



The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT/S3)

**STATEMENT OF THE NATIVE AMERICAN RIGHTS FUND  
ON BEHALF OF THE NATIONAL CONGRESS OF AMERICAN INDIANS**

**October 2, 2023**

This statement is made by the Native American Rights Fund on behalf of the National Congress of American Indians.

We urge Member States to support inclusion of Article 3(1)(a)(ix) “Option A” in the Basic Proposal for the Diplomatic Conference to Conclude and Adopt a Design Law Treaty. By permitting Member States to require that applications include a disclosure of the origin or source of traditional cultural expressions, traditional knowledge or biological/genetic resources utilized or incorporated in the industrial design, “Option A” provides Member States with the policy space needed to facilitate protection of Indigenous Peoples’ traditional knowledge and traditional cultural expressions.

Foreclosing Member States’ ability to adopt such a disclosure requirement is directly contrary to the UN Declaration on the Rights of Indigenous Peoples. Article 31(1) of the Declaration recognizes Indigenous Peoples’ right to maintain, control, protect and develop their traditional knowledge and traditional cultural expressions, and specifically references rights related to designs. Article 31(2) obligates States to “take effective measures to recognize and protect the exercise of these rights.” Article 38 of the Declaration provides that States “shall take the appropriate measures . . . to achieve the ends of this Declaration” and Article 42 provides that States “shall promote respect for and full application of the provisions of this Declaration . . .” Adopting a Design Law Treaty that would **prohibit** a Member State from utilizing a disclosure requirement as part of its efforts to comply with the Declaration would contravene each of these provisions of the Declaration. Member States should adhere to the Declaration, and their commitment made at the 2014 World Conference on Indigenous Peoples to achieve the ends of the Declaration,<sup>1</sup> by supporting the inclusion of Article 3(1)(a)(ix) “Option A”.

The knowledge systems of Indigenous Peoples have existed for millennia and are inherently connected to traditional cultural expressions and genetic resources and associated traditional knowledge. Indigenous Peoples have long been historically and systemically impacted and harmed by the lack of protections for their traditional knowledge and traditional cultural expressions and resulting

---

<sup>1</sup> Outcome Document of the World Conference on Indigenous Peoples approved unanimously in 2014 by all 193 Member States of the UN General Assembly (G.A. Resolution A/RES/69/2).

misappropriation and misuse. In drafting the Design Law Treaty, Member States should utilize the opportunity to make a small but significant step toward reversing – rather than perpetuating and enabling – such injustices. As eloquently explained in the intervention by the honorable delegate of Nigeria, streamlining and simplification of the application process cannot come at the expense of the rights of Indigenous Peoples.

Finally, merging the disclosure provision in some fashion into Rule 2.1(x) as suggested by the United States is not an acceptable compromise. As provided in Article 24, the Design Law Treaty Regulations are subject to amendment by the Assembly. Member States, as well as the Indigenous Peoples who are the owners and holders of traditional knowledge and traditional cultural expressions, must have the legal certainty provided by a permanent disclosure requirement option included in the Treaty itself, not subject to change by the Assembly.

Thank you.