Council of the European Union

Brussels, 1 September 2014
(OR. en)

12583/14

LIMITE

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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Fifty-fourth WIPO General Assembly (Geneva, September 22 to 30, 2014) - Draft EU statements

In preparation of the above-mentioned WIPO General Assembly, delegations will find in the Annex a set of draft EU statements prepared by the Presidency as the basis for discussions at the meeting of the Working party on Intellectual Property on 9 September 2014.

A draft EU Opening statement and a draft EU statement on the Lisbon system/geographical indications will also be circulated shortly as an addendum to this Note.

ANNEX

EU STATEMENTS FOR GENERAL ASSEMBLY 2014

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I. Statements

Report of the Committee on Development and Intellectual Property (CDIP) and Review of the Implementation of the Development Agenda Recommendations (Item 13)

WO/GA/46/3, WO/GA/46/4, WO/GA/46/10

Chair,

Robust and balanced IP infrastructures underpinned by adequate capacity building measures and coupled with a development-oriented IP culture, can contribute significantly to the attainment of development goals. The European Union and its Member States continue to be committed to further progress in this field in order to implement the recommendations of the Development Agenda in an appropriate, and consensus-driven, manner. We would like to thank the WIPO Secretariat for its valuable contribution to the work of the Committee.

The EU and its Member States welcome WIPO's extensive technical assistance and capacity building programmes. This year as in previous years, the EU and its Member States have been very active in promoting IP as an effective tool in in support of development. t. WIPOs programmes can operate in synergy with the very significant EU resources dedicated to technical assistance programmes in the field of intellectual property. In this regard we would recall that the EU and its MS have provided considerable assistance through technical cooperation activities in the field of IP and in favour of developing and least-developed countries, notably in the context of Article 67 of the TRIPS Agreement.

We hope that the collective efforts of WIPO's membership will ensure that WIPO's development activities are conducted on the basis of transparency, good governance, and best practice, thereby creating the conditions for an effective and consensual implementation of the CDIP mandate.

Thank you very much for your attention.

Consideration of the convening of a Diplomatic Conference for the Adoption of a Design Law Treaty (SCT) (Item 14)

WO/GA/46/9

Mr Chairman,

The European Union and its Member States would like first of all to reaffirm their strong commitment to the important work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT).

The European Union and its Member States attach great value to harmonising and simplifying of design registration formalities and procedures. The SCT has, over the last several years, worked assiduously to draw up a draft normative instrument to deal with this issue. These draft Articles and Regulations aim at approximating and simplifying industrial design formalities and procedures. They are also needed to establish a dynamic and flexible framework for the subsequent development of design law, to keep up with future technological, changes. In line with the respective Development Agenda Recommendations, numerous studies have been carried out, in relation to the impact of the proposed Treaty. The study results indicate that respondents in all countries believe that the proposed changes would bring about a positive impact.

We note from the Chair's summary at SCT 29 that "A number of delegations stated that sufficient progress had been made by the SCT to recommend to the WIPO General Assembly the convening of a diplomatic conference in 2014". Following this, the Chair's summaries of SCT 30 and SCT 31 note that further progress on the text was made at both of these meetings. =For some time now the EU and its Members States consider the texts under consideration to be at a sufficient level of maturity for a Diplomatic Conference to be convened, paving the way for the adoption of a Design Law Treaty. However, we also note the concerns of some delegations who consider that further progress is needed on the issue of technical assistance.

The EU and its Member States believe that, while there are differences of opinion as to how the issue of technical assistance and capacity building *should be* dealt with in relation to the treaty, no WIPO Member State questions the principle of their provision.,

Chair,

Questions relating to the provision of technical assistance have arisen before in the contexts of WIPO negotiations surrounding both the Singapore Trademark Law Treaty, and the Patent Law Treaty. In each case however the matter was resolved to the satisfaction of all parties during the Diplomatic Conference itself. Hence, we believe that open questions relating to the provision of technical assistance and capacity building do not necessarily need to be resolved before the convening a diplomatic conference. We know from experience that it is a matter that will be satisfactorily addressed in due course. This matter should therefore not be allowed to further delay progress to the next phase of our work on a draft Design Formalities Treaty.

