INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

EN

PREPARATORY COMMISSION FOR THE ESTABLISHMENT OF THE INTERNATIONAL REGISTRY FOR MAC EQUIPMENT PURSUANT TO THE MAC PROTOCOL

UNIDROIT 2020
MACPC/2/Doc. 5
Original: English
December 2020

Second session (remote)
10-11 December 2020

NOTE ON REGISTRATION CRITERIA

Prepared by the Chair of the Regulations Working Group

1. One of the important tasks to be discharged by the Regulations Working Group is to make a recommendation to the Preparatory Commission on the manner in which the Regulations should describe the information about an item of MAC equipment that must (or may) be provided to the Registry, in order to make a valid registration of an international interest in the item.

2. The requirements are set out in Article XVII of the MAC Protocol. It provides as follows:

> *A description of equipment that contains its manufacturer's serial number and such additional information as required to ensure uniqueness is necessary and sufficient to identify the object for the purposes of Article 18(1)(a) of the Convention. The Regulations shall specify the format of the manufacturer's serial number and provide what additional information is required to ensure uniqueness.*

3. Some participants in the Regulations Working Group meetings suggested that the registry needed to allow registrants to include enough information to ensure that their registration was clearly and indisputably unique. Others felt that the registration criteria did not need to be that exhaustive, and that a registration could be effective if it provided the information required by the Regulations, even if this meant that more than one item of MAC equipment could fit the description.

4. It became clear in the course of some informal communications after the second meeting of the Regulations Working Group that this debate may have been driven in part by the fact that participants had differing views on what is required by Article XVII. Broadly put, there seem to have been two different interpretations:

a. The first interpretation focusses on the fact that Article XVII requires a registration to contain the item's serial number "and such additional information as **required to ensure uniqueness**". Under this interpretation, the task of the drafters of the Regulations is to ensure that the categories of information that can or must be provided in a registration are comprehensive enough to ensure that the item is described in a way that can **always** allow it to be distinguished from any other item.

This interpretation would provide a more clinically complete set of data on the register (at least, that is, if registrations are made correctly). It would however make the registration process more complex, and so could be off-putting to users.

b. The second interpretation focusses on the fact that the second sentence in Article XVII states that the **Regulations** are to provide what additional information is required to ensure uniqueness. Under this interpretation, the task of the Regulations is not simply to deliver on the obligation imposed by the first sentence. Rather, the Regulations delineate what the scope of that obligation is in the first place (almost as if the article required uniqueness "as defined in the Regulations").

This interpretation would allow the Registry to be more user-friendly for registrants, but would be more likely to result in overlapping registrations.

5. In an endeavour to develop a consensus on the proper interpretation of Article XVII, the Chair of the Regulations Working Group informally approached Sir Roy Goode for his view on the question. As part of this, a third approach was suggested in interpreting Article XVII, one that sat to some extent between the first two interpretations. Sir Roy Goode agreed that the first interpretation set too high a bar, as it was probably not even possible to design a practical registration system that could truly achieve uniqueness. Rather, his view was that the first sentence of Article XVII should be read as if "required" were replaced with "designed". On this interpretation, the registration criteria set out in the Regulations only needed to be "designed to ensure uniqueness", and a registration of an international interest over an item of MAC equipment would be effective if it correctly described the item in accordance with the Regulations, even if the description could apply to another item (or items) as well.

6. Sir Roy's interpretation produces a more practical result than the (stricter) first interpretation. His view suggests that the first sentence of Article XVII sets the standard that the Regulations need to deliver on (rather than the second interpretation, which would leave it to the Regulations themselves to decide what the standard is). This means that the Regulations to be approved by the Preparatory Commission would still need to be "designed to ensure uniqueness". For example, while the Preparatory Commission could not be expected to approve Regulations that covered potential overlap situations of which the Preparatory Commission was not aware, does the Preparatory Commission still need to ensure that the registration criteria will produce unique registrations on all of the fact patterns of which the Preparatory Commission is aware? Or is it sufficient if the Preparatory Commission is confident that the registration criteria will produce unique results in the great majority of cases (in which case marginal or uncommon fact patterns could be ignored, even if the Preparatory Commission is aware that they exist)?

7. The answer to this question will dictate whether the existing draft 5.1(c)(ii)a. and b. of the Draft Regulations (MACPC/2/Doc. 4) is sufficient (assuming that the Preparatory Commission otherwise approves of those provisions), or whether the drafting also needs to provide further registration criteria that will allow for uniqueness in any marginal or uncommon fact patterns, of which the Preparatory Commission is aware, that may not be covered by those paragraphs (whether by retaining the existing draft para c., or through some other mechanism).