



IGC 35: Informal Information Session

Presentation by the Secretariat

March 8, 2018

Geneva



Welcome and Introduction

Mr. Wend Wendland

Director, Traditional Knowledge Division



Practical arrangements for IGC 35

Mrs. Fei Jiao

**Assistant Program Officer, Traditional Knowledge
Division**



New Mandate

- Mandate 2018-2019
 - Agreed on at GA 2017
- “[...] continue to expedite its work, with the objective of reaching an agreement on an international legal instrument(s), without prejudging the nature of outcome(s), relating to intellectual property which will ensure the balanced and effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs).” **(extract)**

2018

2019

“Undertake negotiations on GRs with a focus on addressing unresolved issues and considering options for a draft legal instrument”

IGC 35
GRs
(March 19
to 23)

IGC 36
(June 25 to
29)
5/6 days

IGC 37
TK/TCEs
(August 27
to 31)

IGC 38
TK/TCEs
(December
10 to 14)
5/6 days

IGC 39
TK/TCEs


IGC 40
TK/TCEs



Bureau-elect

- IGC Chair-elect
 - Mr. Ian Goss of Australia

- IGC Vice-Chairs-elect
 - Mr. Jukka Liedes of Finland
 - Mr. Faizal Chery Sidharta of Indonesia



9 working documents

9 information documents

18 documents

9 Information documents

- WIPO/GRTKF/IC/35/INF/1 (List of Participants)
- WIPO/GRTKF/IC/35/INF/2 Rev. (Summary of Documents)
- WIPO/GRTKF/IC/35/INF/3 (Draft Program)
- WIPO/GRTKF/IC/35/INF/4 (Information notes on Voluntary Fund)
- WIPO/GRTKF/IC/35/INF/5 Rev. (Indigenous Panel)
- WIPO/GRTKF/IC/35/INF/6 (Recommendation Adopted by the VF Advisory Board)
- WIPO/GRTKF/IC/35/INF/7 (Glossary)
- WIPO/GRTKF/IC/35/INF/8 (Resources on the GRTKF Website)
- WIPO/GRTKF/IC/35/INF/9 Rev. (Report on the Implementation of Cluster C Activities (“Options on Mutually Agreed Terms for Fair and Equitable Benefit-Sharing”))



9 Working documents

- WIPO/GRTKF/IC/35/1 Prov. 2 (Draft Agenda)
- WIPO/GRTKF/IC/35/2 (Accreditation)
- WIPO/GRTKF/IC/35/3 (Voluntary Fund)
- WIPO/GRTKF/IC/35/4 (Consolidated document Relating to IP and GRs)
- WIPO/GRTKF/IC/35/5 (Report on the Compilation of Materials on Databases Relating to GRs and Associated TK)
- WIPO/GRTKF/IC/35/6 (Report on the Compilation of Materials on Disclosure Regimes Relating to GRs and Associated TK)
- WIPO/GRTKF/IC/35/7 (Joint Recommendation on GRs and Associated TK)
- WIPO/GRTKF/IC/35/8 (Joint Recommendation on the Use of Databases for the Defensive Protection of GRs and TK Associated with GRs)
- WIPO/GRTKF/IC/35/9 (Proposal for the Terms of Reference for the Study by the WIPO Secretariat on Measures Related to the Avoidance of the Erroneous Grant of Patents and Compliance with Existing Access and Benefit-Sharing Systems)

IGC's Mandate

The Secretariat is requested to produce a report(s) compiling and updating studies, proposals and other materials relating to tools and activities on databases and on existing disclosure regimes relating to GR and associated TK, with a view to identify any gaps.

IGC 35 documents

WIPO/GRTKF/IC/35/5
(Report on the Compilation of Materials on Databases Relating to GRs and Associated TK)

WIPO/GRTKF/IC/35/6
(Report on the Compilation of Materials on Disclosure Regimes Relating to GRs and Associated TK)

Content

WIPO Publications and Activities

Proposals from Member States

Regional and National Experiences

Historical Development of the TK Text

Historical Development of the GRs Text

WIPO Studies and Guide

Database on Laws and Regulations

Proposals from Member States

Regional and National Experiences

Historical development of the GRs Text

Resources (1/3)



Key Questions on Patent Disclosure Requirements for Genetic Resources and Traditional Knowledge



Resources (2/3)



Regional, National, Local and Community Experiences

This page includes resources available on WIPO's website on regional, national, local and community experiences regarding intellectual property and genetic resources, traditional knowledge and traditional cultural expressions.

Table of contents

1. Laws, legislative measures and protocols
2. Fact-finding missions, surveys, submissions by member states and observers
3. Case studies
4. Lectures and presentations
5. Other resources

1. Laws, legislative measures and protocols

- Laws, treaties and regulations relevant to traditional knowledge, traditional cultural expressions and genetic resources
- Disclosure requirements table [PDF](#)
- Codes, guidelines and practices relating to the recording, digitization and dissemination of TCEs

2. Fact-finding missions, surveys, submissions by member states and observers

Report on fact-finding missions

- Intellectual Property Needs and Expectations of Traditional Knowledge Holders (WIPO Report on Fact-Finding Missions) [PDF](#)



Resources (3/3)

- Disclosure Requirements Table
(http://www.wipo.int/export/sites/www/tk/en/documents/pdf/genetic_resources_disclosure.pdf)
- Background Brief on GRs
- The IGC Preparation Kit
 - A one-stop destination for preparatory information, substantive working documents and other materials most directly relevant to each IGC session.
 - Updated with relevant information relating to the 35th session (working documents, background briefs, this briefing, useful links etc.)
- Indigenous Portal
 - Part of the WIPO Secretariat's effort to provide tailored resources for indigenous peoples and promote easy access to information for and about indigenous peoples and local communities.





Indigenous Participation in IGC 35

■ Indigenous Consultative Forum

- Not a formal committee session or official WIPO meeting, but endorsed by the Committee and facilitated by the Secretariat
- Sunday, March 18, 2018, 14h00

■ Indigenous Panel (shortened)

- Monday, March 19, around 11h15, for 1 hour only
- Theme: “Proposed Patent Disclosure Requirements related to Genetic Resources – Indigenous Peoples’ and Local Communities’ Perspectives”
- Noting that the theme of the panel at IGC 36 will be: “Practical Measures Relating to Intellectual Property and Genetic Resources: Databases and Contracts – Indigenous Peoples’ and Local Communities’ Perspectives”



To note...

- WIPO Voluntary Fund
 - Nominations by Regional Groups for the Advisory Board to please be sent to grtkf@wipo.int by 12pm, Monday, March 19, 2018.



Launch Event

- March 19, 2018, at 12:45
- New Conference Hall
- Refreshments will be served.



Meeting(s) with the IGC Chair-elect

- Time:
 - 2:30pm, Thursday, March 15, 2018
 - 11am, Friday, March 16, 2018 (Provisionally)
- Venue: Uchtenhagen Room
- Participation: Regional Coordinators + interested delegates from Member States



Genetic Resources: Issues for IGC 35

**Mr. Shakeel Bhatti, Counsellor, Traditional Knowledge
Division**

Structure of the Consolidated Document 30/4

- List of terms
- [Preamble]
- **Policy objective[s]**
- [Article 1] Subject matter of instrument
- **[Article 2] [Disclosure requirement]**
- [Article 3] [Exceptions and limitations]
- [Article 4] [Relationship with [PCT] and [PLT]]
- [Article 5] Sanctions and remedies
- [Article 6] [No new disclosure requirement]
- **[Defensive measures]**
- [Article 7] [Due diligence]
- [Article 8] [Prevention of the erroneous grant of patents and voluntary codes of conduct]
- [Article 9] Relationship with international agreements
- [Article 10] International cooperation
- [Article 11] Transboundary cooperation
- [Article 12] Technical assistance, cooperation and capacity building

Structure of the Consolidated Document 35/4

- List of terms
- [Preamble]
- **[I. General Provisions]**
- [Article 1] Objective[s]
- [Article 2] Subject matter of instrument
- **[II. [Mandatory] Disclosure]**
- [Article 3] [Disclosure requirement]
- [Article 4] [Exceptions and limitations]
- [Article 5] Sanctions and remedies
- **[Alternative to Articles 1, 2, 3, 4 & 5 No New Disclosure Requirements]**
- Alt [Article 1] [Objective]
- Alt [Article 3] [No new disclosure requirement]
- **[III. Defensive measures/Defensive measures complementary to mandatory disclosure]**
- [Article 6] [Due diligence]
- [Article 7] [[Prevention of the [erroneous] grant of patents] [Prevention of the granting of patents which do not comply with the requirements for patentability of the invention] and voluntary codes of conduct]
- **[IV. Final Provisions]**
- [Article 8] Relationship with international agreements
- [Article 9] International cooperation
- [Article 10] Transboundary cooperation
- [Article 11] Technical assistance, cooperation and capacity building



Two broad approaches in the current version of the consolidated document

■ Disclosure Requirement:

Inclusion of a disclosure requirement within IP/patent legislation relating to the disclosure of information in applications, where the subject matter includes utilization of, or is directly based on, GRs or TK associated with GRs. Within this approach, defensive measures are considered complementary measures and not an alternative approach to addressing policy objectives.