In conclusion, and as stated at the 29th Session and 30th Sessions of the Committee, the EU and its Member States would propose that the General Assembly mandate the convening of a Preparatory Committee with a view to a holding a Diplomatic Conference in 2015 in Geneva.

Thank you.

Matters Relating to the Standing Committee on Copyright and Related Rights (SCCR)
(Item 15)

Chair,

The European Union and its Member States would like to thank the Chairman of the Standing Committee on Copyright and Related Rights (SCCR) and the WIPO Secretariat for their excellent work and efforts in trying to move forward the issues currently under discussion in the SCCR.
The European Union and its Member States have been actively involved in the discussions on the treaty for the protection of broadcasting organisations. We have worked tirelessly to advance work on a matter that, undeniably, is a complex and technical one at times. We attach great importance to these negotiations and are encouraged by the latest progress in our discussions on the main elements of the treaty such as the scope of application and the catalogue of rights to be vested in broadcasting organisations. We believe that, in order to achieve a treaty giving broadcasting organisations adequate and effective protection, a broad consensus needs to be built as to the extent of the protection to be granted. While trying to build such consensus, our aim needs to remain the conclusion of a Treaty which is meaningful in view of the technological realities and of the needs of broadcasting organisations in the XXIst century. With that objective in mind, we should accelerate work to ensure even greater progress and to be in a position to call for a Diplomatic Conference as soon as possible.

Concerning limitations and exceptions in favour of libraries and archives, as well as educational, teaching and research institutions and persons with other disabilities, the European Union and its Member States believe that the current international copyright framework already enables WIPO Member States the required legal space to introduce, maintain and adapt when necessary, meaningful limitations and exceptions in their national laws. Furthermore, the current international copyright framework provides all the needed flexibility for WIPO Member States to take into account the specificities of their legal systems and of their economic and societal needs, while respecting the necessary balance to ensure that copyright continues to be an incentive and a reward to creativity.

Therefore, the European Union and its Member States are ready to debate and work with all WIPO Member States so that these limitations and exceptions function in the best possible way in the framework of the existing international treaties. This approach is one where WIPO Member States take responsibility for their own legal framework, supported by an exchange of ideas, principles and best practices, which are for us the way forward on this issue. We are glad to see that the Committee has made some progress in this direction in its last few sessions.

However, fundamental differences seem to persist on the need, or not, for an international legally binding instrument on exceptions and limitations in this area. Such differences have regrettably hampered discussions in the SCCR and affected progress on all items on the agenda of the Committee, despite the substantial efforts and resources put by all delegations and the extraordinary engagement of the Committee Chair and Vice Chair.

[Placeholder - we understand the WIPO Secretariat is preparing a proposal as to a possible way forward in the SCCR that will be ready to be presented to Member States at the GA, we will need to react to such proposal in our intervention]

The EU and its Member States remain fully committed to find a way forward for the work in the SCCR including in relation to items to be included in its future work programme. Such future work programme needs to be built upon the understanding that an effective copyright system at international level is made up of many interlinked elements that go well beyond new normative efforts. We also believe that it is essential to undertake a thorough reflection on the working method and the role of the SCCR. Our common aim should be to ensure the best possible use of time and resources, as well as the ability of this organisation to continue playing a central role in copyright at international level. Thank you very much for your attention.

Matters concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) (Item 16)

(WO/GA/46/6)

Mr Chairman, Chair,

The European Union and its Member States recognise the importance of the work carried out by the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

The EU and its Member States believe that this year's discussions have undoubtedly been fruitful, and some limited progress has been made. However, a significant number of issues of fundamental importance need to be resolved before the next stages of our work can be considered. In this respect we regret that the Committee was not able to produce a recommendation to this General Assembly for its future work programme. We agree that all components of the IGC are complex issues and that a very limited number of these issues could be addressed through a cross cutting approach. However we remain convinced that, given the specificities of the texts under consideration, all three texts should remain separate.

