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**INTERNATIONAL CONFERENCE ON
INTELLECTUAL PROPERTY, THE INTERNET,
ELECTRONIC COMMERCE AND TRADITIONAL KNOWLEDGE**

organized
under the auspices of
His Excellency Mr. Petar Stoyanov, President of the Republic of Bulgaria

by
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INTELLECTUAL PROPERTY, TRADITIONAL KNOWLEDGE AND
GENETIC RESOURCES

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I. INTRODUCTION

1. With the emergence of modern biotechnologies, genetic resources have assumed increasing economic, scientific and commercial value to a wide range of stakeholders. Traditional knowledge, whether or not associated with those resources, has also attracted widespread attention from an enlarged audience. Other tradition-based creations, such as expressions of folklore, have at the same time taken on new economic and cultural significance within a globalized information society.
2. Conservation, preservation, management, sustainable utilization and benefit-sharing in respect of genetic resources, traditional knowledge and folklore are being addressed within a range of different policy areas, including food and agriculture, biological diversity and the environment, biotechnology innovation and regulation, human rights, cultural policies and trade and economic development. Within all these areas intellectual property issues have arisen and are assuming increasing importance. As the specialized United Nations agency responsible for the promotion of intellectual property worldwide, WIPO has been requested by its Member States to undertake exploratory groundwork and facilitate discussions for a better understanding of the often inter-related intellectual property issues regarding genetic resources, traditional knowledge and folklore.
3. Section II of the present document reviews the previous work of WIPO regarding genetic resources, traditional knowledge and folklore and Member State discussions that have taken place at WIPO regarding these subjects, particularly since 1998. Section III describes WIPO's current work program relating, specifically, to traditional knowledge and folklore. Section IV reports on the recent decision by the Member States to establish a separate body within WIPO to facilitate the continuation of discussions concerning genetic resources, traditional knowledge and folklore.

II. WIPO'S WORK ON GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE SINCE 1998

a) Genetic Resources

4. Since the 1998-99 biennium, issues related to intellectual property and genetic resources have been addressed in regular activities under WIPO's exploratory Subprogram 11.2 on "Biological Diversity and Biotechnology." The activities on intellectual property and genetic resources began with a study on the role of intellectual property rights in the sharing of benefits arising from the use of biological resources and associated traditional knowledge. The study was commissioned by WIPO jointly with the United Nations Environment Programme (UNEP) and resulted in three case studies, which provide lessons on how the effective protection of intellectual property rights can support the sharing of benefits arising from the use of genetic resources.

5. Issues related to intellectual property and genetic resources were also discussed by Member States at the third session of the Standing Committee on the Law of Patents (SCP), which took place in Geneva from September 6 to 14, 1999. The SCP requested the Secretariat to include the issue of protection of biological and genetic resources on the agenda of a Working Group on Biotechnological Inventions, to be convened at WIPO in November 1999. The SCP further invited the Secretariat to take steps to convene a separate meeting involving a larger number of Member States early in 2000, to consider that issue.
6. The Working Group on Biotechnology, at its meeting on November 8 and 9, 1999, recommended the establishment of nine projects related to the protection of inventions in the field of biotechnology. It decided to establish a questionnaire for the purpose of gathering information about the protection of biotechnological inventions, including certain aspects regarding intellectual property and genetic resources, in the Member States of WIPO. The Secretariat has compiled and published the responses to the questionnaire (WIPO/GRTKF/IC/1/6).
7. In response to the invitation issued by the SCP, WIPO organized a Meeting on Intellectual Property and Genetic Resources on April 17 and 18, 2000. The Meeting addressed issues that generally are raised in the context of access to, and *in situ* preservation of, genetic resources in their direct or indirect relationship with intellectual property. The Chairman's Conclusions from the Meeting state that the exchange of views that took place at the Meeting produced a clear consensus that:

“WIPO should facilitate the continuation of consultations among Member States in co-ordination with the other concerned international organizations, through the conduct of appropriate legal and technical studies, and through the setting up of an appropriate forum within WIPO for future work.”
8. At the same meeting, it was agreed that the WIPO Secretariat should prepare and issue an additional questionnaire in the field of intellectual property and genetic resources, which would be based on submissions by Member States. To date, no such submissions have been received.
9. During the Diplomatic Conference for the Adoption of the Patent Law Treaty from May 11 to June 2, 2000, the Director General conducted consultations concerning formalities in relation to the question of genetic resources. As the outcome of the consultations, a statement was agreed upon among the groups and read out by the Director General, the relevant part of which is as follows:

