

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Twentieth Session
Geneva, February 14 to 22, 2012

PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES: VOLUNTARY FUND

Document prepared by the Secretariat

NEED FOR REPLENISHMENT OF THE VOLUNTARY FUND

1. The amount available in the account of the WIPO Voluntary Fund for Accredited Indigenous and Local Communities (the Fund) was 94,235.37 Swiss francs on November 28, 2011. Based on past experience and the foreseeable evolution of travel-related costs, this amount should allow the Fund to cover the expenses related to the Twentieth Session of the Committee in accordance with the rules of the Fund (contained in Annex I) and the recommendation made by the Advisory Board of the Fund on the margins of the nineteenth session of the Committee (see Annex to WIPO/GRTKF/IC/19/INF/6).

2. However, further and updated information will be provided in the Information Note (WIPO/GRTKF/IC/20/INF/5) that the WIPO Director General will communicate to the Committee before the present session of the Committee. This Information Note will include *inter alia* the level of the contributions and pledges received as at the date of the Note, the amount available in the Fund, the names of the contributors, the names of applicants funded for the nineteenth and Twentieth Sessions, and finally, the names of applicants who have applied for funding in view of the next session of the Committee.

3. All practical details on the Fund, its operation, and the application procedure as well as its rules are available on the website:
http://www.wipo.int/tk/en/ngoparticipation/voluntary_fund/index.html.
4. Under its current rules, the extent of support that the Fund can provide depends exclusively on the voluntary contributions made by donors. Unless the Fund is replenished by donors in the near future, the amount of money that will remain available in the Fund after the Twentieth Session of the Committee will be limited, and will significantly restrict the possibility for the Fund to operate beyond the twenty-second session of the Committee.
5. The Government of Australia, on October 20, 2011, made a substantial contribution to the Fund of 89,500 Swiss francs. Other Member States of the Committee and interested public or private entities are strongly encouraged to contribute to the Fund in view of the crucial need to ensure participation by indigenous and local communities.
6. In this regard, a “Case for Support” has been distributed which provides further information on the fund-raising drive, on the advantages of the Fund and reasons why donors may wish to contribute to it. The flyer is attached as Annex II.

APPOINTMENT OF THE ADVISORY BOARD

7. The decision setting out the objectives and operation of the Fund provides that “[a]part from the *ex officio* member, the members of the Advisory Board will be elected by the Committee on the second day of each of its sessions, on a proposal by its Chair, following consultation with the Member States and their regional groups and, respectively, representatives of accredited observers. Apart from that of the *ex officio* member, their mandates will expire with the opening of the following Committee session” (Article 8).
8. At its nineteenth session, the Chair proposed, and the Committee elected by acclaim, the following eight members of the Advisory Board to serve in an individual capacity:
 - (i) as members of delegations of WIPO Member States: Mr. Sjamsul HADI, Deputy Director, Ministry of Culture and Tourism, Jakarta Pusat, Indonesia; Mr. Benny MUELLER, Legal Advisor, Legal and International Affairs, Swiss Federal Institute of Intellectual Property, Bern, Switzerland; Mr. Raúl MARTÍNEZ, First Secretary, Permanent Mission of the Republic of Paraguay, Geneva; Mr. Mandixole MATROOS, Permanent Mission of the Republic of South Africa, Geneva; Dr. Emin TEYMUROV, Attaché, Permanent Mission of the Republic of Azerbaijan, Geneva;
 - (ii) as members of accredited observers representing indigenous and local communities or other customary holders or custodians of traditional knowledge or traditional cultural expressions: Ms. Debra HARRY, Executive Director, Indigenous Peoples Council on Biocolonialism (IPCB), Nixon, United States of America; Mr. Les MALEZER, Chairperson, Foundation for Aboriginal and Islander Research Action (FAIRA), Woolloongabba, Australia; and Mr. Ngwang Sonam SHERPA, Chairperson, Nepal Indigenous Nationalities Preservation Association (NINPA), Kathmandu, Nepal.

The Chair of the Committee nominated Mr. Vladimir Yossifov, Vice Chair of the Committee, to serve as Chair of the Advisory Board.

