

# **IGC 34: Informal Information Session**

**Presentation by the Secretariat**

**June 1, 2017**

**Geneva**

# Welcome and Introduction

**Mr. Wend Wendland**  
**Director, Traditional Knowledge Division**

# 2016

# 2017



# Structure of the presentation

- **Practical arrangements for Seminar and IGC 34**
  - Ms. Alice Manero, Consultant, Traditional Knowledge Division
- **Traditional cultural expressions: documents and issues for IGC 34**
  - Mrs. Daphne Zografos Johnsson, Legal Officer, Traditional Knowledge Division
- **Discussion and closing remarks**
  - Mr. Minelik Alemu Getahun, Assistant Director General, Global Issues Sector

# **Practical arrangements for the Seminar and IGC 34**

**Ms. Alice Manero**

**Consultant, Traditional Knowledge Division**

# To note

- The Seminar and IGC 34 will take place in the New Conference Hall

# Seminar on Intellectual Property and Traditional Cultural Expressions (June 8 and 9)

- Keynote address: Existing International Intellectual Property Instruments and Traditional Cultural Expressions: Which Gaps Exist and Which, If Any, Should be Filled?
- Four roundtables:
  - RT 1: Key Policy Issues on Intellectual Property and Traditional Cultural Expressions: Session One
  - RT 2: Protection of Traditional Cultural Expressions: Practical Experiences, Initiatives and Projects
  - RT 3: Key Policy Issues on Intellectual Property and Traditional Cultural Expressions: Session Two
  - RT 4: Past International Normative Developments Related to Intellectual Property: What Lessons for Negotiating an International Instrument on Traditional Cultural Expressions?
- Closing address: Reflections on the Way Forward



# Reporting on the Seminar

- Four Rapporteurs
- IGC 34: Agenda Item 5

# Working documents (1/2)

- WIPO/GRTKF/IC/34/1 Prov. 2 (Draft Agenda)
- WIPO/GRTKF/IC/34/2 (Accreditation)
- WIPO/GRTKF/IC/34/3 (Voluntary Fund)
- WIPO/GRTKF/IC/34/4 (Consolidated Document Relating to Intellectual Property and Genetic Resources)
- WIPO/GRTKF/IC/34/5 (The Protection of Traditional Knowledge: Draft Articles)
- WIPO/GRTKF/IC/34/6 (The Protection of Traditional Cultural Expressions: Draft Articles)
- WIPO/GRTKF/IC/34/7 (Indicative List of Outstanding/Pending Issues to be Tackled/Solved)
- WIPO/GRTKF/IC/34/8 (The Protection of Traditional Cultural Expressions: Draft Articles)
- WIPO/GRTKF/IC/34/9 (Joint Recommendation on Genetic Resources and Associated Traditional Knowledge)

# Working documents (2/2)

- WIPO/GRTKF/IC/34/10 (Joint Recommendation on the Use of Databases for the Defensive Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources)
- WIPO/GRTKF/IC/34/11 (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)
- WIPO/GRTKF/IC/34/12 (Traditional Cultural Expressions: A Discussion Paper)
- WIPO/GRTKF/IC/34/13 (Identifying Examples of Traditional Knowledge to Stimulate a Discussion of What Should be Protectable Subject Matter and What is Not Intended to be Protected)

# Information documents for the session

- WIPO/GRTKF/IC/34/INF/2 (Summary of Documents)
- WIPO/GRTKF/IC/34/INF/3 (Draft Program)
- WIPO/GRTKF/IC/34/INF/4 (Information notes on Voluntary Fund)
- WIPO/GRTKF/IC/34/INF/5 (Indigenous Panel)
- WIPO/GRTKF/IC/34/INF/7 (Glossary)
- WIPO/GRTKF/IC/34/INF/8 (Professor Anaya's Technical Review)
- WIPO/GRTKF/IC/34/INF/9 (Reporting on the Seminar)

# Draft Agenda

## **Agenda Item 7 “Traditional Cultural Expressions”**

- WIPO/GRTKF/IC/34/6
- WIPO/GRTKF/IC/34/7
- WIPO/GRTKF/IC/34/12
- WIPO/GRTKF/IC/34/INF/7
- WIPO/GRTKF/IC/34/INF/8

## **Agenda Item 8 “Taking Stock of Progress and Making a Recommendation to the General Assembly”**

- WIPO/GRTKF/IC/34/4
- WIPO/GRTKF/IC/34/5
- WIPO/GRTKF/IC/34/8
- WIPO/GRTKF/IC/34/9
- WIPO/GRTKF/IC/34/10
- WIPO/GRTKF/IC/34/11
- WIPO/GRTKF/IC/34/12
- WIPO/GRTKF/IC/34/13

# Notes prepared by the IGC Chair

- IGC 34 Methodology and Program (Draft)
- Chair's Information Note on Traditional Cultural Expressions
- Chair's Information Note on Discussions under Agenda Item 8 “Taking Stock of Progress and Making a Recommendation to the General Assembly”

# 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
  - Will be updated with relevant information relating to IGC 34 (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 (2/2)



The image shows the WIPO website header. It features the WIPO logo with a stylized 'W' and the text 'WIPO WORLD INTELLECTUAL PROPERTY ORGANIZATION'. The navigation bar includes links for 'Media', 'Meetings', 'Contact Us', 'My Account', and 'English'. Below the header is a secondary navigation bar with links for 'IP Services', 'Policy', 'Cooperation', 'Reference', 'About IP', and 'Inside WIPO'. A search bar with the placeholder 'Search WIPO' and a magnifying glass icon is also present. The main menu at the bottom includes 'Home', 'Policy', 'Traditional Knowledge', and 'Resources', with 'Resources' being the active category.

