

## Towards a Balanced WIPO Design Law Treaty (DLT) for Developing Countries

By Nirmalya Syam \*

### ABSTRACT

The WIPO Design Law Treaty (DLT) aims to harmonize and simplify global industrial design registration procedures, encourage digital applications and reduce costs. While the reforms required by the DLT could boost efficiency, they will mainly benefit enterprises from developed countries with resources to secure global design rights. This policy brief highlights the key concerns for developing countries, particularly the treaty's potential impacts on small and medium-sized enterprises (SMEs) and indigenous communities. It advocates for critical adjustments in the DLT negotiation texts to allow for policy space in the DLT – binding technical assistance, flexible grace periods, enabling disclosure of the origin and source of traditional knowledge and traditional cultural expressions used in designs that are sought to be registered, and optional divisional and electronic filing provisions.

**KEYWORDS:** *Design Law Treaty (DLT), Industrial Designs, Disclosure of Origin, Grace Period, Divisional Applications, Traditional Cultural Expressions (TCEs), Technical Assistance, Policy Flexibility, Intellectual Property Rights (IPRs), Small and Medium-sized Enterprises (SMEs), World Intellectual Property Organization (WIPO)*

*Le traité de l'OMPI sur le droit des dessins et modèles (DLT) vise à harmoniser et à simplifier les procédures mondiales d'enregistrement des dessins et modèles industriels, à encourager les demandes numériques et à réduire les coûts. Si les réformes requises par le DLT pourraient accroître l'efficacité, elles bénéficieront surtout aux entreprises des pays développés qui disposent des ressources nécessaires pour obtenir des droits sur les dessins et modèles à l'échelle mondiale. Ce rapport souligne les principales préoccupations des pays en développement, en particulier l'impact potentiel du traité sur les petites et moyennes entreprises (PME) et les communautés autochtones. Il plaide en faveur d'ajustements essentiels pour permettre une marge de manœuvre politique dans le DLT : assistance technique contraignante, délais de grâce flexibles, possibilité de divulguer l'origine et la source des savoirs traditionnels et des expressions culturelles traditionnelles utilisés dans les dessins et modèles à enregistrer, et dispositions facultatives en matière de dépôt électronique par division.*

**MOTS-CLÉS:** *Traité sur le droit des dessins et modèles (DLT), dessins et modèles industriels, divulgation de l'origine, délai de grâce, demandes divisionnaires, expressions culturelles traditionnelles (ECT), assistance technique, flexibilité politique, droits de propriété intellectuelle (DPI), petites et moyennes entreprises (PME), Organisation mondiale de la propriété intellectuelle (OMPI)*

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### KEY MESSAGES

- "Disclosure of the origin of traditional cultural expressions used in industrial designs can serve as a vital safeguard for developing countries, protecting local industries and preserving the cultural and economic integrity of indigenous designs."
- "A binding commitment to technical assistance, including financial support and training, is essential to alleviate challenges and enable equitable participation in the DLT by developing countries."
- "For developing countries, no grace period or a short grace period of six months aligns better with their interests as these options would encourage more immediate registration, reducing legal ambiguities."
- "Divisional applications can create a more complex, costly IP landscape, favoring larger firms, while resource-constrained SMEs, especially in developing countries, could face greater obstacles in protecting their designs and avoiding infringement."

*El Tratado de la OMPI sobre el Derecho de los Diseños (DLT) pretende armonizar y simplificar los procedimientos mundiales de registro de diseños se industriales, fomentar las solicitudes digitales y reducir los costes. Aunque las reformas exigidas por el Tratado sobre el Derecho de los Diseños podrían aumentar la eficiencia, es posible que beneficien esencialmente a las empresas de los países desarrollados con recursos para garantizar los derechos sobre los diseños industriales a escala mundial. Este informe destaca las principales preocupaciones de los países en desarrollo, en particular el posible impacto del tratado para las pequeñas y medianas empresas (PYME) y las comunidades indígenas. En él se aboga por la introducción de ajustes fundamentales que permitan un espacio político en el DLT: asistencia técnica vinculante, períodos de gracia flexibles, autorización de la divulgación del origen y la fuente de los conocimientos tradicionales y las expresiones culturales tradicionales utilizadas en los dibujos y modelos cuyo registro se solicita, y disposiciones opcionales de presentación por división y electrónica.*

