

# **IGC 39: Informal Information Session**

Presentation by the Secretariat

March 7, 2019

Geneva



# Welcome and Introduction

**Mr. Wend Wendland**

**Director, Traditional Knowledge Division**

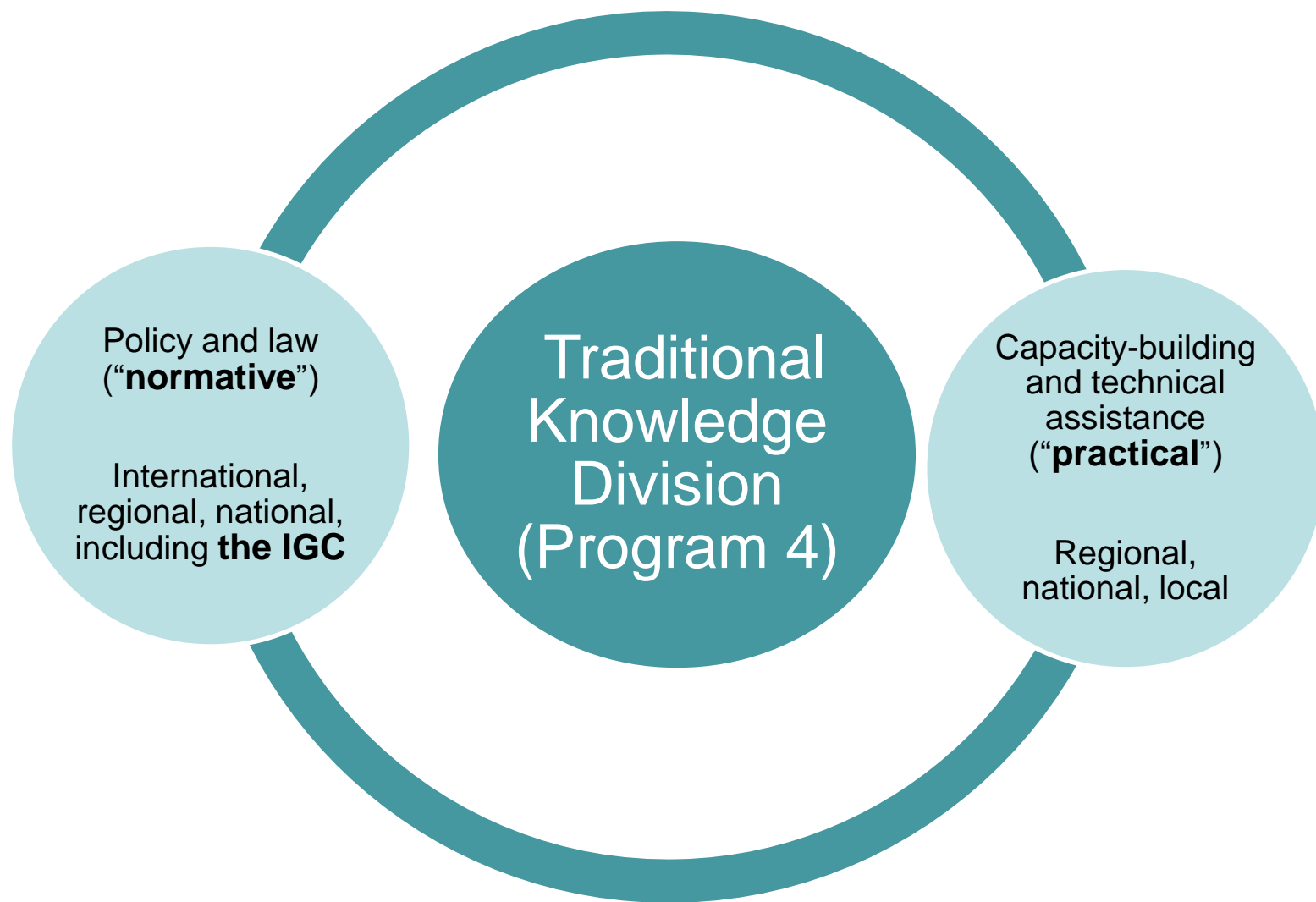
# New members of the team

■ Ms. Rebecka Forsgren  
(Sweden), Indigenous Fellow



■ Ms. Carla Bengoa Rojas  
(Peru), Intern







# Practical arrangements for the *ad hoc* expert group and IGC 39

**Mrs. Fei Jiao**

**Assistant Program Officer, Traditional Knowledge  
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)

*Ad hoc*  
expert  
group on  
GRs  
(June 24)

