

WIPO



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FINAL TEXTS OF PROPOSED AMENDMENTS TO THE CONVENTION
ESTABLISHING THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

Document prepared by the Secretariat

Introduction

1. At their meeting in September 2002, the Assemblies of the Member States of WIPO adopted the three recommendations submitted to them by the WIPO Working Group on Constitutional Reform. The three recommendations are: (i) the abolition of the WIPO Conference; (ii) the formalization in the treaties of the unitary contribution system and the changes in contribution classes that have been practiced since 1994; and (iii) a change in the periodicity of the ordinary sessions of the WIPO General Assembly and the other Assemblies of the Unions administered by WIPO, from once every two years to once every year (see document A/37/14, paragraphs 291 to 301).

* Please note this document was previously issued as A/38/2.

2. In order to implement the decision of the Assemblies in respect of the three recommendations mentioned in the preceding paragraph, several of the treaties administered by WIPO would need to be amended.¹
3. The present document sets out final texts of the amendments to the WIPO Convention that would be necessary to implement the decision of the Assemblies. It is proposed that the said amendments be considered and adopted by the WIPO Conference and the concerned Assemblies at their meeting in September 2003.
4. Since the constitutional structure of WIPO results from common institutional provisions in all the treaties administered by WIPO (see, in general, document WO/GA/WG-CR/2), the present document needs to be considered in conjunction with document A/39/3 (“Final Texts of Proposed Amendments to the Paris Convention and other WIPO-administered Treaties”). The latter document sets out final texts for the implementation of the decision of the Assemblies in the context of the Paris Convention and the other WIPO-administered treaties that are proposed to be amended to implement the decision of the Assemblies.
5. In the ensuing document, the text of any modifications proposed to the WIPO Convention is clearly marked to show deletions, where text is proposed to be deleted, and additions in *bold italics*, where words in the original have been changed or new words inserted. To facilitate ease of reference and comparison, the Notes relating to each Article that is proposed to be amended reproduce the existing provision of the WIPO Convention in a clearly distinguishable box. A clean or unmarked version of the text of the proposed amendments is also reproduced in the Annex to this document.

¹ The WIPO-administered treaties that are proposed to be amended in order to implement the decision of the Assemblies are: Convention Establishing the World Intellectual Property Organization (the WIPO Convention), Paris Convention for the Protection of Industrial Property (the Paris Convention), Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention), Madrid Agreement Concerning the International Registration of Marks (the Madrid Agreement), Hague Agreement Concerning the International Deposit of Industrial Designs (the Hague Agreement), Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks (the Nice Agreement), Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (the Lisbon Agreement), Locarno Agreement Establishing an International Classification for Industrial Designs (the Locarno Agreement), Patent Cooperation Treaty (PCT), Strasbourg Agreement Concerning the International Patent Classification (the Strasbourg Agreement), Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (the Vienna Agreement) and Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (the Budapest Treaty).

6. It is to be noted that a minimum of re-numbering in consequence of amendments has been effected in the proposed texts (for example, the Articles following Article 7 have not been re-numbered in consequence of the proposed deletion of Article 7). The Member States may wish to decide, if all amendments are adopted, that either (i) the text be systematically re-numbered, or (ii) the existing numbering be retained with the indication “[deleted]” next to the numbers where the whole text has been deleted.

[WIPO Convention starts on page 5]

**Convention Establishing the World Intellectual Property Organization
Final Texts of Proposed Amendments**

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Notes on Article 6

6.01 The Assemblies have decided to recommend the abolition of the WIPO Conference. The WIPO Conference, at present, comprises all States party to the WIPO Convention, whether or not member of one of the Unions administered by WIPO, whereas the WIPO General Assembly comprises, at present, only those States party to the WIPO Convention that are also members of one of the Unions administered by WIPO. *Article 6(1)(a)* seeks to implement in part the proposal to abolish the WIPO Conference by according to all States party to the WIPO Convention membership in the WIPO General Assembly (thereby suppressing, as a condition of such membership, that States be party to the WIPO Convention *and* member of one of the Unions administered by WIPO).

Article 6 of the WIPO Convention
General Assembly

(1) (a) There shall be a General Assembly consisting of the States party to this Convention which are members of any of the Unions.

(...)

[continues]

Article 6
General Assembly

[Proposed Amendment to Article 6]

(1) (a) There shall be a General Assembly consisting of the States party to this Convention.

(...)

[Proposed Amendment to Article 6 continues]

[Notes on Article 6, continued]

6.02 *Article 6(2)* sets out the powers and functions of the General Assembly. Those powers and functions will need to be modified as a consequence of the abolition of the WIPO Conference so that the General Assembly acquires the competences at present exercised (at least in theory) by the WIPO Conference.

6.03 *Article 6(2)(ia) and (vbis)* are new provisions that would introduce into the powers of the General Assembly the two independent functions at present exercised by the WIPO Conference, which would need to be re-attributed to the General Assembly as a consequence of the abolition of the WIPO Conference. The two provisions correspond to those which are found at present in Article 7(2)(i) and (iv) of the WIPO Convention.