We will continue to work constructively with all Delegations to find ways to achieve tangible results. Accordingly, we look forward to establishing a reasonable and pragmatic work programme. In our view the number of days of meetings earmarked for the IGC process this year has been too resource intensive. It proved particularly difficult to manage given the different areas of expertise required. At times this has threatened the inclusive nature of discussions, particularly for smaller delegations. We would support 15 meeting days in 2015, with a very limited number of cross cutting sessions. This year's High-level meeting did not prove particularly fruitful and this exercise should therefore not be repeated.

We would like to reiterate our understanding that any international instrument or instruments to be created should be non-binding, flexible, and sufficiently clear. In this respect, we would like to remind Members that no decision has been reached on the nature of the instruments to be adopted and that the work of the IGC should continue on this basis, also in view of the prior achievement of solid, clear and consolidated texts.

Thank you

Standing Committee on the Law of Patents (SCP) (Item 17(i))

Chair,

The European Union and its Member States are pleased that good progress was made at the 20th session of the SCP, that positive conclusions were reached, and that delegations agreed to continue discussions on the basis of the balanced work program, including the topics: "Quality of Patents, including Opposition Systems", "Client-Patent Attorney Privilege", "Exceptions and Limitations to Patent Rights", "Transfer of Technology", and "Patents and Public Health". The topics in the work program address important and complex issues related to the international patent system, with the hope that discussions achieve a more efficient and accessible patent system as a whole.

Consequently, the EU and is Member States are particularly keen to advance on the topics of "Quality of Patents, including Opposition Systems", as we believe that work on this topic would be of interest to member states across the spectrum of development, and also on the topic of "Client-Patent Attorney Privilege", as convergence of differing provisions would be of benefit to users of the patent system, irrespective of the level of development of individual WIPO Member States. However, the EU and its Member States remain committed to all topics on the balanced work programme of this Committee, and are hopeful that further work will enable fruitful discussions on technical issues concerning patent law, and consideration of the need for international harmonisation.

Thank you.

Advisory Committee on Enforcement (ACE) (Item 17 (iv)

Chair,

The European Union and its Member States welcome the previous fruitful discussions of the WIPO Advisory Committee on Enforcement and look forward to further productive exchanges during the tenth upcoming session.

Intensified efforts of the Committee to build a shared understanding of the impact of IPR infringements are a key driver for effective prevention and enforcement strategies. To this extent, a fixed agenda with an additional permanent point on voluntary presentations of respective national IP enforcement frameworks would ensure time savings and thus further facilitate the exchange of views and best practices on this key issue. The European Union and its Member States are confident that fruitful collaboration will continue between delegations in order to combat more effectively IPR infringements which affect us all.

Thank you

II. Context notes

Context Note: Item 13

Report of the Committee on Development and Intellectual Property (CDIP) and Review of the Implementation of the Development Agenda Recommendations

Expected date of delivery:	24 September 2014

Delivered by:	Italian Presidency

WIPO document:	WO/GA/46/3, WO/GA/463/10

Context:

The Committee on Development and Intellectual Property's (CDIP's) stated purpose is to develop a work program for the implementation of the Development Agenda recommendations. In practice this has involved the CDIP mandating studies, and pursuing projects, which cover development across the full gamut of IP.

The wide ranging topics the CDIP addresses, and the difficulty in achieving consensus on the way to move topics forward, has resulted in the CDIP becoming overburdened with work. There are concerns that CDIP is trying to steer the work of WIPO away from the work of an IP organisation to that of a development organisation. Despite the full agenda, the CDIP remains of key interest to developing countries, and many of its discussions have the potential to influence the work of WIPO's other committees.

CDIP has also served to highlight the beneficial role IP can play in developing countries (e.g. the audio-visual sector in Burkina Faso), but there is room for further examples.

Approach at General Assembly

A decision on whether to allow CDIP to continue its discussion on the decision on CDIP related matters adopted at the 43rd Session of the WIPO General Assembly is to be taken at the General Assemblies.

