

WIPO



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

Seventh Session
Geneva, November 1 to 5, 2004

BRIEF SUMMARY OF WORKING DOCUMENTS

Document prepared by the Secretariat

I. DOCUMENTS FOR THE SEVENTH SESSION

1. The following is a brief summary of the working documents prepared for or submitted to the seventh session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the "Committee") as at August 30, 2004.

WIPO/GRTKF/IC/7/1 Prov.: Draft Agenda for the seventh session.

2. This document contains the proposed items to be dealt with by the Committee, and is submitted to the Committee for possible adoption when it convenes for its seventh session.

WIPO/GRTKF/IC/7/2: Accreditation of certain Non-Governmental Organizations.

3. These documents set out the names, contact details and aims and objectives of non-governmental organizations which have applied to the Committee for accreditation as *ad hoc* observers to future sessions of the Committee. Accredited Organizations are invited to attend all meetings of the Committee, receive copies of all working documents, are entitled to make interventions on the issues under discussion following interventions by Member States and Intergovernmental Organizations, and can submit papers on issues being considered by the Committee for uploading on a special website reserved for Observers.

WIPO/GRTKF/IC/7/3: Protection of Traditional Cultural Expressions/Expressions of Folklore: Overview of Policy Objectives and Principles.

4. The Committee has decided to develop an overview of policy objectives and core principles for the protection of traditional cultural expressions (TCEs)/expressions of folklore (EoF). This document provides draft material for the Committee's consideration, for possible use in developing the proposed outcome. It sets out possible substantive elements of protection of TCEs/EoF in a manner which leaves open and facilitates future decisions by Member States on the context and legal status which they may assume at the international, regional and national levels. The material in this document is not, in substance, new to the Committee: it simply distils and structures the existing legal mechanisms and the extensive practical experience with protection of TCEs/EoF that have already been widely discussed by the Committee, and draws essentially on the Committee's own deliberations and the various materials put to the Committee.

5. This document draws together the legal measures used and practical experience developed by countries and communities in many geographical regions, at every level of economic development. The document suggests draft:

- policy objectives, which would set common general directions for protection and provide a consistent policy framework;
- general guiding principles, which would ensure consistency, balance and effectiveness of substantive principles;
- specific substantive principles, which would define the legal essence of protection.

WIPO/GRTKF/IC/7/4: Protection of Traditional Cultural Expressions/Expressions of Folklore: Outline and Analysis of Policy Options and Legal Mechanisms.

6. This is a companion document to WIPO/GRTKF/IC/7/3. It sets out, as requested by the Committee at its sixth session, "an outline of the policy options and legal mechanisms for the protection of TCE subject matter. . ." through which the objectives and principles in WIPO/GRTKF/IC/7/3 could be given effect. It illustrates that it is possible to draw from varied practical experiences and select specific mechanisms, causes of action, doctrines and other means to implement or achieve objectives and principles such as those suggested in WIPO/GRTKF/IC/7/3. Like that document, it is not, in substance, new to the Committee: it simply distils and structures the existing legal mechanisms and the extensive practical experience with protection of TCEs/EoF that have already been widely discussed by the Committee, and draws on the Committee's own deliberations and the various materials put to the Committee. It combines the practical experience of countries and communities in many geographical regions, at every level of economic development.

7. To serve as a useful reference and to maintain consistency, this document follows closely the structure proposed in WIPO/GRTKF/IC/7/3. Both documents draw on the same background of legal measures used and practical experience developed by countries and communities in many geographical regions, at every level of economic development. They both draw extensively on policy discussions and conclusions from related international policy processes which touch upon TCEs/EoF protection. Yet this document has a different focus,

and a complementary role in relation to WIPO/GRTKF/IC/7/3. No substantive decision is suggested on this material, which is supplementary and informative only.

WIPO/GRTKF/IC/7/5: Protection of Traditional Knowledge: Overview of Policy Objectives and Principles.

8. The Committee has decided to develop an overview of policy objectives and core principles for the protection of traditional knowledge (TK). This document provides draft material for the Committee's consideration, for possible use in developing the proposed outcome. It sets out possible substantive elements of TK protection in a manner which leaves open and facilitates future decisions by Member States on the context and legal status which they may assume at the international, regional and national levels. The material in this document is not, in substance, new to the Committee: it simply distils and structures the existing legal mechanisms and the extensive practical experience with protection of TK that have already been widely discussed by the Committee, and draws essentially on the Committee's own deliberations and the various materials put to the Committee.

9. This document draws together the legal measures used and practical experience developed by countries and communities in many geographical regions, at every level of economic development. The document suggests draft:

- policy objectives, which would set common general directions for protection and provide a consistent policy framework;
- general guiding principles, which would ensure consistency, balance and effectiveness of substantive principles;
- specific substantive principles, which would define the legal essence of protection.

WIPO/GRTKF/IC/7/6: Protection of Traditional Knowledge: Outline and Analysis of Policy Options and Legal Mechanisms.

10. This is a companion document to WIPO/GRTKF/IC/7/5. It sets out, as requested by the Committee at its sixth session, "an outline of the policy options and legal mechanisms for the protection of TK subject matter. . ." that could give effect to the objectives and principles in WIPO/GRTKF/IC/7/5. It illustrates that it is possible to draw from varied practical experiences and select specific mechanisms, causes of action, doctrines and other means to implement or achieve objectives and principles such as those suggested in WIPO/GRTKF/IC/7/5. Like that document, it is not, in substance, new to the Committee: it simply distils and structures the existing legal mechanisms and the extensive practical experience with TK protection that have already been widely discussed by the Committee, and draws on the Committee's own deliberations and the various materials put to the Committee. It combines the practical experience of countries and communities in many geographical regions, at every level of economic development.

11. To serve as a useful reference and to maintain consistency, this document follows closely the structure proposed in WIPO/GRTKF/IC/7/5. Both documents draw on the same background of legal measures used and practical experience developed by countries and communities in many geographical regions, at every level of economic development. They both draw extensively on policy discussions and conclusions from related international policy processes which touch upon TK protection. Yet this document has a different focus, and a

complementary role in relation to WIPO/GRTKF/IC/7/5. No substantive decision is suggested on this material, which is supplementary and informative only.

WIPO/GRTKF/IC/7/7: Update on Technical Standards and Issues Concerning Recorded or Registered Traditional Knowledge.

12. This document provides a factual update on a range of technical processes concerning the recordal or registration of TK, further to such material in documents WIPO/GRTKF/IC/6/8, WIPO/GRTKF/IC/5/6 and WIPO/GRTKF/IC/4/14.

WIPO/GRTKF/IC/7/8: Recognition of Traditional Knowledge in the Examination of Patent Applications.

13. The Committee has developed several defensive protection mechanisms that aim to enhance the recognition of TK within the patent system, and thus to reduce the practical likelihood that patents will be allowed that incorrectly claim inventions that make use of TK and genetic resources. These are outlined fully in documents WIPO/GRTKF/IC/5/6 and WIPO/GRTKF/IC/6/8.

14. It is now widely understood that defensive protection measures should not be undertaken in isolation, nor without prior informed consent of concerned TK holders, especially since it can entail publication or further dissemination of TK to the detriment of TK holders. In particular, holders of TK should not disclose their TK to third parties or to undertake or consent to its documentation or publication without fully considering the implications and possible damage to their interests. At the same time, some TK is already disclosed, and is available and accessible. There is increasing interest in ensuring that patent authorities take greater account of this disclosed TK during search and examination relating to the validity of patent applications. With this background, the Committee decided at its sixth session to build on its existing work and to develop draft recommendations for patent authorities.

15. In line with the decisions of the Committee, a questionnaire (WIPO/GRTKF/IC/Q.5) has been circulated to collect relevant information that would assist in future work, and in particular the development of recommendations. Document WIPO/GRTKF/IC/7/7 reports on the background to the issue and provides a possible structure for the proposed recommendations for consideration by the Committee. An update on responses to the questionnaire will be provided as an addendum to this document.

WIPO/GRTKF/IC/7/9: Genetic Resources: Draft Intellectual Property Guidelines for Access and Equitable Benefit-Sharing.

16. Since its inception, the Committee has worked towards guidelines on the intellectual property (IP) aspects of mutually-acceptable terms in agreements that concern access to genetic resources and equitable sharing of benefits from the use of accessed resources. This work has been aimed at producing a resource, to alert custodians of genetic resources to the practical issues that arise when they elect to enter into agreements on access and benefit-sharing. The Committee's work has been based on an empirical survey of experience in this field, and a database collecting actual terms of agreements. As a first step, the Committee agreed on a set

of guiding principles to frame this work, then oversaw the collection and analysis of practical experience in this area, and most recently considered a draft set of guidelines (WIPO/GRTKF/IC/6/5, submitted to the sixth session). It agreed to request further comments on these draft guidelines, so that a further draft could be prepared. The present document therefore provides the required update of this material for the further consideration of the Committee:

- the body of the document provides background information, essentially reproducing the contents of document WIPO/GRTKF/IC/6/5, with minimal changes to reflect developments at the sixth session; and
- the Annex provides updated guidelines, which incorporates various responses and comments received at the sixth session of the Committee and subsequently provided by Member States.

WIPO/GRTKF/IC/7/10: Genetic Resources and Patent Disclosure Requirements: Options on the National and International Dimension.

17. The Committee at its sixth session decided to refer this matter to the WIPO General Assembly for consideration. Accordingly, this document will be prepared, if required, following consideration of the issue by the Assembly.

WIPO/GRTKF/IC/7/11: Update on Legal-Technical Assistance and Capacity Building Activities.

18. This document provides information on legal and technical assistance and capacity building activities undertaken within WIPO's program activities since the previous update which was considered by the Committee at its fifth session.. It is an illustrative list only, and may not include every relevant activity undertaken within the overall WIPO program. It illustrates the continuing strong interest in practical, technical and legal capacity building for the protection of folklore/TCEs and TK, as a distinct set of needs and expectations, in the context of the increased policy attention recently paid to these issues.

WIPO/GRTKF/IC/7/12: Participation of Indigenous and Local Communities.

19. This document provides further updated information on the various steps under taken to facilitate the participation of indigenous and local communities in the work of WIPO concerning IP and genetic resources, TK and TCEs, in particular the enhanced involvement in the work of the Committee. It notes the steps already undertaken to enhance participation of indigenous and local communities, considering both qualitative involvement in substantive discussions and development of Committee documents, as well as practical measures to support attendance at Committee meetings. It notes that a comprehensive approach is necessary, combining qualitative support and enhanced work practices with logistical support for attendance. In the short term, this includes continuing to encourage voluntary donors to support the participation of representatives of accredited observers in the indigenous consultative forum and in the Committee itself. In the longer term, these voluntary funding initiatives may be formalized in the shape of a distinct Voluntary Fund. This paper therefore set out possible elements for a future Voluntary Fund for the Committee's decision. This brief proposal draws on past discussion in the Committee, consultation within the United Nations system, and the series of issues papers considered by the Committee in the past.

II. INFORMATION DOCUMENTS SUPPLEMENTING THE ABOVE WORKING DOCUMENTS

WIPO/GRTKF/IC/7/INF/2: List of Documents Posted on Accredited Observers Web Page

20. This document provides a list of documents submitted by accredited Observers and that have been posted on the Accredited Observer's web page. This web page was created to enhance participation and to disseminate the views of accredited observers on the issues before the Committee, and therefore makes available comments, technical papers, national experiences and similar documents submitted by accredited observers on issues being discussed by the Committee.

III. OTHER DOCUMENTS OF CURRENT INTEREST

21. The discussions of the Committee may also concern the following additional documents.

Publications

Study No. 1 "Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions. *Prepared by Ms. Terri Janke, Terri Janke for the World Intellectual Property Organization (WIPO).* (WIPO Publication No. 781E)

Study No. 2 "A Study on the Protection of Expressions of Folklore/Traditional Cultural Expressions. India, Indonesia and the Philippines". *Written by Mrs P.V. Valsala G. Kutty for the World Intellectual Property Organization (WIPO).* (WIPO Publication No. 912E)

Study No. 3 "WIPO Technical Study on Patent Disclosure Requirements Related to Genetic Resources and Traditional Knowledge". (WIPO Publication No.786E)

Study No. 4: UNEP/WIPO Study on the Role of Intellectual Property (IP) Rights in the Sharing of Benefits Arising from the use of Biological Resources and Associated (WIPO Publication No. 769E)

Booklet No. 1 "Intellectual Property and Traditional Cultural Expressions/Folklore". (WIPO Publication No. 913E)

Background Paper No. 1 "Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions/Expressions of Folklore". (WIPO Publication No. 785E)

Questionnaires

22. Five questionnaires have been circulated and continue to form the basis of several documents prepared for the sessions of the Committee. Subject to decisions of the Committee, further responses to these questionnaires would be relevant for the the continuing work program of the Committee. The questionnaires are:

- WIPO/GRKTF/IC/Q.1: Revised Questionnaire for the Survey on Existing Forms of Intellectual Property Protection for Traditional Knowledge.
- WIPO/GRKTF/IC/Q.2: Questionnaire on Contractual Practices and Clauses relating to Intellectual Property, Access to Genetic Resources and Benefit-Sharing.
- WIPO/GRKTF/IC/Q.3: Questionnaire on various requirements for Disclosure relating to Genetic Resources and Traditional Knowledge in Patent Applications.
- WIPO/GRKTF/IC/Q.4: Questionnaire on Databases and Registries Related to Traditional Knowledge and Genetic Resources.
- WIPO/GRKTF/IC/Q.5: Questionnaire on Prior Art Criteria related to Traditional Knowledge and Genetic Resources.
- WIPO/GRTKF/IC/2/7: Questionnaire on National Experiences with the Legal Protection of Folklore.

Compilations of the responses to WIPO/GRKTF/IC/Q.1, WIPO/GRKTF/IC/Q.3 and WIPO/GRTKF/IC/2/7 are available separately. Responses to WIPO/GRKTF/IC/Q.2 are incorporated in the on-line database available at:

<http://www.wipo.int/tk/en/questionnaires/ic-q2/index.html>.

A selection of earlier documents of potential continuing interest

WIPO/GRTKF/IC/6/3: Traditional Cultural Expressions/Expressions of Folklore: Policy and Legal Options.

WIPO/GRTKF/IC/6/4: Traditional Knowledge: Policy and Legal Options.

WIPO/GRTKF/IC/6/5: Genetic Resources: Draft Intellectual Property Guidelines for Access and Benefit-Sharing Contracts.

WIPO/GRTKF/IC/6/6: Traditional Knowledge and Traditional Cultural Expressions: The International Dimension.

WIPO/GRTKF/IC/6/7: Update on Legal-Technical Assistance and Capacity-Building Activities.

WIPO/GRTKF/IC/6/8: Defensive Protection Measures relating to Intellectual Property, Genetic Resources and Traditional Knowledge.

WIPO/GRTKF/IC/6/9: Genetic Resources and Patent Disclosure Requirements: Transmission of Technical Study to the Convention on Biological Diversity.

WIPO/GRTKF/IC/6/10: Participation of Indigenous and Local Communities.

WIPO/GRTKF/IC/6/12: Submission by the African Group: Objectives, principles and elements of an international instrument, or instruments, on intellectual property in relation to genetic resources and on the protection of traditional knowledge and folklore

WIPO/GRTKF/IC/6/13: Certain Decisions of the seventh Conference of the Parties to the Convention on Biological Diversity.

