

Documents tabled on 12 March 2008:
(previously tabled on 11 September 2007):

National Interest Analysis [2008] ATNIA 3
with attachment on consultation

**Constitutional amendments to the *Convention Establishing the World Intellectual Property Organization* and other WIPO administered treaties adopted by the WIPO General Assemblies in September 1999 and October 2003:
[2007] ATNIF 20 and [2007] ATNIF 21**

Convention Establishing the World Intellectual Property Organization
Paris Convention for the Protection of Industrial Property
Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks
Patent Cooperation Treaty
Strasbourg Agreement concerning the International Patent Classification
Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
Berne Convention for the Protection of Literary and Artistic Works, 1971

**Contribution Classes of States Members of WIPO
and/or the Paris and/or Berne Unions**

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. The proposed treaty actions are the formal acceptance by Australia of various constitutional amendments to each of the above treaties.
2. The amendment to Article 9(3) of the WIPO Convention was adopted by the General Assemblies of the World Intellectual Property Organization (WIPO) in 1999. All of the other amendments were adopted by the WIPO General Assemblies in 2003. The amendments to each instrument will come into force one month after written acceptance by three-fourths of its Member States (pursuant to Article 17(3) of the WIPO Convention, 17(3) of Paris, 8(3) of Nice, 61(3) of the PCT, 11(3) of Strasbourg, 14(3) of Budapest and 26(3) of Berne). Once in force, the amendments to each instrument will bind all States that are a Party to that instrument, including those Parties that have not notified formal acceptance.
3. Notification of Australia's formal acceptance of the amendments is proposed to be undertaken as soon as practicable after the completion of domestic processes.

Overview and national interest summary

4. The WIPO General Assemblies adopted a recommendation in 1999 regarding the tenure of the Director General of WIPO, and several recommendations in 2003 regarding the abolition of the WIPO Conference, changes to the contribution system and the frequency of sessions of the WIPO General Assemblies. In implementing these recommendations, the WIPO General Assemblies have now adopted several amendments to the WIPO Convention and 11 other WIPO-administered treaties. Australia is supportive of constitutional reform which simplifies the WIPO system.
5. These amendments introduce no substantive changes to Australia's current obligations under these treaties, but are rather constitutional reforms aimed at simplifying the WIPO system. Such reforms will benefit Australia's pursuit of its substantive aims in the WIPO system.

Reasons for Australia to take the proposed treaty action

2003 amendments

6. As a result of a process of constitutional reform, the WIPO General Assemblies in 2003 agreed to administrative amendments to a number of treaties. These amendments relate to three matters:

- the abolition of the WIPO Conference;
- the formalisation of the unitary contribution system and changes in contribution classes that have been operative in practice since 1994; and
- the establishment of annual ordinary sessions of the WIPO General Assembly and the Assemblies of the Unions administered by WIPO.

7. Although the amendments affect 12 treaties administered by WIPO, Australia is only party to the following seven treaties that are to be amended:

- Convention Establishing the World Intellectual Property Organization [1972] ATS 15 (the WIPO Convention).
- Paris Convention for the Protection of Industrial Property [1972] ATS 12 (the Paris Convention).
- Berne Convention for the Protection of Literary and Artistic Works [1978] ATS 5 (the Berne Convention).
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks [1979] ATS 2 (the Nice Agreement),
- Patent Cooperation Treaty [1980] ATS 6 (PCT).
- Strasbourg Agreement Concerning the International Patent Classification [1975] ATS 42 (the Strasbourg Agreement).
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure [1987] ATS 9 (the Budapest Treaty).

8. Australia strongly supports constitutional reforms that simplify the international intellectual property system and has previously indicated its support for these amendments. These reforms will benefit Australia's pursuit of its substantive aims in the WIPO system.

9. The amendments make no substantive changes to Australia's current obligations under these instruments. They do not impact on Intellectual Property rights or laws, and will merely formalise practices which have been in place for some years.

Abolition of the WIPO Conference

10. The WIPO Conference currently comprises all States party to the WIPO Convention, whether or not they are also a member of one of the Unions administered by WIPO. In contrast, the WIPO General Assembly currently comprises only those States party to the WIPO Convention that are also members of one of the Unions

administered by WIPO. The WIPO Conference does not meet separately from the General Assembly, and has considered very few items separately from the Assembly. With a view to improving the efficiency of the WIPO system, it has been decided to abolish the WIPO Conference, with its functions to be taken over by the General Assembly.

