

Special Union for the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Union)

Committee of Experts

Thirty-Third Session
Geneva, May 1 to 5, 2023

REPORT

adopted by the Committee of Experts

INTRODUCTION

1. The Committee of Experts of the Nice Union (hereinafter referred to as “the Committee”) held its thirty-third session in Geneva from May 1 to 5, 2023 in hybrid format. The following members of the Committee were represented at the session: Algeria, Australia, Austria, Belarus, Canada, China, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, India, Ireland, Israel, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Mexico, Morocco, Netherlands, New Zealand, Norway, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Singapore, Slovakia, Spain, Sweden, Switzerland, Trinidad and Tobago, Türkiye, Ukraine, United Kingdom, United States of America and Uruguay (50). The following States were represented by observers: Angola, Brazil, Colombia, Côte d'Ivoire, Iraq, Madagascar, Philippines and Thailand (8). Representatives of the following international intergovernmental organizations took part in the session in an observer capacity: African Intellectual Property Organization (OAPI), African Regional Intellectual Property Organization (ARIPO), Benelux Office for Intellectual Property (BOIP) and European Union (EU). Representatives of the following non-governmental organizations attended the session in an observer capacity: Association for the Protection of Intellectual Property (AIPPI), European Law Students' Association (ELSA International), Intellectual Property Institute of Canada (IPIC), International Trademark Association (INTA) and Japan Patent Attorneys Association (JPAA). The list of participants appears as Annex I to this report.

2. The session was opened by Mr. Ken-Ichiro Natsume, Assistant Director General, Infrastructure and Platforms Sector of WIPO, who welcomed the participants.

OFFICERS

3. The Committee unanimously elected Mr. Sébastien Tinguely (Switzerland) as Chair, and Ms. Monique Choiniere (United States of America) and Ms. Rula Cohay (Israel) as Vice-Chairs.
4. Ms. Alison Züger (WIPO) acted as Secretary of the session.

ADOPTION OF THE AGENDA

5. The Committee unanimously adopted the agenda, which appears as Annex II to this report.

DISCUSSIONS, CONCLUSIONS AND DECISIONS

6. As decided by the Governing Bodies of WIPO at their tenth series of meetings held from September 24 to October 2, 1979 (see document AB/X/32, paragraphs 51 and 52), the report of this session reflects only the conclusions of the Committee (decisions, recommendations, opinions, etc.) and does not, in particular, reflect the statements made by any participant, except where a reservation in relation to any specific conclusion of the Committee was expressed or repeated after the conclusion was reached. The Committee agreed to include a brief summary on the general discussion of the “NFTs and the metaverse” topic at this session.

DECISIONS OF THE COMMITTEE

7. In accordance with the provisions of Article 3(7)(a) and (b) of the Nice Agreement, the decisions of the Committee concerning the adoption of amendments¹ to the Nice Classification (hereinafter referred to as “the Classification”) required a four-fifth majority of the countries of the Nice Union represented and voting at the session. Decisions concerning the adoption of other changes to the Classification required a simple majority of the countries of the Nice Union represented and voting at the session.

ENTRY INTO FORCE OF THE DECISIONS OF THE COMMITTEE

8. In accordance with Rule 7 of its Rules of Procedure, the Committee agreed that changes to the Classification that did not entail an amendment in the sense of Article 3(7)(b) of the Nice Agreement will enter into force on January 1, 2024, and will be incorporated in a new version of the Classification. Amendments will enter into force later on, at a date to be determined by the Committee.

9. The Committee noted that the International Bureau will prepare and publish online the new version of the Classification (NCL (12-2024)), in English and French, by the end of 2023. The list of goods and services in Excel format, in English and French, will be made available on the [electronic forum](#) by the end of June 2023.

¹ Article 3(7)(b) of the Nice Agreement provides that “...“Amendment” shall mean any transfer of goods or services from one class to another or the creation of any new class.”

10. The Committee invited the International Bureau to take the opportunity of correcting any obvious typing or grammatical errors that it found in the text of the Classification and harmonizing, as far as possible, the use of punctuation.

BUSINESS SEGMENT

USER ASSOCIATIONS PRESENT THEIR NICE CLASSIFICATION-RELATED ISSUES

11. INTA made a statement outlining some possible solutions to address the increasing size of Class 9. Some relevant past proposals and discussions at previous sessions were recalled by the Committee. The International Bureau announced that it would consider a new project on this subject.

CONSIDERATION OF PROPOSALS IN GROUP 1 (FOUR-FIFTHS MAJORITY APPROVAL) AFTER VOTE 1 IN NCLRMS

12. Discussions were based on Group 1 in [NCLRMS](#), which contained proposals for amendments and other changes to the 2023 version of the Classification, which had received four-fifths majority support at Vote 1.

