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

Fifteenth Session
Geneva, December 7 to 11, 2009

ARRANGEMENTS FOR THE INTER-SESSIONAL WORKING GROUP SESSIONS

Document prepared by the Secretariat

I. INTRODUCTION

1. The WIPO General Assembly, at its Thirty-Eighth (19th Ordinary) Session, held from September 22 to October 1, 2009, agreed to renew the mandate of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC).
2. The WIPO General Assembly's decision stated *inter alia* that "The [IGC] will follow . . . a clearly defined work program for the 2010/2011 biennium. This work program will make provision for, in addition to the 15th session of the Committee scheduled for December 2009, four sessions of the IGC and three inter-sessional working groups, in the 2010-2011 biennium." The decision also sets out a schedule for the sessions of the IGC and the inter-sessional working groups (IWG). The decision is contained in Annex I to the present document.
3. The decision of the General Assembly does not provide guidance on the form that the IWG should take and how precisely the IWG should undertake its work. This document seeks to identify the main issues and questions relevant to the organizational arrangements for sessions of the IWG. In certain cases, the document provides additional factual background

information on each issue for consideration by the IGC. The document does not, however, make any specific proposals or pre-empt or anticipate decisions which are for the IGC to take.

4. In preparing this document, the WIPO Secretariat referred *inter alia* to certain documents set out in Annex II.

5. It is suggested that the following main issues are relevant to the organizational arrangements for sessions of the IWG:

- a) The substantive program of work of the IWG; and,
- b) The methods of work of the IWG:
 - a. rules of procedure;
 - b. length of IWG sessions;
 - c. participation and representation.

6. There is an interdependence between these two sets of issues dealing with “substance” and “procedure” respectively. They are distinguished simply in an attempt to facilitate the IGC’s discussions.

II. THE SUBSTANTIVE PROGRAM OF WORK OF THE IWG

7. This issue concerns the nature of the IWG’s work and the subjects/themes the IWG sessions will address. This issue is closely related to the substantive work program of the IGC itself. The issue is also related to the more procedural questions referred to further below.

8. For example, the IGC might wish to consider questions such as:

- a) How should the IGC initiate and subsequently undertake the “text-based negotiations” on the three substantive topics (traditional cultural expressions (TCEs), traditional knowledge (TK) and genetic resources (GRs)) as referred to in the IGC’s mandate?
- b) Which specific subjects/themes should the IGC and/or IWG address?
- c) What should the distinction, if any, be between the nature of the work carried out by the IGC and the IWG (for example, would the IGC carry out general/policy discussions and refer specific questions to the IWG for technical consideration and/or drafting?)?
- d) What should be the relationship and linkages between the IGC and the IWG (for example, would the IWG report back to the IGC and await new instructions from the IGC to continue its work? Could the IWG refer certain questions to the IGC)?
- e) How and at what stage(s) does the IWG report to the IGC?
- f) What would be the “status” of decisions or recommendations (if any) reached in the IWG?

9. Regarding the subjects/themes to be addressed by the IGC and/or the IWG (paragraph 8(b) above):
- a) Document WIPO/GRTKF/IC/13/10 (African Group proposal) had proposed that an inter-sessional process should examine, in relation to each of TCEs, TK and GRs respectively, issues such as: “Definitions and Object of Protection, Exceptions, Limitations and Duration, Prior Informed Consent (PIC), Rights – Moral/Economic, Beneficiaries and Sui Generis Options for Protection”;
 - b) The annex to document WIPO/GRTKF/IC/14/8 Rev. (African Group proposal) referred to a similar list of subjects/themes, adding “Other Outstanding Issues”;
 - c) Documents WIPO/GRTKF/IC/14/11 and WO/GA/38/17 (proposals from the European Community and its Member States) referred to the following subjects/themes: “definitions and objectives of protection, beneficiaries, prior informed consent, moral/economic rights, exceptions, limitations and durations, sui generis options for protection, disclosure of origin, and other outstanding issues”.

III. METHODS OF WORK OF THE IWG

Rules of procedure

10. As the WIPO General Assembly, in creating the IWG, may have considered that the IWG is a subsidiary body of the IGC, the Rules of Procedure of the IGC (as contained in WIPO/GRTKF/IC/1/2), which incorporate the General Rules of Procedure of WIPO, would generally apply to the IWG.
11. However, the IGC might consider establishing less formal rules of procedure for the IWG. Whether or not this is desirable, and what such less formal rules might be, depend to some degree on the nature of the substantive work to be carried out by the IWG (see above) and the methods of work of the IWG (see below).
12. In considering this question, the IGC could address questions such as:
- a) Would formal agendas be prepared for IWG sessions?
 - b) Would only decisions, if any, taken by the IWG be reported on to the IGC or would all interventions made at sessions of the IWG be reported on fully and formally as is the case with sessions of the IGC? If so, when and by which entity would such reports be adopted (the IGC or the IWG)?
 - c) In which languages should documentation for the IWGs be made available?
 - d) By whom would IWG sessions be chaired and/or facilitated?
13. The Secretariat wishes to point out that under the Rules of Procedure for the IGC (as referenced above), invitations to IGC sessions, together with a draft agenda for each session, are generally required to be sent to IGC participants two months in advance of IGC sessions. As the schedule of IGC and IWG sessions set out in the annex to the General Assembly decision is relatively compressed, in which sessions of the IGC and IWG are in some cases

only two or three months apart, it may not always be possible to apply rules such as the one just cited.

