

# **IGC 38: Informal Information Session**

Presentation by the Secretariat

November 26, 2018

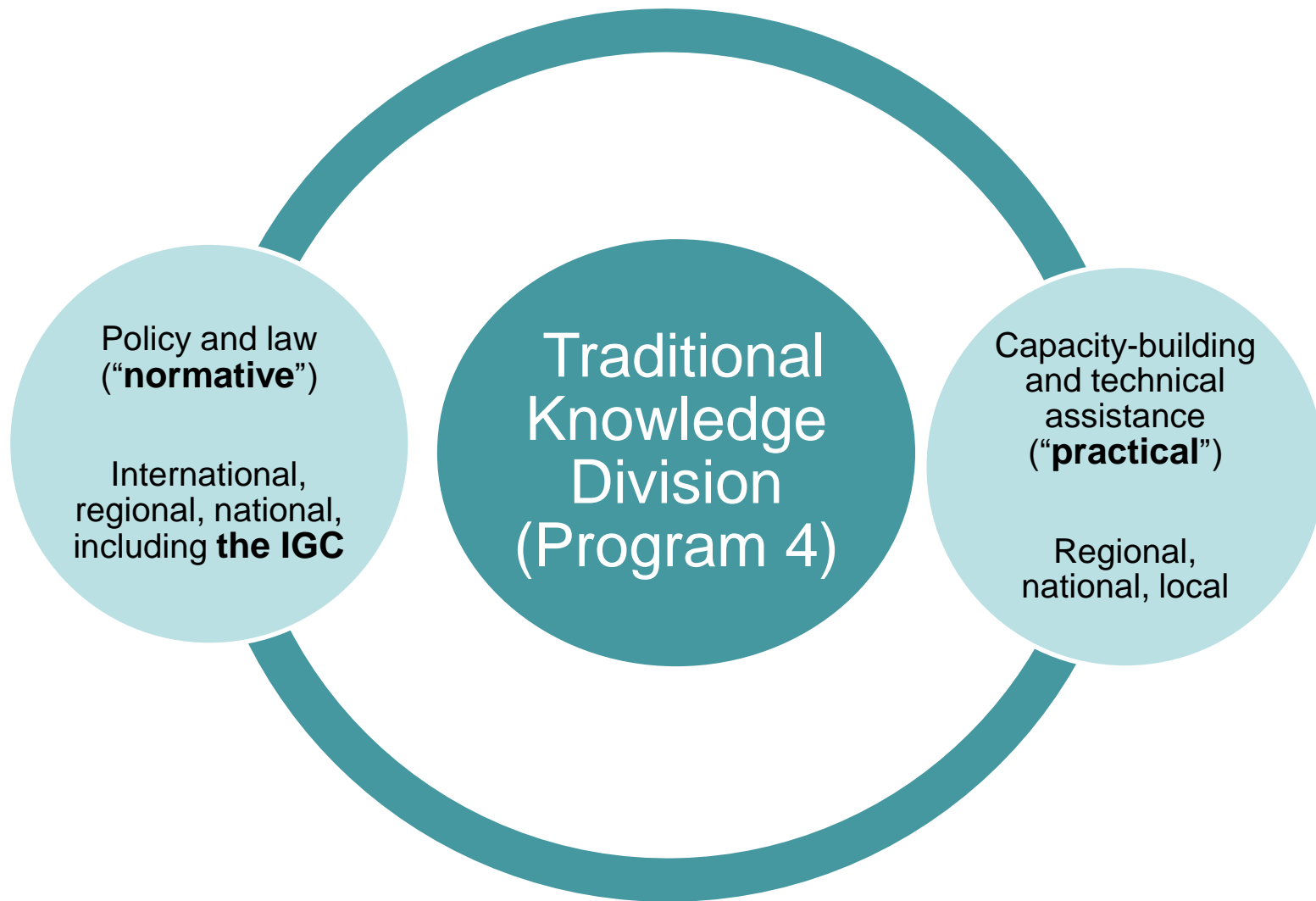
Geneva



# Welcome and Introduction

**Mr. Wend Wendland**

**Director, Traditional Knowledge Division**





# Facilitate

**Help countries and regional organizations develop policies, strategies and laws, including international instruments**



# Inform

**Provide neutral, evidence-based, technical information**



# Train

**Offer practical training and capacity-building on selected topics**



# Practical arrangements for the *ad hoc* expert group and IGC 38

**Ms. 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)

GRs  
(June 25 to  
29)  
5 days

IGC 37  
TK/TCEs  
(August 27  
to 31)

expert  
group on  
TK/TCEs  
(December  
9)