9. Since the mandate of the current members of the Advisory Board would expire at the beginning of its Twentieth Session, the Committee would need, on or before the second day of its Twentieth Session, to elect the members of the Advisory Board. The rules governing the Fund leave open the possibility of past members being eligible for re-election.

10. *The Committee is invited:*

(i) to strongly encourage its members and all interested public or private entities to contribute to the Fund in order to ensure the Fund's operation beyond the twenty-second session of the Committee; and

(ii) to undertake the election of the members of the Advisory Board of the Fund on the basis of the proposal of the Chair on or before the second day of its session.

[Annexes follow]

Establishment of the WIPO Voluntary Fund
for Accredited Indigenous and Local Communities
as approved by the WIPO General Assembly (32nd session) and as subsequently amended
by WIPO General Assembly (39th session)

Resolved to take appropriate measures to facilitate and encourage the participation of indigenous and local communities, and other customary holders or custodians of traditional knowledge and traditional cultural expressions, in the work of the World Intellectual Property Organization (WIPO) concerning intellectual property relating to genetic resources, traditional knowledge and folklore;

Recognizing that the effectiveness of these measures depends in particular on appropriate financial support;

Recognizing moreover that the existence of an appropriate coordinated framework aimed at financing this participation would encourage such contributions;

[*If* the WIPO General Assembly decides to renew the mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore in its current form or in a different form, or if the Assembly decides to create a new body responsible for the matters within the Intergovernmental Committee's remit in its current form (the possible bodies being designated hereinafter by the generic term "the Committee"),¹ *then* in that it is recommended that the Assembly [should decide]² to create a voluntary contribution fund, the name, objective, criteria for support and operation of which would be as follows:

I. NAME

1. The Fund will be known as the "WIPO Voluntary Fund for Accredited Indigenous and Local Communities", hereinafter the "Fund".

II. OBJECTIVE AND SCOPE

2. The Fund is established exclusively to finance the participation in the work of the Committee and other related activities of WIPO of the nominated representatives of accredited observers which represent indigenous or local communities, or otherwise represent customary holders or custodians of traditional knowledge or traditional cultural expressions.

2 *bis*. Intersessional Working Group meetings that are part of the Committee's work program as referred to by the General Assembly, hereinafter "IWG meetings", will be considered as a related activity of WIPO within the scope of Article 2.

3. Since participation in the Committee's work is restricted by its rules of procedure to its members and accredited observers, and in order to ensure their capacity to participate fully in the Committee's work, the funded representatives should only be the nominated representatives of observers which are duly and previously accredited to the Committee, either as ad hoc observers accredited by the Committee itself, or as observers accredited to WIPO.

¹ Note from the Secretariat: the General Assembly has taken such a decision. See par. 202 of the report of its Thirty-Second Session (document WO/GA/32/13)

² Note from the Secretariat: the General Assembly has taken such a decision. See par. 168 of the report of its Thirty-Second Session (document WO/GA/32/13)

4. The creation of the Fund and its operation will not prejudice other established procedures, in particular by the general WIPO Rules of Procedure (WIPO 399 (FE) Rev. 3) implemented in document WIPO/GRTKF/IC/1/2 for the accreditation of indigenous and local communities and other observers, or to organize the effective participation of their members in the sessions. The operation of the Fund shall not pre-empt or override decisions by members of the Committee regarding accreditation and participation in the work of the Committee. It is understood that other direct contributions and other possible forms of direct assistance, either existing or in the future, designed to finance or facilitate such participation, may be pursued outside the framework of the Voluntary Fund, at the choice of the contributor.

III. CRITERIA FOR FINANCIAL SUPPORT

5. Financial support from the Fund will correspond exclusively to the objective set out in Article 2 and 2 *bis* and to the following conditions:

- (a) support from the Fund will be strictly limited to the maximum resources actually available in the Fund;
- (b) each provision of support will relate to a single Committee session and any related activities held consecutively with the Committee session and/or to a single IWG meeting. Provision of support on one occasion shall not prejudice possible support for the participation of the same beneficiary on other Committee sessions or IWG meetings;
- (c) to be eligible for financial support, persons would need to satisfy each of the following criteria:
 - (i) be a natural person;
 - (ii) belong, as a member, to an accredited observer which represents indigenous or local communities, or otherwise represents customary holders or custodians of traditional knowledge or traditional cultural expressions;
 - (iii) have been duly nominated in writing by the observer to represent it at the Committee session and/or the IWG meeting designated for the support and as possible beneficiary of support from the Fund;
 - (iv) be able to participate effectively and contribute to the Committee session and/or the IWG meeting intended for the support, such as through expressing experience in the field and the concerns of indigenous and local communities and other customary holders and custodians of traditional knowledge or traditional cultural expressions; and
 - (v) and whom the Advisory Board considers would not be able to take part in the Committee session and/or the IWG meeting concerned without support from the Fund, owing to a lack of alternative financial resources.

- (d) in ensuring a broad geographical spread of participation among the seven geo-cultural regions recognized by the United Nations Permanent Forum on Indigenous Issues, the Advisory Board should take due account of the need to support those who lack alternative financial resources, and particularly of those observers based in developing and least developed countries and small island developing countries.
- (e) the financial support granted by the Fund will cover:
 - (i) as far as it relates to Committee sessions or IWG meetings, the purchase of a return economy class ticket, including taxes connected with the ticket, between the domicile of the beneficiary and Geneva or any other meeting place, by the most direct and cheapest route;
 - (ii) as far as it relates to Committee sessions only, living expenses in the form of a daily subsistence allowance at the rate specified by the United Nations for Geneva or for the city where said meeting is held, with an additional sum to cover expenses incurred at the time of departure and arrival at the applicable rate under the United Nations system;
 - (iii) as far as the financial support for hotel accommodation and living expenses for any particular IWG meeting is concerned, the WIPO Director General, acting as the manager of the Fund and using exclusively the financial means of the Fund, will apply the same funding arrangement that is applicable to funded State representatives who participate in the same IWG meeting; and
 - (iv) all other expenses related to the participation of the beneficiaries in the Committee session or/and the IWG meeting concerned will be excluded from the Fund's support.
- (f) if an applicant who has been selected to benefit from Fund support has to withdraw or is unable to take part in the Committee session and/or the IWG meeting concerned, any sums unexpended and recovered, apart from possible cancellation charges, will be transferred to the reserve of the resources available to the Fund and the choice which was made with regard to said applicant shall be considered null and void. The applicant will nonetheless be entitled to submit a new request for the following Committee session(s) and/or the following IWG meeting(s), provided that information is submitted giving a good reason for the withdrawal or nature of the event which otherwise made participation impossible.

IV. OPERATING MECHANISM

6. The Fund will operate as follows:

- (a) fund resources will come exclusively from voluntary contributions by governments, NGOs and other private or public entities, and specifically shall not be drawn from the regular WIPO budget;
- (b) the administrative costs associated with the operation of the Fund shall be kept to a strict minimum and shall not entail the drawing of specific funds in credit from the regular WIPO budget;

- (c) the voluntary contributions paid into the Fund will be managed by the WIPO Director General, assisted by an Advisory Board. In this respect, the financial administration by the WIPO Director General and the auditing of the Fund accounts by the WIPO auditor will be undertaken in line with the procedures established, in accordance with the WIPO Financial Regulations, for the funds-in-trust set up to finance certain development cooperation activities conducted by WIPO;
- (d) decisions to extend financial support will be taken, for formal purposes, by the WIPO Director General, following an express recommendation by the Advisory Board. The recommendations made by the Advisory Board relating to the choice of beneficiaries will be binding on the Director General and not subject to appeal; and
- (e) deadline for submission will be settled as follows:
 - (i) duly documented requests for financial support enabling participation in a Committee session will be sent to the WIPO Director General by the applicants in their own name, so as to arrive at least 60 days before the opening of the Committee session which precedes the Committee session for which support is requested. Later requests will be considered at the following Committee session; and
 - (ii) separate and duly documented requests for financial support enabling participation in a particular IWG meeting will be sent to the WIPO Director General by the applicants in their own name, so as to arrive at least 60 days before the opening of the Committee session which precedes the IWG meeting for which support is requested, or by such earlier date as the Secretariat may, for practical reasons, determine and announce. Later requests will be considered at the following session of the Committee.
- (f) before each Committee session, the WIPO Director General will communicate for the information of participants an information note setting out:
 - (i) the level of the voluntary contributions paid into the Fund on the date on which the document was drafted;
 - (ii) the identity of the contributors (unless individual contributors have expressly requested to remain anonymous);
 - (iii) the amount of the resources available taking into account the funds disbursed;
 - (iv) the list of people who have benefited from the Fund's support since the previous information memorandum;
 - (v) the people chosen to benefit from the Fund but who withdrew;
 - (vi) the amount of the support allocated to each beneficiary; and
 - (vii) a sufficiently detailed description of the applicants seeking support for the following session or/and following IWG meeting(s).

