

WIPO General Assembly

Thirty-Ninth (20th Extraordinary) Session Geneva, September 20 to 29, 2010

INFORMATION REPORTS ON OTHER WIPO COMMITTEES

prepared by the Secretariat

1. The present document contains information reports which are being submitted to the WIPO General Assembly in a consolidated document on the work of the following WIPO Committees: Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), Standing Committee on the Law of Patents (SCP), Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), Committee on WIPO Standards (CWS) and Advisory Committee on Enforcement (ACE).

2. *The General Assembly is invited to take note of the information contained in this document.*

[Annex follows]

I. INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC)

1. Following the adoption by the WIPO General Assembly at its Thirty-Eighth (19th Ordinary) session in September 2009 of a renewed and revised mandate¹ for the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), the IGC has met twice, in December 2009 and in May 2010.
2. At its 15th session in December 2009 (December 7 to 11, 2009), and under the chairmanship of His Excellency Ambassador Juan José Ignacio Gómez Camacho, Ambassador of Mexico, the IGC resumed substantive work after a lengthy focus in previous years on procedural questions. Participants in the session reviewed draft international provisions for the protection of traditional cultural expressions (TCEs) and traditional knowledge (TK), and considered options for future work on intellectual property (IP) and genetic resources (GRs), paving the way for the mandated “text-based negotiations” to commence formally in 2010 under the new mandate for 2010 and 2011. The draft provisions on TK and TCEs, as well as the document related to GRs, were also opened for suggested amendments and comments during an intersessional commentary process (until February 2010) and the Secretariat was requested to make available the next versions of the documents for the 16th session of the IGC in May 2010. The 15th session of the IGC also considered arrangements for the intersessional working groups (IWGs) referred to in the new mandate, in particular their composition, mandate, chairmanship and other related issues. Discussions on these arrangements were based largely on a formal proposal by the African Group. Proposals were also presented during the meeting by the group of industrialized countries (Group B) and the Group of Central European and Baltic States.²
3. The IGC met for the 16th time from May 3 to 7, 2010, under the chairmanship of His Excellency Ambassador Philip Richard Owade of Kenya. Delegates began negotiations on the substance of the draft provisions for the protection of TK and TCEs, on the basis of the versions prepared following the 15th session and comments made during the intersessional commentary process referred to. The IGC requested that further versions of the provisions, reflecting the session’s discussions, be prepared by the Secretariat. A number of information notes on certain key issues were also requested of the Secretariat. Constructive negotiations also took place on options for advancing work on IP issues associated with GRs, and, on this subject, a new working document containing draft genetic resources objectives and principles was submitted by Australia, Canada, New Zealand, Norway and the United States of America.³ 2010 also saw the introduction of the preparation of all working documents and most information documents in all six United Nations languages.

¹ WO/GA/38/20, par. 217.

² The report of the 15th session (WIPO/GRTKF/IC/15/7) is available at http://www.wipo.int/meetings/en/details.jsp?meeting_id=17585

³ The initial draft report of the 16th session (WIPO/GRTKF/IC/16/8 Prov.) is available at <http://www.wipo.int/tk/en/index.html>

4. At this 16th session, the IGC also agreed on arrangements for the IWGs. In a detailed decision⁴, the IGC addressed issues such as the mandate, composition and chairmanship of the IWGs. The first IWG session, scheduled to take place from July 19 to 23, 2010, will focus on TCEs. The working document for this session will be the next version of the draft provisions on TCEs following the discussions that took place on TCEs during the 16th session of the IGC (now numbered WIPO/GRTKF/IC/17/4 Prov.).
5. The 17th session of the IGC, scheduled to take place from December 6 to 10, 2010, will consider the results of the first IWG on TCEs and resume discussion of the next versions of the relevant documents on TK and GRs.
6. In the period under review, the IGC continued to feature extensive participation by representatives of indigenous and local communities and the WIPO Voluntary Fund continued to operate successfully. At its 16th session, the IGC requested that the rules of the Voluntary Fund be amended to enable the Fund to extend also to sessions of the IWGs. Pursuant to this request, proposed administrative amendments to the rules of the Fund are presented to the General Assembly for consideration, under Agenda Item 28.⁵
7. In the period under review, technical and legal assistance was provided in respect of a large number of requests by Member states, communities and other stakeholders.