TK  
(December  
10 to 14)  
5 days

IGC 39  
TK/TCEs

IGC 40  
TK/TCEs





# **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. Marisella Ouma, Intellectual Property Consultant, Kenya;
  - Mr. Pierre El Khoury, Law Professor, La Sagesse Law School, Lebanon; and
  - Mr. Bertrand Moullier, Senior Advisor International Affairs, International Federation of Film Producers Associations (FIAPF).



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

## ■ Co-Chairs:

- Ms. Marisella Ouma, Intellectual Property Consultant, Kenya; and
- Mr. Michael Shapiro, Senior Counsel, Office of Policy and International Affairs, United States Patent and Trademark Office

## ■ Reporting to IGC 38:

- The Co-Chairs will report to the IGC plenary at IGC 38 on the outcomes and results of the *ad hoc* expert group's work.
- The report will be included in the report of IGC 38.





# IGC Bureau


- IGC Chair

- Mr. Ian Goss of Australia

- IGC Vice-Chairs

- Mr. Jukka Liedes of Finland

- Mr. Faizal Chery Sidharta of Indonesia



15 working  
documents

7  
information  
documents

22  
documents

# Working documents (1/2)

- The Protection of Traditional Knowledge: Draft Articles (WIPO/GRTKF/IC/38/4).
- The Protection of Traditional Cultural Expressions: Draft Articles (WIPO/GRTKF/IC/38/5).
- The Protection of Traditional Knowledge: Updated Draft Gap Analysis (WIPO/GRTKF/IC/38/6).
- The Protection of Traditional Cultural Expressions: Updated Draft Gap Analysis (WIPO/GRTKF/IC/38/7).
- Report on the Compilation of Materials on Databases Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/38/8).
- Report on the Compilation of Materials on Disclosure Regimes Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/38/9).

# Working documents (2/2)

- Joint Recommendation on Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/38/10).
- Joint Recommendation on the Use of Databases for the Defensive Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources (WIPO/GRTKF/IC/38/11).
- 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/38/12).
- 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/38/13).
- Identifying Examples of Traditional Knowledge to Stimulate a Discussion of what should be Protectable Subject Matter and what is not Intended to be Protected (WIPO/GRTKF/IC/38/14).
- The Economic Impact of Patent Delays and Uncertainty: U.S. Concerns about Proposals for New Patent Disclosure Requirements (WIPO/GRTKF/IC/38/15).