The statement does not go into the specific discussions had in CDIP, but highlights the basis on which WIPO's technical assistance and capacity building activities should be provided (i.e. transparency, good governance, best practice). [*It also highlights that the EU and its Member States are already very active in promoting IP as an effective tool in support of development and provided considerable assistance through technical cooperation activities in the field of IP and in favour of developing and least-developed countries in the context of Article 67 of the TRIPS Agreement*]

Context note: item 14

Consideration of the convening of a Diplomatic Conference for the Adoption of a Design Law Treaty

Expected date of delivery:	24 September 2014

Delivered by:	European Union

WIPO document:	WO/GA/46/9

Context:

The SCT has been developing a possible Design Law Formalities Treaty (DLFT) for a number of years. The EU and its MS have championed this effort and called for a Diplomatic Conference (Dip Con) to establish a DLFT. To date consensus within the WIPO membership on this point has not been found.

At SCT 26 the terms of reference for a study was established, and this study has been completed, and updated (SCT/27/4/Add), by the WIPO Secretariat. The study suggests positive benefits for applicants/users in all countries, but a perceived need for technical assistance and capacity building in middle and low-income countries.

Subsequently, much debate in the SCT has focussed on how the treaty might provide for technical assistance and capacity building. While the EU and its Member States believe that a resolution would be a more than adequate mechanism to achieve this, some within the WIPO membership have argued that it is necessary to include an article within the treaty. In a spirit of cooperation and flexibility, the EU and its Member States proposed a draft Article at SCT 29 which contained provisions to facilitate technical assistance and capacity building.

Approach and General Assembly

Whether or not to convene a diplomatic conference in this regard is a decision point for this General Assembly. It is hoped that by highlighting the technical maturity of the draft treaty, the compliance with the Development Agenda recommendations (in terms of studies, etc), the progress made in dealing with technical assistance, and WIPO's track record in resolving questions of technical assistance at diplomatic conferences, a compelling argument will be made for the convening of a diplomatic conference in 2014.

It is not clear how the decision point will be dealt with during the General Assembly, whether openly in the plenary chamber, or whether an agreement will be reached during informal consultations. Consequently, the form and timing of the draft statement are subject to change.

SCT agenda item

Review of the activities of the SCT stands as a separate agenda item (agenda item 17(ii)) to the decision on whether to convene a diplomatic conference to establish a design law formalities treaty. A separate statement would not seem to be required.

Context Note: Item 15

Matters Relating to the Standing Committee on Copyright and Related Rights (SCCR)

Expected date of delivery:	25 September 2014

Delivered by:	European Union

WIPO document:	-

Context:

The Standing Committee on Copyright and Related Rights (SCCR) was set up in the 1998-1999 biennium to examine matters of substantive law or harmonization in the field of copyright and related rights.

The Committee has been responsible, in the recent years, for recommending the WIPO General Assembly to convene the Diplomatic Conferences which adopted the Beijing Treaty on Audiovisual Performances (2012) and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (2013).

The Committee is currently engaged in discussing:

- Protection of broadcasting organizations: the EU is interested in making the negotiations on this matter progress in order to update the protection of the broadcasting organizations at the international level. However, there remain different views among WIPO Member States on the scope of application and the rights to be granted to the broadcasting organizations.
- Limitations and exceptions for libraries and archives, as well as for educational and research institutions and for persons with other disabilities: discussions on this item have given rise to very different positions: the EU and other developed countries, on the one hand, are of the view that the current international legal framework provides WIPO Member States with enough flexibility to establish those exceptions and limitations in their national law; most developing countries, on the other hand, demand a treaty to harmonize exceptions and limitations at the international level.

The different approach of WIPO Member States to these two issues is leading the Committee to a deadlock, resulting in its inability to issue any recommendation to this General Assembly as regards its future work.

Context note: Item 16

Matters concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

Expected date of delivery:	25 September 2014
Delivered by:	European Union
WIPO document:	WO/GA/46/6

Context:

The WIPO IGC considers a draft instrument/s on Genetic Resources (GR), Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs). The texts under discussion are currently still at a drafting stage, and contain many divergent policy options to be decided.

