



Welcome and Introduction

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Director, Traditional Knowledge Division



Practical arrangements for IGC 37

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Division**

2018

2019

“Undertake negotiations on TK/TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s)”

IGC 35
GRs
(March 19
to 23)

Expert
group on
GRs
(June 24)

(June 25
to 29)
5 days

TK/TCEs
(August 27
to 31)

TK/TCEs
(December
10 to 14)
5/6 days

IGC 39
TK/TCEs

IGC 40
TK/TCEs



IGC Bureau

- IGC Chair

- Mr. Ian Goss of Australia

- IGC Vice-Chairs


- Mr. Jukka Liedes of Finland

- Mr. Faizal Chery Sidharta of Indonesia



Draft Agenda

- **Agenda Item 5** “Traditional Knowledge/Traditional Cultural Expressions”
- **Agenda Item 6** “Establishment of an *Ad Hoc* Expert Group(s)”
- **Agenda Item 7** “Possible Recommendations to the 2018 General Assembly”
- **Agenda Item 8** “Contribution of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) to the Implementation of the Respective Development Agenda Recommendations”



15 working documents

7
information documents

22 documents

Working documents (1/2)

- The Protection of Traditional Knowledge: Draft Articles (WIPO/GRTKF/IC/37/4).
- The Protection of Traditional Cultural Expressions: Draft Articles (WIPO/GRTKF/IC/37/5).
- The Protection of Traditional Knowledge: Updated Draft Gap Analysis (WIPO/GRTKF/IC/37/6).
- The Protection of Traditional Cultural Expressions: Updated Draft Gap Analysis (WIPO/GRTKF/IC/37/7).
- Report on the Compilation of Materials on Databases Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/37/8 Rev.).
- Report on the Compilation of Materials on Disclosure Regimes Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/37/9).

Working documents (2/2)

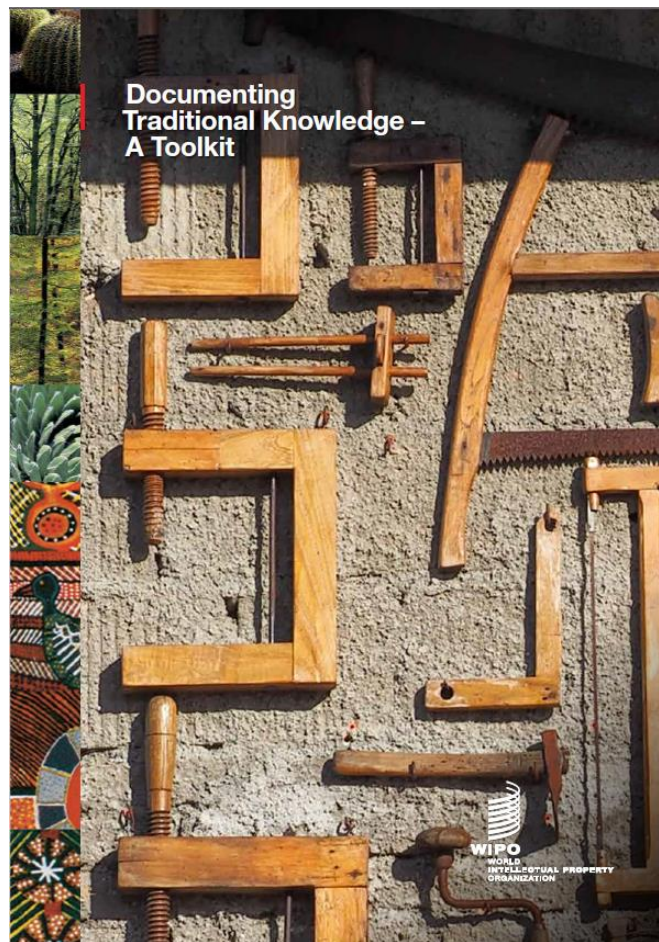
- Proposal for the Terms of Reference for a Study on TK (WIPO/GRTKF/IC/37/10).
- EU Proposal for a Study on TCEs (WIPO/GRTKF/IC/37/11).
- Joint Recommendation on Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/37/12).
- Joint Recommendation on the Use of Databases for the Defensive Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources (WIPO/GRTKF/IC/37/13).
- Proposal for the Terms of Reference for the Study by the WIPO Secretariat on Measures Related to the Avoidance of the Erroneous Grant of Patents and Compliance with Existing Access and Benefit-Sharing Systems See document (WIPO/GRTKF/IC/37/14).
- The Economic Impact of Patent Delays and Uncertainty: U.S. Concerns about Proposals for New Patent Disclosure Requirements (WIPO/GRTKF/IC/37/15).



Notes prepared by the IGC Chair

- Chair's Information Note on Traditional Knowledge and Traditional Cultural Expressions
- IGC 37 Methodology and Program (Draft)

Resources (1/3)

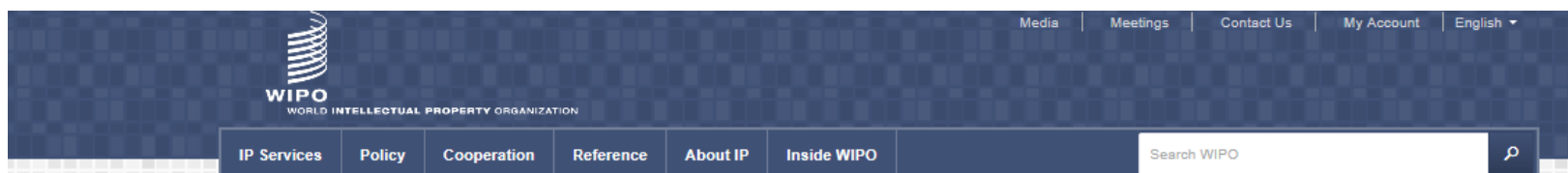




Resources (2/3)

- Background Briefs
- The IGC Preparation Kit
 - A one-stop destination for preparatory information, substantive working documents and other materials most directly relevant to each IGC session.
 - Updated with relevant information relating to the 37th session (working documents, background briefs, this briefing, useful links etc.)
- Indigenous Portal
 - Part of the WIPO Secretariat's effort to provide tailored resources for indigenous peoples and promote easy access to information for and about indigenous peoples and local communities.

Resources (3/3)



[Home](#) [Policy](#) [Traditional Knowledge](#) [Resources](#)

Regional, National, Local and Community Experiences

This page includes resources available on WIPO's website on regional, national, local and community experiences regarding intellectual property and genetic resources, traditional knowledge and traditional cultural expressions.

Table of contents

1. Laws, legislative measures and protocols
2. Fact-finding missions, surveys, submissions by member states and observers
3. Case studies
4. Lectures and presentations
5. Other resources

1. Laws, legislative measures and protocols

- Laws, treaties and regulations relevant to traditional knowledge, traditional cultural expressions and genetic resources
- Disclosure requirements table [PDF](#)
- Codes, guidelines and practices relating to the recording, digitization and dissemination of TCEs

2. Fact-finding missions, surveys, submissions by member states and observers

Report on fact-finding missions

- Intellectual Property Needs and Expectations of Traditional Knowledge Holders (WIPO Report on Fact-Finding Missions) [PDF](#)





Indigenous Participation in IGC 37

■ Indigenous Consultative Forum

- Not a formal committee session or official WIPO meeting, but endorsed by the Committee and facilitated by the Secretariat
- Sunday, August 26, 2018, 14h00

■ Indigenous Panel (shortened)

- Monday, August 27, around 11h00
- Theme: “The Differences and/or Similarities between Intellectual Property Protection of Traditional Knowledge and Traditional Cultural Expressions – Indigenous Peoples’ and Local Communities’ Perspectives”
- Three panelists:
 - Ms. Lucy Mullenkei, Executive Director, Indigenous Information Network (IIN), Kenya
 - Mr. Mattias Åhrén, Professor, UiT-The Arctic University of Norway, Norway
 - Ms. Patricia Adjei, First Nations Arts and Culture Practice Director, Australia Council for the Arts, Australia




To note...

- WIPO Voluntary Fund
 - No money
 - Nominations by Regional Groups for the Advisory Board to please be sent to grtkf@wipo.int by 12pm, Monday, August 27, 2018.



Meeting(s) with the IGC Chair

- Time:
 - 3 p.m., Thursday, August 23, 2018
 - 11 a.m., Friday, August 24, 2018 (Provisionally)
- Venue: Uchtenhagen Room
- Participation: Regional Coordinators + interested delegates from Member States



Traditional Knowledge and Traditional Cultural Expressions: Documents and Cross-Cutting Issues for IGC 37

**Ms. Begoña Venero, Senior Counsellor,
Traditional Knowledge Division**

**Ms. Daphne Zografos Johnsson, Legal Officer,
Traditional Knowledge Division**



Outline

- Documents
- Cross-cutting issues to be addressed by IGC 37
- Other issues



Documents

WIPO/GRTKF/IC/37/4

The Protection of Traditional Knowledge:
Draft Articles

WIPO/GRTKF/IC/37/5

The Protection of Traditional Cultural Expressions:
Draft Articles

Cross-cutting issues to be addressed by IGC 37

- Policy objectives
- Use of terms
 - Misappropriation/misuse/unlawful appropriation/unauthorized use
 - Public domain
 - Publicly available
 - Use/utilization
- Criteria for eligibility
- Beneficiaries
- Scope of protection
- Sanctions, remedies and exercise of rights/application
- Administration of rights/interests
- Exceptions and limitations



Policy objectives

- Art 1 TK – Art 1 TCEs
- The interest of the beneficiaries, the users and the public should be considered
- Redundancies? Irrelevancies?
- IP-related objectives
- No operative language / Correlation between objectives and substantive provisions



Use of terms

- Art 2 TK – Art 2 TCEs
- TK: TK / Secret TK / Sacred TK / Narrowly diffused TK / Widely diffused TK / Protected TK / **Misappropriation / Misuse / Unlawful appropriation / Unauthorized use / Public domain / Publicly available / Use/Utilization**
- TCEs: TCEs / **Public domain / Publicly available / Use/Utilization**



Use of terms

- Misappropriation (TK, but also in GRs text)
 - Necessary?
 - Other related terms
- Public domain
 - Necessary? If so, alignment needed?
- Publicly available
- Use/Utilization
 - Applicable to TCEs?
 - Use by whom?



Criteria for eligibility

- Art. 3 TK – Art. 3 TCEs
- + Elements included in some of the definitions in the Use of terms section
- Definition of protected TK

- Divergent views
- Necessary? Where?

Beneficiaries

- Art 4 TK – Art 4 TCEs
- Alt. 1 (TK and TCEs): Only IPLCs
- Other alternatives: IPLCs +
 - TK text: Other beneficiaries (such as states and/or nations, as may be determined under national law)
 - TCEs text: Other beneficiaries (national law)
- Other concepts: Rights holders / Administrators of rights



Scope of protection

- Art 5 TK – Art 5 TCEs
- Each three alternatives
- Some make reference to tiers of one sort or another
 - The tiered approach
 - Is a tiered approach feasible?
 - Appropriate determination of the tiers



The tiered approach

*Different kinds or levels of rights or measures would be available to rights holders depending on **the nature and characteristics of the subject matter**, **the level of control retained** by the beneficiaries and its **degree of diffusion**.*

The tiered approach:

- Is a tiered approach feasible?
- Appropriate determination of the tiers

Scope of protection

- TK context: opportunity to respond to the reality of the differences amongst
 - Secret TK
 - Narrowly diffused TK
 - Widely diffused TK
- TCEs context:
 - Consideration of appropriate criteria in order to determine the tiers
- Consideration of the practicality and legal implications of the tiers



Sanctions, remedies and exercise of rights/application

- Art 6 TK - Art 10 TCEs
- TK/TCEs texts share identical Alt 1, and each offer additional Alts allowing various degrees of flexibility to determine sanctions at the national level
- Consider having a general framework at the international level, and leaving details to the national level



Administration of rights/interests

- Art 8 TK - Art 6 TCEs
- How and by whom rights or interests should be administered?
- No agreement on the extent of participation of TK/TCEs holders in the establishment/ appointment of the authority
- Consider to leave flexibility at the national level rather than establish “one-size-fits-all” solution



Exceptions and limitations (1/2)

- Art 9 TK – Art 7 TCEs
- Should a determination of exceptions be made at the national level or should general and/or specific exceptions be provided?
- General exceptions
 - Test to be applied at the national level when developing limitations and exceptions
 - Could include elements of the “classic” three-step test and moral-right components



Exceptions and limitations (2/2)

- **Specific exceptions**

- Kinds of exceptions that should be allowed

- Tiered approach to exceptions?

- Various degrees of excepted acts mirror various kinds of subject matter and the tiered rights applied to them



Other issues

- Principles/preamble/introduction
- Term of protection
- Formalities
- Transitional measures
- Relationship with other international agreements
- National treatment
- Transboundary cooperation
- Capacity-building and awareness raising
- Non-derogation



Discussion and Closing Remarks

Facilitated by Mr. Wend Wendland



Sign up for our TK e-Updates!

Copy of this presentation will be made available on the
“IGC Preparation Kit”.