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WIPO GENERAL ASSEMBLY

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

Document prepared by the Secretariat

1. At its Thirty-Second Session, held from September 26 to October 5, 2005, the WIPO General Assembly considered the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC). The General Assembly considered two documents in particular:

(a) document WO/GA/32/6, which concerned the recommendation of the IGC for the establishment of a voluntary fund: participation of indigenous and local communities in its work; and

(b) document WO/GA/32/7, which reported on the work of the IGC to date and conveyed the decision of the Committee which “noted the broad support from Committee participants on the future work of the Committee” and the recommendation of the IGC to the General Assembly that “the mandate of the Committee be extended to the next budgetary biennium to continue its work on traditional knowledge, traditional cultural expressions/folklore and genetic resources”.

2. Following its consideration of these documents, the General Assembly reached agreement on the following decisions:

(a) It adopted the revised draft proposal for a Voluntary Contribution Fund contained in the Annex of document WO/GA/32/6 (document WO/GA/32/13, paragraph 168).

(b) It extended the mandate of the IGC to the next budgetary biennium (2006-2007) to continue its work on traditional knowledge, traditional cultural expressions/folklore and genetic resources (paragraph 202, WO/GA/32/13).

3. The present document provides a brief factual update to the General Assembly on subsequent activities undertaken by the IGC in pursuance of these two decisions.

Implementation of the Voluntary Fund

4. The Annex to this document contains the text of the decision to establish the Voluntary Fund. In line with the General Assembly decision, the Fund was established exclusively to finance the participation in the work of the IGC and other related activities of WIPO of the nominated representatives of accredited observers which represent indigenous or local communities, or otherwise represent customary holders or custodians of traditional knowledge or traditional cultural expressions. The Fund was designed to operate transparently and without drawing on the regular WIPO budget. The resources in the Fund can only be applied to finance the travel and subsistence of eligible representatives of relevant accredited observers taking part in the IGC, according to regular United Nations standards. A significant role was reserved for representatives of Member States and for representatives of relevant observers on the Advisory Board which designates the beneficiaries of financial support from the Fund. The Director General of WIPO is required to implement the recommendations of the Advisory Board. The criteria for granting financial assistance are set out precisely, providing *inter alia* for “broad geographical distribution of the seven geocultural regions recognized by the United Nations Permanent Forum on Indigenous Issues”.

5. Following the establishment of the Voluntary Fund by the General Assembly, steps were taken to implement the procedures laid down by the decision of the Member States. Briefly, these steps included the following:

(a) A promotion campaign was conducted to encourage the voluntary contributions to the Fund. The origins, rationale and operation of the Fund were explained to a wide range of potential donors who were invited to make contributions.

(b) Information circulars were sent to Member States, to intergovernmental and non-governmental organizations having observer status at WIPO, and to observers accredited to the IGC.

(c) Applications were received for funding from a diverse range of applicants, with a view to being supported for participation in the tenth session of the IGC, the first for which funding could be made available in line with the decision of the General Assembly.

(d) The level of contributions and applications were notified to the IGC through an information note (document WIPO/GRTKF/IC/9/INF/8).

(e) The IGC met for its ninth session from April 24 to 28, 2006. By the time of the ninth session, pledges had been received from two potential donors, in chronological order, the Swedish International Biodiversity Programme (‘SwedBio’) (which has pledged the amount of 500,000 Swedish Kronas) and the Government of France (which has pledged the amount of 20,000 Euros).

(f) During its ninth session the IGC elected the Advisory Board required in the Assembly decision.

(g) On the margins of the ninth session, the Advisory Board met and agreed upon eight applicants which it recommended in principle for financial assistance for participation in the tenth session, but for whom insufficient funds were currently available (at that time only pledges had been made).

(h) The Director General will take the decision to fund those candidates whom the Advisory Board has recommended in principle, if and when the funds pledged are made available to the Fund, in sufficient time before the tenth session of the IGC.

(i) Details of the fund, its operation, and the application procedure, are set out on the website: http://www.wipo.int/tk/en/ngoparticipation/voluntary_fund/index.html.

6. In practice, at the time of preparation of this document, it appears likely that, on the first possible opportunity for the fund to operate, the tenth session of the IGC, funded participation may be available for up to eight representatives of accredited observers that represent indigenous or local communities, or otherwise represent customary holders or custodians of traditional knowledge or traditional cultural expressions. Applications for funded participation in the eleventh session of the IGC are due to be lodged 60 days prior to the tenth session (currently scheduled to commence on November 30, 2006), so that they can be considered by the Advisory Board on the margins of the tenth session.

