

# **IGC 26: Informal Information Session**

Presentation by the Secretariat

January 20, 2014

Geneva

# Welcome and Introduction

Mr. Wend Wendland

Director, Traditional Knowledge Division

# IGC mandate 2014-2015

- . . . continue to expedite its work, with open and full engagement, on text-based negotiations with the objective of reaching an agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs
- a clearly defined work program. . . based on sound working methods . . three sessions of the IGC in 2014, including thematic and cross-cutting/stocktaking sessions
- at the beginning of IGC 26, an Ambassadorial/Senior Capital-based Officials meeting, to share views on key policy issues...to further inform/guide the process...IGC might decide to hold further such meetings during future IGC sessions
- build on the existing work of the IGC . . . use all WIPO working documents, including 25/5, 25/6 and 25/7, which are to constitute the basis of the Committee's work . . .as well as any other textual contributions by members
- the Committee is requested to submit to the 2014 General Assembly the text(s) of an international legal instrument(s). With a view to finalising the text(s) within the biennium, the GA will take stock of and consider the text (s), progress made and decide on convening a Diplomatic Conference, and consider need for additional meetings, taking budgetary process into account
- studies or examples might be requested or provided by members . . .examples and studies not to delay progress . .
- “without prejudice to the work pursued in other fora”
- “bearing in mind the Development Agenda recommendations”

# IGC's Work Program for 2014

- Three sessions . . .

- IGC 26 (Ambassadorial/SO meeting + GRs): February 3 to 7, 2014 (5 days)
- IGC 27 (Cross-cutting TK/TCE + TK + cross-cutting TK/TCE + TCEs): March 24 to April 4, 2014 tbc (10 days)
- IGC 28 (Cross-cutting/stocktaking): July 7 to 9, 2014 tbc (3 days)

# Arrangements for IGC 26

Mr. Oluwatobiloba Moody

Assistant Legal Officer, Traditional Knowledge Division

- Proposed overview of the session
- Documents for IGC 26
- Ambassadorial/Senior Capital-Based Officials meeting
- Indigenous Participation
- Side Events
- Available Resources

# Overview

- Twenty-Sixth session, with a focus on genetic resources
- First session under the 2014-2015 mandate
- A Chair and Vice-Chairs to be elected at the opening of the session
- In accordance with mandate, session to begin with Ambassadorial/Senior Capital Based Officials meeting,
  - “to share views on key policy issues relating to the negotiations, to further inform/guide the process”.

# Documents for the session

- A total of 11 documents so far prepared
- Available in all 6 languages on our website
  
- 4 working documents
  - WIPO/GRTKF/IC/26/1 Prov. 2 (*Draft Agenda*)
  
  - WIPO/GRTKF/IC/26/2 (*Accreditation*)
  
  - WIPO/GRTKF/IC/26/3 (*Voluntary Fund*)
  
  - WIPO/GRTKF/IC/26/4 (*Consolidated Document Relating to Intellectual Property and Genetic Resources*)

## ■ 7 information documents

- WIPO/GRTKF/IC/26/INF/2 Rev. (*Summary of Documents*)
- WIPO/GRTKF/IC/26/INF/3 Rev. (*Program*)
- WIPO/GRTKF/IC/26/INF/4 (*Applications and Contributions to the VF*)
- WIPO/GRTKF/IC/26/INF/5 (*Indigenous Panel*)
- WIPO/GRTKF/IC/26/INF/7 (*Cluster C Activities*)
- WIPO/GRTKF/IC/26/INF/8 (*Glossary*)
- WIPO/GRTKF/IC/26/INF/9 (*Report of Indigenous Expert Workshop, held in April 2013*)

- **Ambassadorial/Senior Capital-Based Officials Meeting**

- Consultations with Regional Coordinators held on December 5, 2013 and January 9, 2014, on:
  - Chair and Vice-Chairs of IGC for 2014-2015, and
  - arrangements for Ambassadorial/Senior Capital-based Officials meeting

# Proposed arrangements based on consultations held so far

- February 3, 2014, 10h00 to 13h00, Room A
- An interactive, open and frank exchange
- Extended to Ambassadors or their deputies/Senior Capital Based Officials + 1 expert (ie, two persons per delegation). No observers.
- Speaking rights reserved for Heads of Delegations
- Indigenous Caucus Chair to be able to be present and make a statement
- The elected Chair of the IGC to preside over the meeting
- No webcast or retransmission of the meeting's proceedings