**PALABRAS CLAVES:** *Tratado sobre el Derecho de los Diseños (DLT), Dibujos y Modelos Industriales, Divulgación del origen, Período de gracia, Solicitudes divisionales, Expresiones culturales tradicionales (ECT), Asistencia técnica, Flexibilidad de las políticas, Derechos de propiedad intelectual (DPI), Pequeñas y medianas empresas (PYME), Organización Mundial de la Propiedad Intelectual (OMPI)*

## Introduction

As negotiators from member States of the World Intellectual Property Organization (WIPO) prepare for the final round of negotiations at the diplomatic conference to finalize and adopt a WIPO Design Law Treaty (DLT), from 11-22 November 2024 in Riyadh, Saudi Arabia, they face a pivotal opportunity to shape a balanced design registration system. The DLT aims to streamline the acquisition of industrial design rights by simplifying filing procedures, accepting digital applications, and limiting the information required from applicants.

The initiative to adopt a DLT began as a proposal to address “formalities” for facilitating industrial design registration across contracting parties, by simplifying procedures such as application filing, electronic systems, and power of attorney rules. While the treaty still aims to facilitate international trade by reducing administrative burdens on design applicants, concerns have been raised regarding the potential of some aspects of the draft DLT to increase global inequalities in the design market.

Data on global design registrations and exports reveals substantial disparities, with high-income countries leading in filings and design-related exports,<sup>1</sup> while low and middle-income countries, especially in Asia and Africa, struggle to keep pace. According to WIPO statistics, the top five countries of origin of industrial design registration applications in 2022 (China, Republic of Korea, the United States, the European Union and Japan) accounted for three-quarters of the global industrial design activity in [2022. In comparison](#), the combined share of Africa, the Latin

1 UNCTAD, *Creative Economy Outlook 2022*, UNCTAD/DITC/TSCE/2022/1 (New York, United Nations, 2022). Available from [https://unctad.org/system/files/official-document/ditctsc2022d1\\_en.pdf](https://unctad.org/system/files/official-document/ditctsc2022d1_en.pdf).

America and the Caribbean and the Oceania regions in global design registration applications in 2022 was 2.9%. The DLT may consolidate these asymmetries. It is also important to note that more than half of the global design activity is concentrated in four industrial sectors – furniture and household goods, textiles and accessories, tools and machines, and electricity and lighting.<sup>2</sup>

While harmonizing procedures promises efficiency, simplified registration processes could primarily benefit applicants from developed countries, who are better positioned to secure design rights across jurisdictions than applicants from developing countries, particularly, small and medium enterprises (SMEs). In contrast, the DLT’s lack of built-in protections for traditional and indigenous designs may leave cultural expressions vulnerable to misuse, exacerbating global design inequalities.

This brief aims to support negotiators in these discussions by providing a focused analysis of some of the draft DLT’s key issues and presenting recommendations to address potential imbalances in the treaty.

## Key Provisions and Concerns

### Grace Periods (Article 6)

One of the most intensely discussed provisions of the draft DLT is the grace period, which would allow applicants to publicly disclose their designs before filing for protection. The draft DLT currently proposes a grace period of six or twelve months, during which disclosures will not affect eligibility for registration. While intended to benefit applicants, the grace period’s duration may have significant implications for developing countries, as it could create legal uncertainty and controversies that would favor large corporations with the resources to strategically time applications and face the costs of eventual litigation.