The EU position to date has been that the texts should result in instrument/s which is/are flexible, non-binding and clear. Furthermore, the EU has argued that each aspect considered by the IGC should be afforded equal consideration (this partly from a pragmatic aspect), and that the texts should remain separate. The EU has also argued that further evidence and examples are needed to ascertain the potential impact of the texts (especially TK and TCE) under discussion on all stakeholders, including 'holders' of GR/TK/TCEs, users and society at large.

Developing countries have been very keen to intensify the IGC process so as to establish a treaty/s to protect the subject matter of the IGC. Within Group B, Australia and New Zealand have also been proactive in pursuing the IGC process, possibly by merging the texts on TK and TCEs.

The 2013 WIPO General Assemblies mandate for the IGC included three meetings held in 2014, with 18 meeting days in total. At IGC 26, half a day was used for an Ambassadors/Senior Officials meeting on all issues, while four and a half days were dedicated to discussion of the GR text. At IGC 27, four days were dedicated to substantive discussion on each of TK and TCE, while two days were spent on so-called 'cross-cutting' issues. The remaining three days at IGC 28 were devoted to cross-cutting, stock taking and on and considering the possibility of making a recommendation to the general assembly on whether to convene a diplomatic conference. There was no consensus at the stock taking meeting on the future work/program of the IGC, and this remains to be decided at the General Assembly.

Genetic Resources

Within the context of the IGC negotiations the EU and its Member States have proposed a mandatory disclosure requirement mechanism for patents directly based on GRs. The mechanism requires certain safeguards to be present in order to ensure proper operation. Without the necessary safeguards in place there could be wide ranging and deleterious consequences for the patent system, innovation, and, indeed, any access and benefit sharing.

Safeguards

- Triggers: The EU common position seeks to ensure that disclosure (of the country of origin, or source, of the GR) need only be made for inventions "directly based on" the GR, and not merely related to the GR in some looser way. Some third countries would like a broader trigger, potentially expanding the number of patent applications for which disclosure is needed.

- Sanctions: The EU common position requires that sanctions to dissuade against non/incomplete disclosure be "outside the field of patent law". Some third countries would like to see revocation of patents as a sanction, potentially inhibiting use of the patent system.

- There are other safeguards which also need to be in place.

Furthermore, there are some issues within the common position which remain open, and in need of further reflection within the EU.

Open issues

- Associated TK: The common position relates to the disclosure of "genetic resources *and traditional knowledge* [emphasis added]"; however, the definition of traditional knowledge is not yet clear, and that forming under the consolidated TK text is broad and open to interpretation. It may be difficult for patent applicants to judge whether the 'knowledge' upon which an application is based is traditional or not.

- Exclusions: The common position does not deal with exclusions per se. It is not yet clear how any prospective mechanism might operate in relation to GR derivatives, commodities, GRs outside national jurisdictions, GRs acquired before the CBD, TK in the public domain, etc.

- There are other open issues to be decided, including how the prospective mechanism would relate to the PCT and PLT.

Without the necessary safeguards in place, and resolution of the open issues, the text should be regarded as immature, and it would be premature to decide on a final form of legal instrument.

TK and TCEs

For both the TK and TCE texts, many demandeurs have high ambition and seek binding legal treaties with provisions which would have wide ranging, and difficult to assess, effect. In contrast, the EU and MS have not tabled comprehensive proposals for how instrument/s in the area of TK and TCEs might operate, and instead sought to ensure that the texts under negotiation are legally clear, sufficiently flexible, and do not damage existing IP systems, the public domain, or freedoms to create and innovate.

There is no agreement within the WIPO membership as to the objectives of TCE protection, nor TK protection (though this has not been formally discussed for some time). Many demandeurs view the objective of "legal protection" of TK and TCEs to be protection against "misappropriation". However, without clarity upon what is being misappropriated and from whom, and even what constitutes misappropriation in areas where there is no established property right, it has been difficult to agree. During IGC 27 the demandeurs introduced a so

called ‘granular model’ which could be applicable to both TKs and TCEs. This model is still under discussion (also within the Council)

Nevertheless, both TK and TCE texts have taken on a legal form and include provisions relating to the subject matter and scope of protection, and the beneficiaries of such.

