



The WIPO Intergovernmental Committee and its Mandate 2010-2011

Wend Wendland

Director (a/g) and Head, Traditional
Knowledge Division, WIPO



Structure of presentation

- The establishment of the IGC in 2000
 - What are some of the issues?
 - Terminology
- Has the IGC achieved anything so far!?
- The IGC's mandate for 2010-2011
- The 15th session (December 7 to 11, 2009)
- Next steps



A retrospective

- Diplomatic Conference for Patent Law Treaty, May 2000
 - a Member State proposal to address relationship between IP and access to and benefit-sharing in **genetic resources**
 - informal discussions: agreement to establish Intergovernmental Committee to address IP and genetic resources, as well as “traditional knowledge” and “expressions of folklore” (TCEs)
- Committee formally established at WIPO General Assembly in September 2000
 - First session: April 2001
 - Fifteenth session: December 7 to 11, 2009





Genetic resources, TK and TCEs: common characteristics

- Until recently regarded as “common heritage of humanity”
 - growing recognition of their **economic potential** - focus shifted from their **preservation** to their **utilization** - equity within IP required a reconsideration of their public domain status

- GRs, TK and TCEs query individualism within IP system
 - GRs are living, self-replicating resources
 - TK and TCEs are collectively and inter-generationally created, maintained and developed

- Intellectual assets of developing countries and other new claimants within IP policy-making
 - claims for new IP rights in GRs, TK and TCEs a *quid pro quo* for extending conventional IP rights
 - rise of the indigenous peoples movement

- 
- TK and TCEs are “intellectual property”
 - TK/TCEs of value for biodiversity conservation, food security, cultural identity, cultural diversity, healthcare . . . TK/TCEs should be preserved, maintained, promoted
 - But, should TK be “protected” in an IP sense?
 - TK and TCE-based innovations and creations (derivatives) are already protected
 - Should TK and TCEs “as such” be protected?
 - If so, what does “protection” mean?
 - Is the existing IP system adequate? Or should the existing system be adapted? Should separate IP systems for TK/TCEs be established?


- 
- GRs as such may not be intellectual property; may not be susceptible of direct protection by IP systems

 - IP issues include:
 - “Defensive” protection of genetic resources
 - Disclosure requirements in patent applications for information related to genetic resources used in the claimed invention
 - IP issues in mutually agreed terms for the fair and equitable sharing of benefits arising from the use of genetic resources



Getting comfortable with terms and acronyms . . .

- Traditional knowledge (“TK”)
 - “the content or substance of knowledge resulting from intellectual activity in a traditional context, such as knowledge related to agriculture, biodiversity, medicine...” (WIPO, Draft TK Provisions)
- Traditional cultural expressions/expressions of folklore (“TCEs”)
 - “tangible and intangible forms in which knowledge and culture are manifested and expressed, such as music, designs, performances, art, symbols, literature, crafts and architecture. . .” (WIPO, Draft TCE Provisions)
- Genetic resources (“GRs”)
 - “genetic material of actual or potential value”. “Genetic material” means any material of plant, animal, microbial or other origin containing functional units of heredity (Convention on Biological Diversity, 1992)



The IGC - from aspiration to norm-building. . .

- TCEs/TK/GRs now part of mainstream IP discourse:
 - IGC is a space for new voices and claimants in IP discourse (over 200 NGOs)
 - ongoing evaluation of key IP principles (“fair use”, “public interest”, “public domain”, “author”, “original”, etc.)
 - new applications for core values embedded in IP system – preventing free-riding exploitation of creativity, safeguarding distinctiveness and reputation, providing attribution and integrity



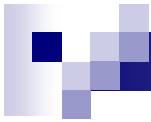
Outcomes to date...

- Amendments to IPC to take TK-related material into account
- Inclusion of TK-related journals in minimum documentation under the PCT
- Database of “best practices” in ABS contracts
- Technical specifications for TK databases
- Guidelines on recognition of TK as prior art in the examination of patent applications
- Resources on IP management during recording and digitization of TCEs and documentation of TK
- Draft provisions for the protection of TK and TCEs/EoF

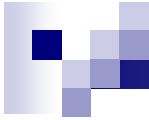


New IGC mandate 2010-2011

- text-based negotiations with the objective of reaching agreement on a text of an international legal instrument (or instruments) which will ensure the effective protection of GRs, TK and TCEs
- a clearly defined work program. . . four sessions of the IGC and three inter-sessional working groups, in the 2010-2011 biennium
- build on the existing work of the IGC . . . use all WIPO working documents, including WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5 and WIPO/GRTKF/IC/11/8A
- the Committee is requested to submit to the 2011 General Assembly the text of an international legal instrument (or instruments). The General Assembly in 2011 will decide on convening a Diplomatic Conference
- “without prejudice to the work pursued in other fora”
- “bearing in mind the Development Agenda recommendations”



Date	Activity
December 7 to 11, 2009	IGC 15
February/March 2010	First Intersessional Working Group
May/June 2010	IGC 16
September 2010	WIPO General Assembly
October 2010	Second Intersessional Working Group
December 2010	IGC 17
February/March 2011	Third Intersessional Working Group
May/June 2011	IGC 18
Early September 2011	IGC 19
September 2011	WIPO General Assembly



- “The new IGC mandate [marks] a watershed”

(Delegation of Tunisia, WIPO General Assembly, October 1, 2009)

- “The outcome [of the IGC’s work under its new mandate] could have significant global governance implications...”

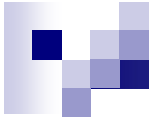
(Global Governance Watch, October 21, 2009)



IGC 15 - December 7 to 11, 2009

■ IGC 15: objectives

- Pave the way for “text-based negotiations” – ie., resume substantive work
- Define a work program for 2010-2011, including arrangements for the inter-sessional working groups



- IGC 15: what happened?
 - Technical discussions held on core documents – **substantive work resumed**
 - Revised documents: published by mid January 2010 for comment by end February 2010
 - Plus: experiences on GRs may be submitted by February 12, 2010
 - Dates for IGC 16 not yet settled
 - Discussions to continue on IWGs – **procedural questions referred to next session**
 - Terms of reference, duration and composition/participation – African Group and other proposals
 - Dates for IWGs awaiting further direction from IGC 16



Next steps

- Undertaking “text-based negotiations”
 - building trust and confidence
 - re-familiarizing with “negotiations” and “working groups”
 - defining the substantive program of the IGC and IWG
 - clarifying the methods of work of the IGC and IWG
 - building on the existing work of the IGC and national/regional experience
 - coordinating with other fora (CBD, TRIPS Council, FAO, UNESCO), especially on [genetic resources](#)



Wend.Wendland@wipo.int

grtkf@wipo.int

<http://www.wipo.int/tk/en/index.html>

Sign up for the TK Division's e-Newsletter and e-Updates!