It is important to note that in most of the industrial sectors where there is high level of design registration activity, products with new designs have a limited shelf life. An extended grace period for such products would in effect allow design owners to delay registration of their designs while still enjoying an exclusive marketing right. During this extended grace period, competitors would face significant legal uncertainty, unsure if their own designs might later be challenged as infringing on the design covered by the grace period. This uncertainty could discourage competitors, particularly individual designers, start-ups and SMEs in developing countries.

For developing countries, no grace period or a short grace period of six months aligns better with their interests as these options would encourage more immediate registration, reducing legal ambiguities. By advocating for flexible grace period options, developing countries can protect their domestic industries while contributing to a fair design protection landscape.

2 See WIPO, *World Intellectual Property Indicators 2023* (Geneva, 2023). Available from <https://doi.org/10.34667/tind.48541>.

### **Disclosure of Traditional Knowledge and Cultural Expressions (Article 3)**

There are numerous examples of traditional and indigenous designs being commercially exploited without recognition or compensation.<sup>3</sup> Addressing these inequities requires a DLT framework that enables the safeguarding of traditional knowledge (TK) and traditional cultural expressions (TCEs) from misappropriation through design registrations by providing the policy space to contracting parties to introduce a disclosure requirement.

The preservation of policy space within the DLT framework to introduce a disclosure requirement for TK and TCEs in national design laws is a priority for developing countries. They have actively called for a provision allowing countries to require applicants to disclose the origins of TK and TCEs incorporated into industrial designs. This disclosure option, proposed under Alternative A by the African Group, enjoys broad support among developing nations as a mechanism to protect cultural heritage, ensure transparency, and respect indigenous communities' rights. This is important because under article 3(2) of the draft DLT, it is stated that contracting parties cannot require the applicant to submit any information or element in the design registration application other than those specifically provided under article 3(1). As currently drafted, article 3(1) does not specifically allow contracting parties to require submission of information relating to the source or origin of any TK or TCE used in a design that is the subject of an application.

Importantly, developing countries are advocating that the treaty empowers each country to introduce a disclosure requirement without making it obligatory for all member States. By providing the option, each country would have the policy space to adopt such a requirement if deemed necessary to address local needs and protect indigenous creations from misappropriation by third parties. The optional nature of this provision respects national sovereignty while establishing a pathway for countries to implement protections for TK and TCEs in a way that aligns with their own legal and cultural contexts. Importantly, an international disclosure obligation under patent law was recently agreed upon under the WIPO treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge.<sup>4</sup>

Without that provision, traditional and indigenous designs remain vulnerable to unregulated use, leaving third parties, including foreign entities, free to utilize traditional and cultural elements without compensating or crediting their origin communities. Allowing countries to require disclosure provides

<sup>3</sup> See Margo A. Bagley, "Ask Me No Questions": The Struggle for Disclosure of Cultural and Genetic Resources Utilization in Design", *Vanderbilt Journal of Entertainment and Technology Law*, vol. 20, No. 4 (2018), p. 975. Available from <https://infojustice.org/wp-content/uploads/2024/08/Bagley-DLT-DOO-article.pdf>.

<sup>4</sup> WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, GRATK/DC/7, 24 May 2024. Available from [https://www.wipo.int/edocs/mdocs/tk/en/gratk\\_dc/gratk\\_dc\\_7.pdf](https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_7.pdf). See also Nirmalya Syam and Carlos M. Correa, "Understanding the New WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge", Policy Brief, No. 131 (Geneva, South Centre, 2024). Available from [https://www.southcentre.int/wp-content/uploads/2024/07/PB131\\_Understanding-the-New-WIPO-Treaty-on-Intellectual-Property-Genetic-Resources-and-Associated-Traditional-Knowledge\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2024/07/PB131_Understanding-the-New-WIPO-Treaty-on-Intellectual-Property-Genetic-Resources-and-Associated-Traditional-Knowledge_EN.pdf).

a way for applicants to acknowledge the origins of traditional and cultural designs, ensuring that indigenous communities gain potential redress if their expressions are misused. This flexibility aligns with the objectives of developing countries to safeguard traditional and cultural resources, promote respectful use of traditional designs, and foster a transparent design registration system that integrates respect for cultural heritage into the global design economy.

