

WIPO



WIPO/GRTKF/IC/10/INF/4

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

Tenth Session

Geneva, November 28 to December 8, 2006

BRIEF SUMMARY OF WORKING DOCUMENTS

Document prepared by the Secretariat

I. DOCUMENTS FOR THE TENTH SESSION

1. The following is a brief summary of the working documents prepared for or submitted to the tenth session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the "Committee") as at November 28, 2006.

WIPO/GRTKF/IC/10/1 Prov 2.: Revised draft Agenda for the tenth session.

2. This document contains the proposed items to be dealt with by the Committee, and is submitted to the Committee for possible adoption when it convenes for its tenth session.

WIPO/GRTKF/IC/10/2 Rev.: Accreditation of certain organizations.

WIPO/GRTKF/IC/10/2 Add.: Accreditation of certain organizations: Addendum.

3. These documents set out the names, contact details and aims and objectives of organizations which have applied to the Committee for accreditation as *ad hoc* observers to future sessions of the Committee. Accredited Organizations are invited to attend all meetings of the Committee, receive copies of all working documents, are entitled to make interventions on the issues under discussion following interventions by Member States and Intergovernmental Organizations, and can submit papers on issues being considered by the Committee for uploading on a special website reserved for Observers.

WIPO/GRTKF/IC/10/3: Participation of Indigenous and Local Communities: Voluntary Contribution Fund

4. The WIPO General Assembly, at its 32nd session held from September 26 to October 5, 2005, decided to establish a “WIPO Voluntary Contribution Fund for Accredited Indigenous and Local Communities”. The decision was taken on the basis of document WO/GA/32/6, which sets out the objectives and operation of the Fund. This document provides an update on the implementation of the Voluntary Fund and draws attention to specific questions before the Committee at its tenth session, in particular the appointment of the Advisory Board. The required information note providing details of contributions received and beneficiaries is circulated in parallel as document WIPO/GRTKF/IC/10/INF/6.

WIPO/GRTKF/IC/10/4: The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised Objectives and Principles

5. The Committee decided at its sixth session to develop an overview of policy objectives and core principles for the protection of traditional cultural expressions (TCEs)/expressions of folklore (EoF). The Committee considered a first draft (Annex I of WIPO/GRTKF/IC/7/3), which distilled and structured the existing legal mechanisms and the extensive practical experience with protection of TCEs/EoF that had already been widely discussed by the Committee, and drew essentially on the Committee’s own deliberations and the various materials put to the Committee.

6. The Committee commented extensively on the first draft and established an intersessional commentary process. The comments received are posted on-line and are available as WIPO/GRTKF/IC/8/INF/4. A revised version (WIPO/GRTKF/IC/8/4) was prepared, closely guided by the comments and direction received at the previous session and in the intersessional commentary process. The Committee reviewed this revised draft at its eighth and ninth sessions, but did not reach any specific conclusion. At its ninth session, the Committee established a further commentary process: the comments received are circulated as documents WIPO/GRTKF/IC/10/INF/2, WIPO/GRTKF/IC/10/INF/2 Add., WIPO/GRTKF/IC/10/INF/2 Add. 2, and WIPO/GRTKF/IC/10/INF/3.

7. This document therefore provides the same text of the draft provisions for the Committee’s continued review. The document suggests draft:

- policy objectives, which would set common general directions for protection and provide a consistent policy framework;
- general guiding principles, which would ensure consistency, balance and effectiveness of substantive principles;
- specific substantive principles, which would define the legal essence of protection.

WIPO/GRTKF/IC/10/5: The Protection of Traditional Knowledge: Revised Objectives and Principles

8. The Committee decided at its sixth session to develop an overview of policy objectives and core principles for the protection of traditional knowledge (TK). The Committee

considered a first draft (Annex I of WIPO/GRTKF/IC/7/5), which distilled and structured the existing legal mechanisms and the extensive practical experience with protection of TK that had already been widely discussed by the Committee, and drew essentially on the Committee's own deliberations and the various materials put to the Committee.

9. The Committee commented extensively on the first draft and established an intersessional commentary process. The comments received are posted on-line and are available as WIPO/GRTKF/IC/8/INF/4. A revised version was prepared, closely guided by the comments and direction received at the previous session and in the intersessional commentary process. The Committee reviewed this revised draft at its eighth and ninth sessions, but did not reach any specific conclusion. At its ninth session, the Committee established a further commentary process: the comments received are circulated as documents WIPO/GRTKF/IC/10/INF/2, WIPO/GRTKF/IC/10/INF/2 Add., WIPO/GRTKF/IC/10/INF/2 Add.2, and WIPO/GRTKF/IC/10/INF/3.

