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

Eighth Session
Geneva, June 6-10, 2005

PARTICIPATION OF INDIGENOUS COMMUNITIES PROPOSED RECOMMENDATION TO THE GENERAL ASSEMBLY FOR THE ESTABLISHMENT OF A VOLUNTARY CONTRIBUTION FUND

Document prepared by the Secretariat

1. Further to the request made by the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (hereinafter the Committee) following its seventh session (WIPO/GRTKF/IC/7/15, paragraph 62), the Secretariat has prepared an official proposal for the creation of a voluntary contribution fund. The proposal takes the form of a recommendation to be adopted by the Committee, which it would submit to the General Assembly for a decision to be taken at its next ordinary session. The content of the proposal is attached.
2. This proposal is the result of an in-depth analysis of the discussions held to date on this subject within the Committee, as well as on the investigations and consultations requested by the Committee since proposals relating to the funding of the participation of indigenous and local communities have been put forward. The context of this proposal is specified in documents WIPO/GRTKF/IC/4/12, WIPO/GRTKF/IC/5/11, WIPO/GRTKF/IC/6/10 and WIPO/GRTKF/IC/7/12. These documents take into consideration the possible components of various voluntary funding mechanisms, report on the investigations conducted with other United Nations agencies at the Committee's request, and deal with the practical, legal and financial matters raised. The reports of recent Committee sessions, where these issues have been discussed at length, have served as a substantive reference point in the drawing-up of this proposal.

3. The Committee considered a series of proposals relating to the strengthening of the involvement of indigenous and local communities in its work. The measures were discussed in documents WIPO/GRTKF/IC/7/14, WIPO/GRTKF/IC/7/13, WIPO/GRTKF/IC/7/12, WIPO/GRTKF/IC/6/10 and the previous documents (see also the report of the seventh Committee session (WIPO/GRTKF/IC/7/15 Prov. 2, paragraphs 26 to 63). The establishment of a fund is therefore one of the stages in a process and the Committee is invited to envisage undertaking other stages in order to strengthen the involvement of indigenous and local communities in its work.

4. The Committee is invited (i). to examine the proposal attached in Annex I; (ii) to adopt the proposal with all necessary amendments; and (iii) to envisage promoting and providing additional mechanisms designed to strengthen the involvement of indigenous and local communities in the Committee's work.

[The Annex follows]

ANNEX

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

Proposed Recommendation
for the Establishment of a Voluntary Contribution Fund

Resolved to take appropriate measures to facilitate and encourage the participation of indigenous and local communities 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 contributions;

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

The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore recommends to the WIPO General Assembly;

Should the General Assembly decide to renew the Committee's mandate in its current form or in a different form, or should the Assembly decide to create a new body responsible for the matters within the Intergovernmental Committee's remit in its current form, (these options being designated hereinafter by the generic term "the Committee");

That it *decides*, in addition, to create a voluntary contribution fund, the name, objective, criteria for support and operation of which would be determined as follows:

Name

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

Objective

2. The Fund will be designed exclusively to finance the participation of representatives of indigenous and local communities duly and previously accredited to the Committee's sessions. It is understood that all direct contributions or all 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 will of the contributor.

3. 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 in order to accredit indigenous and local communities or to organize the effective participation of their members in the sessions.

4. The establishment of the Fund and its operation will be a *sui generis* decision and will not set a precedent for other voluntary funds which WIPO might envisage establishing.

Criteria for financial support

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

(a) Fund support 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, without prejudice to the possibility for the Fund to support the participation on a number of occasions of the same beneficiary at several sessions;

(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 a non-governmental organization (NGO) duly and previously accredited by the Committee and representing an indigenous or local community;

(iii) have been duly nominated in writing by the community to represent it at the session designated for the support and to allow the community to benefit from possible Fund support;

(iv) taking into account proven expertise or experience, be able to participate effectively and make a substantive contribution to the session intended for the support;

(v) and whom the Advisory Council considers would not be able to take part in the session concerned without support from the Fund, owing to a lack of alternative financial resources.

(d) Fund support will be directed as a priority toward members of indigenous and local communities in developing countries, countries in economic transition, and of small island developing countries;

(e) The financial support will cover 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. It will also cover 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 flat rate of US\$60 to cover expenses incurred at the time of departure and arrival. All other expenses related to the participation of the beneficiaries in the session concerned will be excluded from Fund 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 session 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 session, provided that information is submitted giving a good reason for the withdrawal or nature of the event which otherwise made participation impossible.

Operating mechanism

6. The operating mechanism of the Fund will be as follows:

(a) Fund resources will come exclusively from voluntary contributions by governments, NGOs and other private or public entities, without being taken, in particular, from the WIPO ordinary budget.

(b) The administrative costs associated with the operation of the Fund will be kept to a strict minimum and may not entail the drawing of specific funds in credit from the WIPO ordinary budget.

(c) The voluntary contributions paid into the Fund will be managed by the WIPO Director General, assisted by an Advisory Council. 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 the 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 Council. The recommendations made by the Advisory Council relating to the choice of beneficiaries will be binding on the Director General and not subject to appeal.

(e) 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 session for which support is requested. Later requests will be considered at the following session.

(f) Before each Committee session, the WIPO Director General will communicate for the information of participants an information note setting out the level of the voluntary contributions paid into the Fund on the date on which the document was drafted, the identity of the contributors, apart from those contributors expressly wishing to remain anonymous, the amount of the resources available taking into account the funds disbursed, the list of people who have benefited from the Fund's support since the previous information memorandum, and also the people chosen to benefit from the Fund but who withdrew, the amount of the support allocated to each beneficiary, as well as an adequately detailed description of the applicants seeking support for the following session. This document will also be addressed by name to the members of the Advisory Council for examination and deliberation.

(g) Following the election of its members, the Advisory Council will be convened by the WIPO Director General to meet on the fringes of the Committee session which proceeds at the session 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 Intergovernmental Committee or of the new body to be created.

(h) The Advisory Council will be mandated during its deliberations to ensure that all the criteria for eligibility of applicants set out above, in particular in Article 5, are satisfied, and to recommend from the list of eligible applicants those who will be able to benefit from Fund support. The Advisory Council will also ensure, when adopting its recommendation, that:

- a balance is maintained between the male and female beneficiaries and between the regions from which they come, in successive sessions 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 will take account of the available resources as reported by the Director General in the information note referred to in Article 6(f).

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

(i) The Advisory Council will adopt its recommendation before the end of the Committee session on the fringes of which it meets. This recommendation will specify the future session intended for the financial support, the identity in sufficient detail of the beneficiaries unanimously chosen and the identity of any person whose request may have been refused unanimously. It will immediately forward the contents of the recommendation to the WIPO Director General who will take a decision in accordance with the recommendation. The Director General will immediately inform the Committee and, in all cases, prior to the end of the session. The information note which the Director General will submit for this purpose will list those applicants whose requests for support at the following session have been accepted, as well as the identity of those whose requests have been rejected. The names of the other applicants whose requests have neither been accepted nor rejected will be kept on the list of applicants contained in the information note referred to in Article 6(f), which will be distributed for the following Committee session.

(j) The WIPO Director General will take the administrative measures necessary to implement his decision for the session concerned, in accordance with Article 6(b).

Other provisions relating to the Advisory Council

7. The Advisory Council will comprise five members including the Chair of the Committee, appointed *ex officio* or, where that proves to be impossible, one of the Vice-Chairs appointed by the Chair, two members from the delegations of Member States on the Committee and two members from NGOs representing indigenous and local communities duly and previously accredited. The members will serve on an individual basis and will conduct their deliberations independently.

8. Apart from the *ex officio* member, the members of the Advisory Council will be elected by the Committee at the beginning of each of its sessions, on a proposal by its Chair, following consultation with the regional groups and representatives of indigenous and local communities. Apart from that of the *ex officio* member, their mandates will expire with the opening of the following Committee session.

9. The Advisory Council will meet regularly on the fringes of Committee sessions, as soon as a quorum of four members, including the Chair or one of the Vice-Chairs, is present.

10. The recommendations relating to selection of beneficiaries will be made on the unanimous agreement of the members present. If an application is not agreed unanimously, it may continue to be examined at the following session, unless the Advisory Council has rejected it unanimously. 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.

[End of annex and of document]