IGC 36  
GRs  
(June 25 to  
29)

IGC 37  
TK/TCEs  
(August 27  
to 31)

*Ad hoc*  
expert  
group on  
TK/TCEs  
(December  
9)

IGC 38  
TK/TCEs  
(December  
10 to 14)

*Ad hoc*  
expert  
group on  
TK/TCEs  
(March 17)

IGC 39  
TK/TCEs  
(March 18  
to 22)

IGC 40  
TK/TCEs  
(June 17 to  
21)





# **Ad hoc expert group on traditional knowledge and traditional cultural expressions(1/2)**

- Objective: to address specific legal, policy or technical issues
- WIPO Secretariat invited:
  - Ms. Sharon Le Gall, Senior Lecturer, Faculty of Law, University of the West Indies, St. Augustine, Trinidad and Tobago;
  - Ms. Harriet Deacon, Visiting Research Fellow, University of Coventry, United Kingdom; and
  - Mr. Dominic Muyldermans, Senior Legal Consultant, CropLife.



# ***Ad hoc* expert group on traditional knowledge and traditional cultural expressions (2/2)**

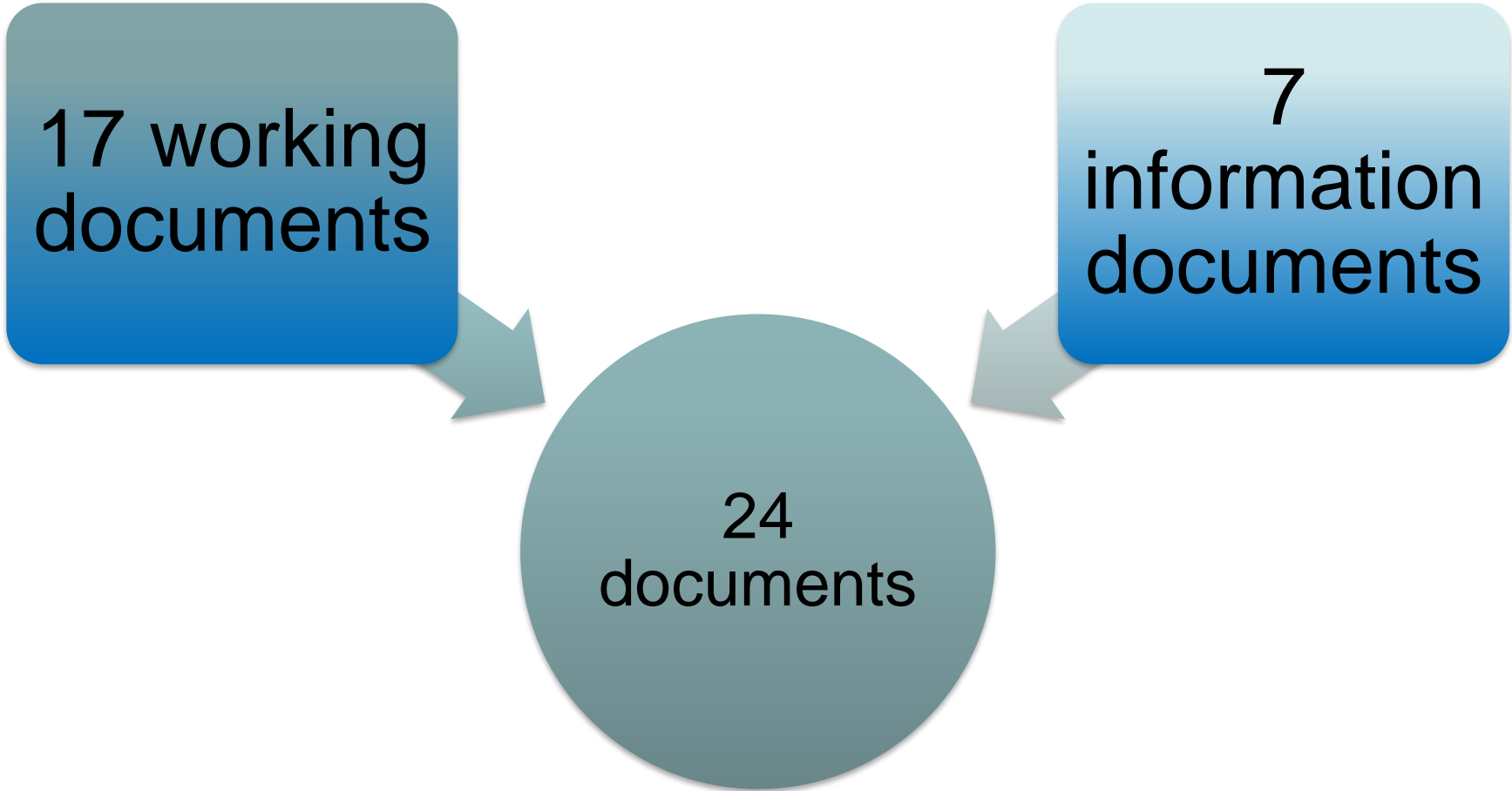

## ■ Co-Chairs:

- Ms. Sharon Le Gall (Senior Lecturer, Faculty of Law, University of the West Indies, St. Augustine, Trinidad and Tobago); and
- Mr. Chidi Oguamanam (Professor of Law, University of Ottawa)

## ■ Reporting to IGC 39:

- The Co-Chairs will report to the IGC plenary at IGC 39 on the outcomes and results of the *ad hoc* expert group's work.
- The report will be included in the report of IGC 39.





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graph TD; A[17 working documents] --> C((24 documents)); B[7 information documents] --> C;
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17 working documents

7  
information documents

24  
documents

