which direct costs (e.g., staffing) increase is influenced by the size and duration of increases in IPR demand. Indirect costs (office space, fixed ICT costs, corporate support costs) may not increase but these costs must be factored in when setting fees. If demand volumes are estimated too low, these fixed costs may be over-recovered (higher surpluses); if they are too high then these fixed costs may be under-recovered (higher deficits).

Cost Control:

An IPO's costs are not always controlled directly. An office might consume support services from elsewhere in the government at prices that are set outside the IPO. Search software costs might be set internationally and not negotiable. Staff costs may be set outside of the IPO and vary by market. Similarly, procurement strategies may be set by the Government which outlines how an Office should operate when seeking new equipment, or searching for professional services. While demand levels will impact on costs (higher application quantities should mean higher costs), there are many other variables outside of the control of an IPO. It is important to note that even if an IPO has fee setting power, if these costs do not change as demand changes, they will simply have to be passed on to the applicant directly or accumulated surplus of funds will have to be depleted. For example, an IPO that manages its own corporate support functions will see economies of scale over time as demand grows and might pass these savings on to users. Likewise, an IPO that can invest in more efficient software might pass savings on to users. If these factors are beyond an IPOs control it will simply have to pass costs through to IPR applicants.

Financial Buffer for Variability

To account for the variability in demand for IPRs, an IPO should have access to funds in the event and to the extent they may be required. If demand falls and fee receipts fall there should be funds held in reserve to maintain business operations. The buffer can take several forms, including access to funds from government or reserves retained by the IPO from previous surpluses if this is allowed in the funding model. Such access to funds is essential if an IPO is to set realistic fees to cover expected costs. If there is no reserve funding available, an IPO will be inclined to charge more in its fee settings to offset the risk of low cash reserves. The reserve funds allow for a multi-year budget view that can lead to more efficient fee setting over time.

Skills and System Costs

Predicting and proactively adjusting for economic change requires skill sets beyond the traditional Chief Financial Officer role. Required roles include a Chief Economist, Chief Data Officer, and data scientists. The sophistication of budgeting and accounting systems must increase to support scenario analysis and allow for the testing of assumptions and corrections to budgets.

Chapter 5: Cross Subsidization

IPOs have a stable mandate, identifiable stakeholder groups, and their operations are partially or fully financed through user fees. Common among IPOs is a clear mandate to ensure that applicants can get to market in a timely manner that is meaningful to them, and, that they have quality rights to enter the market with confidence. In addition to this core duty, IPOs perform a range of other tasks, including quasi-judicial functions, regional and international administrative activities, international coordination, enforcement support, investment in IT infrastructure, policy development, education and support for other innovation agencies. Some IPOs also offer awareness and education services to applicants and potential applicants to help them determine whether to seek IPRs, and to understand the process of seeking IPRs. Other IPOs go further, to undertake ancillary activities such as training in how to effectively use IP in the marketplace or how to enforce rights.

In the most fundamental view, fees collected for costs to confer an IPR should be used solely for that purpose, and cross-subsidy should be avoided. But on a more studied view, there are many types of cross-subsidy to consider, where some are actually integral to the delivery of rights.

- There is inherent cross-subsidy over the life cycle of IP, where an application fee is set deliberately lower than costs to allow for entry into the system and costs are recuperated over time through maintenance or renewal fees along the full lifecycle.

- Financial sustainability could be improved if an IPO had the ability to lend money between areas of the IPO that process applications for different types of IP. A loan is not considered a subsidy, it is a financing strategy and a liability to the recipient (and an asset to the lender). A loan is repaid, it is not a gift, subsidy, or augmentation. Loans from one IP right area to another would be a helpful tool for the autonomous IPO to manage the varying business cycles and mitigate short-term revenue volatility. One could think of it as an accounting flexibility within the IPO that could be transparently managed and reported to alleviate subsidization criticisms.