# Indigenous Participation in IGC session

## ■ Indigenous Consultative Forum

- Not a formal committee session or official WIPO meeting, but endorsed by the Committee and facilitated by the Secretariat
- Sunday, February 2, 2014, 14h00

## ■ Indigenous Panel

- Monday, February 3, 2014, 15h00
- Theme: “Intellectual Property and Genetic Resources: What is at Stake for Indigenous Peoples?”
- Keynote: Professor James Anaya, United Nations Special Rapporteur on the Rights of Indigenous Peoples, United States of America
- Panelists: Mrs. Hema Broad (New Zealand) and Mr. Gerardo Jumi (Colombia)

# Side Events

- Tuesday, February 4, 2014
  - *Small-scale Farmers, Innovation and the Competition of International Regimes*, presented by the Quaker United Nations Office
  
- Wednesday, February 5, 2014
  - *UK Patent Activity for Genetic Resources*, presented by the United Nations University and the UK Intellectual Property Office
  
- Thursday, February 6, 2014
  - *The Nagoya Protocol: Key Features and Recent Developments*, presented by the Convention on Biological Diversity (CBD).
  
- Side events between 13h00 and 15h00 in Room NB 0.107

# Available resources

## ■ IGC Preparation Kit

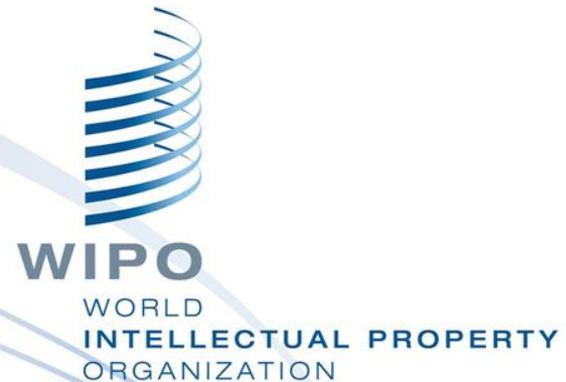
- An initiative of the WIPO Secretariat, designed to assist participants to prepare for IGC sessions
- provides a one-stop destination to participants for preparatory information, substantive working documents and other materials most directly relevant to each IGC session
- Proceedings of the Informal Information Sessions may also be accessed here.

## ■ Indigenous Portal

- Part of the WIPO Secretariat's effort to provide tailored resources for indigenous peoples and promote easy access to information for indigenous peoples and local communities

# To note...

- WIPO Voluntary Fund
  - 1 indigenous participant will be supported by the WIPO Voluntary Fund to IGC 26.
  - A need for more donations
  - Nominations to the Advisory Board to please be sent to [grtkf@wipo.int](mailto:grtkf@wipo.int)
  
- Draft report of the Twenty-Fifth Session available online
  
- Regional Coordinators consultation on Monday, January 27, 2014
  
- Chair-elect remains available for consultations till January 31, 2014.
  - Requests to be communicated to his office or to [grtkf@wipo.int](mailto:grtkf@wipo.int)
  
- Subscribe to receive our newsletters and e-updates



# Genetic Resources: Documents and Issues

Ms. Daphne Zografos Johnsson

Legal Officer, Traditional Knowledge Division

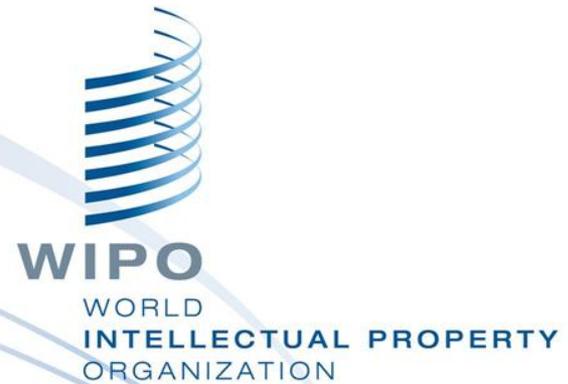
- What is or are the intellectual property issue(s)?
- Which issue(s) could be dealt with an international legal instrument at WIPO?
- How would such an instrument relate to the access and benefit-sharing legal frameworks set out in the Convention on Biological Diversity, 1992 (and the Nagoya Protocol, 2010) and the FAO's International Treaty, 2001?

Genetic resources are not “intellectual property”

- “genetic material of actual or potential value” (Convention on Biological Diversity, 1992)
- plants, animals and micro-organisms

- Access to and use of GRs: “Access and Benefit-sharing” (ABS)
- International framework for ABS set by the:
  - Convention on Biological Diversity, 1992 (CBD) (see also the Bonn Guidelines, 2002),
  - Nagoya Protocol, 2010 (not yet in force), and
  - FAO’s International Treaty, 2001

as implemented by regional and national systems



# Where does intellectual property fit in?

- Inventions based on or derived from GRs may be patentable\*. This raises two main issues:
  - ‘defensive protection’ of GRs: prevention of erroneous patents
    - *“quality of patent examination” issue*
  - ensuring and tracking compliance with ABS systems in national laws established pursuant to the CBD, Nagoya, FAO Treaty
    - *“transparency/mutual supportiveness” issue*
- How patent/IP rights are managed can determine the nature of the benefits and how they are shared

\* or be subject to other forms of IP rights

■ Proposed responses/solutions include:

■ databases/information systems, patent examination guidelines, and/or →

■ mandatory disclosure requirement, and/or →

■ managing patent/IP rights through contract (IP clauses in mutually-agreed terms) →



**Consolidated text**

**26/4**

Draft guidelines for IP clauses in ABS agreements

Database of examples of IP clauses in ABS agreements

**“Cluster C” issues: INF/7**

# Consolidated Document Relating to Intellectual Property and Genetic Resources

- WIPO/GRTKF/IC/26/4
- Developed at IGC 20 and further elaborated at IGC 23
- Submitted to GA 2013 (Annex A of document WO/GA/43/14)

# Consolidated Document Relating to Intellectual Property and Genetic Resources

## ■ GA 2013:

- Agreed to: «continue to expedite its work [...] on text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs»
- Decided that the work of the IGC: «will build on the existing work carried out by the Committee and use all WIPO documents including WIPO/GRTKF/IC/25/5 [...] which are to constitute the basis of the Committee's work on text-based negotiations [...]»

# Structure of the Consolidated Document

- List of terms
- [Preamble]
- **Policy objectives**
- [Article 1] Subject matter of [protection] [instrument]
- [Article 2] [Beneficiaries]
- **[Article 3] [Scope of [instrument] [protection]] [legal obligations]**
  - **[Disclosure protection]**
  - **[Defensive protection]**
- [Article 4] Relationship with international agreements
- [Article 5] International cooperation
- [Article 6] Transboundary cooperation
- [Article 7] Technical assistance, cooperation and capacity building

# Policy objectives

- OBJECTIVE 1: [Compliance with International/National laws relating to ABS [and disclosure]]
- OBJECTIVE 2: Ensuring [intellectual property][patent] offices have the required information to / and make proper decisions in granting [intellectual property][patent] rights

# Scope

- Structure of the provision on scope
  - Introductory provision
  - Disclosure protection
    - Option 1 – Formalities for disclosure
    - Option 2 – No disclosure requirement
  - Defensive protection

# Disclosure protection

- Key normative issue
- Some of the questions to be considered
  - What should be the subject matter? (GRs and ATK?)
  - What should be the nature of obligation to disclose? (mandatory?)
  - What should be the content of the disclosure? (origin/source, proof of legal access, PIC and benefit-sharing?)
  - What should trigger disclosure? (link between GRs and claimed invention)
  - What should be the consequence of non-compliance? (dismissal or no further processing of a pending application; nullity or unenforceability of granted patent; administrative or criminal sanctions outside of the patent system without effect on any granted patent?)

- Should liability be strict?
- How would the requirement be implemented, verified and monitored? (for example through PCT/PLT?)
- Should there be exclusions from disclosure?
- How would a claim to a right over a GR be attested? (who would have standing to assert a claim or initiate action for non-compliance with the disclosure requirement?)
- How would overlapping claims by several claimants be addressed?
- Relationship with PCT and PLT?

# No disclosure requirement

- No mandatory disclosure unless such disclosure is material to the patentability criteria of novelty, inventive step or enablement
- No requirement to disclose the source, origin or other information relating to GRs in IP/patent applications

# Defensive protection

- Establishment of databases accessible to IP/patent offices
- What should be the aim(s) of these databases?
  - Avoid the granting of erroneous IP/patents?
  - Prevent misappropriation?
  - Ensure PIC?
  - Ensure transparency?
- May be used in *complement* of a disclosure requirement and may also help *implement* the disclosure requirement

# Additional questions to consider on databases

- Who should have responsibility for compiling and maintaining the databases?
- Should there be minimum standards to harmonize structure and content?
- To whom should the databases be accessible?
- What should be the content of the databases?
- In what form should the content be expressed?
- Should there be accompanying guidelines?

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## List of terms

- Which key terms should be listed and defined?
- Synergy with terminology and definitions of other international instruments

## Preamble

- What is the purpose of this part?
- What type of information/aspirations should be included in this part?

# Subject matter

- Should protection/the instrument apply to:
  - Any intellectual property right or application?
  - Any patent right or application?
  
- Which is:
  - Derived from utilization of?
  - Directly based on?
    - GRs
    - Their derivatives?
    - Associated TK/TK associated with GRs?

# Beneficiaries

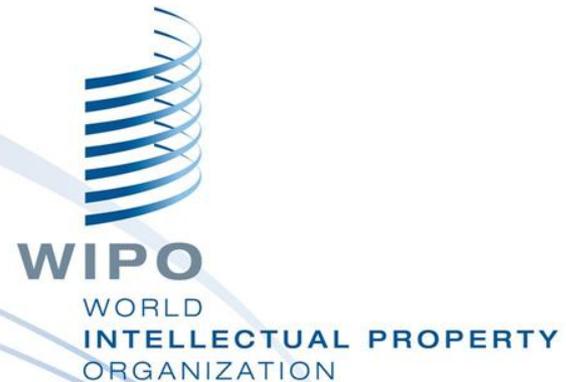
- Effective ABS systems implemented in national patent IP laws should be beneficial to:
  - The public?
  - GRs holders?
  - Supplier countries?
  - Indigenous and local communities?
  - Providers?
  - The country of origin or providing country?
  - Users of GRs?
  
- Instrument for the benefit of?
  - Country providing resources or knowledge?
  - Indigenous peoples and local communities?
  
- Is there a need for a provision on beneficiaries?

# Other provisions

- Relationship with international agreements
  - Mutually supportive relationship with existing international agreements (in particular CBD, Nagoya, ITPGRFA, TRIPS)
- International cooperation
  - Development of guidelines for the search and examination/administrative disclosure of origin or source by international search and examination authorities under the PCT

# Other provisions

- Transboundary cooperation
  - Covers situations where the same GRs/derivatives/ATK/TK associated with GRs are found in *in-situ* conditions within territory of more than one party
- Technical assistance, cooperation and capacity building



# Evaluation of Support Services to the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

Mr. Claude Hilfiker

Head, Evaluation Section; Internal Audit and Oversight Division IAOD

# Evaluation Methodology

- Review of relevant documents and publications on the WIPO TK website.
- Survey of delegates and observers (“IGC participants”) attending the 25th IGC session in July 2013.
- Interviews conducted with some 15 participants attending the 25<sup>th</sup> session
- Direct observation at the 24<sup>th</sup> and 25<sup>th</sup> sessions

# Evaluation Results: Findings

- (a) Preparatory services were efficient and effective with IGC participants rating key services between 69%-96% positively
- (b) Services provided during and after the IGC sessions were rated between 73%-94% positively.
- (c) Services provided to representatives of indigenous people and local communities were found to be efficient and effective with them rating key services from 85% to 93%.

# Improvements Identified

To preparatory services (invitation and registration process, communicating e-updates):

- Electronic updates: earlier information
- Website: TK page restructured
- Registration: simpler and uniform registration system
- Publications: availability, presentations + other docs

Services during and after the IGC sessions:

- Communicating progress to participants during the sessions: live postings
- Webcasting: improve the display
- Facilities for facilitators

# Improvements Identified (contd.)

Services to representatives of indigenous people and local communities:

- Indigenous caucus meeting and the Indigenous Panel: more time allocated, better focus
- Selection process for the WIPO Voluntary Fund: better selection criteria and more thorough process
- Reduced application time through appointing an Advisory Board

# Evaluation Recommendations

- **Recommendation 1:** Improving the preparatory support services provided for pre-session updates and publications/reports.
- **Recommendation 2:** Improving the support services provided during the IGC sessions to communicating progress during the sessions, webcasting and secretarial support for facilitators.

# Evaluation Recommendations (contd.)

- **Recommendation 3:** Increasing the support services provided to representatives of indigenous people and community groups for the caucus meeting and Indigenous Panel.
- **Recommendation 4:** Providing the necessary expertise to the IGC and increasing the level of awareness without overstepping its mandate.

■ To ask for evaluation report: [iaod@wipo.int](mailto:iaod@wipo.int)

# Discussion and Closing Remarks

Sign up for our TK e-Updates!

Copies of this presentation will be made available to Regional Coordinators and on the “IGC Preparation Kit”