10. This document therefore provides the same text of the draft provisions for the Committee's continued review. The document suggests draft:

- policy objectives, which would set common general directions for protection and provide a consistent policy framework;
- general guiding principles, which would ensure consistency, balance and effectiveness of substantive principles;
- specific substantive principles, which would define the legal essence of protection.

WIPO/GRTKF/IC/10/6: Practical Means of Giving Effect to the International Dimension of the Committee's Work

11. The Committee has decided to international dimension integrally with other substantive items on its agenda, notably the items on TK, TCEs/EoF, and genetic resources. This document supplements substantive documents, by providing technical background information on questions such as the interplay between the international dimension and national legal systems, the preferred manner of recognition of foreign right holders, and the appropriate relationship with other international instruments and processes.

12. A series of documents have considered the practical aspects of the Committee's work under the following three aspects:

(i) *what* should be the *content* of the outcome – the question of substance, or what subject matter, focus and level of detail should the outcome have (including the substantial element of its international dimension);

(ii) *what* should be the *nature, format or status* of the outcome – the question of what the format or nature of an outcome should have, and what legal or political status and legal, political or ethical implication should the outcome have, including any international legal implications;

(iii) *how* should the Committee work towards the outcome – the question of what procedures or processes, and what forms of consultation, would help lead to understanding on

the content and status of any proposed outcome; and what timelines or interim steps should apply.

13. This document provides background information on technical or practical aspects of these questions, and may possibly be drawn on as appropriate as a background resource only in the Committee's work. It reviews the possible approaches concerning the format or status of an outcome as including: a binding international instrument or instruments; a non-binding statement or recommendation; guidelines or model provisions; authoritative or persuasive interpretations of existing legal instruments; and an international political declaration espousing core principles and establishing the needs and expectations of TCE/TK holders as a political priority.

II. INFORMATION DOCUMENTS AND OTHER DOCUMENTS OF CONTINUING INTEREST

WIPO/GRTKF/IC/10/INF/1: List of Participants

14. A draft list of participants will be circulated at the tenth session.

WIPO/GRTKF/IC/10/INF/2 : Circulation of Comments Received on Documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5

WIPO/GRTKF/IC/10/INF/2 Add.: Circulation of Comments Received on Documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5: Addendum

WIPO/GRTKF/IC/10/INF/2 Add.2: Circulation of Comments Received on Documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5: Addendum

WIPO/GRTKF/IC/10/INF/3: Circulation of Comments Received on Documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5

15. At its ninth session, the Committee decided that “on the basis of the indications of delegations that they would be submitting written comments on the contents of WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5 ... Committee participants [were] invited to submit such written comments...” These documents include the comments provided in English (INF/2) and in Spanish (INF/3) to the Secretariat by the members of the Committee, and by observers accredited to the Committee.

WIPO/GRTKF/IC/10/INF/4: Brief Summary of working documents

16. The present document, prepared as an informal guide to the Committee's documentation.

WIPO/GRTKF/IC/10/INF/5: Information Note for the Panel of Indigenous and Local Communities

17. Following a decision of the Committee at its seventh session, each session of the Committee now commences with a panel chaired by a member of an Indigenous community. The panel was held at the commencement of the eighth and ninth sessions of the Committee. On each occasion, seven representatives of indigenous and local communities gave

presentations on their communities' experiences and concerns in relation to TCEs, TK and related genetic resources. Similar arrangements have been made for the panel to commence the tenth session. This document sets out proposed practical arrangements for the panel.

WIPO/GRTKF/IC/10/INF/6: Voluntary Fund for Accredited Indigenous and Local Communities: Information Note on Contributions and Applications for Support

18. This document sets out information required to be reported to the Committee on the operation of the Voluntary Fund for Accredited Indigenous and Local Communities. The rules are set out in the Annex to document WO/GA/32/6, which was approved by the General Assembly at its 32nd session. In particular, it gives information of contributions received or pledged, and actual support provided to representatives of accredited indigenous and local communities.

Documents from previous sessions

WIPO/GRTKF/IC/9/8: Recognition of Traditional Knowledge within the Patent System.