This document will also be addressed by name to the members of the Advisory Board for examination and deliberation.

- (g) following the election of its members, the Advisory Board will be convened by the WIPO Director General to meet on the margins of the Committee session which precedes the Committee session or/and the IWG meeting(s) for which support is being considered, without prejudice to the right of its members to discuss informally any questions concerning their mandate between sessions of the Committee.
- (h) the Advisory Board must ensure that all the criteria for eligibility of applicants set out above, in particular in Article 5, are satisfied during its deliberations, and should agree on a recommended list of eligible applicants who should benefit from Fund support. The Advisory Board should also ensure, when adopting its recommendation, that:
 - a balance is maintained between the male and female beneficiaries, and between the geo-cultural regions from which they come, in successive Committee sessions or/and IWG meetings insofar as is possible; and
 - where necessary, the benefits are taken into account which the Committee's work may derive from the repeated participation in its sessions of the same beneficiary.

Finally, when adopting its recommendation the Committee shall take account of the available resources as reported by the Director General in the information note referred to in Article 6(f), and in particular it shall identify those applicants who are agreed and for whom funding is available, and those applicants who are agreed in principle but for whom insufficient funds are available. Those in the latter category should be given priority in decisions on funding for subsequent sessions of the Committee or/and IWG meetings.

The Advisory Board will be provided with administrative assistance for its deliberations by the WIPO International Bureau, in accordance with Article 6(b).

- (i) the Advisory Board will adopt its recommendation before the end of the Committee session on the margins of which it meets. This recommendation will identify:
 - (i) the subsequent Committee session and, should the case arise, the IWG meeting(s) intended for financial support (i.e. the subsequent session of the Committee);
 - (ii) the applicants whom the Advisory Board agrees should be supported for that Committee session and/or the IWG meeting(s), for whom funds are available;
 - (iii) any applicant or applicants whom the Advisory Board agrees should be supported in principle but for whom insufficient funds are available;
 - (iv) any applicant or applicants whose application has been rejected in accordance with the procedure in Article 10; and
 - (v) any applicant or applicants whose application has been postponed for further consideration until the next Committee in accordance with the procedure in Article 10.

The Advisory Board will immediately forward the contents of the recommendation to the Director General who will take a decision in accordance with the recommendation. The Director General will inform the Committee immediately and, in any cases, prior to the end of its current session, by means of an information note specifying the decision taken concerning each applicant.

- (j) the WIPO Director General will take the administrative measures necessary to implement his decision for the Committee session and, should the case arise, for the IWG meeting(s) concerned, in accordance with Article 6(b).

V. OTHER PROVISIONS RELATING TO THE ADVISORY BOARD

7. The Advisory Board will comprise nine members, including:

- the Chair of the Committee, appointed *ex officio* or, where that proves to be impossible, one of the Vice-Chairs nominated by the Chair as his or her deputy;
- five members from the delegations of WIPO Member States taking part in the Committee, reflecting an appropriate geographical balance; and
- three members from accredited observers representing indigenous and local communities or other customary holders or custodians of TK or TCEs.

The members will serve on an individual basis and will conduct their deliberations independently, notwithstanding any consultations that they might consider as appropriate.

8. Apart from the *ex officio* member, the members of the Advisory Board will be elected by the Committee on the second day of each of its sessions, on a proposal by its Chair, following consultation with the Member States and their regional groups and, respectively, representatives of accredited observers. Apart from that of the *ex officio* member, their mandates will expire with the opening of the following Committee session.