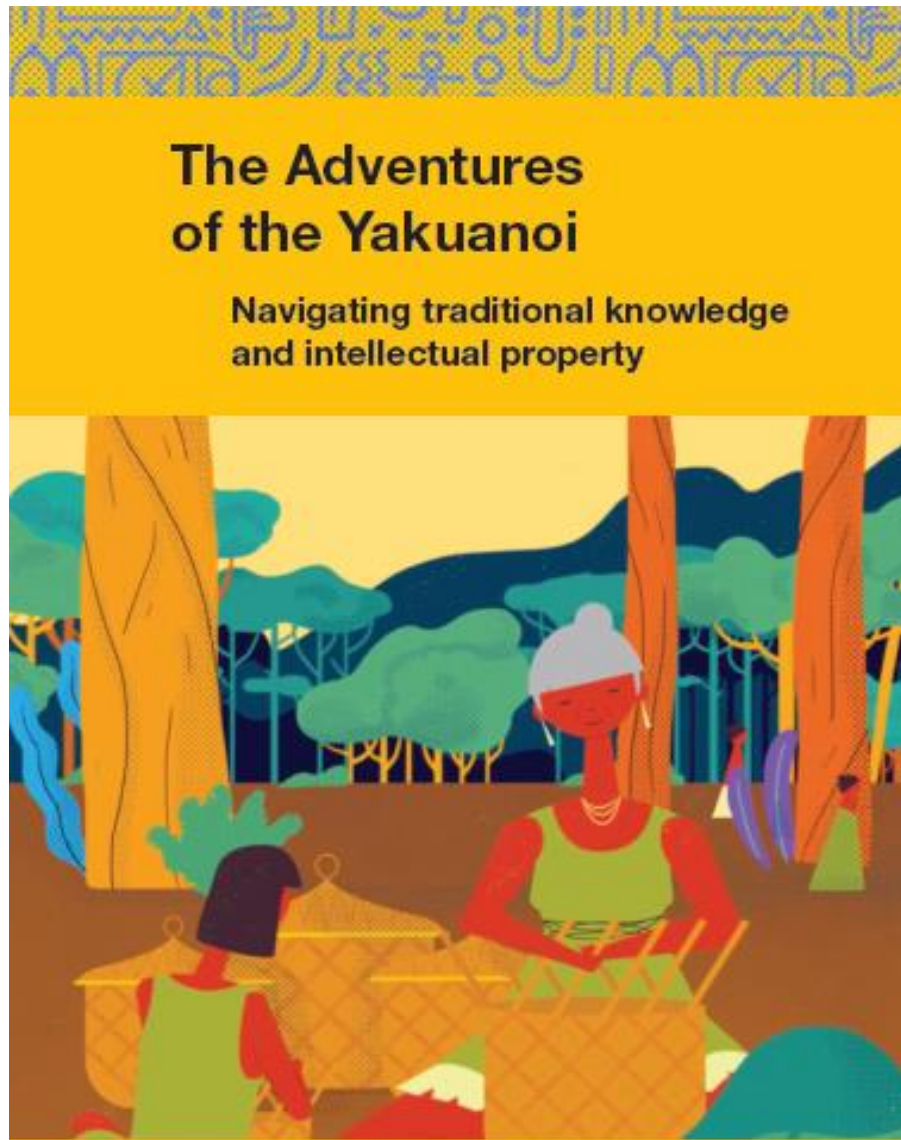


# Note prepared by the IGC Chair

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

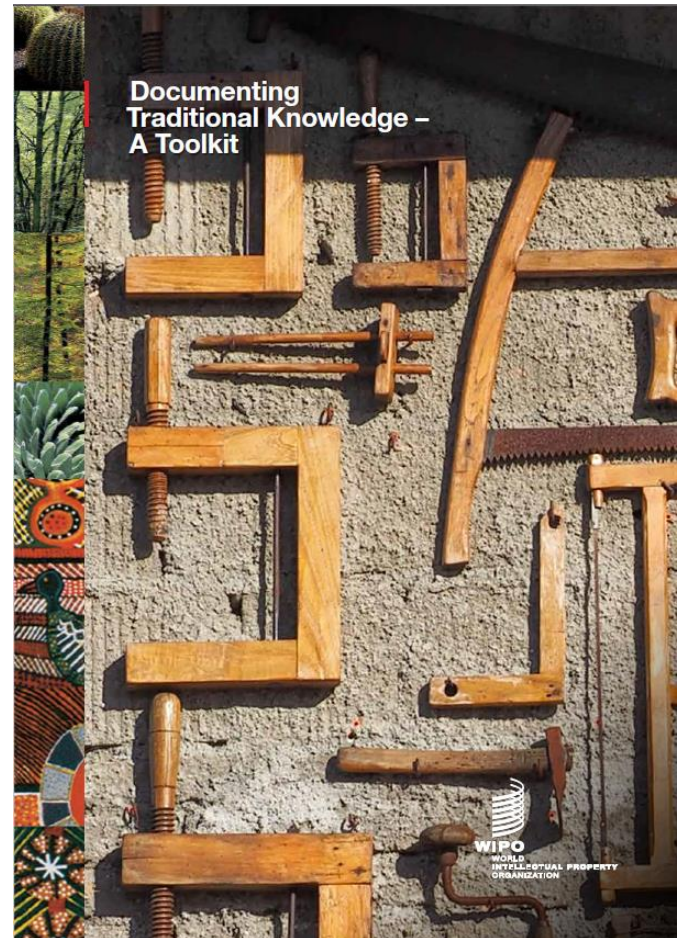


# Resources (1/4)





# 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.
  - Will be Updated with relevant information relating to the 38<sup>th</sup> session (working documents, background briefs, this briefing, useful links etc.)

# Resources (4/4)



WIPO  
WORLD INTELLECTUAL PROPERTY ORGANIZATION

Media | Meetings | Contact Us | My Account | English ▾

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

Search WIPO 🔍

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 38

## ■ Indigenous Consultative Forum

- Not a formal committee session or official WIPO meeting, but endorsed by the Committee and facilitated by the Secretariat
- Sunday, December 9, 2018, 16h00

## ■ Indigenous Panel (shortened)

- Monday, December 10, around 11h00
- Theme: “Indigenous Peoples’ and Local Communities’ Perspectives on Gaps in the Intellectual Property Protection of Traditional Knowledge and Traditional Cultural Expressions: Examples and Proposed Solutions”
- Three panelists:
  - Mr. Elifuraha Laltaika, Executive Director, Law and Advocacy for Pastoralists, Tanzania
  - Ms. June L. Lorenzo, Member, International Indian Treaty Council, United States of America
  - Mr. Q”apaj Conde Choque, Aymar lawyer, *Centro de Estudios Multidisplinaros – Aymara*, Plurinational State of Bolivia



# 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, December 10, 2018.






# Side Events

<b>Monday, December 10</b> <i>from 2pm to 3pm</i> <b>Room B</b>	<b>Organized by the Indian Treaty Council and the Indigenous World Association</b>
<b>Tuesday, December 11</b> <i>from 1pm to 3pm</i> <b>Room B</b>	<b>Organized by the Centre for International Governance Innovation</b>



# Reminder

- IGC 37 Initial Draft Report
  - Comments to be sent to [grtkf@wipo.int](mailto:grtkf@wipo.int) by November 29, 2018.