Article 6 of the WIPO Convention

[continued]

(2) The General Assembly shall:

- (i) appoint the Director General upon nomination by the Coordination Committee;
- (ii) review and approve reports of the Director General concerning the Organization and give him all necessary instructions;
- (iii) review and approve the reports and activities of the Coordination Committee and give instructions to such Committee;
- (iv) adopt the biennial budget of expenses common to the Unions;
- (v) approve the measures proposed by the Director General concerning the administration of the international agreements referred to in Article 4(iii);
- (vi) adopt the financial regulations of the Organization;
- (vii) determine the working languages of the Secretariat, taking into consideration the practice of the United Nations;
- (viii) invite States referred to under Article 5(2)(ii) to become party to this Convention;
- (ix) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- (x) exercise such other functions as are appropriate under this Convention.

[continues]

[Proposed Amendment to Article 6, continued]

- (2) The General Assembly shall:
- (ia) *discuss matters of general interest in the field of intellectual property and may adopt recommendations relating to such matters, having regard for the competence and autonomy of the Unions;***
 - (i) appoint the Director General upon nomination by the Coordination Committee;
 - (ii) review and approve reports of the Director General concerning the Organization and give him all necessary instructions;
 - (iii) review and approve the reports and activities of the Coordination Committee and give instructions to such Committee;
 - (iv) adopt the biennial budget of expenses common to the Unions;
 - (v) approve the measures proposed by the Director General concerning the administration of the international agreements referred to in Article 4(iii);
 - (vbis) *adopt amendments to this Convention as provided in Article 17;***
 - (vi) adopt the financial regulations of the Organization;
 - (vii) determine the working languages of the Secretariat, taking into consideration the practice of the United Nations;
 - (viii) invite States referred to under Article 5(2)(ii) to become party to this Convention;
 - (ix) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
 - (x) exercise such other functions as are appropriate under this Convention.

[Proposed Amendment to Article 6 continues]

[Notes on Article 6, continued]

6.04 *Article 6(3)(ab)* contains a basic rule designed to implement the principle that a State should have the right to vote only in respect of treaties by which it is bound. This provision would be necessary as a consequence of the abolition of the WIPO Conference, since the result of that abolition would be membership in the General Assembly of States party to the WIPO Convention but not members of one of the Unions administered by WIPO, and since the General Assembly exercises certain functions that concern also the various Unions. The phrase “whether member of one or more Unions” is no longer necessary, in view of the abolition of the Conference, and given the new text introduced in *Article 6(3)(ab)*.

6.05 The Assemblies decided that amendments be introduced to WIPO-administered treaties to provide for ordinary sessions of the General Assembly and the Assemblies of the Unions administered by WIPO to take place annually, rather than once every two years (see document A/37/14, paragraphs 291 to 301). *Article 6(4)(a)* implements that decision by establishing annual periodicity for the ordinary sessions of the General Assembly.

6.06 *Article 6(5)* is deleted since States party to the WIPO Convention but not members of any of the Unions will, as a consequence of the abolition of the WIPO Conference (see Articles 6(1)(a) and 7), become members of the WIPO General Assembly.

Article 6 of the WIPO Convention

[continued]

(3) (a) Each State, whether member of one or more Unions, shall have one vote in the General Assembly.

(b) One-half of the States members of the General Assembly shall constitute a quorum.

(...)

(4) (a) The General Assembly shall meet once in every second calendar year in ordinary session, upon convocation by the Director General.

(b) The General Assembly shall meet in extraordinary session upon convocation by the Director General either at the request of the Coordination Committee or at the request of one-fourth of the States members of the General Assembly.

(c) Meetings shall be held at the headquarters of the Organization.

(5) States party to this Convention which are not members of any of the Unions shall be admitted to the meetings of the General Assembly as observers.

(6) The General Assembly shall adopt its own rules of procedure.

[Proposed Amendment to Article 6, continued]

(3) (a) *Subject to paragraph (ab), each State shall have one vote in the General Assembly.*

(ab) No State may vote in the General Assembly on any question relating to a treaty for which the General Assembly is competent and to which the State is not a party.

(b) One-half of the States members of the General Assembly shall constitute a quorum.

(...)

(4) (a) The General Assembly shall meet once in every calendar year in ordinary session, upon convocation by the Director General.

(b) The General Assembly shall meet in extraordinary session upon convocation by the Director General either at the request of the Coordination Committee or at the request of one-fourth of the States members of the General Assembly.

(c) Meetings shall be held at the headquarters of the Organization.

(6) The General Assembly shall adopt its own rules of procedure.

[End of Proposed Amendment to Article 6]

Notes on Article 7

7.01 *Article 7* is deleted *in its entirety* to reflect the Assembly's decision to recommend the abolition of the WIPO Conference. The WIPO Conference's autonomous powers specified in Article 7(2)(i) and (iv) have been attributed to the General Assembly (see Article 6(2)(ia) and (*vbis*) above). The Conference's financial functions specified in Article 7(2)(ii) and (iii) have been subsumed into the new draft provisions which are intended to replace the financial provisions in the WIPO Convention and other WIPO treaties in order to reflect the practice of the unitary contribution system. The procedural and general functions of the Conference specified in Article 7(2)(v) and (vi) need no re-attribution, since corresponding powers already exist for the WIPO General Assembly in Article 6(2)(ix) and (x).

