

USER ASSOCIATION QUESTIONNAIRE ON DESIGN TOPICS.....	1
USER ASSOCIATION QUESTIONNAIRE ON TRADE MARK TOPICS.....	8



## USER ASSOCIATION QUESTIONNAIRE ON DESIGN TOPICS

During the 15th Liaison Meeting on Designs, which was held between 6th and 7th October 2016 at EUIPO, all participants (National Offices, Regional Offices and User Associations) took part in a workshop in order to identify those areas where divergence of practice exists among the Offices. During this exercise, several topics were proposed as potential Convergence Projects.

The input of the User Associations in this process is equally crucial. We therefore kindly invite you to fill in the following questionnaire regarding a number of areas of design practice where convergence projects could be launched. By answering this questionnaire, you will also be helping us determine how interesting and useful these possible projects will be for the users.

Please note that at the end of the questionnaire, you will be given the option to print the completed document.

Thank you.

There are approximately **36** questions in this questionnaire.

### Basic Data

**Please indicate the User Association you represent:**

\* Please write your answer here:

**Please indicate your name and email address (in case clarification is needed regarding any of your answers):**

Please write your answer here:

### Criteria for assessing disclosure of designs on the internet

The objective of this topic is to determine which conditions are necessary for proving the prior art when the information has been disclosed on the internet.

**1. Do you think that the practices of the EU IP Offices regarding the criteria for assessing disclosure of designs on the internet are harmonised?**

Please choose **only one** of the following:

- ☐ Yes
- ☐ No
- ☐ I don't know

**2. Please elaborate on your answer to question 1:**

Please write your answer here:

**3. Which of the following problems do you face as a result of divergence among the practices of the EU IP Offices regarding the criteria for assessing disclosure of designs on the internet?**

Please choose **all** that apply:

- ☐ Different formats for providing the screenshot of the webpage
- ☐ Differences in the consideration of the 'accessibility' of the webpage
- ☐ Differences in the criteria for assessing disclosure
- ☐ Differences in establishing a reliable date of disclosure on the internet
- ☐ Other

**4. Please elaborate on your answer to question 3:**

Please write your answer here:

**5. Do you think that agreeing on a Common Practice among the EU IP Offices regarding the criteria for assessing disclosure of designs on the internet would be beneficial for the users?**

Please choose **only one** of the following:

- ☐ Yes
- ☐ No

**6. Please justify your answer to question 5:**

Please write your answer here:

**7. Do you foresee any difficulties that we could face during discussions to reach a Common Practice regarding the criteria for assessing disclosure of designs on the internet?**

Please choose **only one** of the following:

☐ Yes

☐ No

**8. Please justify your answer to question 7:**

Please write your answer here:

**9. Please provide us with any other comments that you find relevant for the analysis of this topic:**

Please write your answer here:

**Classification of ornamentation and its product indication**

The objective of this topic is to analyse practice regarding the product indications used for ornamentation by clarifying if it is limited to class 32 or whether it extends to other classes of the Locarno Classification.

**10. Do you think that the practices of the EU IP Offices regarding the product indications used for ornamentation are harmonised?**

Please choose **only one** of the following:

☐ Yes

☐ No

☐ I don't know

**11. Please elaborate on your answer to question 10:**

Please write your answer here:

**12. What (if any) are the problems that you face as a result of divergence among the practices of the EU IP Offices regarding the product indications used for ornamentation?**

Please write your answer here:

**13. Do you think that agreeing on a Common Practice among the EU IP Offices regarding the product indications used for ornamentation would be beneficial for the users?**

Please choose **only one** of the following:

☐ Yes

☐ No

**14. Please justify your answer to question 13:**

Please write your answer here:

**15. Do you foresee any difficulties that we could face during discussions to reach a Common Practice regarding the product indications used for ornamentation?**

Please choose **only one** of the following:

☐ Yes

☐ No

**16. Please justify your answer to question 15:**

Please write your answer here:

**17. Please provide us with any other comments that you find relevant for the analysis of this topic:**

Please write your answer here:

**Criteria of protection for a set of articles**

The objective of this topic is to determine the eligibility for design protection of sets of articles and to examine the conditions necessary for rendering them registrable.

