

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

Thirty-Eighth Session
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PROPOSAL FOR A STUDY BY THE WIPO SECRETARIAT ON EXISTING *SUI GENERIS* SYSTEMS FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE IN WIPO MEMBER STATES

Document submitted by the Delegations of the United States of America and Japan

INTRODUCTION

1. On November 15, 2018, the International Bureau of the World Intellectual Property Organization (WIPO) received a request from the Permanent Mission of the United States of America to the World Trade Organization (WTO), on behalf of the Delegations of the United States of America and Japan, to submit a “Proposal for a Study by the WIPO Secretariat on Existing *Sui Generis* Systems for the Protection of Traditional Knowledge in WIPO Member States”, which was updated “Proposal for the Terms of Reference for a Study on Existing *Sui Generis* Systems for the Protection of Traditional Knowledge” as contained in document WIPO/GRTKF/IC/37/16, for discussion by the Thirty-Eighth Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

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

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

[Annex follows]

**PROPOSAL FOR A STUDY BY THE WIPO SECRETARIAT ON
EXISTING *SUI GENERIS* SYSTEMS
FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE IN WIPO MEMBER STATES**

The World Intellectual Property Organization (WIPO)'s Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was established in 2000. The IGC has been discussing the protection of intellectual property and traditional knowledge, traditional cultural expressions and genetic resources since 2001.

The WIPO General Assembly has issued a mandate for 2018-2019 that the IGC "continue to expedite its work, with the objective of reaching an agreement on an international legal instrument(s), without prejudging the nature of outcome(s), relating to intellectual property which will ensure the balanced and effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs)." TK is an important component of the WIPO IGC negotiations, as the IGC has also been mandated to:

"build on the existing work carried out by the Committee, including text-based negotiations, with a primary focus on narrowing existing gaps and reaching a common understanding on core issues, including definitions, beneficiaries, subject matter, objectives, scope of protection, and what TK/TCEs subject matter is entitled to protection at an international level, including consideration of exceptions and limitations and the relationship with the public domain."

The sound working methods under the mandate are to include an evidence-based approach mentioned in paragraph (c) of the mandate, with particular reference to conducting and updating studies covering domestic legislation in paragraph (d).

These tasks facing the IGC involve balancing a complex set of issues that include responding to indigenous people(s)' and local communities' concerns over the unauthorized use of TK, especially in a commercial context, while allowing active exploitation of the TK by the originating community itself and also safeguarding the interests of industry, museums, archives, libraries and other stakeholders.

Over the past twenty years, a number of WIPO Members have introduced provisions into their national laws to protect TK. The IGC would benefit from a better understanding of the scope of these laws, the nature and effectiveness of their implementation, and their quantifiable impacts.

This proposal aims to build upon the body of work developed in the IGC and gather further information that will provide the IGC with a better understanding of *sui generis* systems for protecting TK. The proposal includes questions relating to the nature of these systems, the extent to which countries have implemented and enforced such laws and regulations, examples of how such laws and regulations have been applied, any quantifiable or other benefits that have been derived from these laws, whether these laws would apply to subject matter used by the public, and any exceptions and limitations that may apply.

With this in mind, we propose that the WIPO Secretariat invite those WIPO Members that have a *sui generis*, national law/s or regulation/s for the protection of TK to respond to the following questions:

- Please briefly explain your TK law/regulation, as currently written, and any protection that it provides.
 - Note - If you provided this information previously in another WIPO document, a reference to the relevant sections of that document will suffice.
- What other rights, obligations or sanctions are provided under this law/regulation?

- How is TK defined in this law/regulation?
- Does this law/regulation treat foreign and domestic TK equally?
- What is the number of this law/regulation and when was it passed?
 - Here, please also provide the number and date for any amendments to the law/regulation that have been passed.
- If you have a TK law, is it supported by implementing regulations?
 - If so, what are the numbers of these regulations and when were they implemented?
- How does this law/regulation contribute to innovation?
- How has this law/regulation and/or implementing regulations been enforced?
 - If so, please cite relevant judicial decisions and briefly explain the facts and outcome.
 - Has the benefit been distributed fairly and impartially to the beneficiaries? (Is there any system for distributing benefit among beneficiaries?)
- Has this law/regulation resulted in financial compensation to indigenous or local communities, for example, through judicial or administrative decisions, access and benefit sharing, etc.?
 - If so, please cite examples along with the value of this financial compensation for each example.
- Has this law/regulation resulted in other measurable benefits to indigenous or local communities?
 - If so, please provide examples, explain the nature of the benefits and how they were measured.
- Does this law/regulation provide exclusive rights for products that are used commonly by the public or staple items that are widely available (e.g., items sold over the Internet)?
 - If so, please provide examples.
- Please explain what exceptions to TK protection exist under your law/regulation.

The Secretariat is requested to issue such questionnaire to WIPO Member States as soon as possible, and to compile the responses received in a document for consideration by the IGC at its next possible session. Such document should be supplemented and re-issued by the Secretariat for future IGC sessions as further responses to the questionnaire are received.

[End of Annex and of document]