Article 7 of the WIPO Convention Conference

(1) (a) There shall be a Conference consisting of the States party to this Convention whether or not they are members of any of the Unions.

(b) The Government of each State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(2) The Conference shall:

- (i) discuss matters of general interest in the field of intellectual property and may adopt recommendations relating to such matters, having regard for the competence and autonomy of the Unions;
- (ii) adopt the biennial budget of the Conference;
- (iii) within the limits of the budget of the Conference, establish the biennial program of legal-technical assistance;
- (iv) adopt amendments to this Convention as provided in Article 17;
- (v) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- (vi) exercise such other functions as are appropriate under this Convention.

(3) (a) Each Member State shall have one vote in the Conference.

(b) One-third of the Member States shall constitute a quorum.

[continues]

**[Article 7
Conference]**

[Proposed Amendment to Article 7]

[Proposed Amendment to Article 7 continues]

[Notes on Article 7, continued]

Article 7 of the WIPO Convention

[continued]

(c) Subject to the provisions of Article 17, the Conference shall make its decisions by a majority of two-thirds of the votes cast.

(d) The amounts of the contributions of States party to this Convention not members of any of the Unions shall be fixed by a vote in which only the delegates of such States shall have the right to vote.

(e) Abstentions shall not be considered as votes.

(f) A delegate may represent, and vote in the name of, one State only.

(4) (a) The Conference shall meet in ordinary session, upon convocation by the Director General, during the same period and at the same place as the General Assembly.

(b) The Conference shall meet in extraordinary session, upon convocation by the Director General, at the request of the majority of the Member States.

(5) The Conference shall adopt its own rules of procedure.

[Proposed Amendment to Article 7, continued]

[End of Proposed Amendment to Article 7]

Notes on Article 8

Article 8 of the WIPO Convention Coordination Committee

(1) (a) There shall be a Coordination Committee consisting of the States party to this Convention which are members of the Executive Committee of the Paris Union, or the Executive Committee of the Berne Union, or both. However, if either of these Executive Committees is composed of more than one-fourth of the number of the countries members of the Assembly which elected it, then such Executive Committee shall designate from among its members the States which will be members of the Coordination Committee, in such a way that their number shall not exceed the one-fourth referred to above, it being understood that the country on the territory of which the Organization has its headquarters shall not be included in the computation of the said one-fourth.

(b) The Government of each State member of the Coordination Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

[continues]

Article 8

Coordination Committee

[Proposed Amendment to Article 8]

(1) (a) There shall be a Coordination Committee consisting of the States party to this Convention which are members of the Executive Committee of the Paris Union, or the Executive Committee of the Berne Union, or both. However, if either of these Executive Committees is composed of more than one-fourth of the number of the countries members of the Assembly which elected it, then such Executive Committee shall designate from among its members the States which will be members of the Coordination Committee, in such a way that their number shall not exceed the one-fourth referred to above, it being understood that the country on the territory of which the Organization has its headquarters shall not be included in the computation of the said one-fourth.

(b) The Government of each State member of the Coordination Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

[Proposed Amendment to Article 8 continues]

[Notes on Article 8, continued]

8.01 *Article 8(1)(c)* allows for representation in the Coordination Committee of States that are party to the WIPO Convention, but that are not members of the Paris or Berne Unions. These States, it will be recalled, are not members of the WIPO General Assembly, according to the present text of the WIPO Convention, but are members of the WIPO Conference (see Articles 6 and 7, above). It is proposed that *Article 8(1)(c)* be deleted altogether, on the basis that the abolition of the WIPO Conference renders the provision unnecessary. It is clear, from the records of the 1967 Stockholm Conference at which the WIPO Convention was concluded, that Article 8(1)(c) was intended to safeguard the interests in the Coordination Committee of States party to the WIPO Convention, but not members of any of the Unions, whenever the Coordination Committee was examining a question within the competence of the Conference:

“when the Coordination Committee examines questions within the competence of the Conference, it is joined by one-fourth of the States not members of any of the unions, who are elected by the Conference at each ordinary session (Article 8(1)(c)). According to the [original] BIRPI Draft, this was to occur when the Coordination Committee examined questions “of direct interest to the Conference.” The Committee [Main Committee V] considered that this wording was too vague and made it more specific by saying that the Coordination Committee would be joined by the representatives of non-Union countries when it considers either matters of direct interest to the program or budget of the Conference and its agenda, or proposals for the amendment of the Convention which would affect the rights or obligations of non-Union members of the Organization.”

(WIPO, *Records of the Intellectual Property Conference of Stockholm*, Volume II, page 1235).

8.02 It is also recalled that during discussion of this item in the Assemblies, no delegation opposed the deletion of Article 8(1)(c). To the contrary, the only delegation (Mexico) that expressed a view on the matter, during the Assemblies' consideration of the matter at their meeting in September 2002, stated that the abolition of the WIPO Conference would make Article 8(1)(c) unnecessary (see document A/37/14, paragraph 296). The Delegation of Mexico subsequently confirmed this position, in writing, to the Secretariat by note verbale of December 16, 2002. The Government of Australia also stated its preference for this option in a letter of December 18, 2002, to the Secretariat.

