

# WIPO



WO/GA/30/5  
ORIGINAL: English  
DATE: August 15, 2003

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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

## WIPO GENERAL ASSEMBLY

Thirtieth (16<sup>th</sup> Ordinary) Session  
Geneva, September 22 to October 1, 2003

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

*Document prepared by the Secretariat*

1. The General Assembly, at its Twenty-Sixth (12th Extraordinary) Session, approved the establishment of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (‘the Intergovernmental Committee’), for the purpose of discussion on “intellectual property issues that arise in the context of (i) access to genetic resources and benefit sharing; (ii) protection of traditional knowledge, whether or not associated with those resources; and (iii) the protection of expressions of folklore” (see documents WIPO/GA/26/10, paragraph 71, and WIPO/GA/26/6, paragraphs 13 and 14).
2. The Intergovernmental Committee met in Geneva for five sessions between April 2001 and July 2003. An overview of the activities and outcomes of the Intergovernmental Committee is provided in document WIPO/GRTKF/IC/5/12, and a brief outline of current Committee documents is provided in document WIPO/GRTKF/IC/5/INF/6. Full details of each session of the Intergovernmental Committee are provided in its successive reports.<sup>1</sup>
3. The discussions of the Intergovernmental Committee generally covered three, interlocking aspects of the intellectual property (IP) issues assigned to it: (i) policy discussion about the forms of protection required for and applicable to the intellectual property protection of traditional knowledge (TK), expressions of folklore (traditional cultural

<sup>1</sup> Documents WIPO/GRTKF/IC/1/13, WIPO/GRTKF/IC/2/16, WIPO/GRTKF/IC/3/15, WIPO/GRTKF/IC/4/14 and WIPO/GRTKF/IC/5/15.

expressions (TCEs) and genetic resources; (ii) pooling, analysis and synthesis of practical experience at the national and regional levels with the legal protection of this subject matter; and (iii) development of capacity building and information resources to support both policy development and practical implementation of protection of TK, TCEs and IP aspects of genetic resources.

4. Some of the specific outcomes of the work of the Intergovernmental Committee include:

- strengthened understanding of the policy basis and legal mechanisms for protection of TK, TCEs and IP aspects of genetic resources, and a framework for considering specific policy options, in the form of composite studies and surveys of legal protection, including community, national, regional and international aspects of protection,<sup>2</sup> and supplementary policy dialogue in the form of panel discussions of *sui generis* protection of traditional knowledge and TCEs (expressions of folklore), leading to a comprehensive range of policy resource documents;<sup>3</sup>
- specific steps to strengthen the defensive protection of TK and associated genetic resources (a full table of deliverables is annexed to document WIPO/GRTKF/IC/5/6), including the enhanced practical recognition of TK as prior art in the examination of patents – this has included proposals for action by other WIPO processes, now under implementation, in particular a revision of the International Patent Classification established under the Strasbourg Agreement so as to expand its direct coverage of TK subject matter<sup>4</sup> and incorporation of TK materials in the minimum documentation of the Patent Cooperation Treaty system,<sup>5</sup> as well as the establishment of technical standards for TK documentation at the initiative of the Asian Group<sup>6</sup> and the development of inventories and a portal of on-line databases for disclosed TK and genetic resources;
- development of capacity building tools for the practical protection of TK and TCEs, and associated genetic resources, including a toolkit aimed at ensuring that initiatives to document TK do not proceed so as to undermine the interests of TK holding communities,<sup>7</sup> a practical guide on the legal protection of TCEs,<sup>8</sup> and a trilingual database of contract provisions concerning IP aspects of access to genetic resources;<sup>9</sup>
- preparation of a draft technical study on patent disclosure requirements relating to traditional knowledge and genetic resources, responding to an invitation from the Conference of Parties (COP) of the Convention on Biological Diversity<sup>10</sup> (document WO/GA/30/7 concerns the recommendation that this study be forwarded to the CBD Secretariat as a background information resource.

<sup>2</sup> For example, documents WIPO/GRTKF/IC/5/12, WIPO/GRTKF/IC/5/3 and WIPO/GRTKF/IC/5/8

<sup>3</sup> Documents WIPO/GRTKF/IC/5/INF/2 to 4 and WIPO/GRTKF/IC/4/INF/2 to 5

<sup>4</sup> Documents IPC/CE/30/11, paragraphs 47 to 53 and IPC/CE/32/12, paragraphs 83 to 91

<sup>5</sup> Documents PCT/MIA/9/4 and PCT/MIA/7/5

<sup>6</sup> Documents WIPO/GRTKF/IC/4/14 and WIPO/GRTKF/IC/5/6

<sup>7</sup> Document WIPO/GRTKF/IC/5/5

<sup>8</sup> Documents WIPO/GRTKF/IC/3/10 and WIPO/GRTKF/IC/5/3

<sup>9</sup> Document WIPO/GRTKF/IC/5/9

<sup>10</sup> Document WIPO/GRTKF/IC/5/10

5. Participation of representatives of indigenous and local communities was a particular concern for the Intergovernmental Committee, given especially the nature of the issues and concerns it addressed, reflected in the decision of the Assembly (document A/37/14, paragraph 290) concerning enhanced involvement of these communities in the Committee's work. Building on the extensive consultations with representatives of these communities that were held from 1998 to 2000,<sup>11</sup> including fact-finding consultations and national and regional dialogue, a range of steps was undertaken to enhance involvement, including briefings, consultations on the development of documents, inclusion of Indigenous representatives on national delegations, and the creation of a facility on the WIPO website for perspectives of Indigenous and local communities. A part from those organizations already accredited to WIPO as observers, an additional eighty-one non-governmental organizations were given specific accreditation to take part in sessions of the Intergovernmental Committee as *ad hoc* observers, many of these representing Indigenous communities. Further recommendations for enhanced involvement were developed by the Committee at its most recent session.<sup>12</sup>

6. At its last session, the Intergovernmental Committee also considered the question of its future mandate, should the General Assembly decide to continue the mandate of the Intergovernmental Committee. Despite extensive discussion of the question, the Intergovernmental Committee was unable to reach agreement on a recommendation to the General Assembly in this regard.<sup>13</sup>

*7. The General Assembly is invited to take note of this document and the work undertaken to date by the Intergovernmental Committee, and to decide modalities for WIPO's future work in this domain, including the possibility of an extended mandate for the Intergovernmental Committee.*

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<sup>11</sup> *Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact-finding Mission on Intellectual Property and Traditional Knowledge (1998-1999)*, (WIPO, 2001).

<sup>12</sup> Document WIPO/GRTKF/IC/5/15 Prov., paragraphs 187 to 190.

<sup>13</sup> Document WIPO/GRTKF/IC/5/15 Prov., paragraphs 158 to 160.