# Working documents (1/2)

- The Protection of Traditional Knowledge: Draft Articles (WIPO/GRTKF/IC/39/4).
- The Protection of Traditional Cultural Expressions: Draft Articles (WIPO/GRTKF/IC/39/5).
- The Protection of Traditional Knowledge: Updated Draft Gap Analysis (WIPO/GRTKF/IC/39/6).
- The Protection of Traditional Cultural Expressions: Updated Draft Gap Analysis (WIPO/GRTKF/IC/39/7).
- Report on the Compilation of Materials on Databases Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/39/8).
- Report on the Compilation of Materials on Disclosure Regimes Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/39/9).

# Working documents (2/2)

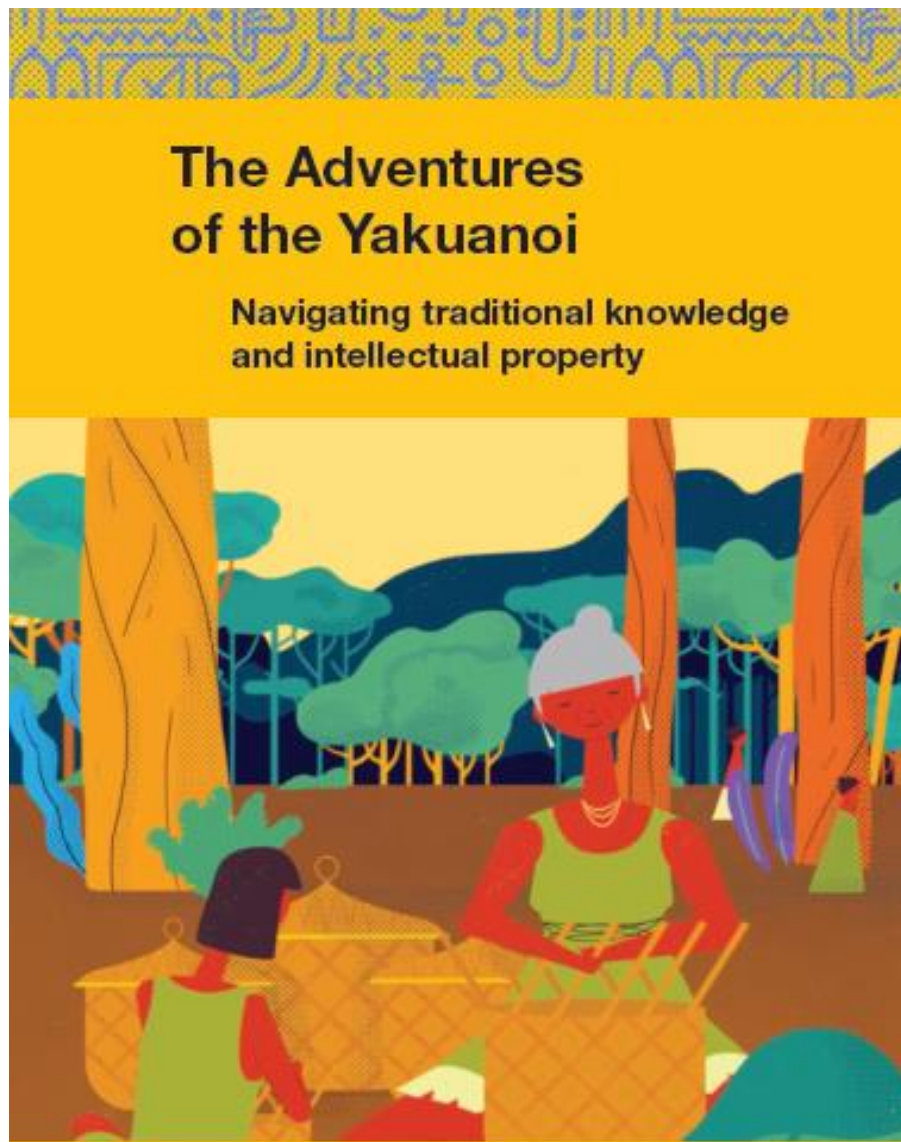
- The Economic Impact of Patent Delays and Uncertainty: U.S. Concerns about Proposals for New Patent Disclosure Requirements (WIPO/GRTKF/IC/39/10).
- Identifying Examples of Traditional Knowledge to Stimulate a Discussion of what should be Protectable Subject Matter and what is not Intended to be Protected (WIPO/GRTKF/IC/39/11).
- Proposal for a Study by the WIPO Secretariat on Existing *Sui Generis* Systems for the Protection of Traditional Knowledge in WIPO Member States (WIPO/GRTKF/IC/39/12).
- Joint Recommendation on Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/39/13).
- Joint Recommendation on the Use of Databases for the Defensive Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources (WIPO/GRTKF/IC/39/14).
- 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/39/15).
- Proposal for the Terms of Reference for a Study on Traditional Knowledge (WIPO/GRTKF/IC/39/16).
- EU Proposal for a Study on Traditional Cultural Expressions (WIPO/GRTKF/IC/39/17).