- IPOs serve stakeholders that often seek a comprehensive suite of IP protections. This diversity in IP requirements underscores the desirability of IPOs maintaining a flexible budgeting approach. Such an approach allows the movement of funds across different IP categories, accommodating fluctuating demand. For instance, a surge in design right applications might necessitate the temporary redirection of funds from patent or trademark departments to handle the increased workload in the design area. Additionally, this fluidity in resource allocation can be employed to broaden the range of services offered by IPOs. Funds can be channeled towards crucial supplementary services like educational programs and awareness campaigns, which aim to improve stakeholders' understanding and navigation of the complex IP landscape.

- In some instances, there is cross-subsidy between general applicants and users of opposition, appeal, and other quasi-judicial processes as some IPOs deliver these activities below cost. This cross-subsidy can be justified because some quasi-judicial functions would be prohibitively expensive if offered at cost, and if not resolved by the IPO this could either lead to a denial of justice or a clogging of superior courts. Also, these internal, quasi-judicial functions are available for all applicants. This is called an option demand and is of value to all applicants regardless of whether or not they avail themselves of this service; having an option available justifies that all applicants contribute a portion to this service.

- Some IPOs have a policy imperative to cross-subsidize for the benefit of small and medium-sized enterprises or to support public research organizations or universities through a lower fee structure for such entities. Other IPOs go further, providing lower fees in select areas for "green" patents, or patents from underrepresented groups. To fulfill this type of cross-subsidy, the appropriate policy justification, regulatory provisions, and national treatment considerations are required.

- Revenues may be used for raising the awareness and knowledge of applicants and potential applicants as to whether to seek IP protection, how to seek IP protection, and how to effectively use IP once acquired. Some of this activity is justified on the basis that it improves the quality of applications, and thus the efficiency of IPOs.

- At times, there is pressure from other government organizations to either tax IPO reserves or ask IPOs to overcharge fees to contribute surpluses to other government purposes. Ultimately, this pressure becomes a burden and tax on the most innovative members of society, which runs counter to many other policies to fuel innovation and entrepreneurship.

Financial Implications of Cross-Subsidies

Cost Recovery at the IPO Agency Level

Ideally an IPO can manage its budget at the whole office level, where if there is a need for a subsidy between the areas that process different IPRs it is allowed. For example, an office may want to keep entry fees for the Designs system very low and offset some of the costs in administering the system from Patents receipts. This is often the case when the demand levels for the different IPRs differ dramatically within a country, and there are fixed support costs within the IPO that support multiple IPRs. The mandate of separate funding or receipts can create complex accounting and systems issues (see below).

Operating Costs and/or Capital Investment Costs

The complexity of the accounting system requirements increases greatly where multi-year capital investments are to be funded while maintaining cash reserves that fund both operating and investment activity. Funding multi-year software projects in the ever-changing ICT environment faced by IPOs is hugely complex (referring in this instance to search system replacement, IPR administration systems integrated internationally (including to WIPO for payments), and cyber security requirements). It is ideal for an IPO to fund its costs from a single source but, in practice, this likely is not possible, and the complexity of real-world financing requires mature accounting systems and skilled personnel to enable cash management to ensure sustainable finances with variable demand for IPRs.

Mix of Taxpayer Funding and IP Rights Fee Receipts

Adding the issue of subsidies between general taxpayer funding and the respective IPRs adds even further complexity. In some jurisdictions the expenditure rules are very different between these funding sources. As the requirements for separation and accountability for funds increase, the complexity of system requirements increases. A full activity-based costing system may be required to maintain the separation of funding and enable reporting to stakeholders.

Cross-Subsidy: A Focus on Under-Represented Groups

In the last decade, IP offices worldwide have come to appreciate the significant need to develop outreach, education, and services especially directed to those who may face barriers to the IP system in view of factors including lack of economic resources or lack of awareness. Much progress has been made, but much remains to be done, and IP offices have come to appreciate that bringing under-represented groups “into” the IP system is a long-term challenge requiring sustained programs, long-term thinking, dedicated focus, and patience, as well as a willingness to try new approaches. Moreover, IP offices have come to recognize that every country, no matter how developed, has under-represented groups, whether based on gender, race, ethnicity, age, size of organization or other factors.

