

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

Twenty-Eighth Session
Geneva, July 7 to 9, 2014

PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES: PROPOSAL FOR SUBSIDIARY CONTRIBUTIONS TO THE VOLUNTARY FUND

Proposal by the Delegations of Australia, Finland, New Zealand and Switzerland

1. Since its creation in 2005, the WIPO Voluntary Fund for Accredited Indigenous and Local Communities (“the Fund”)¹ has benefited from a range of contributions from (in chronological order) the Swedish International Biodiversity Programme (SwedBio/CBM); France; the Christensen Fund; Switzerland (the Swiss Federal Institute of Intellectual Property); South Africa; Norway; Anonymous donor; Australia and New Zealand. The contributions enabled the Fund to finance the participation of representatives of accredited indigenous and local communities up to the Twenty-Sixth Session of the IGC.

2. As indicated in document WIPO/GRTKF/IC/27/3 para.1, the amount available in the account of the Fund was 823.10 Swiss francs on February 27, 2014, and remains unchanged at the current date, save for slight adjustments due to banking fees and interest, notwithstanding repeated appeals by the Chair of the IGC. Unless the Fund is complemented by additional voluntary contributions in the near future, the Fund will continue to be unable to cover any expense that might be recommended by the Advisory Board. This situation is unfortunate due to the important contribution that representatives of indigenous and local communities have made to the IGC negotiations.

3. Under the present Rules of the Fund, financial resources shall come exclusively from voluntary contributions by governments, NGOs and other private or public entities. These rules also specify that financial resources “specifically shall not be drawn from the regular WIPO budget” (see the Rules of the Fund under IV.6(a)). The complexity and length of the negotiations combined with the discretionary and irregular nature of voluntary contributions has

¹ See <http://www.wipo.int/tk/en/igc/participation.html>.

made it difficult for potential donors to maintain an adequate level of financial resources in the Fund and to sustain the Fund at a consistent level.

4. Based on the current financial situation of the Fund and due to the importance of facilitating the continued participation of representatives of indigenous and local communities in the negotiations so as to maintain the credibility and relevance of the IGC process, the Delegations of Australia, Finland, New Zealand and Switzerland propose, for the consideration of the IGC, to recommend to the WIPO General Assembly in September 2014 to amend the Rules of the Fund in order to enable contributions to be drawn from the regular budget of WIPO to replenish the Fund, as a subsidiary way to provide the necessary financial means to the Fund. Such contributions by WIPO will be made under a clearly defined condition, namely a decision by the WIPO General Assembly to make an *ad hoc* contribution within the framework of the Rules of the Fund. The relevant modifications of the Rules of the Fund are contained in the Annex of the present document.

5. The IGC is invited to consider the proposed modifications of the Rules of the Fund, as proposed in the Annex of the present document, and recommend the adoption of these modifications to the WIPO General Assembly at its session of September 2014.

[Annex follows]

Establishment of the WIPO Voluntary Fund
for Accredited Indigenous and Local Communities
as approved by the WIPO General Assembly (32nd session) and
as subsequently amended by WIPO General Assembly (39th 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 (these possible bodies being designated hereinafter by the generic term "the Committee")

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

I. NAME

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

II. 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.
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.

III. 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.

IV. 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) **In the absence of voluntary contributions mentioned under (a), any contribution drawn from the regular WIPO budget will be subject to a decision by the WIPO General Assembly.**
- (c) 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.
- (e d) 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 e) 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 f) 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 g) 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 expressly requested to remain anonymous),
- (iii) the amount of the resources available taking into account the funds disbursed,
- (iv) the list of people who have benefited from the Fund's support since the previous information memorandum,
- (v) the people chosen to benefit from the Fund but who withdrew,
- (vi) the amount of the support allocated to each beneficiary, and
- (vii) 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 h) 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 i) 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 j) 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 k) The WIPO Director General will take the administrative measures necessary to implement his decision for the session concerned, in accordance with Article 6(b).

V. 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]