“Member State discussions concerning genetic resources will continue at WIPO. The format of such discussions will be left to the Director General's discretion, in consultation with WIPO Member States.”
10. Following the Diplomatic Conference, consultations with Member States took place regarding the format and content of such discussions. As a result of the consultations, it was proposed that a distinct body should be established within WIPO to facilitate such discussions (see further below in Section III of this document) and that, in addition to the issue of genetic resources, the discussions should also include the results of WIPO's previous work on the related fields of traditional knowledge and expressions of folklore.

b) *Traditional Knowledge and Folklore*

11. The potential role of intellectual property rights in the protection of traditional knowledge and folklore is an emerging field, which requires thorough exploration. Although there are at present no clear, specific international intellectual property standards for protecting such knowledge, there are a growing number of instances where individuals and organizations are resorting to existing patent, trademark or copyright systems to protect their knowledge and culture. These efforts have met with mixed success, but greater appreciation and respect for traditional knowledge is drawing international attention to these issues.
12. In search of a model that makes the intellectual property system and traditional knowledge more compatible, in 1998 WIPO initiated a program of activities (Main Program 11 – “Global Intellectual Property Issues”) to explore, study and consult on the intellectual property aspects of the protection of traditional knowledge and expressions of folklore. One of the projects undertaken in the past two years has been a global assessment of the needs and expectations of holders of traditional knowledge. For purposes of such work, WIPO has been treating “expressions of folklore” as a form, and thus a subset, of “traditional knowledge”.

▪ **Fact-Finding Missions on Traditional Knowledge, Innovations and Culture**

13. In 1998 and 1999, WIPO’s Global Intellectual Property Issues Division undertook a series of nine Fact-Finding Missions (FFMs) to collect information on the intellectual property needs and expectations of holders of traditional knowledge. From the FFMs, WIPO learned that folklore and traditional knowledge are rich and diverse sources of creativity and innovation. The FFMs revealed that traditional knowledge systems are frameworks for continuing creativity and innovation in most fields of technology, ranging from traditional medicinal and agricultural practices to music, design, and the graphic and plastic arts. Stakeholders consulted during the FFMs considered traditional knowledge to be a constantly renewed source of wealth, both as an economic asset and as cultural patrimony. This was the case in both developing and developed countries visited during the FFMs.
14. WIPO learned from the FFMs that the intellectual property issues related to traditional knowledge cut across the conventional branches of intellectual property law, such as copyright and industrial property. In many cases traditional knowledge holders do not separate “artistic” from “useful” aspects of their intellectual creations and innovations; rather, both emanate from a single belief system which is expressed in daily life and ritual. The FFMs also revealed that numerous indigenous and local communities have protocols for the protection of traditional knowledge and traditional knowledge-based innovations under customary law. In general, the FFMs showed the richness and diversity of traditional knowledge on a global scale, both in terms of its inherent creativity and as potential subject matter for intellectual property protection.
15. From the preliminary data gathered during the FFMs, one can already see areas where the existing intellectual property system might be used to meet expressed needs of traditional knowledge holders. For example, under the umbrella of an association of grassroots innovators, fifteen traditional healers from India intend to collectively file a patent application for a veterinary medical kit consisting entirely of natural plant

medicines and compiled from their traditional practices and formulations. The patent application names the 15 healers as inventors and the association as the applicant. This collective filing allows the healers — who individually could not afford the patent filing fees — to share the costs of the application, the research on commercialization possibilities, and the risks of disclosure in case of rejection of the application. They suggested using this experience as a basis for the exploration of possible collective filing and management of patent rights by traditional knowledge holders and their associations.

16. The full results of the FFMs have recently been published by WIPO in an extensive Report entitled “Intellectual Property Needs and Expectations of Traditional Knowledge Holders: World Intellectual Property Organization WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999). The Report was first made available for public comment on WIPO’s website at www.wipo.int/traditionalknowledge/report/ and in paper form.