19. At earlier sessions, the Committee approved an outline and structure for a set of recommendations for patent authorities on examination of TK related applications, and requested the Secretariat to prepare a full draft set of recommendations. This document contains a second revision of the draft recommendations for the Committee's consideration. It draws on past documents, especially WIPO/GRTKF/IC/5/6, WIPO/GRTKF/IC/6/8, WIPO/GRTKF/IC/7/8 and WIPO/GRTKF/IC/8/8, as well as the national positions and reports that led to this work and are addressed in those documents. It also draws on responses to a Questionnaire on Recognition of Traditional Knowledge and Genetic Resources in the Patent System (WIPO/GRTKF/IC/Q.5) that was circulated between the Committee's sixth and seventh sessions. (Responses to the questionnaire are contained in WIPO/GRTKF/IC/9/INF/6 and WIPO/GRTKF/IC/10/INF/7).

WIPO/GRTKF/IC/9/9: Genetic Resources.

20. This document briefly notes the state of play on the genetic resources agenda item. It also refers to WIPO/GRTKF/IC/8/9, which described the Committee's past activities relating to genetic resources and intellectual property (IP), and work in related fora. The earlier document, which may be of continuing interest, describes the background of work on IP and genetic resources before the Committee was created, and provides an overview of the Committee's own work. It covers the three clusters of substantive questions which have been identified in the course of this work, namely technical matters concerning (a) defensive protection of genetic resources; (b) disclosure requirements in patent applications for information related to genetic resources used in the claimed invention; and (c) IP issues in mutually agreed terms for the fair and equitable sharing of benefits arising from the use of genetic resources. In conclusion, the document catalogues certain technical measures or activities, which have been identified by Committee participants at past sessions to partially address these issues.

WIPO/GRTKF/IC/9/INF/4: The Protection of Traditional Cultural Expressions/Expressions of Folklore: Updated Draft Outline of Policy Options and Legal Mechanisms

21. The Committee has commissioned the development and updating of an outline of policy options and legal mechanisms for the protection of traditional cultural expressions (TCEs). This document is a revised draft requested by the Committee. The document provides updated information on the policy options and legal mechanisms that national and regional legal systems have employed to give effect to the kind of draft objectives and principles developed in WIPO/GRTKF/IC/9/4. An outline of policy options and legal mechanisms may serve as an information resource to assist in the choice of appropriate mechanisms to achieve policy objectives and to implement principles such as those set out for consideration in WIPO/GRTKF/IC/9/4. This document is an information resource only, and no specific decisions in respect of this document are suggested.

WIPO/GRTKF/IC/9/INF/5: The Protection of Traditional Knowledge: Updated Draft Outline of Policy Options and Legal Mechanisms

22. The Committee has commissioned the development and updating of an outline of policy options and legal mechanisms for the protection of traditional knowledge (TK). This document is a revised draft requested by the Committee. The document provides updated information on the policy options and legal mechanisms that national and regional legal systems have employed to give effect to the kind of draft objectives and principles developed in WIPO/GRTKF/IC/9/5. An outline of policy options and legal mechanisms may serve as an information resource to assist in the choice of appropriate mechanisms to achieve policy objectives and to implement principles such as those set out for consideration in WIPO/GRTKF/IC/9/5. This document is an information resource only, and no specific decisions in respect of this document are suggested.

WIPO/GRTKF/IC/8/9: Overview of the Committee's Work on Genetic Resources.

23. This document provides general information on the Committee's past activities relating to genetic resources and intellectual property (IP), and work in related fora. The document describes the background of work on IP and genetic resources before the Committee was created, and provides an overview of the Committee's own work. It covers the three clusters of substantive questions which have been identified in the course of this work, namely technical matters concerning: (a) defensive protection of genetic resources; (b) disclosure requirements in patent applications for information related to genetic resources used in the claimed invention; and (c) IP issues in mutually agreed terms for the fair and equitable sharing of benefits arising from the use of genetic resources. In conclusion, the document catalogues certain technical measures or activities, which have been identified by Committee participants at past sessions to partially address these issues.

WIPO/GRTKF/IC/8/11: Disclosure of Origin or Source of Genetic Resources and Associated Traditional Knowledge in Patent Applications: document submitted by the European Community and its Member States

24. This document provides the text of a proposal submitted on behalf of the European Community and its Member States.

WIPO/GRTKF/IC/8/12: Patent System and the Fight Against Biopiracy - The Peruvian Experience

25. This document provides the text of a submission by the Permanent Mission of Peru.

WIPO/GRTKF/IC/8/13: Ministry of Agriculture, Rural Development and Fisheries, Decree-Law No. 118/2002: document submitted by Portugal

26. This document provides information on and the text of this Portuguese law concerning protection of traditional knowledge.