Providing additional services for under-represented groups may require cross-subsidization—the use of funds paid into the system by some parties, for the purpose of providing services to others. While there is generally strong support for IP offices making such investments, care is required to ensure these investments are well-used to pay the sought-after dividends in enlarging access to the benefits of intellectual property. As with other strategic investments, transparency and strong communications will go a long way in ensuring strong support from stakeholders, and success for these initiatives. Moreover, certain best practices have become apparent or are emerging in some countries:

- **fee discounts offered by the IP office.**
- **cooperation with other agencies that promote innovation, to find people in need of help, and to offer services that go beyond just IP filing assistance.**
- **national pro-bono TM and patent filing, prosecution, and appeal assistance initiatives.**
- **youth education programs targeted where under-represented populations will have the most awareness and access.**
- **IP programs educating about types of IP and how people can protect their ideas, products, or brands.**

Chapter 6: Financial Sustainability for the IP Office of the Future

In addition to the importance of financial autonomy and the challenges faced on a day-to-day basis or during normal business cycles, IPOs also need to build a financial structure that is sustainable, robust, and nimble enough to weather economic instability or evolve to pursue opportunities that had not been contemplated in their present design or mandate.

The pace of global, technological, economic, and societal change is accelerating and evolving in sometimes unforeseen ways. These external changes test the strength of the IP system, the value of IPRs, and the ability of IPOs to serve current demand and evolve to serve future requirements. Environmental scanning of changing factors and conditions is critical for IPOs, allowing them to keep abreast of external and internal factors that may affect operations and priorities. Key game changers include shifting policies and priorities, intergenerational preferences, diversity goals and access to the IP system, disruptive technologies, the rise of private IP rights, evolving IP sentiment, operating in the metaverse, evolving to a virtual workplace, and the resultant need to build new financial management skills in the organization.

Continually Shifting Policies and Economic Factors

Outside the relevant range of economic and policy activity discussed above are a number of factors that can profoundly affect demand, revenues, and operations, including: changes in the manufacturing base or offshoring that drives demand; changes in international rules and treaties that affect applicant behavior and composition of applications; trade disputes that disrupt supply chains; court decisions that affect applications, patentability, or the level of effort required by IPOs to complete their work; cyberthreats that may require immediate and substantial investments to prevent catastrophic disruptions and maintain operations; and global pandemics that can dramatically and instantly shift operations.

Intergenerational Preferences for Formal IP May Shift

Conceptions about IP subject matter, substantive and formal requirements are evolving and challenging the traditional views regarding the demand for and exercise of IPRs. This could have a profound effect on demand for formally examined IP rights in the coming years.

Diversity and Access to the IP System

There has been a fundamental shift to ensure that IPOs themselves represent the society they serve and changing social values affecting internal hiring and retention strategies. Beyond diversity, equity, and inclusion (DEI) concerns with regard to the IPO workforce, DEI has become key in assuring equal access to the IP system, a role that goes beyond traditional approaches for raising awareness and ensuring systems are not biased for or against underrepresented groups.

Disruptive Technologies

Artificial intelligence and other disruptive technologies often operate in areas where the regulatory environment is uncertain, and current IPO structures may not readily facilitate their deployment. For many jurisdictions, applicable IP laws pre-date the Internet, calling into question whether such laws remain fit for purpose. Depending on how policies evolve, pent-up demand can itself be disruptive.

The Rise of Private IP Rights

IPOs must consider how private IPRs supplant or complement formal IPRs. Indeed, in response to the exponential growth in online retail, some companies have created private IPR systems in which IPRs are issued and enforced online based on private contractual exchanges. This could affect traditional IP demand, revenue, and IPO operations.

Monitoring Evolving Sentiment and Preferences

Anti-IP sentiment evolves and can be disruptive in times of crisis. Striking the right balance between competing interests is challenging, and there will be instances of undue pressure on governments, as well as misuse, underuse, or overuse of IP by IP owners. Practices such as patent "trolling" or trademark "squatting," have exacerbated the situation and have generated anti-IP sentiment. Gauging sentiment is critical to understanding potential impact on demand and revenues.

Tracking Decreased Strength of IP Rights

Where jurisdictions take affirmative steps to weaken IP rights, one result is likely to be reduced use of the formal IP system and, with it, reduced requests for services from applicable IPOs. By the same token, where rights are strengthened, greater use of IPO services may be expected.

