



PROTOCOL FOR COMMUNICATING AIPPI VIEWS

There are many occasions when it is important that AIPPI views on current matters under discussion be communicated to others, for example, to governmental and intergovernmental organizations as well as private associations. Although it is preferable that a position has already been established on the matter by an adopted Resolution before such a view is communicated, there are frequently occasions when timing does not make this possible.

Under Article 9.7 of the Statutes, the Bureau is empowered to take any action in the name of the Association *"in cases of urgency or necessity"* and thus can communicate views also in the absence of a formal Resolution. The provision also states that *"necessity" should be understood as authorizing the Bureau to respond to any invitation to submit comments to any consultation by a Governmental Organization or a Non-Governmental Organization concerning matters of substantive IP law, procedure or practice, where same is required within a short time frame when there is no established AIPPI position*". "Urgency" is not defined, and speaks for itself.

It is important that the recipients of such communications understand clearly the status of such views. It is equally important that the matter be kept somewhat open from an AIPPI viewpoint pending a possible need to revise the position if contrary views become known upon more formal or further consideration. Further, if there is no AIPPI Resolution on the matter, it should not restrict the possibilities in the future for AIPPI to adopt a Resolution on the point. When adopting a Resolution, AIPPI should ideally not be constrained significantly by a prior expressed viewpoint. The following protocol shall be followed when communicating views.

1. If AIPPI has a formal position: in such cases, the communication should clearly state that on the matter being discussed, AIPPI has established a position by the adoption of a Resolution. It will in most cases also be advisable to state when the position was adopted. It may also be desirable to attach or include a copy of the Resolution.
2. AIPPI has no formal position, but a Standing Committee has studied the matter and has agreed on a position: in such cases, the Bureau shall first determine if the Committee has adequately studied the matter. To assist in making this determination, the Chair of the Committee shall advise the Bureau if there are Committee members who disagree with the position (and if so, how many).¹ The

¹ This will help ensure that the position represents the consensus of the entire Committee and is not just the opinion of the Committee chair.

Bureau shall also determine if the matter is of sufficient importance and urgency that the Committee's position should be communicated. The communication shall, where reasonably practicable, state that it has been prepared based on input from AIPPI's Standing Committee and that it has been approved by the AIPPI Bureau.

3. AIPPI has no formal position and has not had time to commission a study of the matter by a Standing Committee; nonetheless, the matter has been discussed within the Association in a general way: in such a case, the communication should make clear that the Association has no formal position and has not studied the matter, but from discussions within the Association, the Bureau believes that the views being communicated would likely be the position of the Association should it be formally considered.
4. AIPPI has no formal position and has not studied or discussed the matter: in such cases, the Bureau would usually decline to comment. However, should it decide to do so, it should make clear in the communication that the views expressed are solely those of the Bureau and that the Association has not studied or discussed the matter.

There will also be occasions when the position being communicated represents less than a unanimous opinion of the Association or Committee. In this case, the following applies if the negative positions are substantial in number.

1. The communication, if one is nonetheless deemed desirable, should clearly state that there were a significant number of dissenters and should insofar as reasonably practicable also summarize the substance of their views.
2. If the negative positions seem to represent merely drafting points, or, a lack of familiarity with the subject, it is unnecessary to mention such positions.

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