■ Defensive Measures:

This approach incorporates measures such as databases, voluntary codes and guidelines for IP/patent offices, third party dispute mechanisms and due diligence regimes within patent offices under national laws.



List of terms

- Which terms need to be defined?
- Consistency with terminology used in other international instruments

Preamble

- Which principles/ aspirations/concerns should be included in the preamble?



[I. General Provisions]

[Article 1 Objective[s]]

- the objective(s) have been revised to focus on the IP/patent system.
- the focus of GR work at WIPO is on how the IP/patent system, through a disclosure requirement and/or defensive measures, can improve the implementation of the IP/patent system (e.g., patent quality).
- where possible and within this focus, it might also mutually support international agreements relating to GRs and TK.



[I. General Provisions]

[Article 2] Subject matter of instrument

Two alternatives:

- This instrument applies to genetic resources, [their derivatives] and [traditional knowledge associated with genetic resources].
- [This instrument shall/should apply to patent applications for inventions directly based on genetic resources[, and traditional knowledge associated with genetic resources].



Key issues in II. [Mandatory] Disclosure

- Should disclosure requirements be **mandatory or voluntary**?
- In addition to GRs, should the instrument also apply to **derivatives and TK associated with GRs**?
- What should **trigger** disclosure, “utilization of” subject matter, “directly based on” subject matter, or “directly based on the utilization of” subject matter?



Key issues in II. [Mandatory] Disclosure

- What should be the **content** of disclosure? For example, should it be the origin and/or source of the GR, and information regarding compliance with access and benefit-sharing requirements including prior informed consent?
- Should there be **exceptions and limitations** to a disclosure requirement, and if so, which ones?
- Should issues concerning IP/patent **subject matter eligibility** for GRs and/or derivatives as found in nature and/or isolated therefrom be addressed in this instrument, and, if so, where would this be better addressed, in the preamble or in the main body of the instrument?



Key issues in II. [Mandatory] Disclosure

- What should be the **consequence of non-compliance**?
Should non-compliance affect the validity of a granted patent and, if so, what would the permissible condition for revocation be?



Alternative to Articles 1-5: No new disclosure requirement

■ [Article 1 - Objective]

[The objective of this instrument is to prevent the grant of patent rights on inventions that are not novel, non-obvious, and industrially applicable.]

■ [Article 3 – No new disclosure requirement]

3.1 ... applicants may only be required to state where the GR can be obtained if that location is necessary for a person skilled in the art to carry out the invention.

Therefore no disclosure requirements can be imposed upon patent applicants or patentees for patents related to GR, [their derivatives] and [TK associated with GRs], for reasons other than those related to novelty, inventive step, industrial applicability and enablement.]



Defensive approaches

Existing views:

- defensive measures only, without any additional disclosure requirements, would be the best way to achieve the objectives;
and/or
- disclosure requirements could be complemented by defensive measures.



III. Defensive measures

[Article 6 - Due diligence

Member states shall/should encourage or establish a fair and reasonable due diligence system to ascertain that [protected] GRs have been accessed in accordance with [applicable] access and benefit-sharing legislation or regulatory requirements.

- (a) Optional establishment of a database
- (b) Database should be accessible to potential patent licensees [and potential investors]]



Prevention of erroneous grant of patents

- Provide **legal, policy or administrative measures**
 - to prevent patents from being granted erroneously
 - to allow third party to dispute validity of a patent
- Develop and use **voluntary codes of conduct and guidelines** for users regarding protection of GRs
- Facilitate the creation, exchange, dissemination and access to, **databases of GRs**



Prevention of erroneous grant of patents (2)

■ Database Search System

- Members are encouraged to facilitate the establishment of databases of GR, [their derivatives] and [TK associated with GRs] for the purpose of search and examination of patent applications

■ WIPO Portal Site

- Member States shall/should establish a database search system (the WIPO Portal) that links databases of WIPO members that contain information on GRs within their territory.



Discussion and Closing Remarks

**Facilitated by Mr. Edward Kwakwa, Senior Director,
Department for Traditional Knowledge and Global
Challenges, Global Issues Sector, WIPO**



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Copy of this presentation will be made available on the “IGC Preparation Kit”.