

ANNEX

I am pleased to inform you that the sixth meeting of the Conference of the Parties to the Convention on Biological Diversity (COP6) was held in The Hague, The Netherlands from 7-19 April 2002. Representatives from 176 countries, as well as representatives from international organizations, indigenous and local community organizations and non-governmental organizations, attended the meeting. COP6 adopted 32 decisions, which are available at the following website: www.biodiv.org

I would like to draw your attention to four decisions, which will be of particular interest to WIPO and UPOV and which I was requested by the Conference of the Parties to transmit to your Organization. They are: decision VI/20 on Cooperation with other organizations, initiatives and conventions, decision VI/24 on Access and benefit-sharing as related to genetic resources, decision VI/10 on Article 8 (j) and related provisions, and decision VI/5 on Agricultural biological diversity. Paragraphs of each of these decisions which make specific reference to the World Intellectual Property Organization are included below for ease of reference. Copies of these decisions are also attached for your consideration.*

Cooperation with other organizations, initiatives and conventions

Decision VI/20, paragraphs 35 to 39 addresses cooperation with World Intellectual Property Organization, as follows:

The Conference of the Parties

[Cooperation with the World Intellectual Property Organization]

35. *Recognizes the leading role of the Convention on Biological Diversity in international biological diversity issues and the role of the World Intellectual Property Organization as the lead specialized agency to address intellectual property rights, and emphasizes continued cooperation between the Convention and the Organization;*

36. *Encourages the Executive Secretary to pursue, in accordance with paragraph 17 of decision IV/9, the Memorandum of Understanding between the secretariat of the Convention and the World Intellectual Property Organization with a view to enhancing cooperation between the Convention and the Organization on intellectual property issues arising from the implementation of the Convention such as those in access and benefit-sharing and Article 8(j) and related provisions;*

37. *Invites the World Intellectual Property Organization to address, as a matter priority, the invitation extended to it under paragraph 4 of its decision VI/24 C, on the role of intellectual property rights in the implementation of access and benefit-sharing arrangements;*

* The present Annex includes only the text of the letter dated May 21, 2002, and not its attachments. It therefore includes only those paragraphs of the COP Decisions which were included in the letter for ease of reference. The full text of the decisions are available at <http://www.biodiv.org/decisions/default.asp?lg=0&m=cop-06>.

38. *Encourages the World Intellectual Property Organization to take into account the objectives and principles of the Convention on Biological Diversity when dealing with issues related to access and benefit-sharing and traditional knowledge;*

39. *Invites the World Intellectual Property Organization to further strengthen the complementarity of its work programme with that of the Convention on intellectual property issues arising from access and benefit-sharing and Article 8(j) and related provisions and to provide appropriate information on these issues with a view to enhancing mutual supportiveness in the relevant work programmes that fall within the respective mandates of the Convention and the Organization.*”

Access and benefit-sharing as related to genetic resources

Decision VI/24 on Access and benefit-sharing as related to genetic resources is also of direct relevance to the work of the World Intellectual Property Organization.

One of the main achievements of COP 6 was the adoption of the Bonn Guidelines on access to genetic resources and the fair and equitable sharing of the benefits arising out of their utilization. The guidelines are contained in the annex to Decision VI/24A. Section D, paragraph 10 of the Guidelines makes explicit reference to the work of the World Intellectual Property Organization:

“D. Relationship with relevant international regimes

10. *The guidelines should be applied in a manner that is coherent and mutually supportive of the work of relevant international agreements and institutions. The guidelines are without prejudice to the access and benefit-sharing provisions of the FAO International Treaty for Plant Genetic Resources for Food and Agriculture. Furthermore, the work of the World Intellectual Property Organization on issues of relevance to access and benefit-sharing should be taken into account. The application of the guidelines should also take into account existing regional legislation and agreements on access and benefit-sharing.*”

Section C of Decision VI/24 entitled “Role of intellectual property rights in the implementation of access and benefit-sharing arrangements” includes several specific references to further collaboration with World Intellectual Property Organization in paragraphs 3, and 8 to 12 and more particularly, in paragraph 4, invites World Intellectual Property Organization to carry out a technical study:

The Conference of the Parties

“3. *Requests the Executive Secretary, with the help of other international and intergovernmental organizations such as the World Intellectual Property Organization*

and through the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention, where appropriate, to undertake further information gathering and analysis with regard to:

- (a) Impact of intellectual property regimes on access to and use of genetic resources and scientific research;*
- (b) Role of customary laws and practices in relation to the protection of genetic resources and traditional knowledge, innovations and practices, and their relationship with intellectual property rights;*
- (c) Consistency and applicability of requirements for disclosure of country of origin and prior informed consent in the context of international legal obligations;*
- (d) Efficacy of country of origin and prior informed consent disclosures in assisting the examination of intellectual property rights applications and the re-examination of intellectual property rights granted;*
- (e) Efficacy of country of origin and prior informed consent disclosures in monitoring compliance with access provisions;*
- (f) Feasibility of an internationally recognized certificate of origin system as evidence of prior informed consent and mutually agreed terms; and*
- (g) Role of oral evidence of prior art in the examination, granting and maintenance of intellectual property rights;*

4. Invites the World Intellectual Property Organization to prepare a technical study, and to report its findings to the Conference of the Parties at its seventh meeting, on methods consistent with obligations in treaties administered by the World Intellectual Property Organization for requiring the disclosure within patent applications of, inter alia:

- (a) Genetic resources utilized in the development of the claimed inventions;*
- (b) The country of origin of genetic resources utilized in the claimed inventions;*
- (c) Associated traditional knowledge, innovations and practices utilized in the development of the claimed inventions;*
- (d) The source of associated traditional knowledge, innovations and practices; and*
- (e) Evidence of prior informed consent;*

8. Invites other relevant international organizations (such as the Food and Agriculture Organization of the United Nations, the United Nations Conference on Trade and Development, the World Intellectual Property Organization, the World Trade Organization, and the United Nations Commission on Human Rights), as well as regional organizations, Parties and Governments to contribute to the further study and analysis of the issues specified in paragraphs 3 and 4;

9. Encourages the World Intellectual Property Organization to make rapid progress in the development of model intellectual property clauses which may be considered for inclusion in contractual agreements when mutually agreed terms are under negotiation;

10. *Recognizes the importance of the work being undertaken by the World Intellectual Property Organization on international models and encourage the World Intellectual Property Organization to also consider means by which Parties could collaborate to protect traditional knowledge for further consideration by the Conference of the Parties;*

11. *Urges the World Intellectual Property Organization to provide to the Conference of the Parties with the results of its deliberations of relevance to access to genetic resources and benefit-sharing related to traditional knowledge;*

12. *Encourages Parties to facilitate the participation of indigenous and local communities and other relevant stakeholders in the various forums, in particular the World Intellectual Property Organization, the Convention on Biological Diversity, the World Trade Organization, the United Nations Conference on Trade and Development and regional forums, as well as in the preparation of national strategies, policies, regulatory frameworks and legislation related to access to genetic resources and benefit-sharing, from a very early stage;”*

Section D of the same Decision on “Other issues relating to access and benefit-sharing” also makes specific reference to cooperation with the World Intellectual Property Organization and the Union for the Protection of New Varieties of Plants.

The Conference of the Parties:

“[Cooperation with other relevant intergovernmental organizations]

3. *Acknowledges relevant work being carried out by other intergovernmental organizations, such as the World Intellectual Property Organization, the World Trade Organization, the Union for the Protection of New Varieties of Plants, the United Nations Conference on Trade and Development, and the Food and Agriculture Organization of the United Nations, on issues related to access to genetic resources and benefit-sharing;”*

Article 8(j) and related provisions (Traditional knowledge, innovations and practices)

Decision VI/10 on Article 8 (j) and related provisions, is divided into a number of sections, and contains two annexes. The sections and paragraphs of direct relevance to the World Intellectual Property Organization are the following:

The Conference of the Parties,

In the preamble of the Decision:

“Noting with appreciation the work of the Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization, and that of the Permanent Forum on Indigenous Issues established by the Economic and Social Council, the Working Group on Indigenous Populations of the United Nations Commission on Human Rights, the United Nations Development Programme, the United Nations Environment Programme, the United Nations Educational, Scientific and Cultural Organization, the United Nations Conference on Trade and Development, and the World Health Organization, the International Labour Organization and encourages further collaboration among them and with the Convention on Biological Diversity,”

Section E on Participatory mechanisms for indigenous and local communities, paragraph 26:

