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

Fifth Session
Geneva, July 7 to 15, 2003

BRIEF SUMMARY OF WORKING DOCUMENTS

Document prepared by the Secretariat

I. DOCUMENTS FOR THE FIFTH SESSION

1. The following is a brief summary of the working documents prepared for or submitted to the fifth session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the "Committee") up to June 25, 2002.

WIPO/GRTKF/IC/5/1 Prov.1: Draft Agenda for the fifth session.

2. This document contains the proposed items to be dealt with by the Committee.

WIPO/GRTKF/IC/5/2: Accreditation of certain Non-Governmental Organizations.
WIPO/GRTKF/IC/5/2 Add: Addendum to Accreditation of certain Non-Governmental Organizations.

3. These documents set out the names, contact details and aims and objectives of non-governmental organizations which have applied to the Committee for accreditation as *ad hoc* observers to future sessions of the Committee. Accredited Organizations receive an invitation to attend all meetings of the Committee, advance copies of all working documents, and the opportunity to make interventions on the issues under discussion following interventions by Member States and Intergovernmental Organizations.

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

4. This document is an updated and extended version of the “Preliminary Systematic Analysis of National Experiences with the Legal Protection of Expressions of Folklore” (WIPO/GRTKF/IC/4/3), and introduces a consolidated analysis of the legal protection of traditional cultural expressions (TCEs) (synonymous with “expressions of folklore”). It reviews the policy framework for protection of TCEs, and surveys the available forms of intellectual property (IP) protection for TCEs, through conventional or general IP regimes, through adapted and extended IP regimes (such as adaptations of copyright to improve recognition of TCEs), and through new *sui generis* systems or laws especially created to provide protection for TCEs.

WIPO/GRTKF/IC/5/4: Update on Technical Cooperation on the Legal Protection of Traditional Cultural Expressions.

5. This document updates document WIPO/GRTKF/IC/4/4 and sets out additional capacity-building activities that have been undertaken by the Secretariat of WIPO in this area; namely, workshops and meetings, expert and fact-finding missions, legislative drafting and advice, education and training, and the provision of equipment. The document demonstrates a 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.

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

6. Following the agreement by the Committee on the development of a toolkit to provide practical assistance to TK holders and custodians of genetic resources this document reports on the development of the toolkit and the consultations held with stakeholders. The toolkit focuses on management of IP concerns during the documentation process, and also takes the documentation process as a starting point for a more beneficial management of TK as a community’s intellectual and cultural asset. Finalization of the toolkit will be based on continuous input from WIPO Member States, other participants in the Committee’s work and a wide range of other stakeholders, with an emphasis on field-testing the toolkit in cooperation with the communities concerned and with other TK-related initiatives.

WIPO/GRTKF/IC/5/6: Practical Mechanisms for the Defensive Protection of Traditional Knowledge and Genetic Resources Within the Patent System.

7. This document summarizes the results or conclusions for the defensive protection of traditional knowledge and genetic resources which have been reached by the Committee. It also reviews certain substantive issues that have arisen during the work of the Committee and identifies areas for future work by other WIPO bodies. The document contextualizes these deliverables within their overall substantive context and a package of policy measures and practical tools for the concerned stakeholders. An overview of the outcomes produced by the Committee is contained in the Annex.

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

8. This document updates and consolidates the information received through the survey WIPO/GRTKF/IC/2/5 and the questionnaires circulated to Member States. It covers the

protection of TK both through conventional IP laws, such as patents, designs, trademarks and geographical indications, and through *sui generis* laws, such as laws for the protection of TK associated with genetic resources. Diverse forms of IP protection are reported. The document also summarizes comments made on the limitations of conventional IP systems in the use of TK protection. A supplementary information document, WIPO/GRTKF/IC/5/INF/2, provides more detailed reference material relevant both to the present survey and to the consolidated study of *sui generis* TK protection in document WIPO/GRTKF/IC/5/8.

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

9. This document draws together in one comprehensive resource the diverse information about the intellectual property (IP) protection of traditional knowledge (TK) that has been considered by the Committee. This material includes surveys of Member State mechanisms for TK protection, specific (*sui generis*) laws on the protection of TK, case studies on the use of IP to protect TK, and analysis by the Secretariat of issues such as operational definitions of TK and elements of *sui generis* TK protection, as well as the material gathered in the wide-ranging consultations with TK holders that the Secretariat conducted in 1998-99.

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

10. This document provides updated input into the work of the Committee on intellectual property (IP) aspects of contracts and licenses concerning genetic resources. The document reports on the updating of the Contracts Database to a more fully operational and comprehensive version, including the translation of the Contract Checklist Pages into three languages, discusses the role of contractual arrangements in recently enacted legislation on access to genetic resources and associated traditional knowledge (TK), and provides an overview of the IP aspects of contracts relating to biological material and associated TK. It proposes that the process of collecting information for the Contracts Database continue, and that the database be maintained and updated so that it can continue to be used as a permanent, freely available resource by all those with a practical or policy interest in the IP aspects of contractual practices and contracts concerning 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.

11. This document concerns a draft technical study on requirements in patent law systems to disclose information about genetic resources and traditional knowledge (TK) relevant to patented inventions. The draft study, which is annexed to this document, is based on an initial report (document WIPO/GRTKF/IC/4/12) that was considered by the Committee at its fourth session and reviews salient aspects of the patent system and of legal mechanisms concerning access to genetic resources and associated TK, and surveys the responses to a questionnaire circulated to WIPO Member States on patent disclosure requirements. It discusses the range of relevant disclosure mechanisms, noting that these may differ according to the required linkage between genetic resources or TK and the invention, and according to the legal basis for the disclosure mechanism. The study also reviews relevant provisions of WIPO treaties that may be relevant to disclosure requirements.

