



IGC 27: Informal Information Session

Presentation by the Secretariat

March 14, 2014

Geneva

Welcome and Introduction

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Extracts from 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 . .
- . . . with a view to finalising the text(s) within the biennium, the 2014 General Assembly GA will take stock of and consider the text (s), progress made and decide on convening a Diplomatic Conference . . .
- studies or examples might be requested or provided by members . . .examples and studies not to delay progress . .

		<p>to the negotiations on GR/TCE, to further inform/guide the process. Duration – Half Day.</p> <ul style="list-style-type: none">• Undertake text-based negotiations on GR with a focus on considering options for a draft legal text - Duration four and a half days. <p>Duration 5 Days.</p>	
	April 2014	<p>IGC 27 TK followed by TCE.</p> <ul style="list-style-type: none">• Consideration of Cross Cutting TK/TCE Issues – 1 Day.• TK - Focus on objectives, principles, 4 key Articles viz Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions - Duration 4 Days.• Consideration of Cross Cutting TK/TCE Issues – 1 Day.• TCE - Focus on objectives, principles, 4 key Articles viz Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions Duration 4 Days. <p>Duration 10 Days.</p>	
	July 2014	<p>IGC 28 Cross-cutting session/Stocktaking.</p> <ul style="list-style-type: none">• Cross Cutting GR/TK/TCE session.• Take stock of progress and make a recommendation to the General Assembly. <p>Duration 3 Days.</p>	
	September 2014	<p>WIPO General Assembly</p>	



Documents for the session

■ 8 working documents

- WIPO/GRTKF/IC/27/1 Prov. 2 (*Draft Agenda*)
- WIPO/GRTKF/IC/27/2 (*Accreditation*)
- WIPO/GRTKF/IC/27/3 (*Voluntary Fund*)
- WIPO/GRTKF/IC/27/4 (*The Protection of Traditional Knowledge: Draft Articles*)
- WIPO/GRTKF/IC/27/5 (*The Protection of Traditional Cultural Expressions: Draft Articles*)
- WIPO/GRTKF/IC/27/6 (*Joint Recommendation on Genetic Resources and Associated Traditional Knowledge*)
- WIPO/GRTKF/IC/27/7 (*Joint Recommendation on the Use of Databases for the Defensive Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources*)
- WIPO/GRTKF/IC/27/8 (*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*)

Documents for the session

- 8 information documents
 - WIPO/GRTKF/IC/27/INF/2 Rev. (*Summary of Documents*)
 - WIPO/GRTKF/IC/27/INF/3 Rev. (*Program*)
 - WIPO/GRTKF/IC/27/INF/4 (*Applications and Contributions to the VF*)
 - WIPO/GRTKF/IC/27/INF/5 (*Indigenous Panel*)
 - WIPO/GRTKF/IC/27/INF/7 (*Glossary*)
 - WIPO/GRTKF/IC/27/INF/8 (*Resources on TK website*)
 - WIPO/GRTKF/IC/27/INF/9 (*Report of Indigenous Expert Workshop, held in April 2013*)
 - WIPO/GRTKF/IC/27/INF/10 (*Suggested Cross-Cutting Issues, by the IGC Chair*)

- Consideration of cross-cutting TK and TCE issues

- When and how will this discussion take place?
- What are the “cross-cutting issues”
- How will the benefits of the cross-cutting discussion feed into the text-based negotiations?

■ Consultations with Regional Coordinators
today at 4pm

Draft program of the session (see INF/3)

- Monday March 24: morning: agenda items 1 to 5
- Monday March 24: afternoon and Tuesday March 25 morning: cross-cutting TK/TCEs
- Tuesday March 25 afternoon to Friday March 28 afternoon: TK (agenda item 6)
- Monday March 31: cross-cutting TK/TCEs
- Tuesday April 1 to Friday April 4 morning: TCEs (agenda item 7)
- Friday April 4 afternoon: agenda items 8 and 9

Some suggested cross-cutting issues

- See WIPO/GRTKF/IC/INF/10 (information note by the Chair of the IGC):
 - the meaning of “traditional”;
 - the beneficiaries of protection, in particular, the role of states or “national entities”;
 - the nature of the rights, including the meanings of “misappropriation” and “misuse”; and
 - the treatment of publicly available and/or widely diffused TK and TCEs
- This list is not necessarily exhaustive and delegations may wish to propose other cross-cutting issues for consideration

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, March 23, 14h00

■ Indigenous Panel

- Monday, March 24, 2014, around 10h30
- Theme: “Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions: Indigenous Peoples’ ‘right to maintain, control, protect and develop their intellectual property’ under Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples”
- Keynote: Mr. Pavel Sulyandziga, President of Batani Fund and member of the United Nations Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, Moscow, Russia
- Panelists: Mrs. Edith Bastidas, Colombia; Mr. Preston Hardison, United States of America); Mrs. Latifa Douch, Morocco

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 and about indigenous peoples and local communities

To note...

