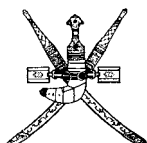


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SULTANATE OF OMAN

WORLD INTELLECTUAL
PROPERTY ORGANIZATION**WIPO INTERNATIONAL FORUM ON “INTELLECTUAL PROPERTY
AND TRADITIONAL KNOWLEDGE: OUR IDENTITY, OUR FUTURE”**organized by
the World Intellectual Property Organization (WIPO)in cooperation with
the Government of the Sultanate of Oman**Muscat, January 21 and 22, 2002**

INFORMATION NOTE ON TRADITIONAL KNOWLEDGE

prepared by the International Bureau of WIPO

1. Intellectual property issues related to genetic resources, traditional knowledge and folklore have emerged in a wide range of policy areas, including food and agriculture, biological diversity and the environment, human rights, cultural policy, trade and economic development. For example, intellectual property rights have been granted for uses of plants which form part of traditional knowledge systems in the agricultural, health and environmental fields. Traditional designs, songs and dances have been used by the entertainment and fashion industries to create works which are protected by intellectual property. Discussions about such uses of genetic resources, traditional knowledge and folklore have linked the protection of intellectual property to policy objectives as diverse as the promotion of free trade, environmental conservation, food security, cultural diversity, etc. These linkages, established through discussions in several international fora, have significant technical, administrative and policy implications for the intellectual property system.

2. Traditional knowledge¹ is a multifaceted concept that encompasses several components. What characterizes traditional knowledge is the fact that, generally, it is not produced systematically, but in accordance with the individual or collective creators' responses to and interaction with their cultural environment. For this reason, existing intellectual property mechanisms, which are intended to function in a trade-related context, may not fully respond to the essentially cultural nature of traditional knowledge. In addition, traditional knowledge, as representative of cultural values, is generally held collectively. This results from the fact that what can be sometimes perceived as an isolated piece of literature (a poem, for example) or an isolated technical invention (the use of a plant resource to heal wounds, for instance) is actually an element that integrates a vast and mostly coherent complex of beliefs and knowledge, control of which is not in the hands of individuals who use isolated pieces of knowledge, but is vested in the community or collective. Furthermore, most traditional knowledge is transmitted orally from generation to generation, and thus remains largely undocumented.

3. A fundamentally important aspect of traditional knowledge is that it is "traditional" only to the extent that its creation and use are part of the cultural traditions of communities. "Traditional", therefore, does not necessarily mean that the knowledge is ancient. "Traditional" knowledge is being created every day, it is evolving as a response of individuals and communities to the challenges posed by their social environment. In its use, traditional knowledge is also contemporary knowledge. This aspect is further justification for legal protection. It is not only desirable to develop a system that documents and preserves traditional knowledge created in the past, which may be on the brink of disappearance: it is

¹ WIPO currently uses the term "traditional knowledge" to refer to tradition-based literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. "Tradition-based" refers to knowledge systems, creations, innovations and cultural expressions which: have generally been transmitted from generation to generation; are generally regarded as pertaining to a particular people or its territory; and are constantly evolving in response to a changing environment. It should be emphasized, however, that a precise definition of traditional knowledge is not a crucial requisite for establishing a system for its protection. Actually, most patent laws do not define inventions. Likewise, most trademark laws do not define signs. The crucial element for the protection of any subject-matter is the identification of some characteristics that it must meet as a condition for protection — such as novelty, inventiveness and susceptibility of industrial application, for inventions, and distinctiveness, for trademarks. The same criterion could be applied to traditional knowledge as well.

also important to envisage a system that contributes to the promotion and dissemination of innovations which are based on continuing use of tradition. Thus, we are not talking only about freezing and preserving knowledge that exists now. We are also talking about preserving what exists as an indispensable and powerful tool for fostering continued innovation and creativity.

4. The protection of traditional knowledge is important for communities in all countries, particularly perhaps in developing and least developed countries. On one level, traditional knowledge plays an important role in the economic and social organization of those countries, and placing value on such knowledge is a viable means of promoting a sense of national cohesion and identity. On another level, developing and least developed countries are engaged in implementing two international agreements — the Convention on Biological Diversity (CBD) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) — that may affect the manner in which knowledge associated with the use of genetic resources (whether "traditional" or not) is protected and disseminated. As an outcome of the Uruguay Round negotiations, many developing and least developed countries have accepted the obligation under the TRIPS Agreement to establish high standards of intellectual property protection, as a means of promoting free trade. It may be argued that biodiversity, and the traditional knowledge associated with using it in a sustainable manner, are a comparative advantage of those countries that are biodiversity-rich, enabling them to participate more effectively in global markets and thus rise above current levels of poverty and deprivation. This is an example of how protection of traditional knowledge at the national and the international levels may be seen as a potentially powerful tool for advancing the integration of least developed countries into the global economy.

5. It should be strongly emphasized that intellectual property, however, is not only about property. It is also about recognition of and respect for the contributions of identifiable, human creators. From this perspective, intellectual property has a very important role to play in protecting the dignity of holders of traditional knowledge and, by conferring property rights in relation to such knowledge, giving those holders a degree of control of its use by others.

6. As the United Nations specialized agency responsible for the promotion of intellectual property, WIPO undertook in 1998 and 1999 nine fact-finding missions (FFMs) "to identify and explore the intellectual property needs and expectations of new beneficiaries, including the holders of indigenous knowledge and innovations, in order to promote the contribution of the intellectual property system to their social, cultural and economic development." These missions were intended to enable the "study of current approaches to, and future possibilities for, the protection of intellectual property rights of holders of indigenous knowledge, innovations and culture."²

² The FFMs were carried out in the following areas: South Pacific (Australia, New Zealand, Fiji and Papua New Guinea), South Asia (Bangladesh, India and Sri Lanka), Southern and Eastern Africa (Uganda, United Republic of Tanzania, Namibia and South Africa), North America (United States of America and Canada), West Africa (Nigeria, Ghana, Mali and Senegal), the Arab countries (Oman, Qatar, Egypt, and Tunisia), South America (Peru and Bolivia), Central America (Guatemala and Panama) and the Caribbean (Trinidad and Tobago, Guyana and Jamaica). The range of interlocutors included a wide spectrum of stakeholders, including traditional knowledge holders and their representatives, government officials, research institutes, non-governmental organizations (NGOs), museums, community organizations, village councils, etc. A full report of the FFMs can be found at WIPO's website (<www.wipo.int/globalissues/tk/report/final>).

7. Moreover, WIPO has been requested by its Member States to provide a forum where they may discuss the intellectual property implications of those linkages, which were raised, but not fully addressed, in other fora. In that context, the WIPO General Assembly, at its Twenty-Sixth Session, held in Geneva from September 26 to October 3, 2000, established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee”). During the informal consultations which led to the establishment of the Committee, the Member States identified three primary themes which they wished to discuss, namely intellectual property issues that arise in the context of (i) access to genetic resources and benefit-sharing, (ii) the protection of traditional knowledge, innovations and creativity, and (iii) the protection of expressions of folklore, including handicrafts. These three topics were exhaustively discussed at the first session of the Intergovernmental Committee, which was held in Geneva from April 30 to May 3, 2001. Currently, a series of activities are being undertaken, in preparation for the second session of the Committee, in Geneva, from December 10 to 14, 2001.

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