II. REPORT ON THE WORK OF THE STANDING COMMITTEE ON THE LAW OF PATENTS (SCP)

8. The fourteenth session of the Standing Committee on the Law of Patents (SCP) was held from January 25 to 29, 2010, in Geneva. Delegations from 102 Member States, eight inter-governmental organizations, and 28 non-governmental organizations participated in the Committee which was chaired by Mr. Maximiliano Santa Cruz from Chile.
9. In accordance with the decision taken at the thirteenth session of the SCP, the discussions at the fourteenth session⁶ were based on preliminary studies on the following six topics: (i) Standards and Patents (document SCP/13/2); (ii) Exclusions from Patentable Subject Matter and Exceptions and Limitations to the Rights (document SCP/13/3); (iii) The Client-Patent Advisor Privilege (documents SCP/13/4 and SCP/14/2); (iv) Dissemination of Patent Information (documents SCP/13/5 and SCP/14/3); (v) Transfer of Technology (document SCP/14/4); and (vi) Opposition Systems (document SCP/14/5). Many delegations stated that these preliminary studies constituted an excellent basis for discussions, and requested further elaborations and clarifications on various issues contained in the documents. Several delegations expressed the importance of the studies being available in all official UN languages.
10. The Delegation of Brazil submitted a proposal on exceptions and limitations to patent rights (document SCP/14/7), which received broad support in the Committee. Some delegations, however, expressed concern that they had not received the document in

⁴ See WIPO/GRTKF/IC/16/8 Prov.

⁵ See WO/GA/39/11.

⁶ The Summary by the Chair (document SCP/14/9 Rev.) is available at:
http://www.wipo.int/meetings/en/details.jsp?meeting_id=17461

advance of the meeting, and therefore had insufficient time to consider the proposal, and expressed the wish to consider the proposal at the following session. Further, the Secretariat presented information on the external experts' study regarding exclusions, exceptions and limitations to the Committee (document SCP/14/INF/2) and informed that the study would be submitted at the following session of the SCP.

11. The Committee also discussed the Report on the International Patent System (documents SCP/12/3 Rev.2. and SCP/14/6), and agreed that document SCP/12/3 Rev.2 would remain open for further discussion at the next session of the SCP, and document SCP/14/6 would be updated, based on the comments received from Member States.
12. In addition, the Chair presented an oral report on the Conference on Intellectual Property and Public Policy Issues, which was held on July 13 and 14, 2009 (document SCP/14/8). Many delegations stated that the Conference had provided a good opportunity to discuss issues and challenges related to the interface of intellectual property and public policy issues.
13. Following a proposal by the Chair, the Committee agreed to carry on discussions at its next session on the basis of the agenda of its fourteenth session. The study by external experts on exclusions, exceptions and limitations, as well as the proposal by the Delegation of Brazil (document SCP/14/7) will be also included in the agenda of the next session.

III. REPORT ON THE WORK OF THE STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS (SCT)

14. During the period under consideration, the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) held two sessions, namely SCT/22 (November 23 through to November 26, 2009) and SCT/23 (from June 30 to July 2, 2010). Both sessions were chaired by Mr. Adil El Maliki (Director General, Moroccan Industrial and Commercial Property Office). The report on the progress made by the SCT in its work is presented according to subject matter.

A. Trademarks

15. In the field of trademarks, the SCT considered documents on grounds of refusal and collective and certification marks, which were revisited for a consecutive time. The document (document SCT/23/2) was finalized at the twenty-third session and the Secretariat was requested to publish it as a reference document, in all six working languages of the SCT. Similarly, the work on technical and procedural aspects relating to the registration of certification and collective marks (document SCT/23/3) was concluded at SCT/23 with a request to the Secretariat to publish the result of this work as an SCT reference document. Work on a summary document concerning letters of consent practices (document SCT/22/5) was finalized subsequent to SCT/22 and published.
16. Following the presentation of an initial proposal concerning the protection of country names against registration or use as trademarks by the Delegation of Jamaica at the twenty-first session of the SCT, the Committee considered and finalized work on a questionnaire on the protection of country names. The SCT instructed the Secretariat to circulate the questionnaire to WIPO Member States, to collect returns by

September 15, 2010, and to present a compilation of the returns at the twenty-fourth session of the SCT. Moreover, the SCT agreed at its twenty-third session to initiate work concerning the use of trademarks on the Internet and to address, in particular, issues relating to the *WIPO Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet*, and recent developments within ICANN on domain name issues.