The lack of a disclosure requirement enabling provision in DLT could also impact national laws of several countries that protect traditional knowledge or traditional cultural expressions, even if those countries may not have a disclosure requirement under a design law as such. For example, in South Africa, Section 43B in the amended Designs Act, 1993 establishes that traditional designs must be disclosed and recognized, including those that may incorporate indigenous knowledge or expressions. The ARIPO Swakopmund Protocol contains provisions that require disclosure of source, and where possible, origin of traditional knowledge used by any person beyond its traditional context (such as use in industrial designs). To implement these provisions under national or regional laws, the DLT must provide the necessary policy space to introduce disclosure requirements.

### **Technical Assistance for Developing Countries**

The cost of implementing the DLT poses a significant barrier for developing countries, particularly due to the treaty's digital infrastructure requirements. Establishing and maintaining electronic filing systems, as well as updating administrative processes, would impose substantial financial and logistical burdens on countries with limited resources. For many, these expenses could divert funds from essential local initiatives, further disadvantaging their design industries. A mandatory commitment to technical assistance, including financial support and training, is essential to alleviate these challenges and enable equitable participation.

Developing countries have emphasized the need for a binding commitment to technical assistance under the DLT, recognizing that the digital requirements for design registration could impose a substantial burden on countries without advanced technological infrastructure. The treaty's electronic filing and public design database requirements, while beneficial for standardization, may exclude countries lacking the means to establish digital systems without external support. A commitment to provide technical assistance is not unprecedented in WIPO. Thus, Article 51 of the Patent Cooperation Treaty provides for a committee to organize and supervise technical assistance to developing countries for developing their patent systems.

A mandatory technical assistance provision would be crucial for building digital infrastructure, training personnel, and ensuring effective implementation of the DLT by all member states. By supporting a binding commitment to technical assistance, developing countries can secure the resources needed to implement digital filing systems and enable inclusive treaty adoption that benefits all member states.

### **Divisional Applications and Partial Design Claims (DLT Articles 2, Rules 2 and 3 of the Regulations)**

Divisional applications allow multiple design registrations from a single parent application, which can create administrative complexity and prolonged uncertainty in the market. They may also allow for some sort of ‘evergreening’ of designs as the term of protection may be artificially extended as it is the case in the context of the patent law.<sup>5</sup> Partial design claims, which permit companies to register parts of a product rather than the whole, may lead to fragmented protections, allowing larger companies to establish extensive protections over isolated design elements.

Article 2 of the draft DLT text contains a reference to divisional applications for design registrations within the scope of the DLT. Divisional applications can result in fragmented protection for similar designs and create complexity in the enforcement of design rights, as well as create challenges for third parties in understanding the scope of protection. By allowing applicants to strategically delay the full disclosure of their designs through later-stage filings, divisional applications can prolong uncertainty for competitors due to lack of clarity on the full scope of the applicant’s design portfolio and artificially extend the term of protection, potentially hindering market activities. For applicants and intellectual property (IP) offices to manage and oversee multiple applications on related matters, the costs and time investment would increase. Hence, divisional applications can create a more complex, costly IP landscape, favoring larger firms that are better equipped to navigate these challenges, while resource constrained SMEs, especially in developing countries, could face greater obstacles in protecting their designs and avoiding infringement, ultimately limiting their competitiveness in domestic and global markets. In this context, at best, divisional applications should be made optional in the DLT and not a mandatory requirement for contracting parties to accept such applications.

Rule 2(3) of the Regulations to the DLT introduces an obligation for parties to allow applications on designs embodied in a part of a product. Partial design claims are often made by cutting out the unclaimed parts of a product from the claims shown in dotted lines. Rule 3 (2) of the Regulations makes dotted line claims permissible. This is contrary to the law in several developing countries which require a design claim to cover the entire product.