14. Furthermore, documents prepared for sessions of the IGC are currently required to be made available in English, French and Spanish. For the 2010-2011 biennium, it is planned by the Secretariat to make IGC documentation available in all the official languages of the United Nations. However, because of the proximity of some of the IGC and IWG sessions to each other, and depending on the nature and length of the documents, it may not be possible to have all documents available in all the languages before each of those sessions. As is already the case for IGC sessions, Member States will be strongly encouraged to provide to the Secretariat any new submissions, proposals or other documents for formal distribution at IWG sessions before a certain date to be communicated by the Secretariat. Documents received after that date will be made available by the Secretariat in the form and in the language(s) received, but translations will not necessarily be available in all languages for the session.

15. It is also noted that in order to facilitate their timely dissemination, IGC documents are immediately made available electronically on the WIPO website (<http://www.wipo.int/tk/>) in all the required languages, as soon as they are ready. The website is currently being restructured so as to enhance and streamline access to IGC documentation. It is intended to create a specific portal through which all IGC and IWG documentation will be made available.

Length of IWG sessions

16. A question for the IGC to consider is the length of IWG sessions. Sessions of the IGC itself are currently five working days in length.

17. Depending upon the IGC's decisions in this regard, the Secretariat could make the necessary room reservations and advise the IGC as to the proposed dates for the IGC and IWG sessions in 2010.

Participation and representation

18. There are several issues related to participation and representation in sessions of the IWG, namely:

Whether or not sessions of the IWG should be open to all members of the IGC, as well as to all accredited observers

19. In the event that the IGC were to decide to limit participation in sessions of the IWG to certain States and/or accredited observers only, a further consideration that would arise would be how and by whom such participants should be selected. The IGC might also decide to limit participation in IWG sessions to a certain number of delegates from each State and/or observer – for example, delegations may be limited to one or two persons each. A related question might be what should the profiles be of representatives of States and/or observers – which areas of expertise/which skill sets should be represented?

How many Member States should be funded to participate in sessions of the IWG out of the regular WIPO budget, and how would these States be selected?

20. At present, one delegate from each of 26 Member States receives funding from the WIPO regular budget to participate in sessions of the IGC itself. The number of funded States is derived as follows: five States from each of the African region, the Arab region, the Latin American and Caribbean region, the Certain Countries in Europe and Asia region and the Asia-Pacific region, plus China. The States to be funded are identified by the Regional Groups and communicated by their Coordinators to the WIPO Secretariat. The Secretariat then proceeds to make the necessary travel and visa arrangements for the funded participants.

21. In order to make the necessary travel and visa arrangements, certain deadlines are usually set as the WIPO Secretariat cannot guarantee that it can make the necessary arrangements in time should information about funded participants be received by the Secretariat from Member States after a certain date, which is communicated by the Secretariat to the Member States. Irrespective of the number of delegates to be funded by WIPO for sessions of the IWG, because of the proximity of some of the IGC and IWG sessions to each other, shortened time periods might have to be applied within which the names of the funded countries and the names of the funded delegates should be communicated to the WIPO Secretariat. This proposal is made on the assumptions for present purposes that either participation in the IWG will be open to all Member States or that countries funded to participate are amongst the countries selected to participate in the IWG (if some form of selection were to be decided upon by the IGC).

May the WIPO Voluntary Fund for Accredited Indigenous and Local Communities ('the Fund') finance the participation of representatives of indigenous and local communities in IWG sessions?

22. This question is presented on the assumption that accredited observers, including representatives of indigenous and local communities, will be permitted to participate in IWG sessions as they do in IGC sessions. If not, this question concerning the Fund does not arise. If accredited observers, including representatives of indigenous and local communities, are permitted by the IGC to participate in the IWG, the question considered below is whether the Fund may finance the participation of representatives of indigenous and local communities in IWG sessions on the same terms and conditions as for IGC sessions.

23. There are three distinct questions:

- a) is the Fund entitled, under its Rules, to provide such financing? If so:
- b) would the Rules and/or operations of the Fund need to be adjusted to accommodate sessions of the IWG as well as of the IGC?, and
- c) does the Fund have adequate resources to do so?