B. Industrial Designs

17. Regarding the work of the SCT on industrial design law and practice, the twenty-third session of the SCT considered a revised working document on possible areas for convergence on industrial design law and practice in SCT Members, highlighting the potential benefits that users and industrial design administrations could derive from convergence among Member States in that area of industrial property (document SCT/23/4). This document sets out already identified possible areas of convergence, as well as tendencies in the law and practice of SCT Members and areas where no concrete convergence could be established at that time.
18. At that session, the SCT took note of a non-paper circulated by the Delegation of the United Kingdom and presented by the European Union and its member States, suggesting that, at its twenty-fourth session, the SCT should make a recommendation to the WIPO General Assembly for pursuing its work on convergence in industrial design law and practice through making provision for the conveying of a diplomatic conference in the 2012-2013 biennium, provided sufficient progress is made on substance to justify such a recommendation. The Chair of that session concluded, *inter alia*, that all SCT delegations attached great importance to the work of the SCT on possible convergences in the industrial design law and practice of Member States and that the SCT supported the advancement of that work (document SCT/23/6, paragraph 10).
19. Furthermore, in the area of industrial designs, the SCT considered the recently established WIPO *Digital Access Service for Priority Documents* (document SCT/22/7), and requested the Secretariat to advance work on the establishment of a digital access service for priority documents for industrial designs and for trademarks, with a view to ensuring the largest possible participation of interested offices in such a service.

C. Geographical Indications

20. During the period under consideration, the SCT did not address issues of substance concerning geographical indications. At the conclusion of the twenty-third session of the SCT, noting that delegations wished to accord priority to the Committee's work on industrial designs, names of States and trademarks and the Internet, the Chair concluded that the item on geographical indications will remain on the agenda for the next session of the SCT, at which moment delegations might wish to revisit this issue (document SCT/23/6, paragraph 21).

IV. DISCONTINUATION OF SCIT

A. Decision by the WIPO General Assembly – September 2009

21. The WIPO General Assembly, at its thirty-eighth session, held in September 2009, considered a proposal submitted by the International Bureau (IB) (document WO/GA/38/10) to replace the Standing Committee on Information Technologies (SCIT) by two bodies, namely, the Committee on WIPO Standards (CWS) and the Committee on Global IP Infrastructure (CGI).
22. The General Assembly approved the creation of the CWS, which would replace the SDWG. However, concerning the creation of the CGI, the General Assembly requested that the SDWG discuss the proposal of the IB to make a recommendation to the thirty-ninth session of the General Assembly, to be convened in 2010. (paragraphs 236 to 249 of document WO/GA/38/20.)

B. Discussion by the SDWG about the proposed CGI – October 2009

23. The SDWG, at the eleventh session, held in October 2009, considered the proposal by the IB (document SCIT/SDWG/11/3). Discussions by the SDWG concerning the proposed creation of the CGI resulted in a number of delegations suggesting possible tasks to be undertaken by such a Committee, and other delegations expressing the need for further information to enable an informed recommendation.
24. At the request of the SDWG, the Secretariat prepared a working paper, containing a draft proposal for a possible mandate of the CGI, including tasks identified by a number of delegations as possible tasks that would not fall within the approved mandate of the CWS. It was also made clear that the CGI would not deal in any way with legal norms or WIPO standards and international classifications.
25. Two different views were expressed regarding the provision of a recommendation to the General Assembly on whether this committee should be created. One view was fully ready to recommend the creation of the CGI to the General Assembly. According to this view, the SDWG, as a technical body, recognized the need for a forum to discuss/address tasks such as those identified by different delegations and the Secretariat during the 11th session of the SDWG. The other view, although not excluding the creation of the CGI, considered that, due to the lack of sufficient information, more information and further consultations with national authorities would be necessary to provide such a recommendation.
26. In concluding the discussions there was no consensus regarding the recommendation to be provided to the General Assembly. (paragraphs 15 to 20 of document SCIT/SDWG/11/3.)

C. First session of the CWS – October 2010

27. Subsequent to the creation of the CWS by the General Assembly in September 2009, the SCIT was discontinued on January 1, 2010. On this date, the SDWG was replaced with the CWS.
28. The first session of the CWS will be held in October 2010. The CWS will continue the work of SDWG in relation to the revision and development of WIPO Standards, Recommendations and Guidelines in the field of industrial property information.