- WIPO Voluntary Fund
 - No further funds
 - Nominations to the Advisory Board to please be sent to grtkf@wipo.int

- Draft report of the Twenty-Sixth Session available online

- Chair remains available for consultations until March 21, 2014
 - Requests to be communicated to his office or to grtkf@wipo.int

- Subscribe to receive our newsletters and e-updates

Traditional Knowledge and Traditional Cultural Expressions

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Two sets of draft articles

- Document WIPO/GRTKF/IC/27/4

The Protection of Traditional Knowledge:
Draft Articles

- Document WIPO/GRTKF/IC/27/5

The Protection of Traditional Cultural Expressions:
Draft Articles

Key policy issues

- In both sets of draft articles: four key policy issues identified by the IGC:
 - Subject matter of protection
 - Beneficiaries of protection
 - Scope of protection
 - Exceptions and limitations
- These issues are inter-related, and form part of a “package”

The Protection of TK: Draft Articles

- Policy Objectives
- General Guiding Principles
- Article 1 - Subject matter of protection
- Article 2 - Beneficiaries of protection
- Article 3 - Scope of protection
- Article 4 – Sanctions, Remedies and Exercise of rights / Application
- *Article 4 BIS – Disclosure requirement*
- Article 5 - Administration [of rights]
- Article 5 BIS – Application of collective rights
- Article 6 – Exceptions and limitations
- Article 7 – Term of protection
- Article 8 – Formalities
- Article 9 – Transitional measures
- Article 10 – Consistency with the general legal framework
- Article 11 – National treatment and other means of recognizing foreign rights and interests
- Article 12 – Trans-boundary cooperation

The Protection of TCEs Draft Articles

- Objectives
- [Principles/Objectives] / [Preamble]
- [Article 1] – Subject matter of protection
- [Article 2] – Beneficiaries of protection
- [Article 3] – Scope of protection
- [Article 4 – Administration of rights/interests]
- [Article 5] – Exceptions and limitations
- Article 6 – Term of protection
- Article 7 – Formalities
- [Article 8 – Sanctions, remedies and exercise of rights/interests]
- [Article 9 – Transitional measures]
- [Article 10 – Consistency with the general legal framework]
- [Article 11 – National treatment]
- [Article 12 – Trans-boundary cooperation]

Cross-cutting TK/TCEs issues

- The GA has mandated a consideration of “cross-cutting TK/TCE issues”
- Cross-cutting TK/TCE issues identified by the Chair (WIPO/GRTKF/IC/27/INF/10):
 - The meaning of “traditional”
 - The beneficiaries of protection, in particular, the role of states or “national entities”
 - The nature of the rights, including the meanings of “misappropriation” and “misuse”
 - The treatment of publicly available and/or widely diffused TK and TCEs
- Other cross-cutting issues can be identified by the IGC

1. The meaning of “traditional”

- This issue is especially relevant to Articles 1 of both texts
- Why is it important to have a clear understanding of the meaning of “traditional”?
- Examples of situations where clarity is important
 - “Contemporary” cultural expressions, including those with a “traditional” origin, are considered “original”
 - TK-based innovation

1. The meaning of “traditional”

- A number of elements can help elucidate the meaning of “traditional” and distinguish “non-traditional” from “traditional” knowledge and cultural expressions
- They can be found in the definition and criteria for eligibility of the TK and TCEs texts: many of these elements seek to capture the essence of what is “traditional” in this context

1. The meaning of traditional

- They include:
 - The intergenerational nature of transmission
 - Which term should be used? From generation to generation?
Between generations? Intergenerational?
 - The link between TK and TCEs and the originating culture and community
 - Which terms should be used?
TCEs text: Distinctive of or the unique product of? Associated with?
TK text: [Distinctively] associated/linked with the cultural, [and] social identity, [and] or cultural heritage of beneficiaries
 - The collective nature of TK and TCEs
 - Their dynamic and evolving nature? Is this consistent with “traditional”?

1. The meaning of traditional

Additional element with respect to TK:

- Should there be reference to a term during which TK should have been used to be considered eligible for protection?
 - Is a time component necessary?
 - Is there a contradiction with characteristic that TK is “dynamic and evolving”

2. The beneficiaries of protection

- This issue is especially relevant to Articles 2 in both texts
- What does the term “beneficiaries” refer to?
 - Important to distinguish between
 - Rights holders
 - Competent authority that might be tasked with exercising rights in cases where the beneficiaries cannot be identified
 - A more general class of persons, such as society at large

2. The beneficiaries of protection

- Who should the beneficiaries be?
 - Understanding on the principle that the beneficiaries are, at least, indigenous peoples and local communities
 - Divergence on terminology on use of the terms “peoples” and “local communities”

2. The beneficiaries of protection

- Should the instrument extend beyond indigenous peoples and local communities to include other potential rights holders/beneficiaries?
- Should “nations” be beneficiaries?
 - Meaning of “nations”
 - Could the term “states” be used instead?
- Should a “national entity” be a beneficiary, or is this rather an administrator of rights (like a collecting society)?
- Should the possibility of extending the range of beneficiaries be left to be decided at the national level, according to the national situation?

