

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

Thirty-Seventh Session
Geneva, August 27 to 31, 2018

PROPOSAL FOR THE TERMS OF REFERENCE FOR A STUDY ON TRADITIONAL KNOWLEDGE

Document submitted by the European Commission, on behalf of the European Union and its Member States

INTRODUCTION

1. On July 30, 2018, the International Bureau of the World Intellectual Property Organization (WIPO) received a request from the European Commission, on behalf of the European Union and its Member States, to re-submit a proposal entitled “Proposal for the terms of reference for a study on traditional knowledge” to the Thirty-Seventh Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), as a working document.

2. Pursuant to the request above, the Annex to this document contains the proposal referred to, as received.

3. *The Committee is invited to take note of and consider the proposal in the Annex to this document.*

[Annex follows]

PROPOSAL FOR THE TERMS OF REFERENCE FOR A STUDY ON TRADITIONAL KNOWLEDGE

Taking into account the evidence based approach mentioned in paragraph (c) of the 2018/2019 mandate for the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), with particular reference to paragraph (d) of that mandate setting out such evidence based approach and expressly mentioning the conducting/updating of studies covering, inter alia, examples of national experiences, including domestic legislation, and in recognition of the commitment of WIPO Members to the Development Agenda Recommendations, the IGC requests the Secretariat with the involvement of the Chief Economist to undertake a study of national experiences and domestic legislation and initiatives in relation to the protection of Traditional Knowledge (TK).

The study should focus on recently adopted legislation and initiatives on TK in general in the Member States of WIPO or regional areas.

Where possible the study would build upon already existing materials and studies already conducted by the Secretariat.

To inform discussion at the IGC, the study should:

- Analyse domestic legislation and concrete examples of protectable subject matter and subject matter that is not intended to be protected.
- Take into account the variety of measures that can be taken, some of which could be measures based, whilst others could be rights-based.

Existing IPR regimes

In particular, the study should, at a minimum, analyse those national and regional intellectual property laws, regulations, measures and procedures in relation to the protection of TK on the basis of the following:

- How are existing IPR regimes used to protect TK?
- What is the role of trademark, design, copyright, trade secrets and geographical indication legislation?
- What are the key definitions?
- What is the scope of protection and who are the beneficiaries?
- How is use of the existing IPR regimes promoted? Has awareness raising taken place?

Alternative (IPR or other) regimes

In case of specific laws, measures, rules and procedures:

- What were the policy objectives and have the instruments proven useful in this respect? What has been the economic, social and cultural impact on indigenous and local communities?
- How have key definitions such as TK, “traditional”, misappropriation, scope and beneficiaries been defined?
- Are there examples how the tiered approach works out in practice? How have the different levels been defined, and how can they be distinguished from each other?
- How is legal certainty for different stakeholders ensured?
- How has the public domain been safeguarded?

Databases

- Which databases exist and how are these used? What is the role of the stakeholders?
- National experiences with Traditional Knowledge Digital Libraries, for instance the Traditional Knowledge Digital Library (TKDL) of India, and their practical impact on patent application and patent revocation procedures, in particular in assessing the criteria of novelty and inventive step.

[End of Annex and of document]