Digitization and Operating in the Metaverse

The COVID-19 pandemic acted as an accelerant to digital transformation. The launch of virtual platforms such as the metaverse may challenge use of IPRs in a virtual space. This shift to virtual platforms may have profound effects on demand levels for IPRs and types of demand. Therefore, IPOs must consider their role in staying abreast of developments and informing users regarding IPR protection in the virtual space.

Leveraging Virtual Operations

For IPOs, the COVID-19 pandemic represented one of the largest external shocks ever. IPOs gained experience in working virtually during the pandemic, including technological advancement, maintaining quality and productivity in a virtual space, and introducing new work arrangements. Additionally, during the pandemic many IPOs experienced an unusual increase in the demand for their services, mainly in the trademark space, which led to an increase in the processing time of IP applications and controversies among parties. IPOs can use the lessons learned from the pandemic to create a workplace of the future, one that can access diverse talent from across domestic regions and meet new quality of life and work-life balance aspirations—all while maintaining or improving work-product quality and productivity. To be successful in the long-term, IPOs will need to be deliberate about establishing telework protocols, expanding channels for organizational communication, creating substantive opportunities to form relationships with co-workers, and understanding intergeneration work-preferences on production and output. While yet to be fully understood, the pandemic accelerated a shift of IPO operations that may have untold benefits and efficiencies, but also risks.

Building New Skills for the IP Office of the Future

Financial sustainability and strategic financial management go beyond traditional accounting approaches. IPO management teams need to build on the core competencies of accounting to include costing experts, production modellers, business analysts, economists, and data scientists. New skills are needed to provide IPO management with data analysis and decision-support expertise to offer a comprehensive picture of

- I the costing and production models upon which to anticipate revenues, which can be very complex and dynamic;
- II the macro economy, including external trends in demand;
- III the microeconomic view on effects on behaviors, such as price elasticities by type of stakeholder;
- IV forecasting expenditures to ensure long-term sustainability;
- V using big data and text mining to understand internal drivers of productivity and costs;
- VI conducting sensitivity analyses; building dashboards to track performance; developing micro-level control charts and early warning systems; and
- VII using social media text mining to track IP sentiment.

Chapter 7: Strategies for Changing Fees

While IPOs face different challenges and contexts, all are confronted with a rapidly changing global IP environment, demanding financial sustainability for the present and future. One of the major challenges facing IPOs is the time and effort it takes to change fees. It can take several years to change fees and receive enough revenue under the new fee structure to regain solvency; IPOs must have a sound strategy in place to remain solvent and continue to deliver on their mandates throughout the fee change cycle. One aspect of this strategy could include maintaining sufficient operating reserves to maintain operations during the time it takes to change fees. There are several considerations in developing a fee adjustment strategy, including starting early, containing costs until a fee change, choosing types of fees, ensuring international comparability, using fees to incentivize behaviors, engaging stakeholders, and collaborating with other IPOs.

Starting Early

There is never a good time to increase fees. From a political, societal, or stakeholder point of view, the broader system may not be ready to positively respond when an IPO requires a fee change. Even in the best of times, it is important to build in sufficient lead-time to adjust fees, perhaps with a window of several years. There may be competing and unanticipated external forces that stall the timing of fee adjustments—for example, a recession, a global pandemic, a change in governments, or a period of rising inflation. Still, it remains a good discipline for the IPOs to review their fees periodically where possible, given that the operating environment may change relatively quickly. Such a practice would allow the IPOs to better plan the fee changes in a more measured approach, which would in turn help the IP applicants to manage and adjust their IP budgets accordingly. In addition, planned periodic fee reviews would also support the IPOs' future allocation of key resources, such as those relating to manpower and ICT investments. It is thus important to plan for fee increases well ahead of structural or marginal losses taking hold. It is important to proactively raise the awareness of government colleagues holding purse-strings about the importance of stable IPO operations.

