

## **WIPO General Assembly**

### **Forty-Ninth (23<sup>rd</sup> Ordinary) Session Geneva, October 2 to 11, 2017**

#### **MATTERS CONCERNING THE CONVENING OF A DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A DESIGN LAW TREATY (DLT)**

*Document prepared by the Secretariat*

1. At its forty-seventh (22<sup>nd</sup> ordinary) session, held in Geneva from October 5 to 14, 2015, the World Intellectual Property Organization (WIPO) General Assembly agreed the following (see document WO/GA/47/19, paragraph 123)\*:

“That the text of the basic proposal for the Design Law Treaty should be finalized by the SCT at its thirty-fourth and thirty-fifth sessions;

“(i) to convene a diplomatic conference for the adoption of a Design Law Treaty at the end of the first half of 2017, only if the discussions on technical assistance and disclosure have been completed during the thirty-fourth and thirty-fifth sessions of the SCT;

“(ii) that the text of the basic proposal for the Design Law Treaty should be finalized by the SCT at its thirty-fourth and thirty-fifth sessions;

“(iii) that, if a diplomatic conference is convened at the end of the first half of 2017, the date and venue of the diplomatic conference would be decided in a preparatory committee, to be held back-to-back with the thirty-fifth session of the SCT.”

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\* For a detailed narrative of WIPO General Assembly sessions dealing with the convening of a diplomatic conference for the adoption of a Design Law Treaty, see document WO/GA/47/8.

2. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), at its thirty-fourth session (November 16 to 18, 2015) and thirty-fifth session (April 25 to 27, 2016), continued discussions on the text of a basic proposal for the Design Law Treaty (DLT), with a view to finalizing the text, as mandated by the WIPO General Assembly.

3. At the end of the thirty-fifth session of the SCT, the Chair concluded that a number of delegations were of the opinion that the work of the SCT was sufficient to consider that the basic proposal (contained in documents SCT/35/2 and 3) was finalized. Other delegations considered that the work of the SCT constituted a sufficient ground for finalizing the basic proposal and that a few elements needed further work. Other delegations considered that the work of the SCT was not sufficient to finalize the basic proposal (see document SCT/35/7, paragraph 7).

4. In relation to the issues identified by the WIPO General Assembly in 2015, namely technical assistance and disclosure (see paragraph 1(i), above), the relevant provisions of the basic proposal are enclosed in the Annex for reference.

5. At its forty-eighth (26<sup>th</sup> extraordinary) session, held in Geneva from October 3 to 11, 2016, the WIPO General Assembly:

“decided that, at its next session in October 2017, it will continue considering the convening of a diplomatic conference on the Design Law Treaty, to take place at the end of the first half of 2018” (see document WO/GA/48/17, paragraph 146).”

6. Following this decision, the SCT held two sessions, namely the thirty-sixth session (October 17 to 19, 2016) and the thirty-seventh session (March 27 to 30, 2017).

7. At the thirty-sixth session of the SCT, the Chair “concluded that, while the DLT would remain on its Agenda, the SCT should abide by the decision of the [WIPO] General Assembly” (see document SCT/36/6, paragraphs 27 and 28).

8. At the thirty-seventh session of the SCT, the Chair recalled his conclusion at the previous session of the SCT and “encouraged delegations to make use of the time available until the next session of the [WIPO] General Assembly in October 2017 to bridge remaining gaps” (see document SCT/37/8, paragraph 8).