The Conference of the Parties

“Also requests the Executive Secretary to communicate with the Permanent Forum on Indigenous Issues, established as a subsidiary organ of the United Nations Economic and Social Council, and other relevant bodies such as the World Intellectual Property Organization, the United Nations Conference on Trade and Development and the United Nations Educational, Scientific and Cultural Organization, in order to explore possibilities of coordination and collaboration on matters of mutual concern;”

Section F on “Assessment of effectiveness of existing subnational, national and international instruments, particularly intellectual property rights instruments, that may have implications for the protection of the knowledge, innovations and practices of indigenous and local communities” is of relevance to the World Intellectual Property Organization, and makes specific references to the World Intellectual Property Organization in paragraphs 31, 33, 34, 36, 38, 48, as follows:

The Conference of the Parties:

“31. Invites the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization to continue its efforts to promote the more effective participation of indigenous and local communities in its work and invites the Intergovernmental Committee to examine and consider mechanisms to protect traditional knowledge, such as the disclosure of the origin of relevant traditional knowledge in applications for intellectual property rights;

33. Also invites Parties and Governments, with the approval and involvement of indigenous and local communities representatives, to develop and implement strategies to protect traditional knowledge, innovations and practices based on a combination of appropriate approaches, respecting customary laws and practices, including the use of

existing intellectual property mechanisms, sui generis systems, customary law, the use of contractual arrangements, registers of traditional knowledge, and guidelines and codes of practice, with the support of relevant intergovernmental organizations such as the Working Group on Indigenous Populations of the United Nations Commission on Human Rights, the Permanent Forum on Indigenous Issues established by the Economic and Social Council, the World Health Organization, the World Intellectual Property Organization, the United Nations Educational, Scientific and Cultural Organization, and the United Nations Conference on Trade and Development;

34. *Requests the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity to address the issue of sui generis systems for the protection of traditional knowledge, focusing in particular on the following issues:*

- (a) Clarification of relevant terminology;*
- (b) Compiling and assessing existing indigenous, local, national and regional sui generis systems;*
- (c) Making available this compilation and assessment through the clearing-house mechanism of the Convention;*
- (d) Studying existing systems for handling and managing innovations at the local level and their relation to existing national and international systems of intellectual property rights, with a view to ensure their complementarity;*
- (e) Assessing the need for further work on such systems at the local, national, regional and international levels;*
- (f) Identifying the main elements to be taken into consideration in the development of sui generis systems;*
- (g) The equitable sharing of benefits arising from the utilization of traditional knowledge, innovations and practices of indigenous and local communities,*

taking into account the work carried out by the Intergovernmental Committee Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore with a view to promote mutual supportiveness, and existing regional, subregional, national and local initiatives;

36. *Invites the World Trade Organization and the World Intellectual Property Organization to make available to the Executive Secretary information referred to in paragraph 35 above provided through their respective notification systems;*

38. *Invites the World Intellectual Property Organization to forward to the Executive Secretary all documents considered to be relevant with respect to advances made by the Intergovernmental Committee so that they be included in documentation for meetings of the Working Group on Article 8(j);*

48. *Invites Parties and Governments, with the assistance of the World Intellectual Property Organization, to take into account traditional knowledge in the examination of novelty and inventive step in patent applications;*”

Annex I of the same decision containing the “Outline of the Composite Report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biodiversity, and the plan and timetable for its preparation” also includes specific references to work carried out by WIPO and further collaboration in paragraphs 15, 23 and 24.

Agricultural biological diversity

Finally, in decision VI/5 on Agricultural Biological Diversity, under the section on the impacts of the application of genetic use restriction technologies on smallholder farmers, indigenous and local communities and Farmers’ Rights, the Conference of the Parties invites both WIPO and UPOV to examine the specific intellectual property implications of genetic use restriction technologies. More specifically, in paragraph 24, the Conference of the Parties:

“24. *Invites the International Union for the Protection of New Varieties of Plants (UPOV), the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization (WIPO) and other relevant organizations to examine, in the context of their work, the specific intellectual property implications of genetic use restriction technologies, particularly in respect of indigenous and local communities;*”

In paragraphs 21, and 25 of the same decision, the Conference of the Parties also makes reference to collaboration with relevant organizations, such as the World Intellectual Property Organization, regarding work to be carried out on genetic use restriction technologies, including their potential impacts on smallholder farmers, indigenous and local communities and on Farmers’ rights and the applicability of existing, or the need to develop new, legal mechanisms to address the application of genetic use restriction technologies.

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