

Public Consultation Paper

Administrative amendments to World Intellectual Property Organization (WIPO) administered Treaties

Background

In September 1999 WIPO established a Working Group to consider and study proposals concerning constitutional reform. On October 1, 2003 the WIPO Conference and the competent Assemblies of certain Unions administered by WIPO unanimously adopted recommendations of the Working Group on Constitutional Reform. Several amendments to the WIPO Convention and 11 other WIPO-administered treaties are required. These amendments introduce no substantive changes to Australia's current obligations under these treaties.

Australia is party to the following treaties that are to be amended in order to formally implement the recommendations adopted by the Assemblies.

- [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).
- [Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks](#) (the Nice Agreement),
- [Patent Cooperation Treaty](#) (PCT).
- [Strasbourg Agreement Concerning the International Patent Classification](#) (the Strasbourg Agreement).
- [Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure](#) (the Budapest Treaty).

Adopted recommendations

• **abolition of the WIPO Conference**

The WIPO Conference was established for Full Members and Member States who were not members of another union. It does not meet separately from the General Assembly, and has considered very few items separately from the Assembly. The functions of the WIPO Conference will be taken over by the General Assembly.

WIPO Convention - amendments

Article 6(1) amended to accord all states party to the WIPO Convention, membership in the WIPO General Assembly

Article 6(2) amended to give the General Assembly the two independent functions currently exercised by the WIPO Conference. These correspond to those which are found at present in Article 7(2)(i) and (iv).

Article 6(3) amended to implement the principle that a State should have the right to vote only in respect of treaties by which it is bound.

Article 6(5) is deleted because States party to the WIPO Convention, but not members of any of the Unions, will become members of the WIPO General Assembly as per Article 6(1).

Articles 7, 8(1)(c) and 8(3)(iii) are deleted due to the abolition of the WIPO Conference.

Article 8(3)(i) and Article 21 are amended to remove the reference to the WIPO Conference.

In Articles 11(8)(c), 17 and 20 the reference to the Conference is replaced by a reference to the General Assembly.

- **formalization of the unitary contribution system and changes in contribution classes** that have been operative in practice since 1994.

The unitary contribution system has involved changes in the Contribution classes. These changes are more equitable and in line with the economic capacity of the developing countries to pay. A review of the operation of the unitary contribution system shows the number and rate of adherence to the contribution provisions have increased considerably, and the system has proven to be simpler to administer for the secretariat and for Member States.

WIPO Convention - amendments

Article 11(1) is a new enabling provision for the budget consequent upon the adoption of the unitary contribution system. It 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.”

Similar amendments have been made to the **Paris Convention** Article 16, **Berne Convention** Article 25, **Nice Agreement** Article 7, **PCT** Article 57 and **Strasbourg Agreement** Article 9.

Article 11(2) has been modernized to reflect, first, the unitary contribution system 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.

Similar amendments are to be made to the **Paris Convention** Article 16, **Berne Convention** Article 25, **Nice Agreement** Article 7, **PCT** Article 57 and **Strasbourg Agreement** Article 9.

Article 11(3) is deleted due to the abolition of the Conference and the fact that there has never been a budget of the Conference.

Article 11(4) implements the current practice for classes of contributions and the unitary contribution system. It retains three essential features (i) that contributions are based on a system of classes with assigned numbers of units, (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, and (iii) that each State of its own accord chooses its own contribution class.

Similar amendments are to be made to the **Paris Convention** Article 16, **Berne Convention** Article 25, **Nice Agreement** Article 7, and **Strasbourg Agreement** Article 9.

Article 11(4) A new provision (ab) implements the unitary contribution system in the simplest possible manner. “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. “

Similar amendments are to be made to the **Paris Convention** Article 16 and **Berne Convention** Article 25.

Article 11(4)(b) 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. Where the change involves moving to a lower class, notification to the General Assembly is required. 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).

Similar amendments are to be made to the **Paris Convention** Article 16 and **Berne Convention** Article 25.

Article 11(4)(c) implements the system of units in the context of the unitary contribution system.

Similar amendments are to be made to the **Paris Convention** Article 16 and **Berne Convention** Article 25.

Article 11(5) contains minor modifications to reflect the unitary contribution system.

Article 11(6) is deleted as fees and charges have not been imposed by the International Bureau “in the field of legal-technical assistance.”

- establishment of **annual ordinary sessions of the WIPO General Assembly and the Assemblies of the Unions** administered by WIPO.

It was considered by delegates that a two year interval is too long, and the practice of frequent Extraordinary sessions illustrates this. The WIPO General Assembly currently meets annually as do all Unions which have business to discuss.

WIPO Convention - amendment

Article 6(4)(a) establishes the annual frequency for ordinary sessions of the General Assembly.

Similar amendments are to be made to **Paris Convention** Article 13(7)(a), **Berne Convention** Article 22(4)(a), **Strasbourg Agreement** Article 7(4)(a), **PCT** Article 53(11)(a), **Nice Agreement** Article 5(4)(a) and **Budapest Treaty** Article 10(7)(a).

- **Term of the Director General**

In addition to those amendments, an amendment to Article 9(3) of the WIPO Convention was unanimously adopted in 1999 by WIPO Member States. This amendment limits the number of terms of the Director General of WIPO to a maximum of two fixed terms of six years each.

At its 23rd session (September 7 to 15, 1998), the WIPO General Assembly, acting upon the recommendation of the WIPO Coordination Committee, adopted a policy to limit the mandates of Directors General to a maximum of two fixed terms of six years each, and decided that the WIPO Convention should be

amended accordingly (document WO/GA/23/7, paragraph 22). Subsequently, the Paris Union and the Berne Union Assemblies and the WIPO Conference unanimously adopted (September 24, 1999) an amendment to Article 9(3) of the WIPO Convention (document A/34/16, paragraph 148). The adopted recommendation (see paragraph 12, document A/34/4), amends Article 9(3) of the WIPO Convention as follows:

“(3) The Director General shall be appointed for a fixed 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.”

In accordance with Article 17(3) of the WIPO Convention, the amendment will 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 of WIPO from three-fourths of the Member States of WIPO at the time the Conference adopted the amendment. To date, 47 of the required 129 notifications of acceptance have been received by the Director General.

Impact on Australian Domestic Law

No domestic legislative changes are required.

Should Australia formally accept the administrative amendments to WIPO administered treaties identified above?

Australia is now undergoing domestic treaty processes to assist the government in deciding whether it should formally accept the administrative amendments outlined above.

Australia is very supportive of constitutional reform which simplifies the system and has previously indicated its support for these amendments.

The amendments do not impact on IP rights or IP laws and will formalise the current practices.

Further information on the adopted recommendations can be found on the WIPO website at www.wipo.int

Final texts of proposed amendments to The Convention Establishing The World Intellectual Property Organization.

http://www.wipo.int/documents/en/document/govbody/wo_gb_ab/doc/a_39_2.doc

Final texts of proposed amendments to the Paris Convention and other WIPO-Administered Treaties

http://www.wipo.int/documents/en/document/govbody/wo_gb_ab/doc/a_39_3.doc

Report of the 2003 General Assembly (see paragraphs 164 to 167)

http://www.wipo.int/documents/en/document/govbody/wo_gb_ab/doc/a_39_15.doc