

# **HCCH Revised Draft Explanatory Report (version of December 2018) on the Judgments Convention is available on the HCCH website**

A revised Draft Explanatory Report (version of December 2018) on the *HCCH Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* is available in both English and French on the Hague Conference website.

In my opinion, particularly complex topics in this Draft Explanatory Report include intellectual property (IP) rights (in particular, Art. 5(3) of the draft Convention- there are several provisions dealing with IP rights in addition to this Article) and the relationship of the draft Convention with other international instruments (Art. 24 of the Draft Convention). Some of the text is in square brackets, which means that such text has tentatively been inserted due perhaps to a lack of consensus at the Special Commission meetings, and thus a final decision will be taken at the Diplomatic Session scheduled for the summer 2019.

With regard to intellectual property rights, the draft Convention distinguishes between IP rights that require to be granted or registered (such as patents, registered trademarks, registered industrial designs and granted plant breeders' rights) and those that do not require grant or registration (*i.e.* copyrights and related rights, unregistered trademarks, and unregistered industrial designs - this is a closed list for these specific rights). See paragraph 238 of the Draft Explanatory Report.

The draft Convention's approach to IP rights, which is based on the territoriality principle, is set out very clearly in paragraph 235 of the Draft Explanatory Report. In particular, the draft Convention reflects a compromise according to which the State of Origin of the judgment will coincide with the *lex loci protectionis i.e.*, the law of the State for which protection is sought, so as to avoid the application of

foreign law to these rights (see also paragraph 236).

With respect to the relationship of the draft Convention with other international instruments, it is important to note that this draft Convention will cover, among many other things, non-exclusive choice of court agreements so as to give preference to the application of the *HCCH Hague Convention of 30 June 2005 on Choice of Court Agreements* to exclusive choice of court agreements. See paragraphs 220-225 and 410-430 of the Draft Explanatory Report.

The latest information about the Judgments Project is available [here](#).