

**PROPOSAL FOR THE DEVELOPMENT OF A RESOURCE TOOL
ADDRESSING THE INTERSECTION BETWEEN PRIVATE INTERNATIONAL LAW
AND INTELLECTUAL PROPERTY LAW**

proposed by the World Intellectual Property Organization

* * *

**PROPOSITION POUR L'ÉLABORATION D'UN OUTIL DE DOCUMENTATION
PORTANT SUR LES INTERACTIONS ENTRE LE DROIT INTERNATIONAL PRIVÉ
ET LE DROIT DE LA PROPRIÉTÉ INTELLECTUELLE**

présentée par l'Organisation mondiale de la propriété intellectuelle

(DISPONIBLE EN ANGLAIS UNIQUEMENT)

*Preliminary Document No 10 of February 2016 for the attention
of the Council of March 2016 on General Affairs and Policy of the Conference*

*Document préliminaire No 10 de février 2016 à l'attention
du Conseil de mars 2016 sur les affaires générales et la politique de la Conférence*

Mr. Christophe Bernasconi
Secretary General
Permanent Bureau
Hague Conference on Private
International Law (HCCH)
Churchillplein 6b
2517 JW The Hague
Netherlands

January 29, 2016

Dear Secretary General Bernasconi,

Further to the discussions that took place between Ms. Marta Pertegás, First Secretary, Permanent Bureau of the Hague Conference on Private International Law (HCCH) and my colleagues in the Building Respect for Intellectual Property Division, I have the pleasure to confirm the interest of the World Intellectual Property Organization (WIPO) in collaborating with the HCCH on a resource tool addressing the intersection between private international law and intellectual property law.

Globalization, ever-closer economic integration, and fast moving digitization have rendered the challenges surrounding the interaction between intellectual property and private international law more frequent and acute. With the aim of contributing to the formation of a factual and practical overview of the approaches taken by courts in this intersection, WIPO published in September 2015 a report (enclosed) on "Private International Law Issues in Online Intellectual Property Infringement Disputes with Cross-Border Elements – An Analysis of National Approaches". The Report *inter alia* highlights the necessity to ameliorate understanding of the intersection between intellectual property and private international law among businesses, counsel and judges.

In parallel, WIPO is cognizant that the work of the HCCH, and in particular the Conventions in force in the area of international litigation (such as the 1965 Service Convention, the 1970 Evidence Convention or the 2005 Choice of Court Convention), may impact intellectual property disputes with cross-border elements. WIPO is also aware that the HCCH

/...

Mr. Bernasconi, The Hague, January 29, 2016

Judgments Project is entering an exciting phase with the submission to the HCCH Council on General Affairs and Policy of the draft text for an international instrument addressing the recognition and enforcement of judgments relating to civil and commercial matters, which includes intellectual property relevant provisions.

At the same time, soft law initiatives have flourished in the last decade, *de lege ferenda*, endeavoring to remove the gaps in the existing legal frameworks concerning private international law and intellectual property to complement legislative efforts, by proposing either normative frameworks for the adjudication of cross-border intellectual property disputes or by aiming to guide relevant legal processes. They include, notably, the initiatives under the auspices of the American Law Institute (ALI), the European Max Planck Group, the International Law Association (ILA), and Japanese and Korean projects.

Against this backdrop, it appears timely for the HCCH and WIPO to strengthen their existing cooperation by providing necessary, updated information on intellectual property and private international law to relevant stakeholders through the development of a resource tool aimed at improving the understanding of this intersection. The resulting material should elucidate the operation of private international law in intellectual property matters in a plain language, user-friendly, simplified format, using hypothetical scenarios to explain the basic private international law issues in the context of cross-border intellectual property disputes. The resource tool would not be intended to have any normative character. Rather, it would simply serve as a basic information tool referencing existing instruments and examples of court judgments for the benefit of different legal actors, such as judges, legislators, arbitrators and legal counsel. It may also provide a solid teaching resource.

The assistance of a (former) specialized judge may be solicited for the drafting of the material. Our respective staff would provide the necessary coordination, in a first phase, and finalize the tool in line with the respective processes of the two Organizations. Resource implications are expected to be limited.

I hope this will be of interest to the HCCH and its Members. My colleagues in the Building Respect for IP Division, Ms. Eun Joo Min, Senior Legal Counsellor, and Mr. Tobias Bednarz, Legal Officer, are at your disposal to provide any further clarifications that you may require. Should you consider this appropriate, WIPO will be pleased to participate in the upcoming meeting of the Council on General Affairs and Policy and respond to any queries HCCH Members may have with regard to this proposal.

I greatly appreciate the HCCH's engagement in WIPO's activities and look forward to the further development of the excellent relationship between our two Organizations.

Yours sincerely,



Francis Gurry
Director General

Permanent Bureau | *Bureau Permanent*
6, Scheveningseweg 2517 KT The Hague | *La Haye* The Netherlands | *Pays-Bas*
telephone | *téléphone* +31 (0)70 363 3303 fax | *télécopieur* +31 (0)70 360 4867
e-mail | *courriel* secretariat@hcch.net website | *site internet* <http://www.hcch.net>