III. OTHER DOCUMENTS OF CURRENT INTEREST

27. The following documents may be of general interest to the Committee:

Publications

Study No. 1 “Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions. Prepared by Ms. Terri Janke, Terri Janke for the World Intellectual Property Organization (WIPO). (WIPO Publication No. 781E)

Study No. 2 “A Study on the Protection of Expressions of Folklore/Traditional Cultural Expressions. India, Indonesia and the Philippines”. Written by Mrs P.V. Valsala G. Kutty for the World Intellectual Property Organization (WIPO). (WIPO Publication No. 912E)

Study No. 3 “WIPO Technical Study on Patent Disclosure Requirements Related to Genetic Resources and Traditional Knowledge”. (WIPO Publication No.786E)

Study No. 4 UNEP/WIPO Study on the Role of Intellectual Property (IP) Rights in the Sharing of Benefits Arising from the use of Biological Resources and Associated (WIPO Publication No. 769E)

Booklet No. 1 “Intellectual Property and Traditional Cultural Expressions/Folklore”. (WIPO Publication No. 913E)

Booklet No. 2 “Intellectual Property and Traditional Knowledge”. (WIPO Publication No. 920E)

Background Paper No. 1 “Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions/Expressions of Folklore”. (WIPO Publication No. 785E)

Questionnaires

28. Six questionnaires have been circulated and continue to form the basis of several documents prepared for the sessions of the Committee. Subject to decisions of the Committee, further responses to these questionnaires would be relevant for the the continuing work program of the Committee. The questionnaires are:

- WIPO/GRKTF/IC/Q.1: Revised Questionnaire for the Survey on Existing Forms of Intellectual Property Protection for Traditional Knowledge.
- WIPO/GRKTF/IC/Q.2: Questionnaire on Contractual Practices and Clauses relating to Intellectual Property, Access to Genetic Resources and Benefit-Sharing.
- WIPO/GRKTF/IC/Q.3: Questionnaire on various requirements for Disclosure relating to Genetic Resources and Traditional Knowledge in Patent Applications.
- WIPO/GRKTF/IC/Q.4: Questionnaire on Databases and Registries Related to Traditional Knowledge and Genetic Resources.
- WIPO/GRKTF/IC/Q.5: Questionnaire on Prior Art Criteria related to Traditional Knowledge and Genetic Resources.
- WIPO/GRTKF/IC/2/7: Questionnaire on National Experiences with the Legal Protection of Folklore.

Compilations of the responses to WIPO/GRKTF/IC/Q.1, WIPO/GRKTF/IC/Q.3 and WIPO/GRTKF/IC/2/7 are available separately. Responses to WIPO/GRKTF/IC/Q.2 are incorporated in the on-line database available at:
<http://www.wipo.int/tk/en/questionnaires/ic-q2/index.html>.

A selection of earlier documents of potential continuing interest

WIPO/GRTKF/IC/7/3: Protection of Traditional Cultural Expressions/Expressions of Folklore: Overview of Policy Objectives and Principles.

WIPO/GRTKF/IC/7/4: Protection of Traditional Cultural Expressions/Expressions of Folklore: Outline and Analysis of Policy Options and Legal Mechanisms.

WIPO/GRTKF/IC/7/5: Protection of Traditional Knowledge: Overview of Policy Objectives and Principles.

WIPO/GRTKF/IC/7/6: Protection of Traditional Knowledge: Outline and Analysis of Policy Options and Legal Mechanisms.

WIPO/GRTKF/IC/7/8: Recognition of Traditional Knowledge in the Examination of Patent Applications.

WIPO/GRTKF/IC/7/9: Genetic Resources: Draft Intellectual Property Guidelines for Access and Equitable Benefit-Sharing.

WIPO/GRTKF/IC/7/12: Participation of Indigenous and Local Communities.

WIPO/GRTKF/IC/6/3: Traditional Cultural Expressions/Expressions of Folklore: Policy and Legal Options.

WIPO/GRTKF/IC/6/4: Traditional Knowledge: Policy and Legal Options.

WIPO/GRTKF/IC/6/5: Genetic Resources: Draft Intellectual Property Guidelines for Access and Benefit-Sharing Contracts.

WIPO/GRTKF/IC/6/6: Traditional Knowledge and Traditional Cultural Expressions: The International Dimension.