9. The Advisory Board will meet regularly on the margins of Committee sessions, subject to the requirement that a quorum of seven members, including the Chair or one of the Vice-Chairs, should be present.

10. A recommendation for the selection of any beneficiaries will require the agreement of at least seven members of the Advisory Board. If an application is not agreed upon, it may continue to be examined at the following session, unless that application received three votes or fewer. In the latter case, the request will be considered to have been rejected, without prejudice to the right of the applicant to submit a new request at a later date.

11. Each member of the Advisory Board who has a direct association with an observer which has applied for funding for a representative shall disclose that association to the Advisory Board, and shall abstain from any vote concerning any applicant nominated by that observer.

[Annex II follows]

WIPO Voluntary Fund for Accredited Indigenous and Local Communities

FUND-RAISING

CASE FOR SUPPORT

I. CONTEXT

A need for protection of traditional knowledge at the international level

- in 1998, WIPO launched a fresh policy initiative aimed at protecting traditional knowledge (TK) and traditional cultural expressions (TCEs) against their misuse and improper dissemination and for managing the interface between IP and genetic resources (GRs);
- indigenous and local communities are those mainly affected since their traditions, knowledge systems and cultural expressions form the basis of their identity and future development; and
- appropriate and effective protection requires a concerted approach by States. With that in mind, in 2001, the Member States decided to create a WIPO body expressly tasked with examining the standards which might be adopted at the international level to ensure this protection. This body is the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

A need to ensure the active participation of indigenous and local communities in the work of the IGC

- indigenous and local communities rightly consider that they should be able to participate in decision-making processes relating to matters which affect them;
- this concern is unanimously shared by the government delegations in the IGC which have recognized that “the participation of indigenous and local communities is of great importance for the work of the Committee”. These communities provide the IGC with experience, information and comments which are essential to ensuring that the decisions taken meet their expectations;
- Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the United Nations General Assembly on September 13, 2007, also stipulates that “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights...”; and
- this need has without a doubt been ever more pressing since December 2009, when the IGC embarked on a formal phase of negotiations on one or more international legal instruments to provide effective protection.

Concrete measures to ensure the active participation of indigenous and local communities, including:

- since April 2001, in the IGC a fast-track accreditation procedure has been in operation for all non-governmental and intergovernmental organizations. The IGC currently has more than 240 accredited observers, many of whom represent indigenous and local communities;
- IGC sessions are opened with an indigenous panel, in which members of indigenous and local communities speak of their experiences and perspectives. The participation of the panelists is financed by WIPO; and
- one of the main measures was the creation in 2005 of the **WIPO Voluntary Fund for Accredited Indigenous and Local Communities** which is designed to finance their participation in IGC sessions.

II. THE VOLUNTARY FUND: OBJECTIVES, OPERATION AND RESULTS

- many indigenous and local communities had stressed that they encountered insurmountable difficulties in funding the travel and accommodation costs of their representatives during IGC meetings; and
- in order to address this legitimate concern, and following extensive consultations and a review of best practices prevailing within the United Nations system, the WIPO General Assembly took the decision in 2005 to create the **WIPO Voluntary Fund**.

This initiative has not gone unnoticed and was welcomed in May 2006 by the UN Permanent Forum on Indigenous Issues, which encouraged donors to contribute to the Fund

- the objective of the Fund and its rules of operation are set out clearly in decisions of the General Assembly. The text of that decision provides the legal basis of the Fund.

Objective

- the Fund is designed exclusively to finance the participation in the IGC process of accredited observers representing indigenous and local communities or the customary holders or custodians of TK and TCEs;
- the funding is designed to cover the purchase of a return economy class ticket by the cheapest route, as well as a daily allowance or fixed stipend and in some cases an additional flat rate to cover incidental expenses incurred by the financed participant at the time of departure and arrival; and
- a decision¹ was taken by the WIPO General Assembly in September 2010 to allow the Fund to finance the participation of the representatives of indigenous and local communities in the Intersessional Working Groups (IWGs) of the IGC set up in accordance with the IGC's mandate adopted in September 2009.