▪ **WIPO-UNESCO Regional Consultations on the Protection of Expressions of Folklore**

17. A specific area of study related to traditional knowledge has been the protection of so-called “expressions of folklore.” The international community has recognized the need to protect expressions of folklore since the 1970’s. In 1982, a set of model provisions were developed under UNESCO/WIPO auspices which could be incorporated into national legislation to help protect expressions of folklore. These are entitled “Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions” (“the Model Provisions”). According to the Model Provisions, expressions of folklore include “productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community . . . or individuals reflecting the traditional artistic expectations of such a community . . .”. These productions included verbal, musical, and tangible expressions, as well as “expressions by action” (e.g. folk dances, plays, and artistic forms).
18. The provisions would provide economic rights to authorize or prevent the exploitation of a specific expression of folklore, and rights would be exercised by a governmental authority or the community concerned. Currently, 33 countries have established provisions within their national legislation (usually under copyright) for the protection of expressions of folklore.
19. Unfortunately, effective international regimes for the exercise and administration of these rights have yet to develop; however, at the 1997 World Forum on the Protection of Folklore, UNESCO and WIPO were requested to convene regional consultations on these issues.
20. Subsequently, in early 1999, WIPO and UNESCO convened four consultations, namely for African countries, for countries of Asia and the Pacific region, for Arab countries and for Latin America and the Caribbean. The primary purpose of these consultations was to enable representatives of countries from these regions to exchange views and clarify issues in relation to the protection of folklore. The consultations produced recommendations to countries in their regions and to WIPO and UNESCO for future work on the protection of folklore.

21. The recommendations from these consultations, which are addressed to States and to WIPO and UNESCO, generally focus on three areas: (1) the need for identification and documentation of expressions of folklore (including the development of international standards for documentation), (2) the need for study of a regional approach to exercise/administration of rights in expressions of folklore which originate or are used in more than one country of a region, and (3) the possible development of *sui generis* forms of protection (whether under national law or an international treaty, or under a “soft law” approach such as the preparation of guidelines) for expressions of folklore. Another important recommendation emerging from the regional consultations calls for WIPO to undertake work towards protecting traditional knowledge (e.g. medicinal, agricultural, ecological) which is not included in the subject matter covered by the 1982 Model Provisions.
22. In 1998 and 1999, the Global Issues Division also organized two Roundtables on intellectual property and traditional knowledge in Geneva. The multidisciplinary nature of this work necessitated WIPO’s participation in meetings and processes on traditional knowledge taking place within other policy forums, such as UNESCO, the Office of the High Commissioner for Human Rights, the Secretariat of the Convention on Biological Diversity, the Food and Agricultural Organization, the World Health Organization, the World Trade Organization and the United Nations Environment Programme.

III. WIPO’S CURRENT WORK ON TRADITIONAL KNOWLEDGE AND FOLKLORE

23. Based on its exploratory work in the 1998-1999 biennium, WIPO is continuing its work on traditional knowledge and expressions of folklore in the 2000-2001 biennium. Several Main Programs in the Program and Budget for the 2000-2001 biennium contain proposed activities relating to these issues, including the Main Program of the Global Intellectual Property Issues Division.
24. These activities respond directly to many of the needs and expectations identified during the 1998-99 biennium. They include, for example:

- **The development of information materials on options under the existing intellectual property system for the protection of traditional knowledge**

These materials will provide practical information on options for the protection of traditional knowledge under the intellectual property (IP) system. The materials will be aimed at two main target groups, being traditional knowledge holders and the national IP offices responsible for the administration of the IP system in each country. The materials will form the basis of WIPO’s traditional knowledge-related training activities, including the workshops referred to below in the activity below. The materials will also be widely disseminated.

The same materials will also form the basis of an intellectual property/traditional knowledge Distance Learning Course to be offered by WIPO. The Distance Learning Program of the WIPO Academy takes full advantage of information technology and the Internet, offering new teaching methods, specially designed course materials, evaluation tools, tailored means of delivery, and expanded audiences. A six part Introduction to Intellectual

Property course has been developed and tested, and has been available to a worldwide audience since October, 1999, in English, French and Spanish. Teaching takes place in the virtual environment of the WIPO Academy's web site at <<http://academy.wipo.int>>. Further information is available at this website. It is expected that the new Distance Learning Course on IP and traditional knowledge will be available in due course.