**18. Do you think that the practices of the EU IP Offices regarding sets of articles are harmonised?**

Please choose **only one** of the following:

☐ Yes

☐ No

☐ I don't know

**19. Please elaborate on your answer to question 18:**

Please write your answer here:

**20. What (if any) are the problems that you face as a result of divergence among the practices of the EU IP Offices regarding sets of articles?**

Please write your answer here:

**21. Do you think that agreeing on a Common Practice among the EU IP Offices regarding sets of articles would be beneficial for the users?**

Please choose **only one** of the following:

☐ Yes

☐ No

**22. Please justify your answer to question 21:**

Please write your answer here:

**23. Do you foresee any difficulties that we could face during discussions to reach a Common Practice regarding sets of articles?**

Please choose **only one** of the following:

☐ Yes

☐ No

**24. Please justify your answer to question 23:**

Please write your answer here:

**25. Please provide us with any other comments that you find relevant for the analysis of this topic:**

Please write your answer here:

#### **Assessment of the degree of freedom of the designer**

The objective of this topic is to determine the extent to which the degree of freedom of the designer may be considered to affect the individual character of a design.

**26. Do you think that the practices of the EU IP Offices regarding the assessment of the degree of freedom of the designer are harmonised?**

Please choose **only one** of the following:

☐ Yes

☐ No

☐ I don't know

**27. Please elaborate on your answer to question 26:**

Please write your answer here:

**28. What (if any) are the problems that you face as a result of divergence among the practices of the EU IP Offices regarding the assessment of the degree of freedom of the designer?**

Please write your answer here:

**29. Do you think that agreeing on a Common Practice among the EU IP Offices regarding the assessment of the degree of freedom of the designer would be beneficial for the users?**

Please choose **only one** of the following:

☐ Yes

☐ No

**30. Please justify your answer to question 29:**

Please write your answer here:

**31. Do you foresee any difficulties that we could face during discussions to reach a Common Practice regarding the assessment of the degree of freedom of the designer?**

Please choose **only one** of the following:

☐ Yes

☐ No

**32. Please justify your answer to question 31:**

Please write your answer here:

**33. Please provide us with any other comments that you find relevant for the analysis of this topic:**

Please write your answer here:

### **Final questions**

**34. Please rank the following topics in order of preference for launching a Convergence Project:**

All your answers must be different.

Please number each box in order of preference from 1 to 4

- Criteria for assessing disclosure of designs on the internet

- Classification of ornamentation and its product indication
- Criteria of protection for a set of articles
- Assessment of the degree of freedom of the designer

**35. Are there any other topics on which you think it would be interesting to launch a Convergence Project?**

Please write your answer here:

**36. Please provide us with any additional comments that you consider relevant for this analysis of design topics:**

Please write your answer here:





## USER ASSOCIATION QUESTIONNAIRE ON TRADE MARK TOPICS

During the last ECP4 Convergence Analysis Working Group meeting, which was held between 13<sup>th</sup> and 14<sup>th</sup> September 2016, the results of the questionnaires sent in June 2016 were presented and discussed, with a view to selecting potential topics for the new Convergence Projects. The Working Group concluded that it would be necessary to re-analyse both “guarantee or certification marks” and “different degrees of distinctiveness”, and highlighted the use of Vienna Classification as a suitable topic to analyse.

Furthermore, during the 16<sup>th</sup> Liaison Meeting on Trade Marks, which was held between 4<sup>th</sup> and 5<sup>th</sup> October 2016 at EUIPO, all participants (National Offices, Regional Offices and User Associations) took part in a workshop in order to identify those areas where divergence of practice exists among the Offices. During this exercise, several topics were proposed as potential Convergence Projects.

The input of the User Associations in this process is equally crucial. We therefore kindly invite you to fill in the following questionnaire regarding a number of areas of trade mark practice where convergence projects could be launched.

While questions on guarantee and certification marks, and different degrees of distinctiveness had been already included in the questionnaire sent out for the first analysis, we believe it is worth including them again in this cycle in order to obtain feedback from those User Associations that did not have the chance to provide us with their replies in previous consultations.

By answering this questionnaire, you will also be helping us determine how interesting and useful these possible projects will be for the users.

Please note that at the end of the questionnaire, you will be given the option to print the completed document.

Thank you.

There are approximately **38** questions in this questionnaire.

