The State of Play in the International Protection of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs)

Perspectives on the WIPO Intergovernmental Committee

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Inter-Governmental Committee

- WIPO set up Inter-Governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) in Oct 2000
- Scope: Issues relating to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions
- No outcome ruled out.
WIPO has done surveys, reports and comparative analysis of protection of TK and TCEs at national, regional and international levels.

Prepared documents setting out draft objectives and principles and also draft substantive provisions for possible treaties.

14 meetings of IGC held so far.
General Assembly held in Sept 09 extended the mandate of the IGC for the biennium 2010-2011

Objective is to arrive at text of international legal instrument(s) to ensure effective protection of GRs, TK and TCEs

Laid down Work Plan including organising three inter-sessional working groups and four regular sessions

General Assembly 2011 to consider holding Diplomatic Conference for formal treaties.
TK, TCE and India

- India is rich in traditional knowledge, genetic resources and traditional cultural expressions including folklore
- It has been concerned about the misappropriation of TK and TCE and bio piracy
- India has domestic laws for protecting its biodiversity and for preventing misappropriation of the TK
- Created Traditional Knowledge Digital Library as a defensive mechanism against misappropriation
India has been urging at various international fora for an effective mechanism against misappropriation for long. It has been an active participant in the IGC process from the very beginning.
Bio-diversity, TK and TCEs are rich and diverse sources of creativity and innovation and important economic assets for the communities concerned.

TK and TCEs were produced not systematically, held collectively within the community and mostly remained undocumented.

It is also an evolving knowledge.
Existing IP system inadequate for protection of TK and TCEs.
Consequently, cultural and manufacturing industries commercially exploited culture based products without permission and without sharing the benefits
Misappropriation of TK occurs both in documented and undocumented (oral) TK
Need to develop a system that will extend same level of protection to TK as available to modern innovations.
IGC and Protection of TK, TCE

- WIPO is the appropriate forum to ensure an internationally acceptable and equitable resolution of the TK and TCE concerns.

- The issues are important and complex and need to be examined from the perspective that IPRs are effective policy instruments relevant for wide ranging socio-economic, technological and political concerns.

- Need to ensure a consensual and holistic approach to the issues of protection of GR, TK and TCE and setting up of fresh international standards.
A New System?

- Any regime for protection of TK should be consistent with and supportive of existing IP systems.
- Need to work for the development of a *sui generis* international system which will ensure:
  - Equitable sharing of benefits arising out of the use of TK with the holders of such knowledge.
  - Disclosure of sources and geographical origin of biological resources used in an invention, and
  - Prevent the grant of patents for products and processes based on knowledge in the public domain.
International Instruments of Protection

- Essential to establish a balanced and equitable international protection system
- Need to create a set of legally binding international instruments for protection of TK and TCEs including folklore
- Objectives, principles and substantive provisions be looked into as a whole.
General Framework

- TK and TCE protection should benefit the traditional communities.
- Non-community users have obligations, not rights of access.
- Entitlements to benefits should take into account the customary protocols, understanding and laws and practices.
General Framework

- Legitimate and non-commercial academic research could be allowed as exceptions to the rights
- Duration of protection should be unlimited
- Need appropriate enforcement and dispute resolution mechanisms.
The WIPO Asia-Pacific Regional Seminar on IPRs, GR, TK and Folklore held in Cochin in November 2002 prepared draft texts for international instruments on TK and TCE and provisions on GR

WIPO Secretariat prepared comprehensive basic draft texts for discussion, based on the Cochin Declaration
What is Needed

- Realisation of the urgency
- Holistic perception
- Commitment towards an early positive outcome
Thank you for your kind attention