13. Upon request, one proposal was moved to Group 2. The Committee agreed unanimously to adopt the remaining proposals in Group 1. The decisions of the Committee are available in NCLRMS/Sessions/CE33/Group 1 (as well as on the [electronic forum](#), project [CE330](#)).

CONSIDERATION OF PROPOSALS IN GROUP 2 AFTER VOTE 1 IN NCLRMS

14. Discussions were based on Group 2 in [NCLRMS](#) (except for proposals contained in the topic “NFTs and the metaverse” that are outlined in paragraphs 16-19 below), which contained proposals for amendments and other changes to the Classification, which did not receive four-fifths majority support at Vote 1.

15. The Committee adopted a significant number of amendments and other changes to the Classification. The decisions of the Committee are available in NCLRMS/Sessions/CE33/Group 2 (as well as on the [electronic forum](#), project [CE330](#)).

CONSIDERATION OF PROPOSALS RELATING TO THE TOPIC “NFTs AND THE METAVERSE”

16. Discussions were based on proposals, submitted by various offices, concerning the addition of goods and services in this newly emerging field to the Alphabetical List.

17. In order to have a general dialogue on this topic that would serve as a basis for consistent discussions on submitted individual proposals, and to streamline those discussions, the International Bureau launched an informal online survey of seven questions for which 35 Nice Member States provided feedback.

18. Although more than half of those polled would accept the word “metaverse” in trademark applications, there were still concerns about adding that term to the Alphabetical List. Nevertheless, there was overwhelming support for the term “virtual environments”. Similarly,

whilst more than half of the offices would not require detailed specification of the type of digital file authenticated by an NFT in a trademark application, the Committee preferred the terms in the Alphabetical List to be specific. It was also noted that the majority of delegations would not accept the term NFTs alone, but the majority would accept physical goods authenticated by NFTs in their appropriate class and so the Committee approved an indication (*clothing authenticated by non-fungible tokens [NFTs]* in Class 25) to provide guidance in this matter. The Committee further approved indications involving *downloadable virtual clothing* and *downloadable digital image files authenticated by non-fungible tokens [NFTs]* in Class 9. However, although some delegations preferred to classify virtual services in the same manner as their real-world equivalent, the majority would not systematically do so due to concerns that some virtual services did not actually provide the same type of service or outcome as that in the real world. Therefore, the Committee was of the opinion that the impact of the virtual service, and whether that service has the same result in the real world, should be considered in order to classify it correctly. As a result, the Committee approved a number of indications involving services in virtual environments in order to provide guidance to users. Finally, delegations were divided on whether “trading” or “exchanging” of virtual goods authenticated by NFTs should be considered as a financial service in Class 36.

19. The Committee adopted a significant number of changes to the Classification, as well as a modification relating to General Remark (d) for Services. The decisions of the Committee are available in NCLRMS/Sessions/CE33/Group 2/NFTs and the metaverse (as well as on the [electronic forum](#), project [CE330](#)).

APPRAISAL OF THE NICE CLASSIFICATION REVISION PROCESS

20. Discussions were based on project [CE332](#), Annexes 2 and 3, relating to the revision process of the Nice Classification, submitted by the International Bureau.

21. The Committee reiterated its support for the current Nice Classification revision cycle and timeframes. Regarding the International Bureau’s suggestion of a fast-track vote, the Committee agreed with some amendments. An updated document is available on the [electronic forum](#), project [SP003](#), Annex 4. The International Bureau agreed to keep the project open in order to collect more feedback on the revision procedure.

NEXT SESSION OF THE COMMITTEE OF EXPERTS

22. The Committee noted that the next (thirty-fourth) session would be held in Geneva at the end of April or beginning of May 2024, subject to the schedule of WIPO meetings, including principal Committees.

CLOSING OF THE SESSION

23. The Chair closed the session.

24. *The Committee of Experts unanimously adopted this report by electronic means on May 26, 2023.*

[Annexes follow]

ANNEXE I/ANNEX I

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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(dans l'ordre alphabétique des noms français des États)
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[L'annexe II suit/
Annex II follows]

ANNEX II
(see paragraph 5 of this report)

AGENDA

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2. Election of a Chair and two Vice-Chairs	3
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7. Consideration of proposals relating to the topic “NFTs and the metaverse” See NCLRMS	16 - 19
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TECHNICAL ANNEX

[The Technical Annex is available on the Electronic Forum, under Project [CE330](https://www3.wipo.int/classifications/nice/nclef/public/en)
<https://www3.wipo.int/classifications/nice/nclef/public/en>]

[End of Technical Annex and of document]