Meetings of the Intergovernmental Committee under its renewed mandate

7. Following the decision of the General Assembly to renew its mandate for the 2006-2007 biennium, the IGC met for its ninth session from April 24 to 28, 2006. A summary of the working documents has been circulated as WIPO/GRTKF/IC/9/INF/3, and is accessible at <http://www.wipo.int/tk/en/igc/igc9-docsummary.html>.

8. In accordance with the decision of the IGC at its seventh session (document WIPO/GRTKF/IC/7/15, paragraph 63), the ninth session was immediately preceded by a half-day panel presentation, chaired by a representative from a local or indigenous community: the panel was chaired by Mr. Terry Williams, representative of the Tulalip Tribes, and presentations were made by representatives of indigenous communities from Brazil, Canada, Kenya, Panama, the Philippines, the Russian Federation and Vanuatu.

9. The decisions of the ninth session were posted on the WIPO website at www.wipo.int/tk, and a draft report is being circulated as WIPO/GRTKF/IC/9/14 Prov. The IGC decisions include the following:

(a) The IGC elected as its Chair Ambassador I Gusti Agung Wesaka Puja of Indonesia, and as its two Vice Chairs, Mr. Lu Guoliang of China and Mr. Abdellah Ouadrhiri of Morocco, in each case for the current and following two sessions of the Committee, and in each case by acclamation.

(b) The Committee unanimously approved accreditation of all the organizations which had sought accreditation as *ad hoc* observers, raising to 132 the total number of such observers. The majority of *ad hoc* observers represent indigenous or local communities, or other custodians of traditional knowledge or traditional cultural expressions.

(c) The Committee took note of the establishment by the General Assembly of the WIPO Voluntary Fund for Accredited Local and Indigenous Communities and of the details of its objectives and operation set out in the Annex to document WIPO/GRTKF/IC/9/3, and elected by acclaim eight members of the Advisory Board to serve in an individual capacity.

(d) On the three substantive agenda items, namely those concerning traditional knowledge, traditional cultural expressions/expressions of folklore and genetic resources, the IGC took note of the extensive comments made on certain working documents under each item, and the indications of a number of delegations that they would be submitting written comments to the Secretariat. The IGC agreed in each case that the question of subsequent steps would be taken up under the agenda item concerning future work. The IGC also took note of a number of other working and information documents under these agenda items.

(e) Regarding its future work, on the basis of the indications of delegations that they would be submitting written comments on the contents of documents WIPO/GRTKF/IC/9/4 ('The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised Objectives and Principles') and WIPO/GRTKF/IC/9/5 ('The Protection of Traditional Knowledge: Revised Objectives and Principles'), the IGC agreed that Committee participants be invited to submit such written comments to the Secretariat before July 31, 2006, so that the comments could be circulated prior to the tenth session of the Committee. The Committee also requested that its tenth session be extended to seven working days to continue work in accordance with its renewed mandate on all comments received on the documents discussed at the ninth session and to enable review of the comments received on documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5.

10. In view of the decision of the ninth session of the IGC on its future work, the tenth session has been scheduled for November 30 to December 8, 2006. The eleventh session of the IGC is envisaged for mid-2007.

11. The General Assembly is invited to take note of the contents of this document.

[Annex follows]

ANNEX

ESTABLISHMENT OF THE WIPO VOLUNTARY FUND
FOR ACCREDITED INDIGENOUS AND LOCAL COMMUNITIES

*Annex to document WO/GA/32/6
approved by the WIPO General Assembly (32nd session)*

Resolved to take appropriate measures to facilitate and encourage the participation of indigenous and local communities, and other customary holders or custodians of traditional knowledge and traditional cultural expressions, in the work of the World Intellectual Property Organization (WIPO) concerning intellectual property relating to genetic resources, traditional knowledge and folklore;

Recognizing that the effectiveness of these measures depends in particular on appropriate financial support;

Recognizing moreover that the existence of an appropriate coordinated framework aimed at financing this participation would encourage such contributions;

[If the WIPO General Assembly decides to renew the mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore in its current form or in a different form, or if the Assembly decides to create a new body responsible for the matters within the Intergovernmental Committee's remit in its current form (the possible bodies being designated hereinafter by the generic term "the Committee"),]¹

then in that it is recommended that the Assembly [should decide]² to create a voluntary contribution fund, the name, objective, criteria for support and operation of which would be as follows:

Name

1. The Fund will be known as the "WIPO Voluntary Fund for Accredited Indigenous and Local Communities", hereinafter the "Fund".

Objective and scope

2. The Fund is established exclusively to finance the participation in the work of the Committee and other related activities of WIPO of the nominated representatives of accredited observers which represent indigenous or local communities, or otherwise represent customary holders or custodians of traditional knowledge or traditional cultural expressions.