Article 8 of the WIPO Convention

[continued]

(c) Whenever the Coordination Committee considers either matters of direct interest to the program or budget of the Conference and its agenda, or proposals for the amendment of this Convention which would affect the rights or obligations of States party to this Convention not members of any of the Unions, one-fourth of such States shall participate in the meetings of the Coordination Committee with the same rights as members of that Committee. The Conference shall, at each of its ordinary sessions, designate these States.

(d) The expenses of each delegation shall be borne by the Government which has appointed it.

[continues]

[Proposed Amendment to Article 8, continued]

(d) The expenses of each delegation shall be borne by the Government which has appointed it.

[Proposed Amendment to Article 8 continues]

[Notes on Article 8, continued]

8.03 The reference in Article 8(3)(i) to the WIPO Conference is proposed to be deleted in view of the abolition of that body.

8.04 The second modification proposed to Article 8(3) is the deletion of *subparagraph (iii)*. That provision refers, at present, to the function of the Coordination Committee in preparing the draft Agenda and the draft Program and Budget of the Conference.

Article 8 of the WIPO Convention

[continued]

- (3) The Coordination Committee shall:
- (i) give advice to the organs of the Unions, the General Assembly, the Conference, and the Director General, on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization, and in particular on the budget of expenses common to the Unions;
 - (ii) prepare the draft agenda of the General Assembly;
 - (iii) prepare the draft agenda and the draft program and budget of the Conference;
 - (iv) [deleted]
 - (v) when the term of office of the Director General is about to expire, or when there is a vacancy in the post of the Director General, nominate a candidate for appointment to such position by the General Assembly; if the General Assembly does not appoint its nominee, the Coordination Committee shall nominate another candidate; this procedure shall be repeated until the latest nominee is appointed by the General Assembly;
 - (vi) if the post of the Director General becomes vacant between two sessions of the General Assembly, appoint an Acting Director General for the term preceding the assuming of office by the new Director General;
 - (vii) perform such other functions as are allocated to it under this Convention.

(...)

[Proposed Amendment to Article 8, continued]

- (3) The Coordination Committee shall:
- (i) give advice to the organs of the Unions, the General Assembly and the Director General, on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization, and in particular on the budget of expenses common to the Unions;
 - (ii) prepare the draft agenda of the General Assembly;
 - ;
 - (iv) [deleted]
 - (v) when the term of office of the Director General is about to expire, or when there is a vacancy in the post of the Director General, nominate a candidate for appointment to such position by the General Assembly; if the General Assembly does not appoint its nominee, the Coordination Committee shall nominate another candidate; this procedure shall be repeated until the latest nominee is appointed by the General Assembly;
 - (vi) if the post of the Director General becomes vacant between two sessions of the General Assembly, appoint an Acting Director General for the term preceding the assuming of office by the new Director General;
 - (vii) perform such other functions as are allocated to it under this Convention.

(...)

[End of Proposed Amendment to Article 8]

Notes on Article 9

9.01 It is not proposed to modify *Article 9* except for the deletion of the reference to the WIPO Conference in Article 9(6).

9.02 It is recalled that the WIPO Conference unanimously adopted an amendment to Article 9(3) in September 1999, according to which the text of Article 9(3) would read:

“The Director General shall be appointed for a term of six years. He shall be eligible for reappointment only for one further fixed term of six years. All other conditions of the appointment shall be fixed by the General Assembly.”

9.03 The amendment has been accepted by 42 States, but will not come into force until one month after acceptance by three-fourths of the States members of WIPO at the time of the adoption of the amendment (at that time, there were 172 Member States of WIPO, thus requiring notifications of acceptance from 129 of those States).

Article 9 of the WIPO Convention International Bureau

- (1) The International Bureau shall be the Secretariat of the Organization.
- (2) The International Bureau shall be directed by the Director General, assisted by two or more Deputy Directors General.
- (3) The Director General shall be appointed for a fixed term, which shall be not less than six years. He shall be eligible for reappointment for fixed terms. The periods of the initial appointment and possible subsequent appointments, as well as all other conditions of the appointment, shall be fixed by the General Assembly.
- (4)
 - (a) The Director General shall be the chief executive of the Organization.
 - (b) He shall represent the Organization.
 - (c) He shall report to, and conform to the instructions of, the General Assembly as to the internal and external affairs of the Organization.
- (5) The Director General shall prepare the draft programs and budgets and periodical reports on activities. He shall transmit them to the Governments of the interested States and to the competent organs of the Unions and the Organization.
- (6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the General Assembly, the Conference, the Coordination Committee, and any other committee or working group. The Director General or a staff member designated by him shall be ex officio secretary of these bodies.

(...)

Article 9
International Bureau

[Proposed Amendment to Article 9]

- (1) The International Bureau shall be the Secretariat of the Organization.
- (2) The International Bureau shall be directed by the Director General, assisted by two or more Deputy Directors General.
- (3) The Director General shall be appointed for a fixed term of six years. He shall be eligible for reappointment only for one further term of six years. All other conditions of the appointment shall be fixed by the General Assembly.*
- (4)
 - (a) The Director General shall be the chief executive of the Organization.
 - (b) He shall represent the Organization.
 - (c) He shall report to, and conform to the instructions of, the General Assembly as to the internal and external affairs of the Organization.
- (5) The Director General shall prepare the draft programs and budgets and periodical reports on activities. He shall transmit them to the Governments of the interested States and to the competent organs of the Unions and the Organization.
- (6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the General Assembly, the Coordination Committee, and any other committee or working group. The Director General or a staff member designated by him shall be ex officio secretary of these bodies.

