

WIPO



WIPO/GRTKF/IC/15/3
ORIGINAL: English
DATE: October 30, 2009

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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

Fifteenth Session
Geneva, December 7 to 11, 2009

PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES:
VOLUNTARY FUND

Document prepared by the Secretariat

1. The WIPO General Assembly, at its 32nd session held from September 26 to October 5, 2005, decided to establish a “WIPO Voluntary Fund for Accredited Indigenous and Local Communities”, hereinafter the “Voluntary Fund” (see paragraph 168 of document WO/GA/32/13). The decision was taken on the basis of document WO/GA/32/6 and its Annex, which sets out the objectives and rules of the Voluntary Fund. Those objectives and rules are annexed to the present document for reference. All practical details on the Voluntary Fund, its operation, and the application procedure, are available on the website: http://www.wipo.int/tk/en/ngoparticipation/voluntary_fund/index.html, and contained in WIPO publication N°. 936(E).

Replenishment of the Voluntary Fund

2. In accordance with the rules for the operation of the Voluntary Fund, the WIPO Director General will communicate an Information Note (WIPO/GRTKF/IC/15/INF/4) before the opening of the fifteenth session of the Committee. This Information Note will include *inter alia* the level of the contributions and pledges received as at the date of the Note, the amount available in the Voluntary Fund, the names of the contributors, the names of the

funded applicants for the fourteenth and fifteenth sessions and the names of the remaining and new applicants for the sixteenth session.

3. The extent of support that the Voluntary Fund can provide depends on the resources donated to it. The amount available in the Voluntary Fund's account was 238.085,05 Swiss francs on October 27, 2009. Based on the past experience and the foreseeable evolution of travel-related costs, this amount might allow the Voluntary Fund to operate in view of the fifteenth and sixteenth sessions of the Committee at least. In due course, replenishment of the Fund would seem to be necessary. In the event that the Voluntary Fund may be required also to fund participants in sessions of the Inter-sessional Working Group referred to in the mandate of the Committee for the 2010-2011 biennium (see WIPO/GRTKF/IC/15/4), the Fund would certainly need to be replenished.

2. The members of the Committee and all interested public or private entities are, therefore, encouraged to contribute to the Voluntary Fund in order to ensure its continued ability to fund the participation of the nominated representatives of accredited observers which represent indigenous or local communities, or otherwise represent customary holders or custodians of traditional knowledge or traditional cultural expressions.

Appointment of the Advisory Board

4. The decision setting out the objectives and operation of the Voluntary Fund provides that “[a]part from the *ex officio* member, the members of the Advisory Board will be elected by the Committee on the second day of each of its sessions, on a proposal by its Chair, following consultation with the Member States and their regional groups and, respectively, representatives of accredited observers. Apart from that of the *ex officio* member, their mandates will expire with the opening of the following Committee session” (Article 8).

5. At its fourteenth session, the Chair proposed, and the Committee elected by acclaim, the following eight members of the Advisory Board to serve in an individual capacity:

(i) as members of delegations of WIPO Member States: Mr. Martin GIRSBERGER, Head, *Propriété intellectuelle et Développement Durable, Institut fédéral de la Propriété intellectuelle*; Mrs. Hayet MEHADJI, First Secretary, Permanent Mission of Algeria, Geneva; Mr. Yazdan NADALIZADEH, Counsellor, Permanent Mission of the Islamic Republic of Iran, Geneva; Mr. Milan NOVAKOVIĆ, Patent Examiner, Intellectual Property Office, Republic of Serbia; Mr. Luis VAYAS VALDIVIESO, First Secretary, Permanent Mission of Ecuador, Geneva;

(ii) as members of accredited observers representing indigenous and local communities or other customary holders or custodians of traditional knowledge or traditional cultural expressions: Mr. Preston HARDISON, representative of the *Tulalip Tribes of Washington*; Mrs. Le'a Malia KANEHE, representative of the *Indigenous Peoples Council on Biocolonialism*; Mr. Joseph OGIERIAKHI, representative of the *West Africa Coalition for Indigenous People's Rights*.