11. Consequently, it is proposed for the WIPO Convention to be amended as follows:

- Article 6(1) is to be amended to accord membership in the WIPO General Assembly to all States party to the WIPO Convention.
- Article 6(2) is to be 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) is to be 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), which provides that States Parties that are not members of any of the Unions can attend meetings of the General Assembly as observers, is to be deleted; the amendments to Article 6(1) make this provision redundant.
- Articles 7, 8(1)(c) and 8(3)(iii) are to be deleted due to the abolition of the WIPO Conference.
- Article 8(3)(i) and Article 21 are to be amended to remove the reference to the WIPO Conference.
- In Articles 11(8)(c), 17 and 20 the reference to the Conference is to be replaced by a reference to the General Assembly.

Formalisation of the unitary contribution system and changes in contribution classes

12. The unitary contribution system has involved changes in the classes of financial contribution by Member States. These changes, which have been operative in practice since 1994, 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. It has now been decided to formalise this practice.

13. Consequently, the WIPO Convention is to be amended as follows:

- Article 11(1) will be a new enabling provision for the budget consequent upon the adoption of the unitary contribution system. It will require that the budget of the organisation be presented so that the income and expenses of the organisation and of the various unions be indicated “in a fair and transparent manner.”
- Article 11(2) is to be modernised 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.

- Article 11(3), relating to the budget of the Conference, is to be deleted due to the abolition of the Conference and the fact that there has never been a budget of the Conference.
- Article 11(4) is to be amended so to implement 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.
- Article 11(5) contains minor modifications to reflect the unitary contribution system.
- Article 11(6) is to be deleted as fees and charges have not been imposed by the International Bureau “in the field of legal-technical assistance.”

14. Amendments similar to those being made to Article 11(1) and (2) of the WIPO Convention are also to be made to Article 16 of the Paris Convention, Article 25 of the Berne Convention, Article 7 of the Nice Agreement, Article 57 of the PCT and Article 9 of the Strasbourg Agreement.

15. Amendments similar to those being made to Article 11(4) of the WIPO Convention are also to be made to Article 16 of the Paris Convention and Article 25 of the Berne Convention.

Establishment of annual ordinary sessions of the WIPO General Assembly and the Assemblies of the Unions administered by WIPO.

16. It was considered by Member States that a two year interval between General Assemblies was too long, as illustrated by the practice of frequent extraordinary sessions. The WIPO General Assembly now currently meets annually, as do all Unions which have business to discuss. This practice is now to be codified into the Convention.

17. Consequently, Article 6(4)(a) of the WIPO Convention is to be amended to provide that the General Assembly will meet once in every calendar year.

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

Entry into force

19. In accordance with Article 17(3) of the WIPO Convention, Article 17(3) of the Paris Convention, Article 8(3) of the Nice Agreement, Article 61(3) of the PCT, Article 11(3) of the Strasbourg Agreement, Article 14(3) of the Budapest Treaty and Article 26(3) of the Berne Convention, the amendments to each instrument will enter into force one month after written notifications of acceptance have been received from three-fourths of the States that were party to the relevant instrument in 2003 (when the amendment was adopted). Once in force, the amendments will bind all States that are party to the instrument, including those States that have not formally accepted it.

1999 Amendments

The term of the Director General of WIPO.

20. At its 23rd session (7 to 15 September 1998), the WIPO General Assembly, acting upon the recommendation of the WIPO Coordination Committee, adopted a policy to limit the length of time a person may serve as the Director General to a maximum of two fixed terms of six years each, and decided that the WIPO Convention should be amended accordingly.

21. Subsequently on 24 September 1999, the Paris Union and the Berne Union Assemblies and the WIPO Conference unanimously adopted an amendment to Article 9(3) of the WIPO Convention to this end.

Entry into force

22. In accordance with Article 17(3) of the WIPO Convention, the amendment will enter into force one month after written notifications of acceptance have been received from three-fourths of the States that were members of WIPO at the time the Conference adopted the amendment. Once in force, the amendments will bind all States that are party to the instrument, including those States that have not formally accepted it.

23. To date 47 of the required 129 notifications of acceptance have been received.

24. The current Director General is in his second term which is due to expire in 2009. When he was unanimously appointed by the General Assembly in 1997, the Director General stated, in the context of the Assemblies' discussions on the policies and practices for the nomination and appointment of a Director General, that he was "totally committed to the principle of limitation of mandates" (document WO/GA/XXI/13, paragraph 240).

Obligations

25. These amendments introduce no substantive changes to Australia's current obligations under these treaties.

Implementation

26. No Commonwealth or State and Territory action is required to implement the amendments to the WIPO treaties. Implementation will not affect the existing roles of the Commonwealth and States and Territories.

Costs

27. Formal acceptance of these administrative amendments is not expected to result in additional costs to the Commonwealth or State or Territory Governments.