V. WORK OF THE ADVISORY COMMITTEE ON ENFORCEMENT (ACE) AND OTHER ACTIVITIES OF THE SECRETARIAT CONCERNING BUILDING RESPECT FOR INTELLECTUAL PROPERTY

A. Work of the ACE

29. The fifth session of the ACE was held from November 2 to 4, 2009. As agreed by Member States, the session focused on the “Contribution of, and cost to, right holders in enforcement, taking into consideration Recommendation No. 45 of the WIPO Development Agenda⁷”. Additionally, in response to a request by the Asia and Pacific Group Coordinator, the agenda included the item “Identifying elements for creating an enabling environment for promoting respect for intellectual property in a sustainable manner and future work.”
30. Delegations expressed their appreciation of the ACE as a valuable international forum for balanced discussions on building respect for intellectual property, and for developing sustainable and practical solutions, taking into account Recommendation No. 45 of the WIPO Development Agenda.
31. The Committee took note of the considerable number of WIPO training, cooperation and other activities⁸, and encouraged the Secretariat to continue and increase these activities, in cooperation with other organizations and the private sector. It was emphasized that the Secretariat should ensure that WIPO’s inclusive approach to building respect for intellectual property be fully reflected in its intersessional work, including in the context of its cooperation with partner organizations.
32. The agreed topic was analyzed on the basis of expert presentations⁹. The Committee expressed appreciation for those presentations which underscored the need for a balanced, inclusive approach to intellectual property enforcement, taking into consideration the diverging national socio-economic realities. Among the specific issues that were dealt with in the presentations were suggestions for closer analysis in order to give meaning to Recommendation No. 45 of the WIPO Development Agenda, such as the effects of seizures of goods in transit; safeguards in relation to provisional measures; the scope of criminalizing intellectual property infringements; and possible abusive enforcement practices. The presentations also approached intellectual property enforcement from an economic perspective, including with a view to welfare and other effects of the various intellectual property infringements; the availability and credibility of available empirical evidence; and the problem of financing often expensive intellectual property litigation, especially for litigants in developing countries. The presentations further addressed development-oriented activities of right holders, such as in education, job creation and community projects.

⁷ “To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that ‘the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations’, in accordance with Article 7 of the TRIPS Agreement.”

⁸ Document WIPO/ACE/5/2.

⁹ Documents WIPO/ACE/5/4 to WIPO/ACE/5/10.

33. Concerning the future work of the Committee, Member States reviewed the suggestions contained in the papers presented by the delegations of Pakistan, entitled 'Creating an enabling environment to build respect for IP'; of Brazil, entitled 'Future work proposal by Brazil'; and of Group B, entitled 'Elements of a General Framework for future discussions in WIPO ACE', respectively¹⁰. The Committee concluded to consider, at its sixth session, the following work program:

'Developing on the substantive study contained in WIPO/ACE/5/6, analyze and discuss IPRs infringements in all its complexities by asking the Secretariat to undertake:

- (i) A literature review of methodologies and gaps in the existing studies;
- (ii) Identification of different types of infractions and motivations for IPR infringements, taking into account social, economic and technological variables and different levels of development;
- (iii) Targeted studies with an aim to developing analytical methodologies that measure the social, economic and commercial impact of counterfeiting and piracy on societies taking into account the diversity of economic and social realities, as well as different stages of development;
- (iv) Analysis of various efforts, alternate models and other possible options from a socio-economic welfare perspective to address the counterfeiting and piracy challenges'¹¹.

34. The sixth session of the ACE is scheduled to take place in Geneva, from December 1 and 2, 2010. As in previous sessions, discussions of the agreed topics will be supported by working documents and expert presentations.

B. Global Congress on Combating Counterfeiting and Piracy

35. In line with the mandate of the ACE, the Secretariat participated in the convening of the Fifth Global Congress on Combating Counterfeiting and Piracy, hosted by the International Criminal Police Organization (INTERPOL) and the Mexican Intellectual Property Office (IMPI), in cooperation with the World Customs Organization (WCO), the International Chamber of Commerce (ICC/BASCAP), the International Trademark Association (INTA), and the International Security Management Association (ISMA)¹². The Congress took place from December 1 to 3, 2009 in Cancun, and brought together more than 800 delegates representing 80 countries.
36. For the 2011 cycle of the Congress, WIPO is the lead Organization and, as such, the Chair of the Global Congress Steering Group. In that role, it is the overall objective of the WIPO Secretariat to ensure that the discussions at the sixth Global Congress reflect a balanced approach to combating counterfeiting and piracy, incorporating into the agenda, as central theme, elements identified in the ACE as forming part of an enabling environment to promote respect for IP.

¹⁰ Annexes 1 to 3 of document WIPO/ACE/5/11.

¹¹ Paragraph 12 of document WIPO/ACE/5/11.

¹² <http://www.ccapcongress.net/>

C. Technical Assistance

37. Technical and legal assistance in the area of building respect for IP was rendered by the Secretariat in 2009 and 2010 in response to a large number of requests by Member States. A comprehensive list of those activities is available at <http://www.wipo.int/enforcement/en/activities/>

[End of Annex and of document]