¹ See document [WO/GA/39/14 Prov.](#), paragraph 214 to 218, Draft report of the General Assembly (39th session)

Operation of the Fund: transparent, independent, efficient and not subject to deductions for administrative costs

- Transparency:
 - the list of candidates for financial support and the list of accepted candidates are communicated to the IGC at regular intervals as laid down by the Fund's rules;
 - the nine members of the Fund Advisory Board, which selects candidates to receive funding, are elected by the IGC plenary on the proposal of its Chairperson. Their mandate expires in practice at the end of the IGC session which elected them; and,
 - the funding criteria, including geographical balance criteria, as well as the conditions governing financial support from the Fund, are clearly established by the Fund's rules.
- Independence:
 - the nine members of the Fund Advisory Board serve independently and take their decisions in their personal capacity;
 - three members of the Advisory Board are from accredited observers representing one or more indigenous or local communities; and,
 - the Advisory Board's recommendations are binding on the WIPO Secretariat which merely provides the necessary administrative support and implements these recommendations.
- Efficiency: No deductions from the Fund for administrative costs:
 - the members of the Advisory Board meet during the IGC session in which they are participating. They are not paid or compensated for the tasks that they carry out;
 - the Advisory Board is required to conclude its deliberations before the end of the session during which it meets;
 - candidates for funding are required to provide documents to support their application, in practice in the form of an application form and *curriculum vitae*, which facilitates the review of their application based on the funding criteria;
 - the WIPO Secretariat is not authorized to draw on the Fund to cover any administrative costs; and,
 - an express clause in the Fund's rules is designed to keep administrative costs to a strict minimum.

III. CONTRIBUTIONS TO THE FUND

- since its creation in 2005, the Fund has benefited from contributions from the Swedish International Biodiversity Programme (SwedBio/CBM), France, the Christensen Fund, the Swiss Federal Institute of Intellectual Property, South Africa, Norway, Australia, including contributions from an anonymous contributor, totaling 604,489.53 Swiss francs. The Swiss contribution of 250,000 Swiss francs accounted for more than a third of this sum².

To ensure continued participation of indigenous and local communities in future meetings of the IGC additional funds will be necessary.

Provisions relating to contributions

- the Fund relies exclusively on voluntary contributions. There are no restrictions on who may contribute;
- the names of the contributors and the level of contributions and pledges received are communicated by the WIPO Director General to the IGC before each Committee session through an Information Note³. Contributors are also publicly acknowledged and thanked by WIPO and further opportunities for doing so can be discussed with contributors. However donors may remain anonymous if they so wish;

The Information Note also contains *inter alia* the amount available in the Fund and the names of the funded applicants from the previous IGC session, the present and the upcoming IGC session.

- all contributions are allocated directly to financing the participation of accredited indigenous and local communities in the sessions of the IGC. No administrative costs are borne by the Fund;
- the rules of operation of the Fund are clearly set out in the General Assembly decisions. Taking into account that it is a collective fund, it is not possible to depart from those rules in relation to any particular contribution;
- contributions cannot be earmarked by the donor for a particular category of beneficiary or expense. It is the Fund's Advisory Board which independently selects candidates for support. If the contributor is represented within the IGC (as a Member State or accredited observer), it may stand for election as a member of the Fund's Advisory Board;
- contributions are used in the order received in the Voluntary Fund's bank account;

² The financial data relating to the balance of the Fund are made public at every session of the IGC. See for example Information Note WIPO/GRTKF/IC/19/INF/4

³ See note 2

- a standard report is prepared which gives donors information on the use of the Fund. In the exchange of letters formalizing the contribution agreement between the donor and WIPO, a specific clause may be included to provide for a detailed periodic financial report on the use of the contribution. The operation of the Fund is also subject to internal auditing.

For more information...

Rules concerning the objective and operation of the Voluntary Fund:

http://www.wipo.int/export/sites/www/tk/en/ngoparticipation/voluntary_fund/amended_rules.doc

Brochure on the Voluntary Fund available online:

http://www.wipo.int/freepublications/en/tk/936/wipo_pub_936.pdf

Home page of the Voluntary Fund:

http://www.wipo.int/tk/en/ngoparticipation/voluntary_fund/index.html

[End of Annexes and of document]