- **Practical information and training workshops on the IP system and the protection of traditional knowledge**

The workshops will provide information and training on the IP system and the protection of traditional knowledge to traditional knowledge holders and other persons at the grassroots level, and to national IP offices. The workshops will be based on the written information materials referred to above. In addition to these workshops, traditional knowledge protection is now almost invariably included in the programs for the many training activities organized by WIPO's Cooperation for Development sector.

- **IP information, training and standards for the documentation of traditional knowledge**

The activity would pursue two practical results: (1) it will allow traditional knowledge documentation initiatives to manage IP rights (IPRs) during the traditional knowledge documentation process, and (2) it will allow national IP offices to integrate the traditional knowledge documentation from those initiatives into their existing procedures for filing, examining and granting of IPRs under the existing IP system. For example, by integrating traditional knowledge documentation into existing procedures and IP information systems, IP offices could include traditional knowledge documentation into their prior art searches when examining applications for patents in respect of traditional knowledge-based inventions. The output of the activity would be practical information materials on managing IPRs during the documentation process, written in a "How To"-format and accessible to users with limited IP background. The information materials would be applied in practical training workshops on IPR management for communities and key documentation institutions. The workshops would seek to link communities, documentation initiatives, and national IP offices so as to initiate cooperation between IP offices and traditional knowledge documentation initiatives at the national level

- **Practical studies of actual examples in which traditional knowledge protection has been sought under the IP system**

The activity will provide practical information on specific and actual examples in which indigenous and local communities have taken advantage of, or attempted to use, the IP system to either protect their traditional knowledge or to further their own interests in the commercial application and utilization of their traditional knowledge. The output of the activity will include practical information on difficulties and successes experienced in applying the IP system to traditional knowledge, lessons learned and divergences between identified needs of traditional knowledge holders and the protection provided by the existing IP system. The results of the activity will be disseminated and used in WIPO's training activities, including those referred to above.

- **Feasibility studies on the applicability of customary laws to traditional knowledge**

Traditional knowledge holders are subject to both customary and modern legal systems, since their knowledge constitutes subject matter to which both may apply. The interfaces, similarities and differences between customary and modern legal systems require understanding and management. This activity would seek ways to manage the relationship between modern and customary understandings of IPRs over traditional knowledge subject matter. It would record customary law systems and related cultural understandings relevant for traditional knowledge protection and draw implications on how the IP system may recognize and use customary law to manage the relationship with traditional knowledge holders.

- **A pilot project on collective acquisition, management and enforcement of IPRs in traditional knowledge**

One of the problems in the IP/traditional knowledge field is the collectivity of creation and ownership of traditional knowledge. This activity would specifically address this issue by exploring options for the collective acquisition, administration and enforcement of IPRs by traditional knowledge holders' associations. It would seek to examine the capacity of a selected community or traditional knowledge holder association to acquire, collectively exercise and enforce all relevant IPRs on behalf of the holders.

IV. INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

25. At the Twenty-Sixth Session of the General Assembly of the Member States of WIPO, held in Geneva from September 25 to October 3, 2000, the Member States established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore for the purpose of discussions on these subjects. The Intergovernmental Committee constitutes a forum in which discussions can proceed among Member States on three primary themes, namely 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.
26. Each one of these themes cuts across the conventional branches of intellectual property law and does therefore not fit into existing WIPO bodies, such as the Standing Committee on the Law of Patents, the Standing Committee on Copyright and Related Rights, the Standing Committee on Trademarks, Industrial Designs and Geographical Indications, and the Standing Committee on Information Technologies. At the same time, the three themes are interrelated, and none can be addressed effectively without considering aspects of the others.
27. The Intergovernmental Committee is open to all Member States of WIPO. As is usual in WIPO bodies, relevant intergovernmental organizations and accredited international and regional non-governmental organizations are invited to participate in an observer capacity.

28. The Committee held its first session from April 30 to May 3, 2001. The working documents of the session can be obtained from the Secretariat and are also available at http://www.wipo.int/news/en/index.html?wipo_content_frame=/news/en/conferences.html.

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