# Note prepared by the IGC Chair

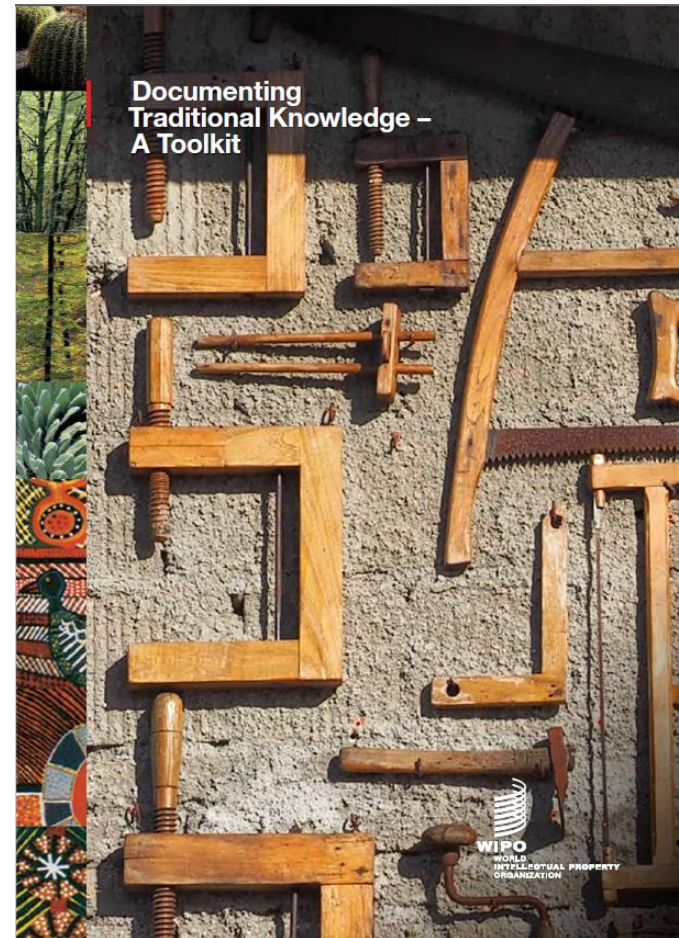
- Chair's Information Note on Traditional Knowledge and Traditional Cultural Expressions

# Resources (1/4)





# Resources (2/4)









# Resources (3/4)

- 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 39<sup>th</sup> session (working documents, background briefs, this briefing, useful links etc.)

