

IGC 32: Informal Information Session

Presentation by the Secretariat

November 7, 2016

Geneva

Welcome and Introduction

Mr. Wend Wendland

Director, Traditional Knowledge Division

2016

2017

IGC
29
GRs

Sem.
GRs

IGC
30
GRs

IGC
31
TK

Sem.
TK

IGC
32
TK

IGC
33
TCEs

Sem.
TCEs

IGC
34
TCEs



Practical arrangements for the Seminar and IGC 32

Mrs. Fei Jiao

**Associate Program Officer, Traditional Knowledge
Division**

Seminar on Intellectual Property and Traditional Knowledge (November 24 and 25)

- Keynote address: Why and How to Protect Traditional Knowledge Internationally?
- Four roundtables:
 - RT 1: Regional, National and Community Experiences Relevant to Identifying “Protectable Traditional Knowledge” at an International Level
 - RT 2: Perspectives on and Experiences with a “Tiered Approach” to the Protection of Traditional Knowledge - Scope of Protection and Exceptions and Limitations
 - RT 3: Complementary Measures and Customary Law for the Protection of Traditional Knowledge: Examples and Lessons Learned
 - RT 4: Perspectives on and Experiences with Other Issues: Sanctions and Remedies, Management of Rights, Term of Protection, Formalities, Transitional Measures, Relationship with other International Agreements, National Treatment and Transboundary Cooperation



Reporting on the Seminar

- Four rapporteurs
- IGC 32: Agenda Item 5

Working documents

- WIPO/GRTKF/IC/32/1 Prov. (Draft Agenda)
- WIPO/GRTKF/IC/32/2 (Accreditation)
- WIPO/GRTKF/IC/32/3 (Voluntary Fund)
- WIPO/GRTKF/IC/32/4 (The Protection of Traditional Knowledge: Draft Articles)
- WIPO/GRTKF/IC/32/5 (Indicative List of Outstanding/Pending Issues to be Tackled/Solved)

Information documents for the session

- WIPO/GRTKF/IC/32/INF/2 (Summary of Documents)
- WIPO/GRTKF/IC/32/INF/3 (Draft Program)
- WIPO/GRTKF/IC/32/INF/4 (Information notes on Voluntary Fund)
- WIPO/GRTKF/IC/32/INF/5 (Indigenous Panel)
- WIPO/GRTKF/IC/32/INF/7 (Glossary)
- WIPO/GRTKF/IC/32/INF/8 (Professor Anaya's Technical Review)
- WIPO/GRTKF/IC/32/INF/9 (Reporting on the Seminar)

Resources

- Background Briefs

- The IGC Preparation Kit
 - A one-stop destination for preparatory information, substantive working documents and other materials most directly relevant to each IGC session.
 - Will be updated with relevant information relating to IGC 32 (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 32

■ Indigenous Consultative Forum

- Not a formal committee session or official WIPO meeting, but endorsed by the Committee and facilitated by the Secretariat
- Sunday, November 27, 2016, 14h00

■ Indigenous Panel - Monday, November 28, 2016, around 11h30, for 1 hour

- Theme: “Outstanding/Pending Issues in the IGC Draft Articles on the Protection of Traditional Knowledge: Indigenous Peoples’ and Local Communities’ Perspectives”
- Keynote: Ms. Lucy Mullenkei, Member of the Maasai People, Kenya; Executive Director of the Indigenous Information Network, Kenya; Co-Chair of the Indigenous Women’s Biodiversity Network and the African Indigenous Women’s Organization
- Respondents: Mr. Rodrigo De la Cruz Inlago (Ecuador) and Mr. Preston Hardison (USA)

To note...