24. Regarding 24 (a): the Fund's rules (contained as an Annex to WIPO/GRTKF/IC/15/3) were established by the WIPO General Assembly in October 2005. The rules provide *inter alia* that "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”¹ (emphasis added) and that “Financial support from the Fund will correspond exclusively to the objective set out in Article 2 and to the following conditions: . . . Each provision of support will relate to a single Committee session *and any related activities held consecutively with the Committee session*”² (emphasis added).

25. It appears that the Fund may not be entitled to finance participation in IWG sessions because while they may be “related” to the IGC they do not necessarily take place “consecutively” with IGC sessions. In the event that the IGC agrees with this interpretation, and it wishes to change the relevant rules, the change would need to be referred to the WIPO General Assembly by the IGC. The IGC could consider the matter again at its 16th session due to take place in May or June 2010 and then refer a draft decision to the General Assembly which meets again in September 2010. In this scenario, the Fund would not be entitled to fund any participants in the first IWG scheduled for February or March 2010.

26. The WIPO General Assembly which established the Fund is the same body that established the IWG. It might be argued, therefore, that, in establishing the IWG, the General Assembly implicitly recognized the IWG as “related” to the IGC and intended that the Fund’s operations extend also to the IWG as an integral part of the IGC process. Following this line of reasoning, it could be argued that funding the participation of the representatives of indigenous and local communities in the inter-sessional work of the IGC lies squarely within the spirit of the Fund’s rules.

27. Accordingly, the IGC may wish to take a formal decision that it interprets the rules of the Fund in such a way so as to allow the Fund in principle to finance also participation in IWG sessions. The participants in the IGC are invited to consider this possibility.

28. In the event that the IGC interprets the rules of the Fund so as to extend to the IWG, a question arises as to the practical implications of that decision for the operation of the Fund. For example, there is the immediate practical question of the selection of participants to receive funding for the first IWG scheduled for February or March 2010. This is referred to below.

29. Regarding 24 (b): In the case that the Fund may fund participation in the IWG, there would need to be some adjustments to the Fund’s operations, and these might, in due course, need to be formally reflected through changes to the Fund’s rules by the WIPO General Assembly.

30. As the IGC is first called upon to decide whether to (i) permit observers to participate in sessions of the IWG, and, if so, (ii) recognize the Fund as covering the IWG, it is not at this stage proposed to canvass in detail what those changes might be, as doing so might pre-empt these more fundamental decisions which are for the IGC to make. Once those decisions are made, a Member State or the Secretariat could at an appropriate time submit a further document or proposal in this regard.

¹ Article 2.

² Article 5(b).

31. At this stage, the Secretariat wishes simply to draw the IGC's attention to the following by way of background information:

- a) at present, applications for funding for an IGC session are considered and decided upon by the Voluntary Fund's Advisory Board at the preceding IGC session. For example, applications for funding to participate in IGC 12 were received by the WIPO Secretariat two months before IGC 11 and the Advisory Board made its decisions for IGC 12 in the margins of IGC 11. The Advisory Board generally meets as from the end of the second day of an IGC session and completes its work by the fourth day;
- b) there are three IWG sessions scheduled for 2010 and 2011, each following an IGC session. In the event that the Fund should also finance participation in IWG sessions, a workable solution could be that the Fund's Advisory Board meeting in the margins of an IGC session also decide on participants to be funded at the subsequent IWG session, and that, in future, applicants for funding would be invited to apply for funding for an IGC session and/or the subsequent IWG session;
- c) this implies that the Advisory Board would meet only at the time of IGC sessions and not also at the time of IWG sessions.

32. In the case of the present session of the IGC, and should the IGC decide that the Fund should immediately be extended to cover the IWG, including the first IWG session scheduled for February or March 2010, then a practical question arises in that applications for funding for the 16th session have already been received. These do not include any applications for funding at the first IWG in February or March 2010 because the inter-sessional process has only recently been established and applicants for funding were not aware whether or not they may apply for funding for IWG sessions.

- a) In this case, a pragmatic solution may be for the Advisory Board meeting in the margins of the present 15th session of the IGC to be invited by the IGC to identify possible participants to be funded for the first IWG from amongst the applicants for funding for IGC 16, and for the operations of the Fund to be adjusted, in practice, as needed for purpose of the first IWG.
- b) This option may only be workable in practice, however, should the decision to extend the Fund to the first IWG be taken and communicated to the Advisory Board before it begins its work in the margins of the present session of the IGC.
- c) This option would, in effect, provisionally adjust the operations of the Fund to facilitate implementation of the IGC's decision to recognize the IWG sessions as related to the IGC, pending any necessary changes in due course to the rules of the Fund by the WIPO General Assembly.

