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U N I D R O I T

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
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STUDY GROUP ON FRANCHISING

Model Franchise Disclosure Law

Proposal submitted by Mr Philip Zeidman,  
Piper, Marbury, Rudnick & Wolfe LLP (Washington D.C.)

Rome, October 2000



MEMORANDUM

**To:** Lena Peters  
**From:** Philip Zeidman  
**Date:** October 26, 2000  
**Subject:** Draft Explanatory Report to  
Draft Model Franchise Disclosure law

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We both attended the meeting of the International Franchising Committee of the Section of Business Law during the Conference of the International Bar Association in Amsterdam on September 21, at which an entire session was devoted to a discussion of the proposed law. Much of the commentary, as you will recall, was opposed to the adoption of the proposal by the Governing Council of Unidroit. I do not know whether that discussion has led you to reconsider the Unidroit Secretariat's support for such a proposal. If so, I assume you will advise the Study Group on Franchising well in advance of the planned meeting in Rome on December 7.

I am proceeding on the assumption that you are undeterred, based on your e-mail to me of October 12, requesting material for the introduction to the Explanatory Report, further elaborating on the points I raised at the Amsterdam meeting. On the basis of that assumption, this memorandum will respond to your request.

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At the September 21 meeting, I called attention to the language of the Report of the Activity of the Institute:

It is the intention of the Institute to issue ...extensive explanatory notes [which] will examine the broader question of the options available to national legislators and the considerations that national legislators might wish to take into consideration when examining the possibility of introducing legislation or franchising.

I asked whether the only section of the Draft Explanatory Report prepared to comply with this directive was the following paragraph:

29. In the legislative process the national legislators will naturally weigh a number of different elements, including an analysis of the problem that the intended legislation is to deal with and whether or not there is legislation that can and is used to deal with the problem, and of course the effectiveness of that existing legislation and whether or not the courts apply it. One important question is the impact that the proposed legislation will have, whether it will only deal with the problem or whether it might have also other, collateral effects. The legislation that is adopted must be suited to the problem at hand. This holds true irrespective of the origin of the proposed legislation, be it domestic or international.

I said that I thought if this were to be only treatment it was manifestly inadequate. I understood your reply to be that this was all that was planned at this juncture, but that you would welcome a more discursive and comprehensive treatment of the subject called for by the Report's reference to «extensive explanatory notes».

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I submit that, if the Study Group elects to forward the proposed Law to the Governing Council for its consideration, the Draft Explanatory Report should treat this threshold question both more prominently and more directly. In lieu of paragraph 29, I would therefore insert the following (after paragraph 18, before the discussion of »General Considerations«):

#### PROPOSED INSERT

The Study Group is aware of a substantial body of concern about proceeding with any proposal for «model» or «uniform» regulation of franchising. Both those members who are nonetheless in favor of proceeding to a recommendation to the Governing Council and those who are opposed to doing so share a concern that representatives of governments and others who become aware of any resultant action by the Governing Council will move toward the adoption of franchising legislation in their own countries without an adequate understanding of the factors which should be considered before reaching such a decision. That shared concern is based upon the relatively limited understanding of franchising which exists in much of the world; the assumption which these readers may make that the consensus among «franchise experts» is that legislation is desirable; and the imprimatur which action by the Governing Council would appear to give to that assumption. Against the background of that concern, the Study Group believes it important that any action by the Governing Council be placed in perspective, by a clear statement accompanying any model law it may determine to adopt:

**«A national government considering the adoption of franchise legislation may wish to consider these questions –**

- **Is it clear that there is a problem; that its nature is known and understood; and that some action is necessary?**
- **Is the evidence of abuse empirical, or only anecdotal?**
- **Is there any pattern of widespread abusive conduct, or is it isolated or limited to particular industries?**
- **Do existing laws address the concerns? Are they adequate?**
- **Does a system of self-regulation exist? If not, should it not be tried before governmental intervention/is considered?**
- **Is there a risk that, in the legislative process, even more onerous and harmful provisions will be appended to any proposal?**
- **Have the views of the national franchising association been sought?**
- **Have any analyses been made of –**
  - **The financial burden the new legislation will impose on franchisors? Of how that will be passed on in additional costs to franchisees? In turn, to consumers?**
  - **How much of a barrier to entry it will represent to small and new franchisors?**
  - **The effect on jobs which would have been created by plans for franchising which will be abandoned?**
  - **The negative effect on foreign franchisors considering entering the country?»**