9. *The WIPO General Assembly is invited:*

*(i) to consider the contents of the present document; and*

*(ii) to decide whether to convene a diplomatic conference for the adoption of a Design Law Treaty at the end of the first half of 2018, at a date and venue to be decided by a preparatory committee.*

[Annex follows]

Draft provisions relating to the issues identified by the WIPO  
General Assembly in 2015, namely disclosure and technical assistance  
(extracts from documents SCT/35/2 and 3, including the relevant footnotes)

Disclosure

**“[Article 1bis<sup>1,2</sup>  
General Principles**

(1) *[No Regulation of Substantive Industrial Design Law] Nothing in this Treaty or the Regulations is intended to be construed as prescribing anything that would limit the freedom of a Contracting Party to prescribe such requirements of the applicable substantive law relating to industrial designs as it desires.*

(2) *[Relation to Other Treaties] Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties.]”*

**“Article 3  
Application**

(1) *[Contents of Application; Fee] (a) A Contracting Party may require that an application contain some, or all, of the following indications or elements:*

[...]

*[(ix) a disclosure of the origin or source of traditional cultural expressions, traditional knowledge or biological/genetic resources utilized or incorporated in the industrial design;]<sup>8</sup>”*

**“Rule 2  
Details Concerning the Application**

(1) *[Further Requirements Under Article 3] In addition to the requirements provided for in Article 3, a Contracting Party may require that an application contain some, or all, of the following indications or elements:*

[...]

*(x) an indication of any prior application or registration, or other information, of which the applicant is aware, that could have an effect on the eligibility for registration of the industrial design;”*

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<sup>1</sup> The text of this Article is based on the proposal made by the Chair at the thirty-fourth session of the SCT, contained in Chair Non-paper No. 1.

<sup>2</sup> Some delegations indicated that they were not supportive of either this proposed article or the proposed item (ix) of Article 3(1)(a). Some delegations supported the proposal contained in item (ix) of Article 3(1)(a).

<sup>8</sup> Some delegations supported proposed item (ix) of Article 3(1)(a). Some delegations were not supportive of this proposal.

Technical assistance

**“[Article 22] [Resolution]  
Technical Assistance and Capacity Building**

**[(1)] [Principles]** *The Organization shall, subject to availability of resources and with a view to facilitating the implementation of the Treaty, provide technical assistance, in particular to developing countries and Least Developed Countries. Such technical assistance shall*

*(i) be development-oriented, demand-driven, transparent, targeted and adequate for the strengthening of the capacity of beneficiary countries to implement the Treaty;*

*(ii) take into account the priorities and the specific needs of receiving countries for enabling the users to take full advantage of the provisions of the Treaty.*

**(2) [Technical Assistance and Capacity Building]** *(a) Technical assistance and capacity building activities provided under this Treaty shall be for the implementation of this Treaty and, where requested, include<sup>23</sup>:*

*(i) establishing the required legal framework and revising administrative practices and procedures of design registration authorities;*

*(ii) building up the necessary capacity of the Offices, including but not limited to providing training of human resources, [and providing appropriate equipment and technology as well as the required infrastructure].*

*(b) The Organization shall provide, subject to [allocation and] availability of resources financing for [WIPO] activities and measures that are required to implement the Treaty in accordance with paragraph (2)(a), (3)(a) [and Article 24(1)(c)]. [Moreover, the Organization shall seek to enter into agreements with international financing organization, intergovernmental organizations and governments of receiving countries in order to provide financial support for technical assistance pursuant to this Treaty.]*

**(3) [Other Provisions]<sup>24</sup>** *[(a) The World Intellectual Property Organization is urged to expedite the creation of a digital library system for registered designs. Contracting Parties shall endeavor to communicate published registered design information through such system. The Organization shall support Contracting Parties in their efforts to exchange information through this system.]*

*[(b) Contracting Parties to this Treaty [shall endeavor][are encouraged] to establish a fee reduction system to the benefit of design creators [(natural persons and small and medium enterprises (SMEs))]. [Such fee reduction system if implemented shall apply to those who are nationals of and reside in a developing country or an LDC.]]”*

[End of Annex and of document]

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<sup>23</sup> The Delegation of the United States of America proposed to insert the words “assistance with” after the word “include”.

<sup>24</sup> Some delegations were of the opinion that the subject matter of this provision was better suited to a Resolution. Other delegations preferred to have this provision in a separate Article. Other delegations were of the view that this provision should not be in the Treaty.