Regulation Impact Statement

28. IP Australia has assessed the implementation of the amendments against criteria in The Best Practice Regulation Handbook. This regulatory option has no

impact on business and individuals or on the economy and a Regulation Impact Statement or Business Cost Calculator report is not required.

Future treaty action

29. Amendments to Article 17 of the WIPO Convention shift certain responsibilities in the amendment process from the WIPO Conference to the General Assembly, without changing the substance of that process. The amendments do not alter any other future treaty actions specified in each treaty.

30. An amendment to the WIPO Convention is to be adopted by a simple majority in the General Assembly. Any such amendment will enter into force for all Parties to the Convention once three-fourths of Parties have notified their acceptance of it (Article 17).

31. Specified provisions in each of the other instruments relating to certain administrative matters may be amended by a similar means—the amendment is to be adopted by a three-fourths vote in the Assembly of the relevant instrument (four-fifths for provisions relating to the Assembly). It will then enter into force for all Parties to the instrument once three-fourths of Parties have notified their acceptance of it. (Article 17 of the Paris Convention, Article 8 of the Nice Agreement, Article 61 of the PCT, Article 11 of the Strasbourg Agreement, Article 14 of the Budapest Treaty and Article 26 of the Berne Convention).

32. All other provisions of the other instruments can only be amended at a review conference convened for that purpose, the convocation of which being decided upon by the Assembly of the relevant instrument (Article 18 of the Paris Convention, Article 11 of the Nice Agreement, Article 60 of the PCT, Article 10 of the Strasbourg Agreement, Article 13 of the Budapest Treaty and Article 27 of the Berne Convention).

Withdrawal or denunciation

33. The amendments do not alter the withdrawal or denunciation provisions specified in each treaty.

34. Any Party may denounce either the WIPO Convention or the PCT upon six months notice (Article 18 of the WIPO Convention and Article 66 of the PCT). Any Party may denounce the Budapest Treaty upon two years notice, provided the State had been party to the treaty for at least five years when giving the notice (Article 17). Any Party may denounce any of the other instruments upon one year notice, provided that the State had been party to the instrument for at least five years when giving the notice (Article 26 of the Paris Convention, Article 12 of the Nice Agreement, Article 15 of the Strasbourg Agreement and Article 35 of the Berne Convention).

Contact details

International Policy
Business Development and Strategy
IP Australia (Department of Innovation, Industry, Science and Research).

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Consultation

1. IP Australia consults regularly with industry and professional organisations. Consultation includes meetings with groups such as the Inventors Associations, the Australian Manufacturers' Patents, Industrial Designs, Copyright and Trade Mark Association (AMPICTA), the Institute of Patent and Trade Mark Attorneys of Australia (IPTA), the Advisory Council on Intellectual Property (ACIP) and the Law Council of Australia. Such meetings include opportunities for exchanging information on IP Australia's activities. In particular the treaty actions regarding the Singapore Treaty on the Law of Trademarks, Patent Law Treaty and formal acceptance of the administrative amendments to several WIPO treaties were items on the agenda for meetings with AMPICTA, IPTA, ACIP and the trade marks Combined Interest Group (CIG). CIG includes representatives from IPTA, AMPICTA and the Law Council. Favourable and supportive comments were received from these meetings.
2. IP Australia placed on its website, in May 2007, a Public Consultation Notice regarding Australia's consideration of the Singapore Treaty, Patent Law Treaty and formal acceptance of the administrative amendments to several WIPO treaties. The Public Consultation Notice provided a general overview of these actions, advised the dates of free Information Sessions to be held in each mainland capital city and called for comments on the proposed treaty actions. A Public Consultation Paper with more detailed information on the formal acceptance of the administrative amendments to several WIPO treaties was also provided with the Public Consultation Notice.
3. In May 2007 approximately 1200 people were notified by email of the potential treaty action and their attention was directed to the Public Consultation Notice and the Consultation papers. They included intellectual property professionals, academics, intellectual property owners and potential applicants for intellectual property rights as well as staff of State and federal government departments and agencies.

4. These consultations were also listed on the www.business.gov.au website in May 2007. This Business Consultation website allows the Australian Government to easily consult with business owners, associations and people interested in business.
5. Public Information Seminars were held around Australia in June. IP Australia officials presented on each of the treaty actions.
6. There has been little interest from stakeholders as there is no impact on intellectual property rights or intellectual property laws. Attendees at the Public Information Seminars considered that as the amendments will formalise the current administrative practices in WIPO it was appropriate for Australia to accept them.
7. The constitutional amendments to several WIPO treaties have also been included on the twice yearly schedules of the Commonwealth-State/Territory Standing Committee on Treaties since 2004. The schedules allow the States and Territories to seek further information at the twice yearly meetings; however no State or Territory has sought further information from this committee.