(...)

[End of Proposed Amendment to Article 9]

* Text adopted in September 1999, but not yet in force.

Notes on Article 11

11.01 *Article 11* has been modified in an endeavor to reflect the current practice of the Organization of a unitary contribution system and of having classes of contribution different from those set out in the constituent treaties of the Organization and the Unions administered by the Organization. Those reforms were adopted by the competent Assemblies in 1989 and 1991 (for certain changes in classes of contribution) and in 1993 (for the unitary contribution system and for further changes to classes of contribution). A full description of the changes in practice is set out in document WO/GA/WG-CR/2, paragraphs 16 to 50.

11.02 *Article 11(1)* proposes a new enabling provision for the budget consequent upon the adoption of the unitary contribution system. The proposed provision seeks to implement the desire expressed by many delegations in the Working Group on Constitutional Reform that, while the Organization has a unitary contribution system, it should not have a unitary budget in the sense that all income and expenses, regardless of their source or purpose, are mixed without identification. Accordingly, Article 11(1) would require that the budget of the Organization be presented so that the income and expenses of the Organization and of the various Unions be indicated “in a fair and transparent manner.”

11.03 The proposed new enabling provision would not affect the independent power of decision over relevant components of the budget that is exercised by the organs of the Organization and the various Unions. Thus, for example, the power to approve levels of fees for the PCT would remain with the membership of the PCT Union.

11.04 The reference in *Article 11(1)* to “expenses common to the Unions” has been deleted, since it is considered that the requirement proposed in Article 11(1) that the budget of the Organization present income and expenses of the Organization and the Unions administered by the Organization in a fair and transparent manner sufficiently covers the question of common expenses.

Article 11 of the WIPO Convention Finances

(1) The Organization shall have two separate budgets: the budget of expenses common to the Unions, and the budget of the Conference.

[continues]

Article 11
Finances

[Proposed Amendment to Article 11]

(1) *The Budget of the Organization shall present the income and expenses of the Organization and the Unions administered by the Organization in a fair and transparent manner.*

[Proposed Amendment to Article 11 continues]

[Notes on Article 11, continued]

11.05 *Article 11(2)* has not been changed in substance, but has been modernized to reflect, first, the unitary contribution system (*Article 11(2)(b)(i)*) and, secondly, the fact that the other sources of income referred to in the provision do not always relate to the specific items referred to in the present text of Article 11(2)(b) of the WIPO Convention. Thus, for example, *Article 11(2)(b)(ii)* as proposed to be amended would refer to “charges due for services performed by the International Bureau” without the additional words “not in direct relation with any of the Unions or not received for services rendered by the International Bureau in the field of legal-technical assistance.” The deleted words no longer seem relevant and, indeed, place an unnecessary restriction on the revenue at present received from services performed by the International Bureau. An example of revenue that is not covered by the present wording of Article 11(2)(b)(ii) is the fees received by the WIPO Arbitration and Mediation Center, which may be considered as being related to several of the Unions, while not being related to services rendered by the International Bureau in the field of legal-technical assistance.

Article 11 of the WIPO Convention

[continued]

(2) (a) The budget of expenses common to the Unions shall include provision for expenses of interest to several Unions.

(b) This budget shall be financed from the following sources:

- (i) contributions of the Unions, provided that the amount of the contribution of each Union shall be fixed by the Assembly of that Union, having regard to the interest the Union has in the common expenses;
- (ii) charges due for services performed by the International Bureau not in direct relation with any of the Unions or not received for services rendered by the International Bureau in the field of legal-technical assistance;
- (iii) sale of, or royalties on, the publications of the International Bureau not directly concerning any of the Unions;
- (iv) gifts, bequests, and subventions, given to the Organization, except those referred to in paragraph (3)(b)(iv);
- (v) rents, interests, and other miscellaneous income, of the Organization.

[continues]

[Proposed Amendment to Article 11, continued]

- (2) *The* budget shall be financed from the following sources:
- (i) contributions *of Member States*;
 - (ii) *fees and* charges due for services performed by the International Bureau;
 - (iii) sale of, or royalties on, the publications of the International Bureau;
 - (iv) gifts, bequests, and subventions, given to the Organization;
 - (v) rents, interests, and other miscellaneous income, of the Organization.

[Proposed Amendment to Article 11 continues]

[Notes on Article 11, continued]

11.06 It is proposed that *Article 11(3)* be deleted. In practice, there has never been a budget of the Conference and, with the proposed abolition of the Conference, the provision is not only practically, but also theoretically, redundant.

11.07 *Article 11(4)* seeks to implement the current practice with respect to classes of contributions and the unitary contribution system. It retains three essential features of the former and present contribution system, namely (i) that contributions are based on a system of classes with assigned numbers of units (*Article 11(4)(a)*), (ii) that the number of units assigned to each class is determined by the corresponding constituent organ for the treaty or treaties to which the class relates (*Article 11(4)(ab)*), and (iii) that each State of its own accord chooses its own contribution class (*Article 11(4)(b)*).