Containing Costs

IPOs must consider a range of contingency plans to employ while concurrently pursuing a fee adjustment process. There are risks to containing costs in the short-term, and while not optimal because of the long-term implications, short-term approaches to curb losses include:

- Reduce expenditures in non-mandated or non-revenue generating areas such as awareness activities, which can be seen as scalable up and down, however, this could have unintended implications on client services or benefits in the long run;
- Postpone capital investments in IT systems; however, this may introduce risks to existing systems or cause higher expenditures in the future;
- Temporarily loaning funds between areas of the IPO that process applications for different types of IP f could be used as a financing strategy. It would be considered a liability to the recipient (and an asset to the lender). Loans from one IP right area to another would be a helpful tool for an autonomous IPO to cover revenue shortfalls during the time it takes to adjust fees. One could think of it as an accounting flexibility within the IPO that could be transparently managed and reported.
- Seek temporary funding from other sources; however, this bridge financing would need to be paid back, potentially with interest, through higher future fees; or
- Cap the number of employees, delay hiring to fill open positions arising from attrition, or reduce capacity and level of service provided to applicants; however, this will result in growing turnaround times and backlogs, to the detriment of paying applicants and ultimately society.

Choosing Types of Fees

Fees can be established to serve several purposes, and each approach may be palatable in different circumstances. One approach is to increase fees to cover inflation from the time of the previous adjustment; this is relatively straight-forward, where the focus is on inflation applicable to IPO costs, such as wages, property lease rates, and capital investments. A second approach is a fee structure with changes meant to incentivize a certain behavior or introduce a broader policy or trade initiative; this requires an appropriate policy basis and can also require extensive justification. A third approach to fee adjustment is based not on cost but on the value of the IP right, sometimes called a regulatory fee. The amount of a regulatory fee can be challenging to set and difficult to justify. A fourth approach to fee adjustment links fees to a proportion of overall inflation rates which can be indexed automatically on set intervals. This last type of fee adjustment offers considerable certainty in helping to future-proof IPOs. A fifth approach to fee adjustment re-adjusts the “front-end” and “back-end” balance of the fee structure when applicant filing behaviors or owner renewal behaviors are different than originally assumed during a previous fee adjustment. Each of these five approaches to fee changes should be considered in developing a comprehensive proposal; the combination of fee types may affect the overall level of effort required.

Ensuring International Comparability

Many IP applicants operate in multiple jurisdictions. For some jurisdictions, cross-border filings represent the majority of applications, and fee rates must consider the fees charged abroad by other IPOs. Benchmarking across jurisdictions can be a valuable tool to set the context for stakeholders. In making this comparison, it is important to recognize that some offices are considered offices of second filing, may serve different sized markets, or may have different service standards for timeliness and quality. As such, there is naturally variability in fees across IPOs.

Incentivizing Behaviors

Setting and generating fees can involve certain IP policy considerations, and as such, requires appropriate policy justification when fee levels or structures are changed. It is important to understand how fee rates, changes in fees, and fee structures incentivize and affect applicant behavior. Fee changes should not discourage innovators from entering the IP system and may even be used to encourage small and medium sized enterprises (SME), public research organizations or universities, or other specific stakeholder subgroups to seek IP protection. In addition, fee changes are not necessarily all about fee increments, as the IPOs may reduce or remove fees that are no longer required due to changes such as new IP legislations or processes. Furthermore, IPOs may offer cost savings to the IP applicants where relevant. For example, IPOs may do so to encourage more IP applicants to use digital platforms or tools to file for their applications, which in turn reduces manual back-end processing efforts and costs. IPOs are well placed to understand the IP market and have first-hand experience with how fee or regulatory changes can have profound effects on behavior within the IP ecosystem.

Engaging Stakeholders

Ensure appropriate consultations with stakeholders to validate fee adjustments and determine the level of overall support. This can aid in setting the appropriate timing and level of adjustments. Stakeholder support could increase if it can be shown that the increased fees will lead to decreased turnaround times, decreased backlogs, improved applicant/client service, and increased quality of IPO services.

Collaborating with Other IPOs

A critical form of engagement is collaboration with counterpart IPOs, to validate assumptions and to understand recent experiences in fee-setting, benchmarking costs and overhead, and stakeholder reactions. Given that IPOs have unique operational conditions, there are often very few domestic government organizations against which to benchmark, so benchmarking against other IPOs provides a valuable comparison to help validate fee changes.

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