### **Basic Data**

**Please indicate the User Association that you represent:**

\* Please write your answer here:

**Please indicate your name and email address (in case clarification is needed regarding any of your answers):**

Please write your answer here:



## Deceptiveness

According to Article 4(1)(g) of the Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks: *"trade marks which are of such a nature as to deceive the public, for instance, as to the nature, quality or geographical origin of the goods or service shall not be registered or, if registered, shall be liable to be declared invalid"*.

### 1. Do you think that the practices of the EU IP Offices regarding deceptiveness as an absolute ground for refusal are harmonised?

Please choose **only one** of the following:

☐ Yes

☐ No

☐ I don't know

#### 1.a. Please elaborate on your answer to question 1:

**Only answer this question if the following conditions are met:**  
Answer was 'No' at question '3 [A003]' (1. Do you think that the practices of the EU IP Offices regarding deceptiveness as an absolute ground for refusal are harmonised? )

Please write your answer here:

#### 1.b. What (if any) are the problems that you face as a result of divergence among the practices of the EU IP Offices regarding the criteria for assessing the deceptiveness of a trade mark?

**Only answer this question if the following conditions are met:**  
Answer was 'No' at question '3 [A003]' (1. Do you think that the practices of the EU IP Offices regarding deceptiveness as an absolute ground for refusal are harmonised? )

Please write your answer here:

### 2. Do you think that agreeing on a Common Practice among the EU IP Offices regarding the criteria for assessing the deceptiveness of a trade mark would be beneficial for the users?

Please choose **only one** of the following:

☐ Yes

☐ No

**3. Please justify your answer to question 2:**

Please write your answer here:

**4. Do you foresee any difficulties that could arise during discussions to reach a Common Practice regarding the criteria for assessing the deceptiveness of a trade mark?**

Please write your answer here:

**5. Please provide us with any other comments that you find relevant for the analysis of this topic:**

Please write your answer here:

**Subject matter**

The subject is descriptiveness with regard to marks consisting solely of terms describing the subject matter of the goods or services (e.g. "MIDDLE AGES" applied for "books" in class 16). According to Article 4(1)(c) of the Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks: *"trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, [...], or other characteristics of the goods or services shall not be registered or, if registered, shall be liable to be declared invalid"*.

**6. Do you think that the practices of the EU IP Offices regarding the assessment of descriptiveness in marks consisting solely of terms describing the subject matter of the goods or services are harmonised?**

Please choose **only one** of the following:

☐ Yes

☐ No

☐ I don't know

**6.a. Please elaborate on your answer to question 6:**

**Only answer this question if the following conditions are met:**  
Answer was 'No' at question '10 [A010]' ( 6. Do you think that the practices of the EU IP Offices

regarding the assessment of descriptiveness in marks consisting solely of terms describing the subject matter of the goods or services are harmonised? )

Please write your answer here:

**6.b. What (if any) are the problems that you face as a result of divergence among the practices of the EU IP Offices regarding descriptiveness in marks consisting solely of terms describing the subject matter of the goods or services?**

**Only answer this question if the following conditions are met:**  
Answer was 'No' at question '10 [A010]' ( 6. Do you think that the practices of the EU IP Offices regarding the assessment of descriptiveness in marks consisting solely of terms describing the subject matter of the goods or services are harmonised? )

Please write your answer here:

**7. Do you think that agreeing on a Common Practice among the EU IP Offices regarding descriptiveness in marks consisting solely of terms describing the subject matter of the goods or services would be beneficial for the users?**

Please choose **only one** of the following:

☐ Yes

☐ No

**8. Please justify your answer to question 7:**

Please write your answer here:

**9. Do you foresee any difficulties that could arise during discussions to reach a Common Practice regarding descriptiveness in marks consisting solely of terms describing the subject matter of the goods or services?**

Please write your answer here:

**10. Please provide us with any other comments that you find relevant for the analysis of this topic:**

Please write your answer here:

**Use of Vienna Classification**

The objective of this topic is to gather specific information regarding the approach followed by the EU IP Offices in relation with the use of international Vienna Classification of the figurative elements of marks (established by the Vienna Agreement in 1973).