# Resources (4/4)





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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 39

## ■ Indigenous Consultative Forum

- Not a formal committee session or official WIPO meeting, but endorsed by the Committee and facilitated by the Secretariat
- Sunday, March 17, 16h30

## ■ Indigenous Panel

- Monday, March 18, around 11h00
- Theme: “Draft Articles on Intellectual Property and Traditional Knowledge/Traditional Cultural Expressions: Indigenous Peoples’ and Local Communities’ Perspectives on Subject Matter and Scope of Protection”
- Three panelists:
  - Ms. Jennifer Tauli Corpuz, who is from the Kankana-ey Igorot People of the Mountain Province in the Philippines. She currently coordinates the Legal Desk for the Tebtebba Indigenous Peoples’ International Center for Policy Research and Education.
  - Mrs. Edith Bastidas, who is an indigenous representative of Pastos Indigenous Peoples, Resguardo Indígena Ipiales, Colombia. She is a lawyer and specializes in indigenous peoples’ rights.
  - Mr. Áslat Holmberg, who is a Saami from Finland. He is the Vice President of the Saami Council, representing the Finnish Sámi Central Organization.



# To note...

- WIPO Voluntary Fund
  - No money
  - Nominations by Regional Groups for the Advisory Board to please be sent to [grtkf@wipo.int](mailto:grtkf@wipo.int) by 12pm, Monday, March 18, 2019.



## Calendar of Side Events


Time	Title	Venue	Organizer(s)
March 18 1pm – 2:30pm	<b>Protecting, Promoting and Preserving Indigenous Languages: International Year of Indigenous Languages 2019</b>	Room NB 0.107	UNESCO and WIPO
March 19 2pm – 3pm	<b>Film screening: <i>Flight of the Condor: A Letter, a Song and the Story of Traditional Cultural Expressions</i></b>	Room NB 0.107	University of Iceland





# Reminder

- Meeting with the IGC Chair
  - March 14, 2019, at 4:30pm
  - Uchtenhagen Room



# **Traditional Knowledge and Traditional Cultural Expressions: Documents and Cross-Cutting Issues for IGC 39**

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

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



# Outline

- Documents
- Suggested cross-cutting unresolved issues to be addressed by IGC 39
- Other issues



# Documents

WIPO/GRTKF/IC/39/4

The Protection of Traditional Knowledge:  
Draft Articles

WIPO/GRTKF/IC/39/5

The Protection of Traditional Cultural Expressions:  
Draft Articles



# Suggested cross-cutting unresolved issues to be addressed by IGC 39

- Objectives
- Subject matter
- Scope of protection
- Exceptions and limitations



# Objectives

## Art 2 TK - Art 2 TCEs

- It is key to determine relevant policy objectives
- The TK and TCEs texts include a number of alternatives. The texts could be rationalized to focus on common, concisely-stated core IP related objectives
- What kind of harm(s) an IP instrument on TK and TCEs would seek to address? Which gaps ought to be filled?
- It would be useful to consider the perspective of all interests





# Subject matter

Art 1 and 3 TK – Art 1 and 3 TCEs

- How to define subject matter?
- First step: Define subject matter that is generally relevant
- Second step: Determine exactly which portion of the general subject matter is to be protected



# Use of terms

Art 1 TK – Art 1 TCEs

- Definition of “traditional”
- Definition of “traditional knowledge”
- Definition of “traditional cultural expressions”



# Criteria for eligibility

Art 3 TK – Art 3 TCEs

- What is the appropriate place?
  - Criteria in Art 3 as well as in definitions of TK and TCEs in Use of Terms sections
- Are they necessary?



# Scope of protection

Art 5 TK – Art 5 TCEs

- Seeks to determine
  - Which specific acts in respect of TK and TCEs should be prohibited/prevented
  - What specific rights should be granted to the beneficiaries of protection



# Scope of protection

Art 5 TK – Art 5 TCEs

- Different approaches and options present in both texts
  - «Rights-based» and «measures-based»
  - «Right to say no» and «right to be compensated»
  - «Economic rights» and/or «moral rights»
  - Some alternatives make reference to tiers of one sort or another
  - Approaches not necessarily mutually exclusive



# 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: tiers that have been discussed include
  - TCEs of particular spiritual or cultural value or significance
  - Secret TCEs
  - Other TCEs
- Consideration of the practicality and legal implications of the tiers



# Scope of protection

- Level of detail of the provisions
  - **Lower level** – more flexibility for States to determine the scope through domestic implementing legislation and measures
  - **Higher level** – ensures maximum harmonization



# 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
- Beneficiaries
- Term of protection
- Formalities
- Sanctions, remedies and exercise of rights/applications
- Administration of rights/interests
- 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. Edward Kwakwa, Senior Director,  
Department for Traditional Knowledge and Global  
Challenges, Global Issues Sector, WIPO**



Sign up for our TK e-Updates!

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