

## KASKA DENA COUNCIL

### ITEM 6, Document 6/4

March 17, 2004

1. Thank you Mr. Chairman, it is my privilege to speak for on behalf of the Kaska Dena Council. It is a concrete testimony to your clear comments regarding inclusion of our views. Again the Secretariat has clearly documented the deliberations of this Committee with saliency, precision and presented us with a *pragmatic* approach forward. I expressly thank them.
2. We fully support the further development and proposed annotation of core principles for the protection of Indigenous Knowledge. Similar to the decision under the TCE document, this approach provides a non-exhaustive list of soft and hard law options.
3. Mr. Chairman, before I begin with my brief intervention. I would like to state that the I speak in full support with the substantive intervention of my learned colleague from the Saami Council, particularly with respect to his emphasis on the role of customary law in the protection of Indigenous knowledge and his specific comments regarding paragraph 28(b). With the Saami Council, I look forward to furthering development of this important work by the Secretariat. It is my submission that there are many Canadian Aboriginal law circumstances which will enrich these discussions.
4. If I may, I would like to identify a legal area for this list of options that has not currently been thoroughly examined by this Committee. I suggest that privacy law is relevant, particularly as it applies in the public domain context, where Indigenous Knowledge has been submitted into public information systems, in digitized formats or otherwise. I raise this in light of the Kaska Dena Council's legal examination of Indigenous Knowledge submitted to into an federal environmental assessment. Our preliminary findings have been that a Canadian privacy commission has set a very supportive precedent in this regard. That is, the Canadian privacy commission in question not only held that Indigenous knowledge was collectively owned by the First Nation, but decided that the information was not to be public disclosed without the express consent of the Indigenous group as it would "be deleterious to the government to government relationship between the Aboriginal government and the provincial government."
5. Mr. Chairman, I note that prior informed consent of individuals is not a foreign concept in the domestic and international context when it comes to personal or collective information in the control of possession of corporations, government bodies, societies.
6. Mr. Chairman, the approach that is proposed in paragraph 104 is in our opinion a very constructive suggestion, most importantly because it is open-ended. It is our submission that there are many areas of law that might be very applicable. For instance, in the development of dispute resolution mechanisms in national legislation or an international framework, *sui generis* or otherwise, there is wisdom in drawing upon administrative legal areas, such as labour law. That is, in determining disputes between Traditional Knowledge holders and other parties, an equitable structure whereby Indigenous Peoples have participatory rights on

the decision-making board, where their customary laws may be considered on equal footing and where their standing is guaranteed may be particularly relevant.

7. Mr. Chairman, I would like to make a brief comment with respect to document 6/8 particularly with respect to use of Traditional Knowledge databases and registries. I note that Brazil, Venezuela and the United States have raised and questioned the utility of TK registries as a defensive protection tool. Similarly, a multitude of Indigenous Peoples raise this same concerns. I would like to say on behalf of the Kaska Dena Council that many of the indigenous concerns are specific to control and management of digitized Indigenous Knowledge. That is, where the information is Indigenous controlled and properly obtained with their prior informed consent many of our concerns are met. For instance Mr. Chairman, the Kaska are currently developing their own Indigenous-controlled and owned Traditional Knowledge Network, which will be further highlighted at a side event tomorrow afternoon. This Network preserves Indigenous Knowledge in its orally transmitted form by collecting all such Knowledge in digital video format.
8. Finally, I also note a United Nation University – Institute of Advanced Studies discussion paper titled THE ROLE OF REGISTERS IN THE PROTECTION OF TRADITIONAL KNOWLEDGE: FROM CONCEPT TO PRACTICE, which I was a contributing author. This paper was launched at the Seventh Conference of the Parties of the Convention of Biological Diversity, in Kuala Lumpur, Malaysia in February of this year. This paper examines at length many existing Traditional Knowledge databases and registries in Canada, U.S., Venezuela, Panama, Peru and India. To the extent the WIPO Secretariat can take this paper into consideration, I kindly submit it for incorporation and bolstering of this Committee’s work. I understand that copies of this paper is or will be available to all participants today or tomorrow.
9. Thank you Mr. Chairman.