WIPO/GRTKF/IC/6/8: Defensive Protection Measures relating to Intellectual Property, Genetic Resources and Traditional Knowledge.

WIPO/GRTKF/IC/6/9: Genetic Resources and Patent Disclosure Requirements: Transmission of Technical Study to the Convention on Biological Diversity.

WIPO/GRTKF/IC/6/10: Participation of Indigenous and Local Communities.

WIPO/GRTKF/IC/6/12: Submission by the African Group: Objectives, principles and elements of an international instrument, or instruments, on intellectual property in relation to genetic resources and on the protection of traditional knowledge and folklore.

WIPO/GRTKF/IC/6/13: Certain Decisions of the seventh Conference of the Parties to the Convention on Biological Diversity.

WIPO/GRTKF/IC/6/14: Report.

WIPO/GRTKF/IC/5/3: Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions.

WIPO/GRTKF/IC/5/5: Draft Toolkit on Intellectual Property Management

WIPO/GRTKF/IC/5/7: Consolidated Survey of Intellectual Property Protection of Traditional Knowledge.

WIPO/GRTKF/IC/5/8: Composite Study on the Protection of Traditional Knowledge.

WIPO/GRTKF/IC/5/9: Contractual Practices and Clauses relating to Intellectual Property, Access to Genetic Resources and Benefit-Sharing

WIPO/GRTKF/IC/5/10: Draft Technical Study on Disclosure Requirements Related to Genetic Resources and Traditional Knowledge.

WIPO/GRTKF/IC/5/11: Participation of Indigenous and Local Communities.

WIPO/GRTKF/IC/5/12: Overview of Activities and Outcomes of the Intergovernmental Committee.

WIPO/GRTKF/IC/5/13: Patent Referring to *Lepidium meyenii* (Maca): Responses of Peru. *Document submitted by the Delegation of Peru.*

WIPO/GRTKF/IC/5/14: Isfahan Declaration. *Document submitted by the Delegation of the Islamic Republic of Iran.*

WIPO/GRTKF/IC/5/INF/2: Information on National Experiences with the Intellectual Property Protection of Traditional Knowledge.

WIPO/GRTKF/IC/5/INF/3: Comparative Summary of *Sui Generis* Legislation for the Protection of Traditional Cultural Expressions.

WIPO/GRTKF/IC/5/INF/4: Comparative Summary of Existing National *Sui Generis* Measures and Laws for the Protection of Traditional Knowledge.

PCT/R/WG/4/130: Proposals by Switzerland regarding the Declaration of the Source of Genetic Resources and Traditional Knowledge in Patent Applications.

WIPO/GRTKF/IC/4/13: Access to Genetic Resources Regime of the United States National Parks. *Document submitted by the Delegation of the United States of America.*

WIPO/GRTKF/IC/4/14: Technical Proposals On Databases and Registries of Traditional Knowledge and Biological/Genetic Resources. *Document submitted by the Asian Group.*

WIPO/GRTKF/IC/3/5: Inventory of Traditional Knowledge-related Periodicals.

WIPO/GRTKF/IC/3/6: Inventory of Existing Online Databases containing Traditional Knowledge Documentation Data.

WIPO/GRTKF/IC/3/7: Review of Existing Intellectual Property Protection of Traditional Knowledge.

WIPO/GRTKF/IC/3/9: Traditional Knowledge - Operational Terms and Definitions.

WIPO/GRTKF/IC/3/10: Final Report on National Experiences with the Legal Protection of Expressions of Folklore.

WIPO/GRTKF/IC/3/12: Certain Decisions of the Sixth Conference of the Parties to The Convention on Biological Diversity. *Document submitted by the Secretariat of the Convention on Biological Diversity.*

WIPO/GRTKF/IC/2/INF.2: International Treaty on Plant Genetic Resources for Food and Agriculture.

WIPO/GRKTF/IC/2/10: Position Paper of the Asian Group and China. *Document submitted by the Asian Group and China.*

WIPO/GRTKF/IC/1/3: Matters concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore – an Overview.

WIPO/GRKTF/IC/1/8:

- Directive 98/44/EC of the European Parliament and of the Council on the Legal Protection of Biotechnological Inventions;
- Explanatory Note on Recital 27 of the above Directive concerning the Indication of the Geographical Origin of Biotechnological Inventions;

- Communication by the European Union and its Member States on the Relationship between the Convention on Biological Diversity and the TRIPS Agreement Paper on the Relationship between Intellectual Property Rights and Biodiversity.
Documents submitted by the European Community and its Member States.

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