The Chair of the Committee nominated Mr. Abdellah OUADRHIRI, Director General, *Bureau marocain du droit d'auteur*, Ministry of Communication, Morocco, Deputy Chair of the Committee, to serve as Chair of the Advisory Board.

6. Since the mandates of the current members of the Advisory Board would expire at the beginning of its fifteenth session, the Committee would need, on or before the second day of its fifteenth session, to elect the members of the Advisory Board. The rules governing the Voluntary Fund leave open the possibility of past members being eligible for reelection.

7. *The Committee is invited:*

(i) *to encourage its members and all interested public or private entities to contribute to the Voluntary Fund; and*

(ii) *to undertake the election of the members of the Advisory Board of the Voluntary Fund on the basis of the proposal of the Chair on or before the second day of its session.*

[Annex follows]

ANNEX

Establishment of the WIPO Voluntary Fund
for Accredited Indigenous and Local Communities

Annex to document WO/GA/32/6
approved by the WIPO General Assembly (32nd session)

Resolved to take appropriate measures to facilitate and encourage the participation of indigenous and local communities, and other customary holders or custodians of traditional knowledge and traditional cultural expressions, in the work of the World Intellectual Property Organization (WIPO) concerning intellectual property relating to genetic resources, traditional knowledge and folklore;

Recognizing that the effectiveness of these measures depends in particular on appropriate financial support;

Recognizing moreover that the existence of an appropriate coordinated framework aimed at financing this participation would encourage such contributions;

[*If* the WIPO General Assembly decides to renew the mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore in its current form or in a different form, or if the Assembly decides to create a new body responsible for the matters within the Intergovernmental Committee's remit in its current form (the possible bodies being designated hereinafter by the generic term "the Committee"),]¹

then in that it is recommended that the Assembly [should decide]² to create a voluntary contribution fund, the name, objective, criteria for support and operation of which would be as follows:

¹ Note from the Secretariat: the General Assembly has taken such a decision. See par. 202 of the report of its Thirty-Second Session (document WO/GA/32/13).

² Note from the Secretariat: the General Assembly has taken such a decision. See par. 168 of the report of its Thirty-Second Session (document WO/GA/32/13).

Name

1. The Fund will be known as the “WIPO Voluntary Fund for Accredited Indigenous and Local Communities”, hereinafter the “Fund”.

Objective and scope

2. The Fund is established exclusively to finance the participation in the work of the Committee and other related activities of WIPO of the nominated representatives of accredited observers which represent indigenous or local communities, or otherwise represent customary holders or custodians of traditional knowledge or traditional cultural expressions.

3. Since participation in the Committee’s work is restricted by its rules of procedure to its members and accredited observers, and in order to ensure their capacity to participate fully in the Committee’s work, the funded representatives should only be the nominated representatives of observers which are duly and previously accredited to the Committee, either as *ad hoc* observers accredited by the Committee itself, or as observers accredited to WIPO.

4. The creation of the Fund and its operation will not prejudice other established procedures, in particular by the general WIPO Rules of Procedure (WIPO 399 (FE) Rev. 3) implemented in document WIPO/GRTKF/IC/1/2 for the accreditation of indigenous and local communities and other observers, or to organize the effective participation of their members in the sessions. The operation of the Fund shall not pre-empt or override decisions by members of the Committee regarding accreditation and participation in the work of the Committee. It is understood that other direct contributions and other possible forms of direct assistance, either existing or in the future, designed to finance or facilitate such participation, may be pursued outside the framework of the Voluntary Fund, at the choice of the contributor.