33. It may be noted that the Advisory Board's role is limited to deciding which amongst the representatives of accredited observers who have applied for funding qualify for such funding. In the event that the IGC were to decide to limit participation in the IWG to selected accredited observers only, a mechanism or process would be needed to make the required selection and the IGC would be invited to create such a mechanism or process. As a matter of practical workability and to ensure consistency of the Board's operations, such a selection would need to be made independently of and before the work of the Advisory Board commences. This would be to ensure that the Board only recommends persons for funding

who are entitled to attend sessions of the IWG.

34. Regarding 24 (c): The extent of support that the Voluntary Fund can provide depends on the resources donated to it. As reported on in WIPO/GRTKF/IC/15/3, 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 IGC 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 IWG, the Fund would certainly need to be replenished.

35. The members of the IGC 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.

36. *The IGC is invited to:*

- (a) consider the above issues and questions;*
- (b) identify any other relevant issues; and*
- (c) agree upon working arrangements for the intersessional working group sessions.*

[Annex follows]

ANNEX

**WIPO General Assembly
Thirty-Eighth (19th Ordinary) Session
September 22 to October 1, 2009**

**Matters Concerning the Intergovernmental Committee on Intellectual Property and
Genetic Resources, Traditional Knowledge and Folklore**

Agenda Item 28

DECISION

Bearing in mind the Development Agenda recommendations, the WIPO General Assembly agrees that the mandate of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore be renewed as follows:

- (a) The Committee will, during the next budgetary biennium (2010/2011), and without prejudice to the work pursued in other fora, continue its work and undertake text-based negotiations with the objective of reaching agreement on a text of an international legal instrument (or instruments) which will ensure the effective protection of GRs, TK and TCEs.
- (b) The Committee will follow, as set out in the Annex, a clearly defined work program for the 2010/2011 biennium. This work program will make provision for, in addition to the 15th session of the Committee scheduled for December 2009, four sessions of the IGC and three inter-sessional working groups, in the 2010-2011 biennium.

(c) The focus of the Committee's work in the 2010/2011 biennium will build on the existing work carried out by the Committee and use all WIPO working documents, including WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5 and WIPO/GRTKF/IC/11/8A (Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources), which are to constitute the basis of the Committee's work on text-based negotiations.

(d) The Committee is requested to submit to the 2011 General Assembly the text (or texts) of an international legal instrument (or instruments) which will ensure the effective protection of GRs, TK and TCEs. The General Assembly in 2011 will decide on convening a Diplomatic Conference.

(e) The General Assembly requests the International Bureau to continue to assist the Committee by providing Member States with necessary expertise and funding of the participation of experts from developing countries and LDCs according to the usual formula.

The General Assembly adopts the draft report of the 14th session of the Committee as reflected in document WIPO/GRTKF/IC/14/12 Prov. 2 as the report of that session.”

Date	Activity
February/March 2010	First Intersessional Working Group
May/June 2010	IGC 16
September 2010	WIPO General Assembly
October 2010	Second Intersessional Working Group
December 2010	IGC 17
February/March 2011	Third Intersessional Working Group
May/June 2011	IGC 18
Early September 2011	IGC 19
September 2011	WIPO General Assembly

WIPO General Rules of Procedure (399 (FE) Rev.3: the rules of procedure applicable to WIPO meetings;

“Rules of Procedure” (WIPO/GRTKF/IC/1/2): this document, adopted by the IGC at its first session in April 2001, sets out the rules of procedure to be followed by the IGC;

“Intersessional Procedures: Proposed Modalities and Terms of Reference” (WIPO/GRTKF/IC/13/10): this was a proposal made by the African Group at the 13th session of the IGC in response to an invitation issued by the IGC at its 12th session to Committee participants to make proposals concerning modalities and terms of reference for intersessional mechanisms or processes;

“Proposal of the African Group on the Mandate of the Intergovernmental Committee” (WIPO/GRTKF/IC/14/8 Rev.): this proposal included an Annex which set out a proposed work program and timeline, including for intersessional working groups;

“Elements for the New Mandate – Proposal by the European Community and its Member States” (WIPO/GRTKF/IC/14/11 and (WO/GA/38/17): these proposals made, respectively, at the 14th session of the IGC and the WIPO General Assembly in 2009, included suggestions on the work program of the IGC;

“Elements for the New Mandate – Proposal by the United States of America” (WO/GA/38/18): this proposal, made at the WIPO General Assembly in 2009, included suggestions on the work program of the IGC;

“Australian Proposal for Extension of the Mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore” (WO/GA/38/19): this proposal, made at the WIPO General Assembly in 2009, included suggestions on the work program of the IGC.

“Participation of Indigenous and Local Communities: Establishment of a Voluntary Fund: Recommendation of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore” (WO/GA/32/6): this proposal, made at the General Assembly in 2009, included suggestions on the involvement of representatives of indigenous and local communities in its work.

[End of annexes and document]