2. The beneficiaries of protection

- Identification of beneficiaries linked to the definition of subject matter
 - Overlaps and redundancies between Articles 1 and 2 in both texts
 - Consideration of cross-referencing between articles to avoid duplication and inconsistency

3. The nature of rights

The current texts include different policy choices, such as:

■ **The right to say No**

- Exclusive rights ... such as the right to say No to uses that fall within prerogatives and the right to be compensated
- Found in Patent and Copyright laws
- Analogous to a right of free, prior and informed consent

The right to be compensated

- Right to be paid for certain uses ... cannot prevent or oppose uses
- Found in the field of copyright and patents: Compulsory licenses
- “Use now, pay later” option

3. The nature of rights

Economic rights

- Exclusive rights

Moral rights

- Rights to claim authorship or a work and to object to any mutilation and deformation or other modification of, or other derogatory action in relation to, the work which would be prejudicial to the author's honor or reputation.

3. The nature of rights

Could exclusive economic rights be ...

- Appropriate for sacred and secret TK and TK uniquely attributable to specific indigenous peoples and local communities?
- Appropriate for TCEs which are secret and/or of particular cultural or spiritual significance?

Could moral rights be ...

- Appropriate for TK that is secular and is already publicly available or non attributable to specific indigenous peoples and local communities?
- All other TCEs?

3. The nature of rights

Regarding the level of detail into which the instrument should delve, there are basically 2 approaches:

■ Flexible approach

- Give States maximum flexibility to determine the scope of protection through national and domestic implementing legislation

- “Measures-based approach”

■ Prescriptive approach

- More detailed and prescriptive

- “Rights-based approach”

4. The treatment of publicly available and/or widely diffused TK and TCEs

- TK and TCEs that are already available, without restriction, to the general public.
- Should there be differentiated protection for publicly available TK or TCEs, on the one hand, and secret or restricted TK or TCEs, on the other?
- This is relevant to the definition of the subject matter, the identification of the beneficiaries, the delimitation of the scope of rights and the extent of the exceptions and limitations to the rights.
- The separate issue of TK/TCEs that are shared across cultures and territories is rather dealt with under articles dealing with transboundary protection.

4. The treatment of publicly available and/or widely diffused TK and TCEs

In the TK text:

- Paragraph 1.4: [Protection does not extend to TK that is widely known or used outside the community of the beneficiaries as defined in Article 2.1, [for a reasonable period of time] ... (in the criteria for eligibility)
- Option 2, paragraph 3.1(b): “Where [protected] TK is knowingly used outside the traditional context” / “where the TK [is secret]/[is not widely known,]” (in the scope of protection)
- Paragraph 6.11: National authorities shall exclude from protection TK that is already available without restriction to the general public.] (in the Exceptions and Limitations).

4. The treatment of publicly available and/or widely diffused TK and TCEs

One view:

- Distinguish between secret TK and publicly available / widely diffused TK

Another view:

- Not to distinguish between secret TK and between publicly available/widely diffused TK

4. The treatment of publicly available and/or widely diffused TK and TCEs

Crucial questions:

- Should all TK be protected? Should all TK be equally protected?

- Different views on the public domain:
 - Essential to give rise to further creativity. Without a rich and robust public domain, creativity would be stifled ... The scope of protection should be limited not to encroach on the public domain.
 - The protection of TK and TCEs overrides the concerns about the public domain. The protection against misappropriation and misuse is essential.

Joint Recommendation on GRs and Associated TK (27/6)

- Document submitted by the Delegations of Canada, Japan, Norway, the Republic of Korea and the United States of America during IGC 20
- “The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and the General Assembly of the World Intellectual Property Organization, (...)
 - *Recommend* that each Member State may consider the use of this Recommendation adopted by the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore as **guidelines for the protection of genetic resources and associated traditional knowledge.**”
- Includes: Definitions / Objectives and Principles / Prevention of the erroneous grant of patents / Opposition measures / Supporting measures / Application.

Joint Recommendation on the use of Databases for the Defensive Protection of GRs and TK Associated with GRs (27/7)

- Document submitted by the Delegations of Canada, Japan, the Republic of Korea and the United States of America during IGC 23
- “The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and the General Assembly of the World Intellectual Property Organization, (...)
 - *Recommend* that each Member State and the WIPO International Bureau consider the use of this Recommendation adopted by the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore as **guidelines for the establishment, improvement and use of databases for the defensive protection of genetic resources and traditional knowledge associated with genetic resources.**”
- One-click database search system

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 (27/8)

- Document submitted by the Delegations of Canada, Japan, Norway, the Republic of Korea, the Russian Federation and the United States of America ... first submitted for IGC 23
- Proposal to request the Secretariat to update the WIPO Technical Study on Patent Disclosure Requirements Related to GRs and TK (2004) with information regarding disclosure requirements and related ABS systems that have been implemented by WIPO Members ... Need for a fact based analysis.
- The Study should analyze: the impact disclosure requirements have with regard to secure compliance with the ABS system; costs and burdens to national offices/jurisdictions resulting from a disclosure requirement; costs and burdens associated with a disclosure requirement to patent applicants; and the impact disclosure requirements have with regard to the credibility of the patent system.

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”