## 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 34

- Indigenous Consultative Forum
  - Not a formal committee session or official WIPO meeting, but endorsed by the Committee and facilitated by the Secretariat
  - Sunday, June 11, 2017, 09h30
- Indigenous Panel - Monday, June 12, 2017, around 11h15, for 1 hour
- Theme: “Outstanding/Pending Issues in the IGC Draft Articles on the Protection of Traditional Cultural Expressions: Indigenous Peoples’ and Local Communities’ Perspectives”
  - Keynote: Mr. S. James Anaya, Dean and Thomson Professor of Law, University of Colorado Law School, United States of America
  - Respondents:
    - Ms. Aroha Te Pareake Mead (New Zealand)
    - Ms. Jennifer Tauli Corpuz (Philippines)

# To note...

- WIPO Voluntary Fund
  - Nominations by Regional Groups to the Advisory Board to please be sent to [grtkf@wipo.int](mailto:grtkf@wipo.int)

# Side-events (to be confirmed)

	June 8	June 9	June 12	June 13	June 14
Lunch			WIPO Secretariat with ABS Initiative	Indigenous Caucus	Centre for International Governance Innovation
Evening	International Federation of Film Producers Associations/ Colombia/ Australia	Tajikistan	Finland	Russian Federation	

# Reminder

- Informal Consultation
  - Regional Coordinators plus interested Member States
  - June 6, at 4pm (to be confirmed)
  - Room U. Uchtenhagen

# **Traditional Cultural Expressions: Documents and Issues for IGC 34**

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

# IP and Traditional Cultural Expressions

- Documents
- Core issues
- Other issues

# Documents

**WIPO/GRTKF/IC/34/6**

The Protection of Traditional Cultural Expressions:  
Draft Articles

**WIPO/GRTKF/IC/34/7**

Indicative List of Outstanding/Pending Issues to be  
Tackled/Solved

**WIPO/GRTKF/IC/34/12**

Traditional Cultural Expressions: A Discussion Paper

# Structure

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

# General remarks

- Distinct proposals in alternatives
- International v. national levels
- Articles that the IGC worked on at the last session

# Structure

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

# Core issues

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

# Policy objectives

- Simple, direct and efficient wording
- Reflection on terms “misappropriation” and “misuse/unlawful appropriation”
- Reflection on the recognition of rights already acquired by third parties
- IP-related objectives
- Objectives v operative language (mechanism)
- Link between objectives and substantive provisions
- Redundancies with Principles/Preamble/Introduction section

# Subject matter

- Articles 2 and 3
- Article 3 – Three alternatives
  - Necessity to have eligibility criteria
    - Divergent views on specific wording
    - Reference to a time period

## Article 2 Use of Terms

**Traditional cultural expression** means any form of [artistic and literary], [other creative, and spiritual,] [creative and literary or artistic] expression, tangible or intangible, or a combination thereof, such as **actions<sup>1</sup>**, **materials<sup>2</sup>**, **music and sound<sup>3</sup>**, **verbal<sup>4</sup>** 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], that are [created]/[generated], expressed and maintained, in a collective context, by indigenous [peoples] and local communities; that are the unique product of and/or directly linked with and the cultural [and]/[or] social identity and cultural heritage of indigenous [peoples] and local communities; and that are transmitted from generation to generation, whether consecutively or not. Traditional cultural expressions may be dynamic and evolving.

<sup>1</sup>[Such as dance, works of mas, plays, ceremonies, rituals, rituals in sacred places and peregrinations, games and traditional sports/sports and traditional games, puppet performances, and other performances, whether fixed or unfixed.]

<sup>2</sup>[Such as material expressions of art, handicrafts, ceremonial masks or dress, handmade carpets, architecture, and tangible spiritual forms, and sacred places.]

<sup>3</sup>[Such as songs, rhythms, and instrumental music, the songs which are the expression of rituals.]

<sup>4</sup>[Such as stories, epics, legends, popular stories, poetry, riddles and other narratives; words, signs, names and symbols.]

### *Alternative*

**Traditional cultural expressions** comprise the various dynamic forms which are created, expressed, or manifested in traditional cultures and are integral to the collective cultural and social identities of the indigenous local communities and other beneficiaries.

# Beneficiaries

- Three alternatives – beneficiaries are IPLCs
- Beneficiaries beyond IPLCs?
  - “Other beneficiaries”

# Scope of protection

- Four alternatives
- All alternatives 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.*

# Scope of protection

- Four alternatives
- All alternatives make reference to tiers of one sort or another
  - The tiered approach
    - Is a tiered approach feasible?
    - Appropriate determination of the tiers

# Exceptions and limitations

- Three alternatives
- 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 national level when developing limitations and exceptions
  - Could include elements of the “classic” three-step test and moral-right components

# 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 10 on sanctions

# Relationship with public domain

- Definition introduced at IGC 27
  - Two alternatives
  - Challenges in trying to define the public domain
  - Is a definition necessary?
- WIPO/GRTKF/IC/17/INF/8 Note on the Meanings of the Term “Public Domain” in the Intellectual Property System with Special Reference to the Protection of Traditional Knowledge and Traditional Cultural Expressions/Expressions of Folklore
- “Publicly available” definition in Use of Terms section
  - Relevance in the TCEs context?

# Definition of misappropriation

- IGC mandate calls for common understanding on a 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

- Principles/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
- Non-derogation

# **Discussion and Closing Remarks**

**Facilitated by Mr. Minelik Alemu Getahun, Assistant  
Director General, Global Issues Sector**

Sign up for our TK e-Updates!

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