



# **IGC 33: Informal Information Session**

Presentation by the Secretariat

February 15, 2017

Geneva

# Welcome and Introduction

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

# 2016

# 2017



# IGC 33 work program

- Undertake negotiations on TCEs with a focus on addressing unresolved issues and considering options for a draft legal instrument
- Elaborate an indicative list of outstanding/pending issues to be tackled/solved at the next session on TCEs

# Structure of the presentation

- **Practical arrangements for IGC 33**
  - Ms. Fei Jiao, Associate Program Officer, Traditional Knowledge Division

- **Traditional cultural expressions: documents and issues for IGC 33**

- Mrs. Daphne Zografos Johnsson, Legal Officer, Traditional Knowledge Division
- **Discussion and closing remarks**
  - Mr. Edward Kwakwa, Senior Director, Global Issues Sector

# **Practical arrangements for IGC 33**

**Ms. Fei Jiao**

**Associate Program Officer, Traditional Knowledge  
Division**

# To Note:

■ Room A

# Working documents

- WIPO/GRTKF/IC/33/1 Prov. (Draft Agenda)
- WIPO/GRTKF/IC/33/2 (Accreditation)
- WIPO/GRTKF/IC/33/3 (Voluntary Fund)
- WIPO/GRTKF/IC/33/4 (The Protection of Traditional Cultural Expressions: Draft Articles)

# Information documents for the session

- WIPO/GRTKF/IC/33/INF/2 (Summary of Documents)
- WIPO/GRTKF/IC/33/INF/3 (Draft Program)
- WIPO/GRTKF/IC/33/INF/4 (Information notes on Voluntary Fund)
- WIPO/GRTKF/IC/33/INF/5 (Indigenous Panel)
- WIPO/GRTKF/IC/33/INF/7 (Glossary)
- WIPO/GRTKF/IC/33/INF/8 (Resources available on the WIPO Website)
- WIPO/GRTKF/IC/33/INF/9 (Professor Anaya's Technical Review)

# Notes prepared by the IGC Chair

- IGC 33 Methodology and Program (Draft)
- Chair's Information Notes on Traditional Cultural Expressions

# Resources (1/2)

- 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.
  - Has been updated with relevant information relating to IGC 33 (working documents, background briefs, 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 (2/2)



WIPO  
WORLD INTELLECTUAL PROPERTY ORGANIZATION

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IP Services | Policy | Cooperation | Reference | About IP | Inside WIPO |  ⚲

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## 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

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### 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

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### 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 33

- Indigenous Consultative Forum
  - Not a formal committee session or official WIPO meeting, but endorsed by the Committee and facilitated by the Secretariat
  - Sunday, February 26, 2017, 14h00
- Indigenous Panel - Monday, February 27, 2017, around 11h00, for 1 hour
  - Theme: “IGC Draft Articles on the Protection of Traditional Cultural Expressions: Indigenous Peoples’ and Local Communities’ Perspectives”
  - Keynote speaker: Professor Rebecca Tsosie, Regent’s Professor at the James E. Rogers College of Law at the University of Arizona (USA); Special Advisor to the Provost on Diversity and Inclusion.
  - Respondents: Dr. Kanyinke Sena (Kenya) and Ms. Lucia Fernanda Inácio Belfort Sales (Brazil)

# To note...

- WIPO Voluntary Fund
  - No further funds
  - Nominations by Regional Groups to the Advisory Board to please be sent to [grtkf@wipo.int](mailto:grtkf@wipo.int)

# Reminder:

## ■ **Informal Consultation**

- Regional Coordinators and interested Member States
- February 23, at 4pm
- Room U. Uchtenhagen

# **Traditional Cultural Expressions: Documents and Issues for the IGC 33**

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

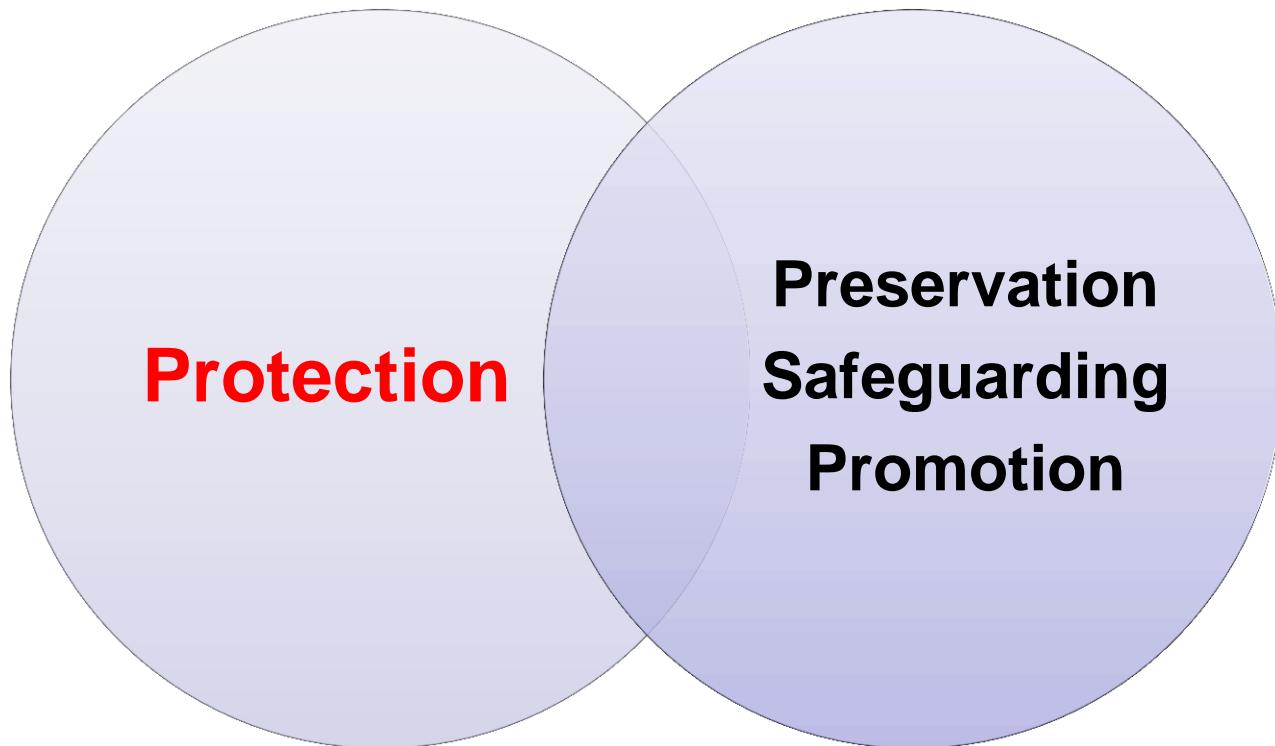
# IP and Traditional Cultural Expressions

- Background
- Key document
- Key issues
- Other issues

**[Traditional] cultural expression** means any form of [artistic and literary], [creative and other spiritual] expression, tangible or intangible, or a combination thereof, such as actions , materials , music and sound , verbal and written [and their adaptations], regardless of the form in which it is embodied, expressed or illustrated [which may subsist in written/codified, oral or other forms].

# Past IP-related work at international level

- Berne Convention, 1967
- Tunis Model Law on Copyright, 1976
- WIPO-UNESCO Model Provisions, 1982
- WPPT Treaty (1996) and Beijing Treaty (2012)



# Preservation Safeguarding Promotion

UNESCO  
Convention  
Safeguarding  
Intangible  
Cultural  
Heritage, 2003

UNESCO  
Recommendation  
Safeguarding  
Traditional  
Culture and  
Folklore, 1989

UNESCO  
Convention for  
the Promotion  
and Protection of  
the Diversity of  
Cultural  
Expressions,  
2005

# Key document

WIPO/GRTKF/IC/33/4

The Protection of Traditional Cultural Expressions:  
Draft Articles

# Structure

- [Principles/Preamble/Introduction]
- Objectives
- Use of terms
- 1. [Eligible]/[Eligibility criteria for] subject matter of [protection]/[safeguarding]
- 2. Beneficiaries of [protection]/[safeguarding]
- 3. [Criteria for eligibility]/Scope of [protection]/[safeguarding]
- 4. Administration of [rights]/[interests]
- 5. Exceptions and limitations
- 6. [Term of protection]/[safeguarding]
- 7. Formalities
- 8. [Sanctions, remedies and exercise of [rights]/[interests]]
- 9. [Transitional measures]
- 10. [Relationship with [other] international agreements]
- 11. [National treatment]
- 12. [Transboundary cooperation]
- 13. [Capacity building and awareness raising]

# Key issues

- Objectives
- Subject matter
- Beneficiaries
- Scope of protection
- Exceptions and limitations
- Relationship with public domain
- Definition of misappropriation

# Objectives

- Simple, direct and efficient wording
- IP-related objectives
- Objectives v. operative language (mechanism)
- Link between objectives and substantive provisions
- Redundancies with Principles/Preamble/Introduction section

# Subject matter

- Placement of definition
- Eligibility criteria
  - Divergent views on specific wording
  - Reference to a time period
  - Necessity to have them

# Beneficiaries

- Beneficiaries beyond IPLCs (nations?)
- Role of a competent national authority
- Reference to elements that further qualify beneficiaries (criteria of eligibility)

# Scope of protection

- The current options
  - Flexibility for States to determine scope
  - The tiered approach

# 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.*

# Scope of protection

- The current options
  - Flexibility for States to determine scope
  - The tiered approach
    - Appropriate determination of the tiers
    - Quality, level of control, degree of diffusion
    - Practicality and legal implications of the proposed tiers

# Exceptions and limitations

- General exceptions
  - Test to be applied at national level when developing limitations and exceptions
  - Could include elements of the “classic” three-step test and moral-right components
  - Two alternative sets of conditions

# Exceptions and limitations

- Specific exceptions
  - Kinds of exceptions that should be allowed
  - Redundancies
- Tiered approach to exceptions?
  - Various degrees of excepted acts mirror various kinds of subject matter and the tiered rights applied to them
- Incidental use in Article 8 on sanctions

# Relationship with public domain

- Definition introduced at IGC 27
- “Publicly available” definition in Use of Terms section
  - Relevance in the TCEs context?
- Challenges in trying to define the public domain
- Is a definition necessary?

# Definition of misappropriation

- Reference to the concept but no definition
- There are definitions in the TK and GRs texts
- Consider providing appropriate definition
- Is a definition necessary?

# Other issues

- Preamble/Introduction
- Use of terms
- Administration of rights/interests
- Term of protection
- Formalities
- Sanctions, remedies and exercise of rights
- Transitional measures
- Relationship with other international agreements
- National treatment
- Transboundary cooperation
- Capacity building and awareness raising

# **Discussion and Closing Remarks**

**Facilitated by Mr. Edward Kwakwa, Senior Director,  
Global Issues Sector**

Sign up for our TK e-Updates!

Copies of this presentation will be made available to  
Regional Coordinators and on the “IGC Preparation Kit”