

CHINA

The following comments were received through a communication from SIPO

(A) General Comments

We appreciate very much the enormous work the WIPO Secretariat has done in summarizing the draft policy objectives and core principles put forward by the various member states. However, since there are 15 policy objectives and 23 core principles (including 9 general guiding principles and 14 specific substantive principles) in WIPO/GRTKF/IC/7/5, we think it is necessary for the IGC to make these principles in a way more brief and concentrate, so that these principles have more unity and coherence.

Summarizing from all the comments put forward by the various member states of the IGC, the protection of TK could be mainly broken down into two groups, active or negative. Being the case, put forward two sets of model clauses based on these comments and making a detailed analysis and comparison between them may be also something worth doing.

(B) Comments on the draft objectives and core principles

I. POLICY OBJECTIVES

The title of point (vi) is “*Contribute to safeguarding traditional knowledge*”, but the contents also include TCEs. So there lacks consistency between the title and the contents.

II. CORE PRINCIPLES

A. General guiding principles

i We suggest to add in A “*Principle of providing help to what TK holders need*”, for example to help set up collective management or keep record of their TK prescriptions so long as they wish etc. It is also acceptable if these contents could be included in A1 “*Principle of responsiveness to the needs and expectations of TK holders*”.

ii In A2 “*Principle of recognition of rights*”, the term of “*misuse*” and “*misappropriation*” need to be clearly defined.

iii In A5.1, there is the term of “those that develop, preserve and sustain TK”, we want to know the difference between this term and “TK holders”.

iv In A6.2, the principle that “Nothing in these Principles shall be interpreted to derogate from existing obligations that national authorities have to each other under the Paris Convention and other international intellectual property agreements” need to be further considered. TK is not the same as IPR, so we can’t be sure that TK protections suit entirely the existing obligations that national authorities each have under the Paris Convention and other international intellectual property agreements.

B. Specific substantive principles

i B.4 reads “Traditional knowledge holders should also be effectively protected against other acts of unfair competition, including acts specified in Article 10bis of the Paris Convention”. We think the relationship between misappropriation and acts of unfair competition should be further clarified.

ii B6 is about “Equitable compensation and recognition of knowledge holders”, it seems too broad. We wonder whether there could be added into it concrete principles for the determination of the damage and compensation.

iii In B8.2 “Exceptions and limitations”, we need further clarification on “use in government hospitals”.

iv In B8.3, we think “other fair use or fair dealing with traditional knowledge, including use of traditional knowledge in good faith that commenced prior to the introduction of protection” is key to strike a fair balance between the interests of the people at large and that of the TK holders. Whether “fair use” after the introduction of protection should be limited to the original scale or not needs further deliberation.

v The principle in B12. 2 “Traditional knowledge protection should be consistent with existing intellectual property systems and supportive of the applicability of relevant international intellectual property standards to the benefit of holders of traditional knowledge” needs further consideration. TK is not the same as IPR, so we can’t expect TK protection to be entirely under the umbrella of IPR laws and related international treaties.