**11. Do you think that the practices of the EU IP Offices regarding the use of Vienna Classification are harmonised?**

Please choose **only one** of the following:

☐ Yes

☐ No

☐ I don't know

**11.a. Please elaborate on your answer to question 11:**

**Only answer this question if the following conditions are met:**  
Answer was 'No' at question '17 [A017]' (11. Do you think that the practices of the EU IP Offices regarding the use of Vienna Classification are harmonised? )

Please write your answer here:

**11.b. What (if any) are the problems that you face as a result of divergence among the practices of the EU IP Offices regarding the use of Vienna Classification?**

**Only answer this question if the following conditions are met:**  
Answer was 'No' at question '17 [A017]' (11. Do you think that the practices of the EU IP Offices regarding the use of Vienna Classification are harmonised? )

Please write your answer here:

**12. Do you think that agreeing on a Common Practice among the EU IP Offices regarding the use of Vienna Classification would be beneficial for the users?**

Please choose **only one** of the following:

☐ Yes

☐ No

**13. Please justify your answer to question 12:**

Please write your answer here:

**14. Do you foresee any difficulties that could arise during discussions to reach a Common Practice regarding the use of Vienna Classification?**

Please write your answer here:

**15. Please provide us with any other comments that you find relevant for the analysis of this topic:**

Please write your answer here:

### **Recordals: harmonisation of formalities**

The objective of this topic is to gather specific information regarding the requirements and procedures of each of the EU IP Offices for filing recordals\*, in order to determine best practices.

*( \* such as changes to the name or address of the proprietor, transfer, levies of execution or licensing)*

**16. Do you think that the practices of the EU IP Offices regarding the requirements and procedures for filing recordals are harmonised?**

Please choose **only one** of the following:

☐ Yes

☐ No

☐ I don't know

**16.a. Please elaborate on your answer to question 16:**

**Only answer this question if the following conditions are met:**  
Answer was 'No' at question '24 [A024]' ( 16. Do you think that the practices of the EU IP Offices regarding the requirements and procedures for filing recordals are harmonised? )

Please write your answer here:

**16.b. What (if any) are the problems that you face as a result of divergence among the practices of the EU IP Offices regarding the requirements and procedures for filing recordals?**

**Only answer this question if the following conditions are met:**  
Answer was 'No' at question '24 [A024]' ( 16. Do you think that the practices of the EU IP Offices regarding the requirements and procedures for filing recordals are harmonised? )

Please write your answer here:

**17. Do you think that agreeing on a Common Practice among the EU IP Offices regarding the requirements and procedures for filing recordals would be beneficial for the users?**

Please choose **only one** of the following:

☐ Yes

☐ No

**18. Please justify your answer to question 17:**

Please write your answer here:

**19. Do you foresee any difficulties that could arise during discussions to reach a Common Practice regarding the requirements and procedures for filing recordals before each of the EU IP Offices?**

Please write your answer here:

**20. Please provide us with any other comments that you find relevant for the analysis of this topic:**

Please write your answer here:

### **Re-analysis: Different degrees of distinctiveness**

The objective is to re-analyse the criteria for assessing trade marks with enhanced distinctiveness, well-known marks and trade marks with reputation.

Please note that the term enhanced distinctiveness is used in the following context:

*The distinctiveness of the earlier mark has to be taken into account when deciding on likelihood of confusion. Enhanced distinctiveness is acquired through use of a trade mark and is anything above inherent distinctiveness.*

**21. Do you think that the practices of the EU IP Offices regarding the following degrees of distinctiveness are harmonised?**

Please choose the appropriate response for each item:

	Yes	No	I don't know
Trade marks with enhanced distinctiveness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Well-known marks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Trade marks with reputation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**21.a. In case you answered "No" to any of the three options given in question 21, please elaborate on your answer:**

**Only answer this question if the following conditions are met:**

----- Scenario 1 -----

Answer was 'No' at question '31 [A031]' ( 21. Do you think that the practices of the EU IP Offices regarding the following degrees of distinctiveness are harmonised? (Trade marks with enhanced distinctiveness))

----- or Scenario 2 -----

Answer was 'No' at question '31 [A031]' ( 21. Do you think that the practices of the EU IP Offices regarding the following degrees of distinctiveness are harmonised? (Well-known marks))

----- or Scenario 3 -----

Answer was 'No' at question '31 [A031]' ( 21. Do you think that the practices of the EU IP Offices regarding the following degrees of distinctiveness are harmonised? (Trade marks with reputation))

Please write your answer here:

**21.b. What (if any) are the problems that you face as a result of divergence among the practices of the EU IP Offices regarding the criteria for assessing the different degrees of distinctiveness?**

**Only answer this question if the following conditions are met:**

----- Scenario 1 -----

Answer was 'No' at question '31 [A031]' ( 21. Do you think that the practices of the EU IP Offices regarding the following degrees of distinctiveness are harmonised? (Trade marks with enhanced distinctiveness))

----- or Scenario 2 -----

Answer was 'No' at question '31 [A031]' ( 21. Do you think that the practices of the EU IP Offices regarding the following degrees of distinctiveness are harmonised? (Well-known marks))

----- or Scenario 3 -----

Answer was 'No' at question '31 [A031]' ( 21. Do you think that the practices of the EU IP Offices regarding the following degrees of distinctiveness are harmonised? (Trade marks with reputation))

Please write your answer here:

**22. Do you think that agreeing on a Common Practice among the EU IP Offices regarding the criteria for assessing enhanced distinctiveness would be beneficial for the users?**

Please choose **only one** of the following:

☐ Yes

☐ No

**23. Please justify your answer to question 22:**

Please write your answer here:

**24. Do you think that agreeing on a Common Practice among the EU IP Offices regarding the criteria for assessing 'well-known marks' would be beneficial for the users?**

Please choose **only one** of the following:

☐ Yes

☐ No

**25. Please justify your answer to question 24:**



Please write your answer here:

**26. Do you think that agreeing on a Common Practice among the EU IP Offices regarding the criteria for assessing 'trade marks with reputation' would be beneficial for the users?**

Please choose **only one** of the following:

☐ Yes

☐ No

**27. Please justify your answer to question 26:**

Please write your answer here:

**28. Do you foresee any difficulties that could arise during discussions to reach a Common Practice regarding the criteria for assessing the different degrees of distinctiveness?**

Please write your answer here:

**29. Please provide us with any other comments that you find relevant for the analysis of this topic:**

Please write your answer here:

**Re-analysis: Guarantee or certification marks**

The objective is to re-analyse the criteria for assessing guarantee or certification marks.

**30. Do you think that the practices of the EU IP Offices regarding guarantee or certification marks are harmonised?**

Please choose **only one** of the following:

☐ Yes

☐ No

☐ I don't know

**30.a. Please elaborate on your answer to question 30:**

**Only answer this question if the following conditions are met:**  
Answer was 'No' at question '42 [A042]' ( 30. Do you think that the practices of the EU IP Offices regarding guarantee or certification marks are harmonised? )

Please write your answer here:

**30.b. What (if any) are the problems that you face as a result of divergence among the practices of the EU IP Offices regarding guarantee or certification marks?**

**Only answer this question if the following conditions are met:**  
Answer was 'No' at question '42 [A042]' ( 30. Do you think that the practices of the EU IP Offices regarding guarantee or certification marks are harmonised? )

Please write your answer here:

**31. Do you think that agreeing on a Common Practice among the EU IP Offices regarding guarantee or certification marks would be beneficial for the users?**

Please choose **only one** of the following:

☐ Yes

☐ No

**32. Please justify your answer to question 31:**

Please write your answer here:

**33. Do you foresee any difficulties that could arise during discussions to reach a Common Practice regarding guarantee or certification marks?**

Please write your answer here:

**34. Please provide us with any other comments that you find relevant for the analysis of this topic:**

Please write your answer here:

## Final Questions

### **35. Please rank the following topics in order of preference for launching a Convergence Project:**

All your answers must be different.

Please number each box in order of preference from 1 to 6

- ☐ Deceptiveness of a trade mark
- ☐ Subject matter
- ☐ Use of Vienna Classification
- ☐ Records: harmonisation of formalities
- ☐ Re-analysis: Different degrees of distinctiveness
- ☐ Re-analysis: Guarantee or certification marks

### **36. Please provide us with a short summary of your comments on these 6 proposed topics (approximately 10 lines) which may be included in the second Analysis Paper and brought to the Working Group for discussion in March 2017:**

Please write your answer here:

### **37. Are there any other topics on which you think it would be interesting to launch a Convergence Project?**

Please write your answer here:

### **38. Please provide us with any additional comments that you consider relevant for this analysis of trade mark topics:**

Please write your answer here: