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

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UPDATE ON TECHNICAL STANDARDS AND ISSUES CONCERNING RECORDED
OR REGISTERED TRADITIONAL KNOWLEDGE

Document prepared by the Secretariat

1. This document provides a brief account for the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee”) on various practical activities relating to the documentation and recordal of traditional knowledge (TK), updating past documents on this subject. In line with past discussion of this subject, this document is not intended to promote or encourage the recordal or registration of TK, but to share information about practical experience in the area. For some communities, and for some forms of TK, the strong preference is not to record or document TK, due to concerns about possible negative implications (such as unauthorized access and use of TK by third parties, or unintentional passing of TK into the public domain). How to deal with those concerns has been widely discussed in the Committee, and is the subject of current work in developing a practical toolkit (see WIPO/GRTKF/IC/5/5).

2. At its third session (in June 2002), an informal panel of experts briefed the Committee on national experiences with registries and databases of traditional knowledge, including reports from China, India, Venezuela and the Tulalip Tribes of the United States of America. The objective of the panel of experts was to exchange information on the experiences of countries and communities with the documentation, compilation and registration of recorded and disclosed traditional knowledge, and to explore what are the disadvantages and advantages of traditional knowledge registration. In the course of three years, since the

reports of the experts on the informal panel were presented, considerable progress has been made in the community and national projects that were presented to the Committee.

3. This document provides an update on the progress with these projects since 2002 and provides general background information for a similar informal panel of experts which will brief the Committee at its eighth session on the progress with these and other projects concerning recorded or registered traditional knowledge. The document is merely a background information resource. More detailed information will be provided directly by the experts on the experiences of their countries and communities with recorded or registered traditional knowledge (TK).

I. Experiences With Intellectual Property Issues Concerning Recorded or Registered Traditional Knowledge

4. An update on a number of communities or countries is provided below. Further summaries may be included in an addendum to this document based on interventions or presentations made during the Committee's eighth session.

China Traditional Chinese Medicine (TCM) Patent Database

5. The "China Traditional Chinese Medicine (TCM) Patent Database" exists in two language versions. The Chinese language version contains more than 12,124 deeply indexed records of TCM patent literature with 32,603 TCM formulas. The English language version is a Demo version, which was prepared for and demonstrated at the third session of the Committee, contained 1,761 records of TCM patent literature in English with 4,177 TCM formulas. Since the establishment of the Demo version for the third session of the Committee, the English language sample has been available on the Internet.¹ At the time of the third session, the Chinese language records covered the time period from April 1985 to June 2001, whereas the 1,761 English language demonstration records cover the period from 1993 to 1994. The database focused on bibliographic type data related to TCM. The China TCM Patent Database was compiled by the State Intellectual Property Office (SIPO) of the People's Republic of China. In addition to the China TCM Patent Database, SIPO uses some other TCM databases, which were not compiled directly by SIPO and are not located on SIPO servers. Most of them are in Chinese.

"StoryBase" of the Tulalip Tribes of Washington State

6. In the United States of America the Tulalip Tribes in Washington State are a federally-recognized Indian Tribe located on the Tulalip Reservation in the mid-Puget Sound. The Tulalip reservation was established by the Point Elliott Treaty in 1855 to provide a permanent home for the Snohomish, Snoqualmie, Skagit, Suiattle, Samish and Stillaguamish Tribes and allied bands living in the region. The Reservation is rich with natural resources: marine waters, tidelands, fresh water creeks and lakes, wetlands, forests and developable land. The Tulalip Tribes are compiling a database of their traditional environmental knowledge named "StoryBase".² While compiling this database, the tribes have distinguished between

¹ See <http://211.157.104.69/englishversion/help/help.html>

² See Tulalip Natural Resources. "Cultural Stories" *ICONS CD-ROM*. 2002. See entry in the Inventory contained in Annex II.

“Type A knowledge”, which they wished to reserve exclusively for the members of the tribal communities, and “Type B knowledge”, which the tribes wished to make available to the public at large. The software which is being developed to operate the database is being programmed to restrict access for Type A knowledge in the StoryBase to community members, whereas Type B knowledge will be disclosed and made available either to the general public or to patent examiners only. In distinguishing between Type A and Type B knowledge, intellectual property considerations are being taken into account and in the technical structure of the database this distinction will be reflected in the access privileges of different users. The access privileges are complex and are still being developed on the basis of discussions within the Tribes. However, the tribes have already identified three “core principles” that should be borne in mind as TK finds expanded use in policy making: tribes are sovereign; good law follows good practice; researchers should perform research in utmost good faith and respect for tribal traditions.³

Traditional Knowledge Digital Library of Ayurveda

7. One of the reports concerned the Traditional Knowledge Digital Library (TKDL) project of India, which had been initiated by the Council of Scientific and Industrial Research (CSIR) of the Government of India. Since the time of the informal panel of experts, held on June 17, 2002, there has been a forward movement on this digital library. After completing 36,000 formulations in five international languages, significant work has been carried out on the Ayurvedic system of traditional medicine, which was codified and disclosed in writing in ancient Sanskrit scriptures in the 12th century B.C. With respect to TKDL Unani, a team of 30 Unani experts, information technology experts and scientists is currently working to develop a database of previously disclosed Unani literature. Similarly, it is intended to initiate work shortly on the Siddha system of traditional medicine in South Asia.

