



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

- 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

- 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 25th session
- Direct observation at the 24th and 25th 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

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”