

# WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION

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## INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

**Fourth Session**  
**Geneva, December 9 to 17, 2002**

### BRIEF SUMMARY OF WORKING DOCUMENTS

*Document prepared by the Secretariat*

#### I. DOCUMENTS FOR THE FOURTH SESSION

1. The following is a brief summary of the documents prepared for or submitted to the fourth session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the "Committee") up to December 6, 2002:

WIPO/GRTKF/IC/4/1 Prov.1: Draft Agenda for the fourth session.

WIPO/GRTKF/IC/4/2: Accreditation of certain Non-Governmental Organizations.

WIPO/GRTKF/IC/4/2 Add: Addendum to Accreditation of certain Non-Governmental Organizations.

WIPO/GRTKF/IC/4/2 Add2: Further Addendum to Accreditation of certain Non-Governmental Organizations.

These documents set out the names, contact details and aims and objectives of Intergovernmental and Non-governmental Organizations who have applied to the Committee for accreditation as *ad hoc* observers to future sessions of the Committee. Accredited Organizations receive an invitation to attend all meetings of the Committee, advance copies of all working documents, and the opportunity to make interventions on the issues under discussion following interventions by Member States and Intergovernmental Organizations.

WIPO/GRTKF/IC/4/3: Systematic Analysis of National Experiences with the Legal Protection of Expressions of Folklore. An initial draft rather than a final text, this document provides, on the basis of actual examples and national experiences, a technical analysis of the use of existing intellectual property and *sui generis* approaches for the legal protection of traditional cultural expressions/expressions of folklore. Comments are invited on the current draft before March 31, 2003. A further version of the document will be published for the fifth session of the Committee in 2003.

WIPO/GRTKF/IC/4/4: Brief Report on Legal-Technical Assistance for the Legal Protection of Expressions of Folklore. This document sets out recent capacity-building activities that have been undertaken by the Secretariat of WIPO in this area; for instance, workshops and meetings, expert and fact-finding missions, legislative drafting and advice, education and training, and the provision of equipment. The document demonstrates a continuing strong interest in practical and policy issues in relation to the protection of folklore and expressions of traditional culture, as a distinct set of needs and expectations.

WIPO/GRTKF/IC/4/5: Initial Checklist of Legal and Practical Issues for an Intellectual Property Toolkit. At its third session, the Committee decided to establish a toolkit to provide practical information on the intellectual property aspects of documentation of traditional knowledge. This paper discusses the background to this decision, and the needs the toolkit is intended to meet. A key concern is to ensure that any documentation process should serve the interests of TK holders. This paper provides a draft outline as the basis for development of the toolkit, and describes the extensive consultations already undertaken on this draft. Further input is sought on the draft, and on the proposed elements of the toolkit, so that a pilot version of the toolkit can be developed, consulted upon and reviewed in advance of the fifth session of the Committee in 2003.

WIPO/GRTKF/IC/4/6: Update on Work Concerning Traditional Knowledge Databases: Proposed document WIPO/GRTKF/IC/4/6 has not been prepared, since the chief developments in this area took place at a WIPO Asia-Pacific Regional Seminar on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore, held in Cochin, India, from November 11 to 13, 2002. The output of this Seminar is already the subject of a separate document: WIPO/GRTKF/IC/4/14. This includes recommendations made in a workshop, held in parallel to the seminar, on the Technical Aspects of Databases and Registries of Traditional Knowledge and Associated Biological and Genetic Resources:

WIPO/GRTKF/IC/4/7: Review of Existing Intellectual Property Protection of Traditional Knowledge. This document provides an update on how existing intellectual property systems are currently being used to protect traditional knowledge, and is supplementary to document WIPO/GRTKF/IC/3/7. These documents are based on questionnaires circulated to Member States, the latest version of which is document WIPO/GRTKF/IC/Q.1. Some Members have provided questionnaire responses for the first time; other Members have updated their responses, for instance by providing copies of new laws and regulations. In this way, a mechanism has been established whereby the Committee can be kept informed of any new or additional measures or practices to protect traditional knowledge.

