

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Twenty-Seventh Session
Geneva, March 24 to April 4, 2014

TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS: CERTAIN SUGGESTED CROSS-CUTTING ISSUES

Document prepared by the Chair of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, His Excellency, Ambassador Wayne McCook

1. In accordance with the work program of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC) for 2014, the Twenty-Seventh Session of the IGC will include consideration of cross-cutting traditional knowledge (TK) and traditional cultural expressions (TCEs) issues.
2. In view of this, the Chair of the IGC, His Excellency, Ambassador Wayne McCook, has prepared a non-paper which reflects the Chair's views on some of the possible cross-cutting TK/TCEs issues. The Chair's non-paper includes a table reflecting, side-by-side, the provisions of documents WIPO/GRTKF/IC/27/4 ("The Protection of Traditional Knowledge: Draft Articles") and WIPO/GRTKF/IC/27/5 ("The Protection of Traditional Cultural Expressions: Draft Articles"). It has been prepared for ease of comparison of the two documents referred to. At the request of the Chair, the Secretariat will make copies of the non-paper available to IGC participants.
3. The Chair has also prepared a summary of the non-paper which is attached as an Annex.

4. *The IGC is invited to take note of this document and the Annex to it.*

[Annex follows]

SUMMARY OF THE NON-PAPER ON TK AND TCE ISSUES PREPARED BY THE CHAIR

1. The IGC has previously identified four key policy issues that the IGC has agreed warrant prioritized attention: subject matter of protection, beneficiaries, scope of protection and exceptions and limitations.
2. In the past, the IGC has considered these policy issues separately, but in parallel, in relation to TK and TCEs. Given the similarities between the TK and TCEs draft articles, for the first time, the WIPO General Assembly has mandated a consideration of “cross-cutting TK/TCE issues.”
3. I wish to draw attention to some of the fundamental cross-cutting issues that remain unresolved, and impede further progress in the text-based negotiations of the IGC. In my view, it will be difficult to advance on the drafting of the TK and/or TCEs draft articles without resolving, or at least reaching greater clarity on, these fundamental cross-cutting issues. Some of the issues I propose cut across both the TK and TCEs texts (horizontal cross-cutting) and/or pervade all or most of the articles of at least one of the texts (vertical cross-cutting). Further, the cross-cutting discussion at IGC 27 might also facilitate a more direct and interactive comparison between the two texts, so that, for example, the IGC might agree that a provision, wording or language in the TK text should be copied across from the TCEs text, and *vice versa*.
4. The four cross-cutting issues I have identified are the following:
 - (1) the meaning of “traditional”;
 - (2) the beneficiaries of protection, in particular, the role of states or “national entities”;
 - (3) the nature of the rights, including the meanings of “misappropriation” and “misuse”;
and
 - (4) the treatment of publicly available and/or widely diffused TK and TCEs.
5. This list is not necessarily exhaustive and delegations may wish to propose some other cross-cutting issues for consideration.
6. For each of the issues I have identified, I also present in the non-paper, where possible, their implications, the main approaches to them, and I try to point to options available for their treatment.
7. Participants in the Twenty-Seventh Session may wish to use this information document and the non-paper in their preparations for the session as they see fit, bearing in mind that these are not intended to serve as working documents.

[End of Annex and of document]