Article 11 of the WIPO Convention

[continued]

(3) (a) The budget of the Conference shall include provision for the expenses of holding sessions of the Conference and for the cost of the legal-technical assistance program.

(b) This budget shall be financed from the following sources:

- (i) contributions of States party to this Convention not members of any of the Unions;
- (ii) any sums made available to this budget by the Unions, provided that the amount of the sum made available by each Union shall be fixed by the Assembly of that Union and that each Union shall be free to abstain from contributing to the said budget;
- (iii) sums received for services rendered by the International Bureau in the field of legal-technical assistance;
- (iv) gifts, bequests, and subventions, given to the Organization for the purposes referred to in subparagraph (a).

(4) (a) For the purpose of establishing its contribution towards the budget of the Conference, each State party to this Convention not member of any of the Unions shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class A	10
Class B	3
Class C	1

[continues]

[Proposed Amendment to Article 11, continued]

(4) (a) For the purpose of establishing its contribution towards the budget , each State party to this Convention shall belong to a class, and shall pay its annual contributions on the basis of *the* number of units *assigned to that class*.

[Proposed Amendment to Article 11 continues]

[Notes on Article 11, continued]

11.08 *Article 11(4)(ab)* seeks to implement the unitary contribution system in the simplest possible manner. It provides that the number of classes and the units assigned to each shall be established by the competent organ(s). The competence to establish classes and units would rest with the General Assembly and the Assemblies of the various contribution-financed Unions. Since their decisions relate to a *unitary* contribution system, *Article 11(4)(ab)* provides that the classes and units be established in a joint session of the General Assembly and the various Union Assemblies.

11.09 *Article 11(4)(b)* implements, in the context of the unitary contribution system, the substance of the provisions of Article 11(4)(b) of the present text of the WIPO Convention. In so doing, it provides for the choice of class by each State at the time of becoming party to the WIPO Convention or, in the case of States that are members of a Union, at the time of becoming a member of that Union. It also provides for a State to change classes and for notification to the General Assembly of such a change when it involves moving to a lower class. Both the choice of class and the right to change classes must be exercised subject to any conditions governing eligibility for membership of any classes (such conditions apply in the present system in the lowest classes).

11.10 *Article 11(4)(c)* implements the system of units in the context of the unitary contribution system. It follows, in substance, the provisions of Article 11(4)(c) of the present text of the WIPO Convention.

Article 11 of the WIPO Convention

[continued]

(b) Each such State shall, concurrently with taking action as provided in Article 14(1), indicate the class to which it wishes to belong. Any such State may change class. If it chooses a lower class, the State must announce it to the Conference at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.

(c) The annual contribution of each such State shall be an amount in the same proportion to the total sum to be contributed to the budget of the Conference by all such States as the number of its units is to the total of the units of all the said States.

(d) Contributions shall become due on the first of January of each year.

(e) If the budget is not adopted before the beginning of a new financial period, the budget shall be at the same level as the budget of the previous year, in accordance with the financial regulations.

[continues]

[Proposed Amendment to Article 11, continued]

(ab) The number of classes and the units assigned to each class shall be established by the General Assembly meeting in joint session with the Assemblies of the Unions whose constituent treaties provide for the payment of a contribution.

(b) Subject to any conditions governing eligibility for membership of any classes, each State shall, (i) at the time of becoming party to this Convention, or (ii) at the time of becoming a member of a Union which provides for a contribution, whichever occurs earlier, indicate the class to which it wishes to belong. Any such State may, subject to any conditions governing eligibility for membership of any class, change class. If it chooses a lower class, the State must announce it to the General Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.

(c) The annual contribution of each State shall be an amount in the same proportion to the total sum to be contributed to the budget by all States as the number of its units is to the total of the units of all the States.

(d) Contributions shall become due on the first of January of each year.

(e) If the budget is not adopted before the beginning of a new financial period, the budget shall be at the same level as the budget of the previous year, in accordance with the financial regulations.

[Proposed Amendment to Article 11 continues]

[Notes on Article 11, continued]

11.11 *Article 11(5)* reproduces the existing text of Article 11(5) of the WIPO Convention with minor modifications to reflect the unitary contribution system. The initial reference to a State “having no vote” has been amended to correspond to the subsequent reference to such a State “not exercising its vote.” This amendment is also in conformity with one of the comments received by the Secretariat, in a letter of December 19, 2002, from the Swiss Federal Institute of Intellectual Property.

11.12 It is proposed that *Article 11(6)* be deleted, since fees and charges have not been imposed by the International Bureau “in the field of legal-technical assistance.”

11.13 *Article 11(8)(c)* is in the same form as the corresponding provision in the existing text of the WIPO Convention except for the replacement of the reference to the Conference by a reference to the General assembly.

Article 11 of the WIPO Convention

[continued]

(5) Any State party to this Convention not member of any of the Unions which is in arrears in the payment of its financial contributions under the present Article, and any State party to this Convention member of any of the Unions which is in arrears in the payment of its contributions to any of the Unions, shall have no vote in any of the bodies of the Organization of which it is a member, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any of these bodies may allow such a State to continue to exercise its vote in that body if, and as long as, it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances.