Registers of the Collective Knowledge of Indigenous Peoples Under Law No. 27811 of Peru

8. Law No. 27811 of Peru was published in the Official Journal of Peru on August 10, 2002 and introduces a protection regime for the collective knowledge of indigenous peoples derived from biological resources.⁴ Title VI of the Law concerns “Registers of the Collective Knowledge of Indigenous Peoples” and provides in Article 15 that “[t]he collective knowledge of indigenous peoples may be entered in three types of register: (a) Public National Register of Collective Knowledge of Indigenous Peoples; (b) Confidential National Register of Collective Knowledge of Indigenous Peoples; (c) Local Registers of Collective Knowledge of Indigenous Peoples. The Public National Register of Collective Knowledge of Indigenous Peoples and the Confidential National Register of Collective Knowledge of Indigenous Peoples shall be under the responsibility of INDECOPI.”⁵ The purposes of the Registers are described as the following, as the case may be: “(a) to preserve and safeguard the collective knowledge of indigenous peoples and their rights therein; (b) to provide INDECOPI with such information as enables it to defend the interests of indigenous peoples where their collective knowledge is concerned.”⁶ Subsequent

³ See Hardison, P. “Traditional Knowledge Studies and the Indigenous Trust.” Tulalip Tribes and the Indigenous Biodiversity Information Network (IBIN). September 15, 2004 (on file with Mr. Hardison).

⁴ See Official Journal ‘El Peruano’, August 10, 2002

⁵ Article 15, Law No 27811

⁶ Article 16, Law No 27811

provisions on the character of the different registers provide that the Public National Register “shall contain such collective knowledge as is in the public domain”⁷ and the Confidential National Register “may not be consulted by third parties.”⁸ Pursuant to these provisions the establishment of the registers foreseen by the law are currently under way.

II. Substantive Issues Arising from the Experiences

9. The experiences reflected in these and numerous other issues raise several substantive issues on which increasing experience is now available. Comparative analyses of such initiatives have identified some of substantive questions such as standardised registration, protection, or erosion of rights, TK database trusts, and protection of the contents of databases.⁹ Member State proposals, in particular the proposal of the Asian Group and China at the fourth Session of the Committee, proposed that the Committee should consider the possibility of creating a legal presumption of ownership on the part of the TK holder with a TK rights system.¹⁰

10. Many of these issues have already been addressed in one of the Committee’s first technical normative products on TK: the Data Specification (a set of agreed standards) for databases and registries of TK and biological/genetic resources, which was agreed as an international standard by the Committee at its fifth session.¹¹ At the fourth session of the Committee, the Asian Group submitted a document entitled “Technical Proposals on Databases and Registries of Traditional Knowledge and Biological/Genetic Resources” to the Committee, with certain proposals for decision.¹² The document stated that “there is a need to develop an internationally agreed Data Specification (a set of agreed standards) for databases and registries of TK and biological/genetic resources, including the consideration of related legal questions, such as the relationship of documented TK and recognition of rights associated with TK, and the possibility of creating a legal presumption of ownership on the part of the TK holder with a TK rights system”.¹³ The document contained a draft of such a Data Specification. Based on the draft, the Asian Group proposed to develop an interregional consensus on the data specification.

11. The document proposed that “the Committee should create a Task in its work program to further develop and adopt the draft Data Specification.”¹⁴ The Committee considered the proposal at its fourth session and decided that “this issue would remain on the agenda for the fifth session, including the proposal of the Asian Group”.¹⁵

12. At the fifth session the Committee reconsidered the proposed Data Specification and “supported the proposal ..., including the transmission of it to the appropriate body within the

⁷ Article 17, Law No 27811

⁸ Article 18, Law No 27811

⁹ See *The Role of Registers & Databases in the Protection of Traditional Knowledge. A Comparative Analysis*. UNU Institute of Advanced Studies, 2003.

¹⁰ See WIPO/GRTKF/IC/4/14, Annex, page 4 (“Proposed Future work of the Intergovernmental Committee”).

¹¹ See WIPO/GRTKF/IC/4/14 and WIPO/GRTKF/IC/5/15.

¹² WIPO/GRTKF/IC/4/14.

¹³ WIPO/GRTKF/IC/4/14, page 3.

¹⁴ See WIPO/GRTKF/IC/4/14, Annex, page 4

¹⁵ See WIPO/GRTKF/IC/4/15, para. 125

Standing Committee on Information Technology (SCIT).”¹⁶ The Data Specification has since been referred to in several TK initiatives as well as draft technical and legal frameworks relating to disclosed TK.

III. Conclusion

13. As increasing experience is gained at community, national and international levels with issues surrounding recorded and registered TK, the Committee continues to provide a forum for exchange of information about such experiences and progress. At the eighth session, this exchange of information will take the form of an informal panel of experts, and may possibly also include detailed interventions under the relevant agenda item (Item 7). The Committee’s standard setting work on technical aspects and issues concerning recorded or registered traditional knowledge has, in essence, been successfully completed at the fifth session of the Committee, with the adoption of a data standard.

14. The Intergovernmental Committee is invited to take note of the contents of this document and comment upon them.

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¹⁶ See, WIPO/GRTKF/IC/5/15, para. 109