¹ Note from the Secretariat: the General Assembly has taken such a decision. See par. 202 of the report of its Thirty-Second Session (document WO/GA/32/13).

² Note from the Secretariat: the General Assembly has taken such a decision. See par. 168 of the report of its Thirty-Second Session (document WO/GA/32/13).

3. Since participation in the Committee's work is restricted by its rules of procedure to its members and accredited observers, and in order to ensure their capacity to participate fully in the Committee's work, the funded representatives should only be the nominated representatives of observers which are duly and previously accredited to the Committee, either as *ad hoc* observers accredited by the Committee itself, or as observers accredited to WIPO.

4. The creation of the Fund and its operation will not prejudice other established procedures, in particular by the general WIPO Rules of Procedure (WIPO 399 (FE) Rev. 3) implemented in document WIPO/GRTKF/IC/1/2 for the accreditation of indigenous and local communities and other observers, or to organize the effective participation of their members in the sessions. The operation of the Fund shall not pre-empt or override decisions by members of the Committee regarding accreditation and participation in the work of the Committee. It is understood that other direct contributions and other possible forms of direct assistance, either existing or in the future, designed to finance or facilitate such participation, may be pursued outside the framework of the Voluntary Fund, at the choice of the contributor.

Criteria for financial support

5. Financial support from the Fund will correspond exclusively to the objective set out in Article 2 and to the following conditions:

(a) Support from the Fund will be strictly limited to the maximum resources actually available in the Fund;

(b) Each provision of support will relate to a single Committee session and any related activities held consecutively with the Committee session. Provision of support on one occasion shall not prejudice possible support for the participation of the same beneficiary on other sessions;

(c) To be eligible for financial support, persons would need to satisfy each of the following criteria:

(i) be a natural person;

(ii) belong, as a member, to an accredited observer which represents indigenous or local communities, or otherwise represents customary holders or custodians of traditional knowledge or traditional cultural expressions;

(iii) have been duly nominated in writing by the observer to represent it at the session designated for the support and as possible beneficiary of support from the Fund;

(iv) be able to participate effectively and contribute to the session intended for the support, such as through expressing experience in the field and the concerns of indigenous and local communities and other customary holders and custodians of traditional knowledge or traditional cultural expressions;

(v) and whom the Advisory Board considers would not be able to take part in the session concerned without support from the Fund, owing to a lack of alternative financial resources.

(d) In ensuring a broad geographical spread of participation among the seven geo-cultural regions recognized by the United Nations Permanent Forum on Indigenous Issues, the Advisory Board should take due account of the need to support those who lack alternative financial resources, and particularly of those observers based in developing and least developed countries and small island developing countries.

(e) The financial support will cover the purchase of a return economy class ticket, including taxes connected with the ticket, between the domicile of the beneficiary and Geneva or any other meeting place, by the most direct and cheapest route. It will also cover living expenses in the form of a daily subsistence allowance at the rate specified by the United Nations for Geneva or for the city where said meeting is held, with an additional flat rate of US\$60 to cover expenses incurred at the time of departure and arrival. All other expenses related to the participation of the beneficiaries in the session concerned will be excluded from Fund support.

(f) If an applicant who has been selected to benefit from Fund support has to withdraw or is unable to take part in the session concerned, any sums unexpended and recovered, apart from possible cancellation charges, will be transferred to the reserve of the resources available to the Fund and the choice which was made with regard to said applicant shall be considered null and void. The applicant will nonetheless be entitled to submit a new request for the following session, provided that information is submitted giving a good reason for the withdrawal or nature of the event which otherwise made participation impossible.

Operating mechanism

6. The Fund will operate as follows:

(a) Fund resources will come exclusively from voluntary contributions by governments, NGOs and other private or public entities, and specifically shall not be drawn from the regular WIPO budget.

(b) The administrative costs associated with the operation of the Fund shall be kept to a strict minimum and shall not entail the drawing of specific funds in credit from the regular WIPO budget.

(c) The voluntary contributions paid into the Fund will be managed by the WIPO Director General, assisted by an Advisory Board. In this respect, the financial administration by the WIPO Director General and the auditing of the Fund accounts by the WIPO auditor will be undertaken in line with the procedures established, in accordance with the WIPO Financial Regulations, for the funds-in-trust set up to finance certain development cooperation activities conducted by WIPO.

(d) Decisions to extend financial support will be taken, for formal purposes, by the WIPO Director General, following an express recommendation by the Advisory Board. The recommendations made by the Advisory Board relating to the choice of beneficiaries will be binding on the Director General and not subject to appeal.