(6) The amount of the fees and charges due for services rendered by the International Bureau in the field of legal-technical assistance shall be established, and shall be reported to the Coordination Committee, by the Director General.

(7) The Organization, with the approval of the Coordination Committee, may receive gifts, bequests, and subventions, directly from Governments, public or private institutions, associations or private persons.

(8) (a) The Organization shall have a working capital fund which shall be constituted by a single payment made by the Unions and by each State party to this Convention not member of any Union. If the fund becomes insufficient, it shall be increased.

(b) The amount of the single payment of each Union and its possible participation in any increase shall be decided by its Assembly.

(c) The amount of the single payment of each State party to this Convention not member of any Union and its part in any increase shall be a proportion of the contribution of that State for the year in which the fund is established or the increase decided. The proportion and the terms of payment shall be fixed by the Conference on the proposal of the Director General and after it has heard the advice of the Coordination Committee.

(...)

[Proposed Amendment to Article 11, continued]

(5) Any State party to this Convention which is in arrears in the payment of its financial contributions shall *not exercise its* vote in any of the bodies of the Organization of which it is a member, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any of these bodies may allow such a State to continue to exercise its vote in that body if, and as long as, it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances.

(7) The Organization, with the approval of the Coordination Committee, may receive gifts, bequests, and subventions, directly from Governments, public or private institutions, associations or private persons.

(8) (a) The Organization shall have a working capital fund which shall be constituted by a single payment made by the Unions and by each State party to this Convention not member of any Union. If the fund becomes insufficient, it shall be increased.

(b) The amount of the single payment of each Union and its possible participation in any increase shall be decided by its Assembly.

(c) The amount of the single payment of each State party to this Convention not member of any Union and its part in any increase shall be a proportion of the contribution of that State for the year in which the fund is established or the increase decided. The proportion and the terms of payment shall be fixed by the *General Assembly* on the proposal of the Director General and after it has heard the advice of the Coordination Committee.

(...)

[End of Proposed Amendment to Article 11]

Notes on Article 17

17.01 A modification is proposed to Article 17, which sets out the manner in which amendments may be made to the WIPO Convention. In order to reflect the abolition of the WIPO Conference and the attribution of its independent functions to the WIPO General Assembly (see Article 6, above), references to the Conference are replaced by references to the General Assembly in each paragraph. The reference to States party to this Convention not members of any of the Unions is proposed to be deleted, as it is no longer necessary. The Swiss Federal Institute of Intellectual Property also expressed its support for this deletion, in its letter of December 19, 2002, to the Secretariat.

Article 17 of the WIPO Convention Amendments

(1) Proposals for the amendment of this Convention may be initiated by any Member State, by the Coordination Committee, or by the Director General. Such proposals shall be communicated by the Director General to the Member States at least six months in advance of their consideration by the Conference.

(2) Amendments shall be adopted by the Conference. Whenever amendments would affect the rights and obligations of States party to this Convention not members of any of the Unions, such States shall also vote. On all other amendments proposed, only States party to this Convention members of any Union shall vote. Amendments shall be adopted by a simple majority of the votes cast, provided that the Conference shall vote only on such proposals for amendments as have previously been adopted by the Assembly of the Paris Union and the Assembly of the Berne Union according to the rules applicable in each of them regarding the adoption of amendments to the administrative provisions of their respective Conventions.

(3) Any amendment shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States Members of the Organization, entitled to vote on the proposal for amendment pursuant to paragraph (2), at the time the Conference adopted the amendment. Any amendments thus accepted shall bind all the States which are Members of the Organization at the time the amendment enters into force or which become Members at a subsequent date, provided that any amendment increasing the financial obligations of Member States shall bind only those States which have notified their acceptance of such amendment.

Article 17
Amendments

[Proposed Amendment to Article 17]

(1) Proposals for the amendment of this Convention may be initiated by any Member State, by the Coordination Committee, or by the Director General. Such proposals shall be communicated by the Director General to the Member States at least six months in advance of their consideration by the *General Assembly*.

(2) Amendments shall be adopted by the *General Assembly*. Amendments shall be adopted by a simple majority of the votes cast, provided that the *General Assembly* shall vote only on such proposals for amendments as have previously been adopted by the Assembly of the Paris Union and the Assembly of the Berne Union according to the rules applicable in each of them regarding the adoption of amendments to the administrative provisions of their respective Conventions.

(3) Any amendment shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States Members of the Organization, entitled to vote on the proposal for amendment pursuant to paragraph (2), at the time the *General Assembly* adopted the amendment. Any amendments thus accepted shall bind all the States which are Members of the Organization at the time the amendment enters into force or which become Members at a subsequent date, provided that any amendment increasing the financial obligations of Member States shall bind only those States which have notified their acceptance of such amendment.

[End of Proposed Amendment to Article 17]

Notes on Article 20

20.01 The proposed revisions reflect the re-attribution of the power of amendment of the Convention from the Conference to the General Assembly, consequent upon the abolition of the Conference (see Articles 6 and 7, above).