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

12. This document reviews mechanisms for facilitating the participation of indigenous and local communities in the work of WIPO concerning intellectual property and genetic resources, traditional knowledge and traditional cultural expressions, in particular in the work of the Committee. It addresses the specific question of the possible provision of financial support for the participation of indigenous and local communities in sessions of the Committee, as a means to facilitate their involvement in WIPO's work on these issues. The document is based on the information on the practices of other United Nations agencies and relevant intergovernmental organizations in facilitating the participation of non-governmental organizations, including the modalities of selection, accreditation and application of funding, if applicable. On this basis and on the basis of the Secretariat's own independent analysis, this document presents a range of detailed possible options available to the Committee for its consideration.

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

13. This document draws together the main activities and outcomes of the Committee, and describes the interaction between the various components of the Committee's work and related program activities of WIPO, to facilitate consideration of future work and to provide background on the work of the Committee. It also sets out some of the key issues considered by the Committee, to assist in clarifying the basis for future work. This document describes the Committee's activities and highlights the integral nature of its key outcomes.

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

14. This document, submitted by the Delegation of Peru, aims to describe the results of the technical and legal analysis carried out in relation to patents referring to *Lepidium meyenii* (or "maca"). The document also attempts to draw attention to a series of elements and problems associated with this type of patents of particular importance for Peru. The following patents PCT/US00/05607, US Patent 6,267,995, and US Patent 6,428, 824 are referred to in the document and these will be made available separately.

In addition to the working documents specifically prepared for the fifth session, the following document is also to be considered at the fifth session:

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

15. This document contains technical proposals to the WIPO Intergovernmental Committee for consideration. The proposals are based on the conclusions of the WIPO Asia-Pacific Regional Seminar on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, held in Cochin, India, from November 11 to 13, 2002 ("the Asia-Pacific Regional Seminar").

II. INFORMATION DOCUMENTS SUPPLEMENTING THE ABOVE WORKING DOCUMENTS

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

16. This information document provides a detailed background information relevant to the Consolidated Survey of Intellectual Property Protection of Traditional Knowledge (document WIPO/GRTKF/IC/5/7) and a Composite Study on the Protection of Traditional Knowledge (document WIPO/GRTKF/IC/5/8), comprising of information from the responses provided to two questionnaires on TK protection (WIPO/GRTKF/IC/2/5 and WIPO/GRTKF/IC/Q.1). The document contains responses and texts of legislation received up to February 28, 2003,

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

17. This information document is a parallel resource document containing information on the *sui generis* systems referred to in document WIPO/GRTKF/IC/5/3. The information in this document has been prepared in tabular form using as its structure the key elements used to structure the oral presentations on TCEs made at the Committee's fourth session (documents WIPO/GRTKF/IC/4/INF/2, 3, 4, 5 and 5 Add.).

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

18. This information document provides background information on existing *sui generis* measures and laws for TK protection, with a focus on those countries which are presenting their national experiences at the Panel on National and Regional Experiences with Existing *Sui Generis* Measures and Laws for the Protection of Traditional Knowledge ("the TK Panel") which will take place as an informal part of the fifth session of the Committee. The Panel and this information document focus exclusively on traditional knowledge in the narrow sense, i.e. tradition-based know-how and technical knowledge, and other aspects of the tradition-based useful arts ("TK").

III. OTHER DOCUMENTS OF CURRENT INTEREST

19. The discussions of the Committee may also concern the following additional documents.

Background studies

WIPO/GRTKF/STUDY/1: A Study on the Protection of Expressions of Folklore. *Written by Mrs P.V. Valsala G. Kutty for the World Intellectual Property Organization (WIPO).*

WIPO/GRTKF/STUDY/2: Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions. *Prepared by Ms. Terri Janke, Terri Janke and Company for the World Intellectual Property Organization (WIPO).*

Questionnaires

20. Five 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/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 www.wipo.int/globalissues.

A selection of earlier documents of potential continuing interest

WIPO/GRTKF/IC/4/3: Systematic Analysis of National Experiences with the Legal Protection of Expressions of Folklore.

WIPO/GRTKF/IC/4/4: Brief Report on Legal-Technical Assistance for the Legal Protection of Expressions of Folklore.

WIPO/GRTKF/IC/4/5: Initial Checklist of Legal and Practical Issues for an Intellectual Property Toolkit.

WIPO/GRTKF/IC/4/7: Review of Existing Intellectual Property Protection of Traditional Knowledge.

WIPO/GRTKF/IC/4/8: Elements of a *sui generis* system for the protection of Traditional Knowledge.

WIPO/GRTKF/IC/4/10: Report on Electronic Database of Contractual Practices and Clauses relating to Intellectual Property, Access to Genetic Resources and Benefit-Sharing.

WIPO/GRTKF/IC/4/11: Initial Report on Technical Study on Disclosure Requirements Related to Genetic Resources and Traditional Knowledge.

WIPO/GRTKF/IC/4/12: Participation of local and indigenous communities in the work of the committee.

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

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/4/15: Report. *Adopted by the Committee.*

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/GRTKF/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/GRTKF/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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