

World Intellectual Property Organization

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

Sixth Session

Geneva, March 15 to 19, 2004

Agenda Item 5; Traditional Cultural Expressions (TCEs)

- Statement by the Saami Council -

Thank you Mr. Chairperson,

The Saami Council joins others and congratulates the WIPO Sec for the excellent work done when providing Document 6/3, which we find very useful for the continued work of this Committee.

We support the proposal made in Document 6/3 of para. 211 (ii), that the Committee accelerates its substantive work in the on TCEs, including the preparation of an overview of policy objectives and core principles for protection of TCEs as well as an outline of the policy options and legal mechanisms for the protection of TCE subject matter.

The Saami Council supports these proposals on the understanding that such work constitutes a step towards developing an international instrument that protects TCEs. The Saami Council agrees with the New Zealand delegation that such an instrument could be a property protection regime, but more likely a cultural heritage protection regime, or a combination of both, as also identified by Doc 6/3, e.g. in para. 110.

Given that an international instrument thus most likely – in order to adequately protecting indigenous peoples' TCEs – will have to include elements that goes beyond traditional IPR, we believe it crucial that the WIPO Sec seeks to cooperate with other relevant UN bodies in this work. In this context, we particularly would like to highlight the importance of WIPO seeking the cooperation with the Permanent Forum on Indigenous Issues in all activities relating to TCEs.

Mr. Chairperson,

In continuing its work as suggested in para. 211, the Saami Council calls on the WIPO Sec to focus on particularly two issues.

Firstly, we draw the attention to para 97 in Document 6/3, where the question is asked whether there is necessary to establish a protection for TCEs currently deemed to be in the so called public domain. The Saami Council – and other indigenous organizations – have repeatedly in this Committee stressed and given concrete examples of ongoing thefts and disrespectful use of indigenous TCEs as this debate continues. This theft is made possible by a legal system that is not ours, that we had no part in creating, and that allows others to come in and steal elements of our culture, without paying any attention to our views, needs or interests. The Saami Council urges the WIPO Sec to direct increased attention to the issue of protection for TCEs in the so-called public domain in its future work.

In doing so, even though we appreciate this debate and find it constructive, we believe that in order to speed up the process, it would be useful if the WIPO Sec, in the documents prepared for the next IGC, starts to experiment with some more “legalistic” language for the IGC to consider. We believe that only then will the discussions in this fora be really focused and concrete.

Secondly, we would like to draw your attention to paras. 19-21 in Document 6/3 elaborating upon the need to consider customary laws in the protection of TCEs. We would particularly like to commend the Sec for this part of Document 6/3, as we find very insightful. Member states in this Committee must recognize that indigenous peoples are equally entitled to have our legal values respected as non-indigenous peoples. Thus, indigenous TCEs must be protected in accordance with the relevant indigenous peoples’ legal system and legal thinking, which any international instrument must recognize. Member states should acknowledge that there is nothing dramatic in recognizing legal pluralism in a country, as indicated in para. 20. The Saami Council is encouraged by the WIPO Sec having commenced the work with the study on the role customary laws should play in protection of TCEs. As the Canadian delegation, the Saami Council is prepared to contribute to this study in any way we can.

Finally Mr. Chairperson, the Saami Council listened with interest to New Zealands proposal that the IGC elaborate a practical guide for protection of TCEs. We suggest that the Committee consider this proposal carefully.

Thank you Mr. Chairperson.

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Agenda Item 6; Traditional knowledge

- Statement by the Saami Council -

Thank you Mr. Chairperson,

The Saami Council again extends our gratitude to you for allowing us to address the Committee. We find this very appropriate, as we would like to think that after having discussed these issues extensively, the member states might be interested in listening to the voices of the peoples that will be mostly affected by their decisions. In return for your understanding Mr. Chairperson, we will try to be brief.

The Saami Council's position on Document 6/4 is similar to that on the parallel Document 6/3. Again, we congratulate the Secretariat for the excellent work done in preparing Document 6/4. We support the proposals made in the end thereof, and would like to draw the attention to certain particular elements in the Document at hand.

Firstly, we reiterate the need to speed up the work with protecting TK that traditional IPR-mechanisms regard to be in the so called public domain, in accordance with relevant indigenous customary laws. We encourage the Secretariat to give the customary law study the highest priority and repeat our availability to contribute to this work. In this context, we further reiterate that unlike the delegation of the United States, we think that Document 6/4 contains full evidence of that conventional IPR-mechanisms cannot adequately protect TK.

Secondly, the Saami Council underlines that any international instrument must recognize who is the actual owner or custodian of TK, *i.e.* normally a community - as identified in para. 84 of Doc 6/4, or, in the case of indigenous peoples, a people. The fact that indigenous knowledge belongs to the relevant indigenous people highlights the need for enhanced attention being given to the principle of PIC, as an important tool for the protection of TK.

Further, in the Saami Council's opinion, the applicability of the principle of PIC to TK at the same time substantially limits the relevance of ABS regimes to TK. It seems to us that these principles are essentially mutually exclusive. Since TK can only be accessed and shared with other groups or subjects with the indigenous people's consent, there can only be access and

sharing to the extent the relevant indigenous people so agrees. Therefore, we see little need for the WIPO IGC further discussing ABS regimes in the context of TK. Moreover, addressing ABS regimes in the IGC would constitute a duplication of work, as identified by the Brazilian delegation. Such discussions are currently ongoing within the framework of the CBD – particularly in the ABS Working Group.

We encourage the Secretariat to take these aspects into account in its future work on TK, and thus gives priority to the work on recognition of exclusive rights for TK holders, as suggested in para 20 of Doc 6/4 and focusing on the principle of PIC as identified by para. 21 whereas leaving the work on ABS mentioned in para. 22 to the CBD ABS WG.

Finally, Mr. Chairperson,

While duplication of work is undesirable, cooperation and coordination is essential. The Saami Council would therefore like to address para. 28 (b) in Doc. 6/4 concerning coordination with other relevant fora and processes. It appears that some relevant fora have accidentally been omitted, including the Office of the High Commissioner on Human Rights, the Special Rapporteur on Indigenous Peoples' Rights and the Permanent Forum on Indigenous Issues. We believe that these fora have, and continue to, carry out activities relevant to this body.

Thank you Mr. Chairperson.