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

Fourth Session

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TECHNICAL COOPERATION ON THE LEGAL PROTECTION OF EXPRESSIONS OF
FOLKLORE – BRIEF REPORT

Document prepared by the Secretariat

I. OVERVIEW

1. At its third session, in June 2002, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee”) adopted a proposal for enhanced technical cooperation on the legal protection of expressions of folklore at the national level. The proposal included regular reporting on technical cooperation undertaken by the Secretariat. This document is the first such report.

2. The Secretariat has provided a wider range of technical cooperation on this topic, through many workshops and meetings, expert and fact-finding missions, legislative drafting and advice, education and training, and the provision of equipment. This includes activities specifically focussed on the legal protection of expressions of folklore (including those dealing with the overlapping area of traditional knowledge), and more general activities which address this issue along with other areas of intellectual property. Indeed, due to the strong expressions of interest in this area by Member States, most recent national and regional meetings on general intellectual property themes have addressed this area in some way.

3. This paper seeks to record the activities that have been undertaken in this area, approximately since the Committee was established. This is an illustrative list only, and may not include every relevant activity undertaken by the Secretariat. It demonstrates the

continuing strong interest in practical and policy issues in relation to the protection of folklore and expressions of traditional culture, as a distinct set of needs and expectations, in the context of the increased attention recently paid to broader traditional knowledge and related genetic resources issues.

II. BACKGROUND

4. The *Final Report on National Experiences with the Legal Protection of Expressions of Folklore* (document WIPO/GRTKF/IC/3/10) was considered by the Committee at its third session in June 2002. The Committee approved the following task proposed in the report:

Enhanced legal-technical assistance for the establishment, strengthening and effective implementation of existing systems and measures for the legal protection of expressions of folklore at the national level.

5. As part of this task, it was proposed that the WIPO Secretariat provide brief reports to the Committee on relevant work it has undertaken.

6. The legal protection of expressions of folklore, together with the related areas of traditional knowledge (TK) and intellectual property (IP) aspects of genetic resources, is a subject of great current interest on the part of Member States, intergovernmental organizations, non-governmental organizations and other stakeholders. As a result, many activities on IP more generally, such as symposiums, seminars, conferences and advisory missions undertaken by the WIPO Secretariat now include folklore and TK as a topic. These more general activities are not reported on in this document. A recent overview of WIPO's overall program of cooperation for development has been provided in document PCIPD/3/3 ("Cooperation for Development Activities: Strategic Highlights").

7. Technical cooperation activities are undertaken at the request of the Member States concerned. The WIPO Secretariat has received a number of requests for specific forms of legal-technical assistance, directly relevant to the approved task, including in the normal course of WIPO's program of cooperation for development. To ensure that this first report gives a representative picture of the kinds of legal-technical assistance that have been requested, it covers activities undertaken by the Secretariat since 2000, the year in which the Committee was established by Member States. It gives an illustrative list, and may not cover all activities which have some relevance to this area, including those which deal with the overlap between IP protection and the protection of folklore. For example, the WIPO Performances and Phonograms Treaty (WPPT) stipulates that the rights of performers extend to those who perform expressions of folklore – hence assistance provided with the implementation of the WPPT may be considered relevant to the protection of folklore, but it is not covered in this report.

8. The activities mentioned in this report illustrate the wide variety of requests for assistance in relation to expressions of folklore and traditional knowledge from almost all regions of the world. The WIPO Secretariat attempts to comply with all requests received, but cannot always do so due to budgetary and human resource constraints. Requests for information and legal-technical cooperation and technical advice are received not only from Member State governments, but also from other intergovernmental and non-governmental organizations (NGOs).

III. REPORT ON ACTIVITIES

9. The activities are listed under the following general categories:

- (i) Specific Workshops and Meetings (these are workshops and meetings dealing specifically with folklore or having folklore as one of its principal themes);
- (ii) Expert and Fact-finding Missions;
- (iii) Legislative Drafting, Comments and Information;
- (iv) Education and Training;
- (v) Provision of Equipment.

Specific Workshops and Meetings

10. The fact-finding missions conducted in 1998 and 1999 identified national and sub-regional workshops for Government officials, Indigenous peoples and traditional communities and other stakeholders as a primary need. ¹ Since the establishment of the Intergovernmental Committee in September 2000, there has been an increased demand for such workshops. The workshops have taken an integral approach to providing technical assistance, and undertaking consultations on the substantive issues considered by the Committee, so that the work of the Committee is informed by a broad range of stakeholder input as possible.

