

Council on General Affairs and Policy of the Conference – March 2018

Document	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	No 23 of March 2018
Title	Final steps of the WIPO-HCCH Guide on “When Private International Law meets Intellectual Property Law – A Guide for Judges”	
Author	Permanent Bureau	
Agenda item	Item III.6.c	
Mandate(s)		
Objective	To seek a mandate from the Council with regard to the approval procedure of the WIPO-HCCH Guide on “When Private International Law meets Intellectual Property Law – A Guide for Judges”	
Action to be taken	For Approval <input type="checkbox"/> For Decision <input checked="" type="checkbox"/> For Information <input type="checkbox"/>	
Annexes		
Related documents	n.a.	

A. Introduction

1. At its March 2016 and 2017 Meetings, the Council on General Affairs and Policy of the Conference (Council) directed the Permanent Bureau (PB) of the Hague Conference on Private International Law (HCCH) to assist the World Intellectual Property Organization (WIPO) in developing a Guide addressing the intersection between private international law and intellectual property law (draft Guide).¹ The purpose of this document is to inform Council of the progress and current status of this joint project and to seek instructions from Council with regard to the approval procedure.

B. Progress and current status

2. The draft Guide “When Private International Law Meets Intellectual Property Law – A Guide for Judges” is designed to be a basic information tool and should be considered as a stepping-stone that will help judges and lawyers when they are resolving cross-border IP law issues. It does not advocate any particular approach to substantive issues of law or provide any solutions in individual cases; rather, by highlighting the main issues in this complex area, it aims to assist judges and lawyers in many different States to make informed decisions.

3. The draft Guide was prepared by the co-authors: The Honourable Dr Annabelle Bennett (Australia) and Judge Samuel Granata (Belgium), with the co-ordination of the WIPO Secretariat and the PB. Conscious of this being a complex subject, the draft Guide is set to be user-friendly: it is written in straightforward language and includes examples or cases which are drawn mainly from those jurisdictions that the authors know best, namely Australia, Belgium and the European Union. They are purely illustrative: this draft Guide does not offer a comprehensive overview of all relevant laws, and each reader should complement it with more detailed study of the law relevant to their jurisdiction.

4. The draft Guide was presented to the Member States of WIPO at the 12th Session of the WIPO Advisory Committee on Enforcement (ACE), which took place from 4 to 6 September 2017, in Geneva, Switzerland.

5. Subsequently, both Secretariats invited several external experts to comment on the draft Guide. The consulted experts (Professor Pedro de Miguel Asensio, Complutense University of Madrid; Professor Marcelo De Nardi, Unisinos University; Professor Toshiyuki Kono, Kyushu University; Professor Dr Axel Metzger, Humboldt University; and Professor Marketa Trimble, University of Nevada) provided valuable input to the draft Guide, which was incorporated into a revised draft.

6. The revised draft was circulated to the Members of the HCCH in English and French on 12 December 2017 and 1 February 2018, respectively, and Members were invited to comment on the draft by 28 February 2018, as mandated by Council in March 2017.² When circulating the revised draft, the PB noted that “[d]epending on the nature of the comments received and the time required to reflect upon them and incorporate them into the draft Guide, the PB hopes to be able to submit, shortly before the meeting in March 2018, a final version of the text to Council for approval. In the event that the final version is not available until after the Council meeting, the PB will seek a mandate from Council to commence a written voting procedure in line with the outcome of the discussions that may take place during the Council in relation to the procedure for conducting written votes.”

7. Eight Members (Argentina, Canada, the European Union, Israel, the Netherlands, Paraguay, Switzerland and Viet Nam) submitted comments on the draft Guide (these comments are available on the Secure Portal of the HCCH website). The PB, together with the co-authors and the WIPO Secretariat, has already begun to analyse and incorporate the majority of these comments. However, given that the comments are of various degrees and natures, therefore

¹ See “Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (15-17 March 2016)”, C&R No 24; “Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (14-16 March 2017)”, C&R Nos 18 and 19, available on the HCCH website at < www.hcch.net >, under “Governance” then “Council on General Affairs and Policy”.

² “Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (14-16 March 2017)”, C&R No 18, available on the HCCH website at < www.hcch.net > (path indicated in note 1).

requiring more time to process them and incorporate them into the revised draft Guide, the PB regretfully informs Members that it will not be in a position to submit a final draft version of the Guide to Council for approval at its meeting in March 2018.

C. Final steps

8. With regard to final steps, the PB, together with the WIPO Secretariat and the co-authors, will, in consultation with the aforementioned eight Members, prepare a final draft of the text to be sent to all Members for approval as soon as possible, but in any case no later than Friday 8 June 2018. Members will then be invited to approve the amended Guide. The PB invites Council to decide whether the approval should result from a written voting procedure or be expressed by Council at its meeting in 2019.