

AIPLA



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Update on The Hague Judgments Project

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Through the advocacy by the US delegation (led by the US State Department, in collaboration with USPTO and US Trade Representative) and organizations like AIPLA, intellectual property has been excluded from the reach of the final version of the Hague Conference's *Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* (HCCH), which was signed on July 2, 2019.

The HCCH is a product of the Hague Conference. The Hague Conference has 83 governmental members, including the US, European Union and all other G20 states except Indonesia. Beginning in 1992, the Hague Conference began working on the "Judgments Project," which envisioned a broad convention on two aspects of private international law: international jurisdiction of courts and recognition and enforcement of their judgments abroad.

The broad convention was scaled down and separated into pieces. In 2005, for example, a Choice of Court Convention was concluded. In 2011, the Hague Conference's Council on General Affairs and Policy began studying whether another

convention could be concluded that related to the recognition and enforcement of judgments abroad. This was the genesis of the HCCH.

Hague Conference members worked through various drafts of the HCCH to the point that a diplomatic session was convened in June 2019. The HCCH related to all aspects of private civil law, and many IP governmental entities outside of the U.S. did not play a major role in drafting the HCCH.

However, during this time, AIPLA and many of our sister organizations in the U.S. and Europe expressed concern about including IP in the HCCH. IP is a complicated field, and concerns were raised about unintended consequences. Other concerns related to sovereignty, comity and territoriality of IP rights. For example, the HCCH could have allowed foreign money judgments based on, e.g., items considered to be IP such as genetic resources and traditional knowledge, to be enforced in US courts. Conceivably, foreign courts could take a broad view as to the extraterritoriality of the IP in that jurisdiction, and the HCCH would then pressure US courts to respect that IP despite sovereignty and comity principles.

Leading up to the diplomatic session, the exclusion of IP remained an open issue. During the proceedings, however, and thanks to advocacy, the members agreed to a broad exclusion of IP in Article 2(m) of the final version of the HCCH (adopted July 2). Further definition on the scope of Intellectual Property that is excluded. Work on an explanatory note document is in progress.

AIPLA's advocacy involvement included comment submissions since the year 2000, as well as raising awareness of this issue among our sister organizations, especially those outside of the U.S.

AIPLA's submissions on this topic included the following:

- AIPLA Comments on the Draft Convention on the Recognition and Enforcement of Foreign Judgments Relating to Civil or Commercial Matters, March 19, 2018 ([PDF](#))
- AIPLA and PhRMA Comments on Draft Convention on the Recognition and Enforcement of Foreign Judgments Relating to Civil or Commercial Matters Currently Being Negotiated at The Hague Conference on Private International Law, July 19, 2017 ([PDF](#))

- AIPLA Comments on a Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments Currently Being Negotiated at The Hague Conference on Private International Law, January 18, 2017 (**PDF**), which includes a earlier AIPLA letter submitted in 2000.