11. The main objectives of the workshops are to: (i) provide Member States, Indigenous and local communities, relevant organizations and other stakeholders with a forum where they can consider and reflect on the technical, legal and policy dimensions of the issues that arise in the context of the mandate of the Intergovernmental Committee and, (ii) ensure that States, Indigenous peoples and local communities, and other stakeholders have a clear idea of the work and mandate of the IGC, so that they may contribute to its deliberations in an effective way. WIPO has financed the participation of Government officials from developing countries and nominated representatives of Indigenous and local communities.

12. Since 2001, the following workshops of this nature have been organized by the WIPO Secretariat:

- WIPO Workshop on Intellectual Property and Traditional Knowledge, Paramaribo, Suriname, May 21 to 22, 2001;
- WIPO Workshop on Intellectual Property and Traditional Knowledge, Kingston, Jamaica, May 24 to 25, 2001;

¹ "Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-1999)," (WIPO, 2001).

- Sub-Regional Workshop on Intellectual Property, Genetic Resources and Traditional Knowledge, Brisbane, Australia, June 25 to 27, 2001;
 - WIPO International Seminar on the Preservation, Promotion and Protection of Folklore and Traditional Knowledge, São Luís de Maranhão, Brazil, March 11 to 13, 2002;
 - Regional Meeting on Intellectual Property and the Protection of Expressions of Folklore and Traditional Knowledge for the English-speaking countries in Africa, in Lusaka, Zambia, from May 8 to 10, 2002;
 - WIPO - OAPI Regional Symposium on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Abidjan, Coted'Ivoire, April 8 to 10, 2002; and
 - WIPO Expert Group Meeting on Intellectual Property and the Protection of Expressions of Folklore and Traditional Knowledge, Addis Ababa, Ethiopia, May 13 and 14, 2002.
13. Two further workshops are planned for November 2002:
- WIPO Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore for Nordic Countries, Sigtuna, Sweden, November 6 to 8, 2002;
 - WIPO Asia - Pacific Regional Seminar on Intellectual Property Rights, Genetic Resources, Traditional Knowledge and Folklore, in Cochin, India, from November 11 to 13, 2002.
14. Apart from these workshops, folklore has also been a primary or principal focus of other workshops, seminars, forums and meetings organized or participated in by WIPO, such as:
- WIPO National Workshop on Traditional Knowledge with an Emphasis on Expressions of Folklore, Egypt, Cairo, February 8 and 9, 2000;
 - The 10th Anniversary Celebrations of the Russian Association of Indigenous Peoples of the North (RAIPON), Moscow, The Russian Federation, May 2000;
 - WIPO Inter -Regional Meeting on Intellectual Property and Traditional Knowledge, Chiang Rai, Thailand, November 9 to 11, 2000;
 - WIPO/ITC Workshop on Legal Protection of Original Craft Items, Havana, Cuba, January 30 to February 1, 2001;
 - WIPO International Conference on Intellectual Property, the Internet, Electronic Commerce and Traditional Knowledge, Sofia, Bulgaria, May 2001;
 - WIPO National Seminar on the Preservation, Promotion and Protection of Expressions of Folklore in Colombia, Bogota, Colombia, August 9 to 10, 2001;

- WIPO Asia-Pacific Regional Symposium on Intellectual Property Rights, Traditional Knowledge and Related Issues, Yogyakarta, Indonesia, October 17 to 19, 2001;
- International Symposium on Protection and Legislation of Folk/Traditional Culture, Beijing, China, December 18 to 20, 2002;
- WIPO International Forum on "Intellectual Property and Traditional Knowledge: Our Identity, Our Future," Muscat, Oman, January 21 and 22, 2002;
- WIPO National Seminar on the Preservation, Promotion and Protection of Folklore and Traditional Knowledge, Florianópolis, Santa Catarina, Brazil, August 22 and 23, 2002; and
- WIPO National Seminar on Intellectual Property for Ministry of Foreign Affairs Officials of Ecuador, Quito and Guayaquil, Ecuador, October 14 to 16, 2002 (folklore and traditional knowledge were prominent themes).

Expert and Fact-finding Missions

15. In 2000, at the request of the relevant Omani and Egyptian authorities, a mission was undertaken to Oman and Egypt to provide IP advice to national cultural heritage institutions on the on-line exploitation of such heritage. The mission held discussions with the national authorities responsible for cultural heritage in both countries and identified existing national capacity for the management and commercialization of such material as well as possibilities for improving the IP aspects of ongoing work in both countries.

16. In April 2000, WIPO participated in a fact-finding and expert mission with the International Trade Centre (ITC) to Colombia on the legal protection of original craft items.

17. In August 2002, an expert mission on the documentation and protection of traditional knowledge and cultural expressions was undertaken in the Lao People's Democratic Republic at the request of the Intellectual Property Office of that country.

18. At the request of the International Labor Organization (ILO), in 2002 WIPO provided intellectual property-related information for an ILO project concerning enterprise development and employment creation in the cultural sector in the Southern African Development Community (SADC) area. In this respect, WIPO participated in an ILO National Workshop on Enterprise Development and Employment Creation in the Cultural Sector in Zambia: National and Local Strategies, Lusaka, Zambia, in October 2002.

19. WIPO was invited to participate in an International Forum on the Promotion of Traditional Women's Crafts in the Mediterranean Countries, taking place in Tunis, Tunisia in October 2002. WIPO was not able to participate for resource reasons.

20. In October 2002, the WIPO Secretariat had discussions with representatives of the Gulf Cooperation Council Folklore Centre, in Doha, Qatar. The Centre requested IP-related information and assistance in respect of its collection, recording and preservation activities.

21. A fact-finding mission on folklore protection will be undertaken in China in late November 2002 at the invitation of the Chinese government.

22. The WIPO Secretariat also receives requests for information and assistance from Indigenous and other non-governmental organizations (NGOs). For example, in 2001, a Peruvian NGO requested information from WIPO in relation to a project it was contemplating to promote a specialty product contract for regulating access to and use of expressions of folklore. A Canadian NGO, which wished to assist the Peruvian NGO with this project on the basis of its experiences with protecting Inuit heritage, also requested information from WIPO. Another Canadian Indigenous association has requested assistance with its efforts to protect a particular craft using industrial designs, copyright and trademark law.

Legislative Drafting, Comments and Information

23. Within the context of the Secretariat's normal and ongoing Development Cooperation functions, the WIPO Secretariat has provided comments and information on the protection of expressions of folklore and traditional knowledge to many countries which have requested this as part of the drafting of IP laws or review of existing laws. Since 2000, the Copyright Law Section, Cooperation for Development (Intellectual Property Law) Department of WIPO has provided as requested comments and information specifically on folklore in respect of pieces of legislation. Requests for such assistance continue to be received by the Secretariat. They are also received from regional intergovernmental organizations. 14

24. For example, at the request of Pacific Island States through the Secretariat of the Pacific Community (SPC) and the Pacific Islands Forum Secretariat (PIFS), the Secretariat has provided information and legislative drafting comments and advice in relation to the development of a Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture for Pacific Island countries. WIPO participated in a SPC/PIFS/UNESCO Workshop for Legal Experts on the Protection of Traditional Knowledge and Expressions of Folklore, Noumea, New Caledonia, February 2001; provided written comments on a draft model law for national laws in 2001; and, in June 2001, participated in a further Workshop for Legal Experts on the Protection of Traditional Knowledge and Expressions of Folklore, held in Noumea, New Caledonia. The Regional Framework was adopted by the Ministers of Culture of the Pacific Island countries at their meeting in September 2002. WIPO was invited by the SPC to participate in this meeting but was not able to do so for budgetary reasons.

Education and Training

25. The topics of genetic resources, traditional knowledge and folklore are now frequently included, at the request of Member States, in many training workshops, seminars or briefings organized by WIPO, both within its program of cooperation for development (including the WIPO Worldwide Academy), and in its outreach programs dealing with industry and civil society. The numerous relevant activities are not listed in this document.

26. These activities will be supplemented in the near future by an online Distance Learning Course on traditional knowledge and expressions of folklore, which is currently being developed by the WIPO Academy and the Traditional Knowledge Division.

Provision of Equipment

27. The WIPO Secretariat has received Member State requests for equipment and related technical assistance for the collection, recordal and preservation of expressions of folklore, in view of the linkages between these activities and the legal protection of expressions of folklore.

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