For developing countries, the administrative and legal resources required to navigate divisional and partial claims may pose a significant barrier to SMEs and local designers. By advocating for these provisions to remain optional, developing countries can support a more accessible IP framework that protects local designers, promotes fair competition, and aligns with the resource capacities of member states.

<sup>5</sup> See e.g., Katarina Foss-Solbrekk, “The Divisional Game: Using Procedural Rights to Impede Generic/Biosimilar Market Entry”, *IIC – International Review of Intellectual Property Competition*, vol. 53 (2022), pp. 1007-37.

### **Term of Protection (Article 9 bis)**

Another substantive provision in the DLT is article 9 bis which sets the term of protection of designs. This requirement is incongruous with a formalities treaty and is beyond its scope. The DLT should not include any provision on the term of protection.

### **Electronic Filing Requirements (Articles 9ter/quarter)**

The DLT’s push for electronic filing systems that could benefit design applicants through standardized submissions, but for many developing countries mandatory digital filing can be an expensive and resource-intensive requirement. Without the infrastructure to support such systems, many developing countries may face challenges in complying with the treaty’s requirements. Moreover, while digital filing may be easier for international applicants, local SMEs and individual designers may find it more challenging to make use of digital filing systems.

For these countries, the flexibility to make electronic filing optional and accompanied by targeted support measures, such as funding and training for IP offices as well as for local SMEs and individual designers, would enable a more inclusive participation in design protection. A balanced approach to digital filing requirements could ensure that countries with limited resources are not excluded from the DLT’s benefits.

## **Conclusions**

The DLT has the potential to set new globally harmonized standards for procedures and formalities for obtaining industrial design protection but it must be balanced, designed and implemented with special consideration of the conditions and needs of developing countries and indigenous and local communities.

At the diplomatic conference the draft DLT will need to be finalized with amendments to enable the disclosure of traditional knowledge and traditional cultural expressions used in designs. Disclosure of the origin of traditional cultural expressions used in industrial designs can serve as a vital safeguard for developing countries, protecting local industries and preserving the cultural and economic integrity of indigenous designs. The DLT should also ensure technical assistance to developing countries for their implementation of the DLT and retain policy flexibility that aligns with local business environments such as recognizing the special challenges for SMEs as compared to large firms in obtaining design rights.

In addition, by allowing flexible grace periods and optional divisional and electronic filing provisions, WIPO member States can shape a treaty that respects both global and local needs in the industrial design sector. With these adjustments, the DLT can foster a fair, inclusive, and culturally respectful environment for design protection, paving the way for more balanced innovation and economic growth in all countries that may decide to become Parties to the treaty.



## Recommendations

- 1. Support Flexible Grace Period Lengths:** Developing countries should seek flexibility in grace period options to enable a six-month period, accommodating local markets and minimizing registration delays.
- 2. Enabling Disclosure of Traditional Knowledge and Cultural Expressions:** Developing countries should support Alternative A, requiring mandatory TK and TCE disclosure to protect indigenous designs, promote transparency, and recognize cultural heritage in the design protection process.
- 3. Binding Technical Assistance Provisions:** Developing countries should advocate for a binding technical assistance clause, supporting their capacity to establish and sustain digital filing and administrative systems, thus enhancing treaty inclusivity.

**4. Optional Divisional Applications and Partial Design Claims:** Keeping divisional and partial claims optional would protect designers and smaller businesses from unnecessary complexity and high legal costs, promoting fair competition and local innovation.

**5. Deletion of Term of Protection:** Article 9 *bis* which lays down a term of protection for designs must be deleted as this is beyond the scope of the DLT.

**6. Optional Electronic Filing Requirements with Capacity-Building Support:** Developing countries should advocate for optional electronic filing and ensure access to resources, such as funding and training, that support digital transition without disadvantaging member states lacking the infrastructure.

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