WIPO/GRTKF/IC/4/8: Elements of a *sui generis* system for the protection of Traditional Knowledge. This document is an updated version of document WIPO/GRTKF/IC/3/8, a discussion of the elements of a possible *sui generis* intellectual property (IP) system for the protection of traditional knowledge (TK). It reviews the background to the debate on *sui generis* protection of TK, and considers some of the factors that may make it difficult at this

stage to define precisely a legal regime for TK protection. The document then discusses the nature of IP protection in general, and on this basis, considers the kind of rationales that may be relevant for IP protection of TK. The paper is intended to facilitate debate and discussion, rather than to pre-empt any policy decision on the desirability or otherwise of *sui generis* approaches to protecting TK.

WIPO/GRTKF/IC/4/9: Traditional Knowledge - Operational Terms and Definitions: Formal document WIPO/GRTKF/IC/4/9 has not been prepared, and WIPO/GRTKF/IC/3/9 should be consulted instead. At its third session, the Committee considered document WIPO/GRTKF/IC/3/9, a discussion on operational terms and definitions of traditional knowledge, and agreed that work in this regard would be continued in parallel with the other work of the Committee, and would take into account all comments submitted to the Secretariat of WIPO by Members. To date, no additional comments have been submitted, and Member State consultations are continuing on the contents of WIPO/GRTKF/IC/3/9. Accordingly, preparation of the updated document on the operational terms and definitions of traditional knowledge has been deferred until the period prior to the fifth session of the Committee in 2003.

WIPO/GRTKF/IC/4/10: Report on Electronic Database of Contractual Practices and Clauses relating to Intellectual Property, Access to Genetic Resources and Benefit-Sharing. At its third session, the Committee decided on the establishment of a database of contractual practices concerning intellectual property, access to genetic resources and benefit-sharing. Following this decision, the Secretariat circulated a questionnaire (document WIPO/GRTKF/IC/Q.2) to Member States and a wide range of stakeholders to secure information about relevant contracts and licenses. The Secretariat has created a pilot database, incorporating responses to the questionnaire: see <http://www.wipo.int/globalissues>. This document reports on the questionnaire and the creation of the database, and provides a preliminary discussion of some of the intellectual property aspects of the contracts covered by the database. It proposes that the process of collecting information for the database continue, with a view to developing a fully operational and more comprehensive version of the database for future consideration by the Committee.

WIPO/GRTKF/IC/4/11: Initial Report on Technical Study on Disclosure Requirements Related to Genetic Resources and Traditional Knowledge. This Initial Report contains draft materials for a technical study on patent disclosure requirements relating to genetic resources and traditional knowledge (TK). The decision to prepare a draft study responds to an invitation made by the Conference of Parties (COP) of the Convention on Biological Diversity (CBD). It also flows from the general WIPO work program which has included a range of intellectual property questions related to access to genetic resources and benefit-sharing. This report gives an overview of salient aspects of the patent system and of legal mechanisms concerning access to genetic resources and associated TK, and summarizes the previous consideration given to this issue in WIPO forums. It reviews the responses to a questionnaire circulated to WIPO Member States (document WIPO/GRTKF/IC/Q.3), in order to set the issue in the context of legal requirements for disclosure in national or regional patent laws. Issues that may need further consideration are identified at the conclusion of this report.

WIPO/GRTKF/IC/4/12: Participation of local and indigenous communities in the work of the committee. This paper considers the issue of the participation of local and indigenous communities in the work of the Committee, and reports on the decision of the WIPO General Assembly at its 28th Session, held from September 23 to October 1, 2002, concerning the facilitation of the involvement of representatives of such communities. It also

includes some suggested possible mechanisms to enhance participation of representatives of these communities in the work of the Committee.

WIPO/GRTKF/IC/4/13: Access to Genetic Resources Regime of the United States National Parks.

*Document submitted by the Delegation of United States.*

WIPO/GRTKF/IC/4/14: Technical Proposals On Databases and Registries of Traditional Knowledge and Biological/Genetic Resources.

*Document submitted by the Asian Group.*

WIPO/GRTKF/IC/4/INF/2; WIPO/GRTKF/IC/4/INF/3; WIPO/GRTKF/IC/4/INF/4

WIPO/GRTKF/IC/4/INF/5: Presentations on national and regional experiences with specific legislation for the legal protection of traditional cultural expressions (expressions of folklore).

A portion of the fourth session will be devoted to presentations on national and regional experiences with specific legislative systems for the legal protection of traditional cultural expressions. The presentations offer an opportunity for the invited presenters to describe, in-depth and from a practical viewpoint, their laws, systems or mechanisms (actual or proposed), including their actual experiences with developing, enacting and implementing them, if any to date. The oral presentations therefore complement the Secretariat's document WIPO/GRTKF/IC/4/3. Document WIPO/GRTKF/IC/4/INF/2 contains the written presentations of New Zealand, Nigeria and the Secretariat of the Pacific Community, as Annexes II, III and IV respectively. The presentation of Tunisia is contained in WIPO/GRTKF/IC/4/INF/3, that of Panama in WIPO/GRTKF/IC/4/INF/4, and that of the Russian Federation in WIPO/GRTKF/IC/4/INF/5. Annexed to these documents are suggested guidelines that were prepared by the Secretariat to help provide a common focus for the presentations.

## II. OTHER DOCUMENTS OF CURRENT INTEREST

2. The discussions of the Committee may also concern the following additional documents.

### *Background studies*

WIPO/GRTKF/STUDY/1: A Study on the Protection of Expressions of Folklore. *Written by Mrs P.V. Valsala G. Kutty for the World Intellectual Property Organization (WIPO).*

WIPO/GRTKF/STUDY/2: Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions. *Prepared by Ms. Terri Janke, Terri Janke and Company for the World Intellectual Property Organization (WIPO).*

### *Questionnaires*

Three questionnaires were circulated between the third and fourth sessions of the Committee, and form the basis of several documents prepared for the fourth session. Subject to decisions of the Committee, there may be further responses to these questionnaires in the context of the continuing work program of the Committee. The questionnaires are:

- WIPO/GRKTF/IC/Q.1: Revised Questionnaire for the Survey on Existing Forms of Intellectual Property Protection for Traditional Knowledge.
- WIPO/GRKTF/IC/Q.2: Questionnaire of Contractual Practices and Clauses relating to Intellectual Property, Access to Genetic Resources and Benefit-Sharing.
- WIPO/GRKTF/IC/Q.3: Questionnaire on various requirements for Disclosure relating to Genetic Resources and Traditional Knowledge in Patent Applications.

*Earlier documents*

WIPO/GRTKF/IC/3/5: Inventory of Traditional Knowledge-related Periodicals.

WIPO/GRTKF/IC/3/6: Inventory of Existing Online Databases containing Traditional Knowledge Documentation Data.

WIPO/GRTKF/IC/3/7: Review of Existing Intellectual Property Protection of Traditional Knowledge.

WIPO/GRTKF/IC/3/9: Traditional Knowledge - Operational Terms and Definitions.

WIPO/GRTKF/IC/3/10: Final Report on National Experiences with the Legal Protection of Expressions of Folklore.

WIPO/GRTKF/IC/3/12: Certain Decisions of the Sixth Conference of the Parties to The Convention on Biological Diversity.

*Document submitted by the Secretariat of the Convention on Biological Diversity.*

WIPO/GRTKF/IC/3/17: Report. *Adopted by the Committee.*

WIPO/GRTKF/IC/2/INF.2: International Treaty on Plant Genetic Resources for Food and Agriculture.

WIPO/GRKTF/IC/2/10: Position Paper of the Asian Group and China.

*Document submitted by the Asian Group and China.*

WIPO/GRTKF/IC/1/3: Matters concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore – an Overview.

WIPO/GRKTF/IC/1/8:

- Directive 98/44/EC of the European Parliament and of the Council on the Legal Protection of Biotechnological Inventions;
- Explanatory Note on Recital 27 of the above Directive concerning the Indication of the Geographical Origin of Biotechnological Inventions;
- Communication by the European Union and its Member States on the Relationship between the Convention on Biological Diversity and the TRIPS Agreement Paper on the Relationship between Intellectual Property Rights and Biodiversity.

*Documents submitted by the European Community and its Member States.*