- Subject matter of protection: in both TK and TCE texts the subject matter of protection has not been agreed. With a common thread being whether TK and TCEs within the public domain should be subject to protection measures.

- Beneficiaries of protection: in both TK and TCE texts there is an unresolved issue of whether states/nations should be capable of being considered beneficiaries of protection.

- Scope of protection: Within the TCE text the EU has advocated that the “scope of protection” afforded to TCEs be the “safeguard[ing] as appropriate and according to national law, in a reasonable and balanced manner”; however, this does detail the measures that might be adopted.

- Unauthorised disclosure: The EU has advocated that the effect of TK protection is to prevent “unauthorised disclosure” of TK

With fundamental issues outstanding, it is difficult to predict the potential effects of instrument/s in the areas of TK and/or TCEs, but there is a potential for them to be wide ranging and extend outside the sphere of IP.

Cross cutting/attempts to merge texts
The ‘merge/synchronisation’ of the text was introduced during IGC 27. This was suggested by the Chair of the IGC to identify the problems within the texts. The EU and some others (like US and Japan) are against any attempts to ‘merge/synchronise’ the texts.

Approach at stock taking
At the stock taking meeting demadeurs pushed for an intensified calendar of work (up to 7 meetings per year) and the convening of a Diplomatic Conference in the next biennium (2014-2015) in view of finalising the IGC work. The EU and its Member States initially supported four meetings over two years, but showed flexibility in accepting the renewal of the current mandate, sticking to its current language, that is: a maximum of 3 sessions per year and deciding on whether to convene a Diplomatic Conference at the end of the next biennium depending on progress made in the three texts. The flexibility shown by the EU did not result in reciprocal flexibility from demandeurs. The result was that a partial recommendation was produced including all the various options advocated.

Approach at General Assembly

The WIPO General Assembly is invited to decide on convening a diplomatic conference and to consider the need for additional meetings, taking account of the budgetary process. The draft statement includes a reference to the number of meetings the EU would be prepared to accept over the next year (15) and to the fact that it does neither favour extensive cross-cutting activity, nor High-level segments meetings. Most importantly the draft statement does not support the convening of a diplomatic conference.

Context note: item 17(i)

Standing Committee on the Law of Patents (SCP)

Expected date of delivery:	25 September 2014

Delivered by:	Italian Presidency

WIPO document:	WO/GA/46/7

Context:

The SCP was originally established to discuss the harmonisation and further progress of patent law. The EU's (and Group B's) stated goal for the SCP has been substantive patent law harmonisation; however, following the advent of the Development Agenda, developing countries have blocked any talks of harmonisation in the SCP.

The SCP has been pursuing a "balanced" work program, for a number of sessions, but little has yet been achieved. SCP 18 failed to agree future work, and while this impasse was overcome at SCP 19 and positive conclusions were also reach at SCP 20, progress remains slow. The agenda items the SCP discusses are drawn from a "non-exhaustive" list, but since the creation of this list, only five significant items have been discussed: exceptions and limitations; client-attorney privilege; technology transfer; quality of patents (including opposition systems); and patents and health.

Approach at General Assembly

There is no decision point on the SCP. The statement highlights EU support for the SCP process, and indicates the importance the EU attaches to certain topics, and the hope that progress can be made on patent law harmonisation.

Context note: Item 17(iv)

Advisory Committee on Enforcement (ACE)

Expected date of delivery:	25 September 2014

Delivered by:	European Union

WIPO document:	WO/GA/46/7

Context:

The Advisory Committee on Enforcement (ACE) was established in 2002 as a permanent WIPO Committee. Unlike other Committees, ACE does not have normative activities in its mandate and therefore relies for the its most part on the exchange of information and good practices on IP enforcement between Member States and other key actors.

Such exchanges are crucial to the good functioning of the Committee and have proved to be increasingly fruitful in recent years. However, further improvement could be made by eliminating long debates related to future agendas and thereby dedicating more time to productive exchanges of views.

Thus, the time saved would allow for a new annual Agenda item on voluntary presentations of national IP enforcement regimes regarding different issues, such as for instance normative rules, jurisdictional systems, customs activity, to be introduced.