Criteria for financial support

5. Financial support from the Fund will correspond exclusively to the objective set out in Article 2 and to the following conditions:

(a) Support from the Fund will be strictly limited to the maximum resources actually available in the Fund;

(b) Each provision of support will relate to a single Committee session and any related activities held consecutively with the Committee session. Provision of support on one occasion shall not prejudice possible support for the participation of the same beneficiary on other sessions;

(c) To be eligible for financial support, persons would need to satisfy each of the following criteria:

(i) be a natural person;

(ii) belong, as a member, to an accredited observer which represents indigenous or local communities, or otherwise represents customary holders or custodians of traditional knowledge or traditional cultural expressions;

(iii) have been duly nominated in writing by the observer to represent it at the session designated for the support and as possible beneficiary of support from the Fund;

(iv) be able to participate effectively and contribute to the session intended for the support, such as through expressing experience in the field and the concerns of indigenous and local communities and other customary holders and custodians of traditional knowledge or traditional cultural expressions;

(v) and whom the Advisory Board considers would not be able to take part in the session concerned without support from the Fund, owing to a lack of alternative financial resources.

(d) In ensuring a broad geographical spread of participation among the seven geo-cultural regions recognized by the United Nations Permanent Forum on Indigenous Issues, the Advisory Board should take due account of the need to support those who lack alternative financial resources, and particularly of those observers based in developing and least developed countries and small island developing countries.

(e) The financial support will cover the purchase of a return economy class ticket, including taxes connected with the ticket, between the domicile of the beneficiary and Geneva or any other meeting place, by the most direct and cheapest route. It will also cover living expenses in the form of a daily subsistence allowance at the rate specified by the United Nations for Geneva or for the city where said meeting is held, with an additional flat rate of US\$60 to cover expenses incurred at the time of departure and arrival. All other expenses related to the participation of the beneficiaries in the session concerned will be excluded from Fund support.

(f) If an applicant who has been selected to benefit from Fund support has to withdraw or is unable to take part in the session concerned, any sums unexpended and recovered, apart from possible cancellation charges, will be transferred to the reserve of the resources available to the Fund and the choice which was made with regard to said applicant shall be considered null and void. The applicant will nonetheless be entitled to submit a new request for the following session, provided that information is submitted giving a good reason for the withdrawal or nature of the event which otherwise made participation impossible.

Operating mechanism

6. The Fund will operate as follows:

(a) Fund resources will come exclusively from voluntary contributions by governments, NGOs and other private or public entities, and specifically shall not be drawn from the regular WIPO budget.

(b) The administrative costs associated with the operation of the Fund shall be kept to a strict minimum and shall not entail the drawing of specific funds in credit from the regular WIPO budget.

(c) The voluntary contributions paid into the Fund will be managed by the WIPO Director General, assisted by an Advisory Board. In this respect, the financial administration by the WIPO Director General and the auditing of the Fund accounts by the WIPO auditor will be undertaken in line with the procedures established, in accordance with the WIPO Financial Regulations, for the funds-in-trust set up to finance certain development cooperation activities conducted by WIPO.

(d) Decisions to extend financial support will be taken, for formal purposes, by the WIPO Director General, following an express recommendation by the Advisory Board. The recommendations made by the Advisory Board relating to the choice of beneficiaries will be binding on the Director General and not subject to appeal.

(e) Duly documented requests for financial support enabling participation in a Committee session will be sent to the WIPO Director General by the applicants in their own name, so as to arrive at least 60 days before the opening of the Committee session which precedes the session for which support is requested. Later requests will be considered at the following session.

(f) Before each Committee session, the WIPO Director General will communicate for the information of participants an information note setting out:

(i) the level of the voluntary contributions paid into the Fund on the date on which the document was drafted,

(ii) the identity of the contributors (unless individual contributors have expressly requested to remain anonymous),

(iii) the amount of the resources available taking into account the funds disbursed,

(iv) the list of people who have benefited from the Fund's support since the previous information memorandum,

(v) the people chosen to benefit from the Fund but who withdrew,

- (vi) the amount of the support allocated to each beneficiary, and
- (vii) a sufficiently detailed description of the applicants seeking support for the following session.