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

Informal Consultation

- November 23, at 4pm

Traditional Knowledge: Documents and Issues for IGC 32

Ms. Begoña Venero Aguirre
Senior Counsellor, Traditional Knowledge
Division

Working documents

- WIPO/GRTKF/IC/32/4 (The Protection of Traditional Knowledge: Draft Articles)
- WIPO/GRTKF/IC/32/5 (Indicative List of Outstanding/Pending Issues on the Protection of Traditional Knowledge)

WIPO/GRTKF/IC/32/4 (The Protection of Traditional Knowledge: Draft Articles)

- Prepared during IGC 31, which focused on:
 - Objectives
 - Beneficiaries
 - Subject matter
 - Scope of protection
 - Meaning of “misappropriation”

Structure of WIPO/GRTKF/IC/32/4

- Preamble/Introduction
- Policy objectives
- Use of terms: Misappropriation, misuse, **protected TK**, public domain, publicly available, TK, **secret TK**, **sacred TK**, **narrowly diffused TK**, **widely diffused TK**, **unlawful appropriation**, unauthorized use, use/utilization
- Subject matter of the instrument
- Beneficiaries of protection
- Scope of [and conditions of] protection
- Complementary measures
- Sanctions, remedies and exercise of rights/application
- Disclosure requirement / No disclosure requirement
- Administration of rights/of interests
- Exceptions and limitations
- Term of protection/rights
- Formalities
- Transitional measures
- Relationship with other international agreements
- National treatment
- Transboundary cooperation

Objectives

■ Key questions (Chair's Information Note):

- Are there areas of possible convergence, e.g. prevent the misappropriation /illegal appropriation /misuse /unauthorized use /unlawful appropriation of TK?
- Are these objectives reflected in the substantive provisions?
- How would they be implemented?
- Do the objectives directly relate to the objective of our work as detailed in the IGC mandate: *... reaching an agreement on an international legal instrument(s) relating to intellectual property which will ensure the balanced and effective protection of GRs, TK and TCEs?*
- Do all the objectives included in the different alternatives belong here or would it be more appropriate to include some in the preamble?

Beneficiaries

- IPLCs
- States? Nations?
... with different scope of protection?
- Competent bodies / National authorities ... What would be their role?
- References to a beneficiary as such, entitled to the rights to be specified by Article 3, belong in Article 2, while references to competent authorities, which manage, administer or enforce the rights of beneficiaries, for their benefit, belong in Article 5 (Chair's information note)

Subject matter

- Alt. 1 simply states that the subject matter is TK ... + Definition of TK in the “Use of Terms” section
 - Alt. 2 incorporates a definition/description of TK.
 - Alt. 3 is similar to Alt. 2 but includes a broader definition/description of TK.
 - Alt. 4 expands on Alt. 1 by including criteria for eligibility, which comprise some elements included in the definitions/descriptions of TK in Alt. 2 and 3.
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- In the IP system: creations or inventions / creations and inventions that can be protected using the IP system
 - Draft text reflects this approach: Possible definitions of TK + some examples + suggested “criteria for eligibility for protection” – TK / “protected TK”.

Scope of protection

- Tiered approach = Differentiated protection for secret TK, narrowly diffused TK and widely diffused TK
- Alt. 1 basically leaves this issue to be dealt with at a national level ... No tiered approach.
- Alt. 2, and 3 include a tiered approach with the same levels of protection afforded to secret and narrowly diffused TK. The main area of difference is the nature of rights afforded to TK which is widely diffused.
- Alt. 4 replicates Alt. 2 but with a reminder of the need to comply with the eligibility criteria (“protected TK”)
- Protected TK: only form of TK which would be afforded any rights.

Definition of “misappropriation”

- Alt. 1: Any access or use without prior informed consent or approval or involvement and, where applicable, without mutually agreed terms, for whatever purpose, would be misappropriation.
- Alt. 2: There would be misappropriation only if the TK has been acquired by the user from the holder through improper means or a breach of confidence, and which results in a violation of national law in the provider country.
- Alt. 3: Links misappropriation to any access or use of TK in violation of customary law and established practices governing the access or use of such TK.
- Alt. 4: Somehow links Alt. 1 and Alt. 3, considering misappropriation any access or use without the compliance of requirements very similar to those specified in Alt. 1 (**free** prior informed consent, mutually agreed terms) and Alt. 3 (customary law), and established practices governing the access and use of such TK

Other issues

- Preamble/Introduction
- Use of terms
- Complementary measures and disclosure requirement
- Sanctions, remedies and exercise of rights
- Administration of rights/interests
- Term of protection
- Formalities
- Transitional measures
- Relationship with other international agreements
- National treatment
- Transboundary cooperation

Discussion and Closing Remarks

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

Sign up for our TK e-Updates!

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