# **Traditional Knowledge and Traditional Cultural Expressions: Documents and Cross-Cutting Issues for IGC 38**

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



# Outline

- Documents
- Cross-cutting issues to be addressed by IGC 38
- Other issues



# Documents

WIPO/GRTKF/IC/38/4

The Protection of Traditional Knowledge:  
Draft Articles

WIPO/GRTKF/IC/38/5

The Protection of Traditional Cultural Expressions:  
Draft Articles

# Cross-cutting issues to be addressed by IGC 38

- 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





# Objectives

Art 2 TK - Art 2 TCEs

- Fundamental to development of operative text
- Consider perspectives of all interests (beneficiaries, users, public)
- Redundancies? Irrelevancies?
- IP-related objectives
- No operative language / Correlation between objectives and substantive provisions



# Use of terms

## Art 1 TK – Art 1 TCEs

- Misappropriation
  - Referred to in TK, TCEs and GRs texts
  - Only defined in TK text
  - Is a definition necessary?
  - Other related terms (misuse/ unlawful appropriation/ unauthorized use)



# Use of terms

- Public domain
  - Fundamental concept
  - Two alternatives in TK and TCEs texts
  - Necessary to define? If so, alignment?
- Publicly available
- Use/Utilization
  - Applicable to TCEs?
  - Use by whom?



# 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?
  - Or should what is protected be defined by the scope and exceptions?
  - Divergent views

# Beneficiaries

Art 4 TK – Art 4 TCEs

- Only IPLCs?
- Other alternatives: IPLCs +
  - Reflects divergences in environments where TK/TCEs may be found
  - Could include states and nations
- Other concepts: Rights holders / Administrators of rights



# 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»
  - 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:
  - 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. 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”.