Article 20 of the WIPO Convention Final Provisions

(1) (a) This Convention shall be signed in a single copy in English, French, Russian and Spanish, all texts being equally authentic, and shall be deposited with the Government of Sweden.

(b) This Convention shall remain open for signature at Stockholm until January 13, 1968.

(2) Official texts shall be established by the Director General, after consultation with the interested Governments, in German, Italian and Portuguese, and such other languages as the Conference may designate.

(3) The Director General shall transmit two duly certified copies of this Convention and of each amendment adopted by the Conference to the Governments of the States members of the Paris or Berne Unions, to the Government of any other State when it accedes to this Convention, and, on request, to the Government of any other State. The copies of the signed text of the Convention transmitted to the Governments shall be certified by the Government of Sweden.

(4) The Director General shall register this Convention with the Secretariat of the United Nations.

Article 20
Final Provisions

[Proposed Amendment to Article 20]

(1) (a) This Convention shall be signed in a single copy in English, French, Russian and Spanish, all texts being equally authentic, and shall be deposited with the Government of Sweden.

(b) This Convention shall remain open for signature at Stockholm until January 13, 1968.

(2) Official texts shall be established by the Director General, after consultation with the interested Governments, in German, Italian and Portuguese, and such other languages as the *General Assembly* may designate.

(3) The Director General shall transmit two duly certified copies of this Convention and of each amendment adopted by the *General Assembly* to the Governments of the States members of the Paris or Berne Unions, to the Government of any other State when it accedes to this Convention, and, on request, to the Government of any other State. The copies of the signed text of the Convention transmitted to the Governments shall be certified by the Government of Sweden.

(4) The Director General shall register this Convention with the Secretariat of the United Nations.

[End of Proposed Amendment to Article 20]

Notes on Article 21

21.01 The proposed revisions simply delete references to the WIPO Conference. Several of the transitional provisions are merely of historical significance.

Article 21 of the WIPO Convention Transitional Provisions

(1) Until the first Director General assumes office, references in this Convention to the International Bureau or to the Director General shall be deemed to be references to the United International Bureaux for the Protection of Industrial, Literary and Artistic Property (also called the United International Bureaux for the Protection of Intellectual Property (BIRPI)), or its Director, respectively.

(2) (a) States which are members of any of the Unions but which have not become party to this Convention may, for five years from the date of entry into force of this Convention, exercise, if they so desire, the same rights as if they had become party to this Convention. Any State desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such States shall be deemed to be members of the General Assembly and the Conference until the expiration of the said period.

(b) Upon expiration of this five-year period, such States shall have no right to vote in the General Assembly, the Conference, and the Coordination Committee.

(c) Upon becoming party to this Convention, such States shall regain such right to vote.

(3) (a) As long as there are States members of the Paris or Berne Unions which have not become party to this Convention, the International Bureaux and the Director General shall also function as the United International Bureaux for the Protection of Industrial, Literary and Artistic Property, and its Director, respectively.

(b) The staff in the employment of the said Bureaux on the date of entry into force of this Convention shall, during the transitional period referred to in subparagraph (a), be considered as also employed by the International Bureau.

[continues]

Article 21
Transitional Provisions

[Proposed Amendment to Article 21]

(1) Until the first Director General assumes office, references in this Convention to the International Bureau or to the Director General shall be deemed to be references to the United International Bureaux for the Protection of Industrial, Literary and Artistic Property (also called the United International Bureaux for the Protection of Intellectual Property (BIRPI)), or its Director, respectively.

(2) (a) States which are members of any of the Unions but which have not become party to this Convention may, for five years from the date of entry into force of this Convention, exercise, if they so desire, the same rights as if they had become party to this Convention. Any State desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such States shall be deemed to be members of the General Assembly until the expiration of the said period.

(b) Upon expiration of this five-year period, such States shall have no right to vote in the General Assembly, and the Coordination Committee.

(c) Upon becoming party to this Convention, such States shall regain such right to vote.

(3) (a) As long as there are States members of the Paris or Berne Unions which have not become party to this Convention, the International Bureau and the Director General shall also function as the United International Bureaux for the Protection of Industrial, Literary and Artistic Property, and its Director, respectively.

(b) The staff in the employment of the said Bureaux on the date of entry into force of this Convention shall, during the transitional period referred to in subparagraph (a), be considered as also employed by the International Bureau.

[Proposed Amendment to Article 21 continues]

[Notes on Article 21, continued]

Article 21 of the WIPO Convention

[continued]

(4) (a) Once all the States members of the Paris Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of that Union shall devolve on the International Bureau of the Organization.

(b) Once all the States members of the Berne Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of that Union shall devolve on the International Bureau of the Organization.

[Proposed Amendment to Article 21, continued]

(4) (a) Once all the States members of the Paris Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of that Union shall devolve on the International Bureau of the Organization.

(b) Once all the States members of the Berne Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of that Union shall devolve on the International Bureau of the Organization.

[End of Proposed Amendment to Article 21 and of
Proposed Amendments to the WIPO Convention]

7. The Assemblies of the Paris and Berne Unions and the WIPO Conference, each in so far as it is concerned, is invited to adopt the proposed amendments to the WIPO Convention.

[Annex follows]