WIPO/GRTKF/IC/6/14: Report.

WIPO/GRTKF/IC/5/3: Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions.

WIPO/GRTKF/IC/5/5: Draft Toolkit on Intellectual Property Management

WIPO/GRTKF/IC/5/7: Consolidated Survey of Intellectual Property Protection of Traditional Knowledge.

WIPO/GRTKF/IC/5/8: Composite Study on the Protection of Traditional Knowledge.

WIPO/GRTKF/IC/5/9: Contractual Practices and Clauses relating to Intellectual Property, Access to Genetic Resources and Benefit-Sharing

WIPO/GRTKF/IC/5/10: Draft Technical Study on Disclosure Requirements Related to Genetic Resources and Traditional Knowledge.

WIPO/GRTKF/IC/5/11: Participation of Indigenous and Local Communities.

WIPO/GRTKF/IC/5/12: Overview of Activities and Outcomes of the Intergovernmental Committee.

WIPO/GRTKF/IC/5/13: Patent Referring to *Lepidium meyenii* (Maca): Responses of Peru. *Document submitted by the Delegation of Peru.*

WIPO/GRTKF/IC/5/14: Isfahan Declaration. *Document submitted by the Delegation of the Islamic Republic of Iran.*

WIPO/GRTKF/IC/5/INF/2: Information on National Experiences with the Intellectual Property Protection of Traditional Knowledge.

WIPO/GRTKF/IC/5/INF/3: Comparative Summary of *Sui Generis* Legislation for the Protection of Traditional Cultural Expressions.

WIPO/GRTKF/IC/5/INF/4: Comparative Summary of Existing National *Sui Generis* Measures and Laws for the Protection of Traditional Knowledge

PCT/R/WG/4/130: Proposals by Switzerland regarding the Declaration of the Source of Genetic Resources and Traditional Knowledge in Patent Applications

WIPO/GRTKF/IC/4/13: Access to Genetic Resources Regime of the United States National Parks. *Document submitted by the Delegation of the United States of America.*

WIPO/GRTKF/IC/4/14: Technical Proposals On Databases and Registries of Traditional Knowledge and Biological/Genetic Resources. *Document submitted by the Asian Group.*

WIPO/GRTKF/IC/3/5: Inventory of Traditional Knowledge-related Periodicals.

WIPO/GRTKF/IC/3/6: Inventory of Existing Online Databases containing Traditional Knowledge Documentation Data.

WIPO/GRTKF/IC/3/7: Review of Existing Intellectual Property Protection of Traditional Knowledge.

WIPO/GRTKF/IC/3/9: Traditional Knowledge - Operational Terms and Definitions.

WIPO/GRTKF/IC/3/10: Final Report on National Experiences with the Legal Protection of Expressions of Folklore.

WIPO/GRTKF/IC/3/12: Certain Decisions of the Sixth Conference of the Parties to The Convention on Biological Diversity. *Document submitted by the Secretariat of the Convention on Biological Diversity.*

WIPO/GRTKF/IC/2/INF.2: International Treaty on Plant Genetic Resources for Food and Agriculture.

WIPO/GRKTF/IC/2/10: Position Paper of the Asian Group and China. *Document submitted by the Asian Group and China.*

WIPO/GRTKF/IC/1/3: Matters concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore – an Overview.

WIPO/GRKTF/IC/1/8:

- Directive 98/44/EC of the European Parliament and of the Council on the Legal Protection of Biotechnological Inventions;
- Explanatory Note on Recital 27 of the above Directive concerning the Indication of the Geographical Origin of Biotechnological Inventions;
- Communication by the European Union and its Member States on the Relationship between the Convention on Biological Diversity and the TRIPS Agreement Paper on the Relationship between Intellectual Property Rights and Biodiversity.

Documents submitted by the European Community and its Member States.

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