This document will also be addressed by name to the members of the Advisory Board for examination and deliberation.

(g) Following the election of its members, the Advisory Board will be convened by the WIPO Director General to meet on the margins of the Committee session which precedes the session for which support is being considered, without prejudice to the right of its members to discuss informally any questions concerning their mandate between sessions of the Committee.

(h) The Advisory Board must ensure that all the criteria for eligibility of applicants set out above, in particular in Article 5, are satisfied during its deliberations, and should agree on a recommended list of eligible applicants who should benefit from Fund support. The Advisory Board should also ensure, when adopting its recommendation, that:

- a balance is maintained between the male and female beneficiaries, and between the geo-cultural regions from which they come, in successive sessions insofar as is possible; and
- where necessary, the benefits are taken into account which the Committee's work may derive from the repeated participation in its sessions of the same beneficiary.

Finally, when adopting its recommendation the Committee shall take account of the available resources as reported by the Director General in the information note referred to in Article 6(f), and in particular it shall identify those applicants who are agreed and for whom funding is available, and those applicants who are agreed in principle but for whom insufficient funds are available. Those in the latter category should be given priority in decisions on funding for subsequent sessions of the Committee.

The Advisory Board will be provided with administrative assistance for its deliberations by the WIPO International Bureau, in accordance with Article 6(b).

(i) The Advisory Board will adopt its recommendation before the end of the Committee session on the margins of which it meets. This recommendation will identify:

- (i) the future session intended for financial support (i.e. the subsequent session of the Committee),
- (ii) the applicants whom the Advisory Board agrees should be supported for that session and for whom funds are available,

(iii) any applicant or applicants whom the Advisory Board agrees should be supported in principle but for whom insufficient funds are available,

(iv) any applicant or applicants whose application has been rejected in accordance with the procedure in Article 10,

(v) any applicant or applicants whose application has been postponed until the next session of the Committee in accordance with the procedure in Article 10.

The Advisory Board will immediately forward the contents of the recommendation to the Director General who will take a decision in accordance with the recommendation. The Director General will inform the Committee immediately and, in any cases, prior to the end of its current session, by means of an information note specifying the decision taken concerning each applicant.

(j) The WIPO Director General will take the administrative measures necessary to implement his decision for the session concerned, in accordance with Article 6(b).

Other provisions relating to the Advisory Board

7. The Advisory Board will comprise nine members, including:

- the Chair of the Committee, appointed *ex officio* or, where that proves to be impossible, one of the Vice-Chairs nominated by the Chair as his or her deputy;
- five members from the delegations of WIPO Member States taking part in the Committee, reflecting an appropriate geographical balance; and
- three members from accredited observers representing indigenous and local communities or other customary holders or custodians of TK or TCEs.

The members will serve on an individual basis and will conduct their deliberations independently, notwithstanding any consultations that they might consider as appropriate.

8. Apart from the *ex officio* member, the members of the Advisory Board will be elected by the Committee on the second day of each of its sessions, on a proposal by its Chair, following consultation with the Member States and their regional groups and, respectively, representatives of accredited observers. Apart from that of the *ex officio* member, their mandates will expire with the opening of the following Committee session.

9. The Advisory Board will meet regularly on the margins of Committee sessions, subject to the requirement that a quorum of seven members, including the Chair or one of the Vice-Chairs, should be present.

10. A recommendation for the selection of any beneficiaries will require the agreement of at least seven members of the Advisory Board. If an application is not

agreed upon, it may continue to be examined at the following session, unless that application received three votes or fewer. In the latter case, the request will be considered to have been rejected, without prejudice to the right of the applicant to submit a new request at a later date.

11. Each member of the Advisory Board who has a direct association with an observer which has applied for funding for a representative shall disclose that association to the Advisory Board, and shall abstain from any vote concerning any applicant nominated by that observer.

[End of Annex and of document]