(e) Duly documented requests for financial support enabling participation in a Committee session will be sent to the WIPO Director General by the applicants in their own name, so as to arrive at least 60 days before the opening of the Committee session which

precedes the session for which support is requested. Later requests will be considered at the following session.

(f) Before each Committee session, the WIPO Director General will communicate for the information of participants an information note setting out:

(i) the level of the voluntary contributions paid into the Fund on the date on which the document was drafted,

(ii) the identity of the contributors (unless individual contributors have

(iii) expressly requested to remain anonymous),

(iv) the amount of the resources available taking into account the funds disbursed,

(v) the list of people who have benefited from the Fund's support since the previous information memorandum,

(vi) the people chosen to benefit from the Fund but who withdrew,

(vii) the amount of the support allocated to each beneficiary, and

(viii) a sufficiently detailed description of the applicants seeking support for the following session.

This document will also be addressed by name to the members of the Advisory Board for examination and deliberation.

(g) Following the election of its members, the Advisory Board will be convened by the WIPO Director General to meet on the margins of the Committee session which precedes the session for which support is being considered, without prejudice to the right of its members to discuss informally any questions concerning their mandate between sessions of the Committee.

(h) The Advisory Board must ensure that all the criteria for eligibility of applicants set out above, in particular in Article 5, are satisfied during its deliberations, and should agree on a recommended list of eligible applicants who should benefit from Fund support. The Advisory Board should also ensure, when adopting its recommendation, that:

- a balance is maintained between the male and female beneficiaries, and between the geo-cultural regions from which they come, in successive sessions insofar as is possible; and
- where necessary, the benefits are taken into account which the Committee's work may derive from the repeated participation in its sessions of the same beneficiary.

Finally, when adopting its recommendation the Committee shall take account of the available resources as reported by the Director General in the information note referred to in Article 6(f), and in particular it shall identify those applicants who are agreed and for whom

funding is available, and those applicants who are agreed in principle but for whom insufficient funds are available. Those in the latter category should be given priority in decisions on funding for subsequent sessions of the Committee.

The Advisory Board will be provided with administrative assistance for its deliberations by the WIPO International Bureau, in accordance with Article 6(b).

(i) The Advisory Board will adopt its recommendation before the end of the Committee session on the margins of which it meets. This recommendation will identify:

(i) the future session intended for financial support (i.e. the subsequent session of the Committee),

(ii) the applicants whom the Advisory Board agrees should be supported for that session and for whom funds are available,

(iii) any applicant or applicants whom the Advisory Board agrees should be supported in principle but for whom insufficient funds are available,

(iv) any applicant or applicants whose application has been rejected in accordance with the procedure in Article 10

(v) any applicant or applicants whose application has been postponed until the next session of the Committee in accordance with the procedure in Article 10.

The Advisory Board will immediately forward the contents of the recommendation to the Director General who will take a decision in accordance with the recommendation. The Director General will inform the Committee immediately and, in any cases, prior to the end of its current session, by means of an information note specifying the decision taken concerning each applicant.

(j) The WIPO Director General will take the administrative measures necessary to implement his decision for the session concerned, in accordance with Article 6(b).

Other provisions relating to the Advisory Board

7. The Advisory Board will comprise nine members, including:

- the Chair of the Committee, appointed *ex officio* or, where that proves to be impossible, one of the Vice-Chairs nominated by the Chair as his or her deputy;
- five members from the delegations of WIPO Member States taking part in the Committee, reflecting an appropriate geographical balance; and
- three members from accredited observers representing indigenous and local communities or other customary holders or custodians of TK or TCEs.

The members will serve on an individual basis and will conduct their deliberations independently, notwithstanding any consultations that they might consider as appropriate.

8. Apart from the *ex officio* member, the members of the Advisory Board will be elected by the Committee on the second day of each of its sessions, on a proposal by its Chair, following consultation with the Member States and their regional groups and, respectively, representatives of accredited observers. Apart from that of the *ex officio* member, their mandates will expire with the opening of the following Committee session.
9. The Advisory Board will meet regularly on the margins of Committee sessions, subject to the requirement that a quorum of seven members, including the Chair or one of the Vice-Chairs, should be present.
10. A recommendation for the selection of any beneficiaries will require the agreement of at least seven members of the Advisory Board. If an application is not agreed upon, it may continue to be examined at the following session, unless that application received three votes or fewer. In the latter case, the request will be considered to have been rejected, without prejudice to the right of the applicant to submit a new request at a later date.
11. Each member of the Advisory Board who has a direct association with an observer which has applied for funding for a representative shall disclose that association to the Advisory Board, and shall abstain from any vote concerning any applicant nominated by that observer.

[End of Annex and of document]