Sr. Presidente, Secretariado, delegados gubernamentales, representantes de agencias, hermanas y hermanos indígenas. Siguiendo el mandato del Foro, y teniendo presente la importancia de la relación de los Pueblos indígenas, con respecto a los derechos de la propiedad intelectual, folclore, el conocimiento tradicional, los recursos genéticos y el futuro trabajo de la Organización Mundial de la Propiedad Intelectual (OMPI), y con el ánimo de facilitar la cooperación en el orden cultural y educativo y de fomentar el respeto universal de los DD HH y las libertades fundacionales, presenta en nombre del COIHL las siguientes recomendaciones:

El Foro Permanente debe:

i. Animar a los Estados Miembros de la ONU a que incluyan representantes de los pueblos indígenas y las comunidades locales en sus delegaciones al Comité Intergubernamental, (CIG);

ii. Recomendar el establecimiento de consultas con la Secretaría del CIG para desarrollar un informe que señale una gama de opciones para facilitar una participación más formal de las comunidades indígenas y locales, dar indicaciones sobre modalidades de cómo estas opciones podrían ser aplicadas por el Comité. Este informe debería contener:

- información sobre las prácticas en otras organizaciones y procesos de las Naciones Unidas y de otras organizaciones relevantes sobre las facilidades para la amplia participación de organizaciones de los pueblos indígenas y organizaciones no gubernamentales, incluidas las modalidades de selección, acreditación y solicitud de fondos, si procede.
- Establecer mecanismos para determinar el número de participantes, teniendo en cuenta la participación regional y equilibrada, el proceso para elegir a los candidatos(as) bajo algún proceso de financiación y la capacidad en la que participarán.

iii. Facilitar reuniones del conclave de los pueblos indígenas durante el CIG para garantizar intervenciones informadas y destacadas de los pueblos indígenas.

iv. Solicitar a la OMPI que continúe su importante trabajo para complementar y en coordinación con el trabajo en marcha en el Convenio sobre la Diversidad Biológica, la Organización para la Agricultura y la Alimentación, UNESCO y la Comunidad Andina de Naciones:
- Incluir los derechos ambientales y humanos y las cuestiones sobre el desarrollo sostenible dentro del trabajo del CIG
- Sugerir la adopción de un régimen sui generis de protección legal que reconozca el derecho consuetudinario o tradicional, sobre los derechos de propiedad intelectual, el conocimiento tradicional, folclore, y recursos genéticos como alternativa al sistema de propiedad intelectual existente.

Finalmente, que los Estados adopten políticas efectivas para luchar contra la discriminación étnica, social y cultural en todas sus formas y niveles, a fin de mejorar la calidad de vida de los pueblos indígenas.

Muchas gracias Sr. Presidente
COMMITTEE ON INDIGENOUS HEALTH

Agenda Item 4 d

CULTURE


Report No. 4

Pursuant to the mandate vested on the Indigenous Peoples’ Committee on Indigenous Health (COIH), a constituent body of the Indigenous Peoples’ Caucus since 1997, and in continuation of its practice of providing specific thematic briefings pertinent to the mandate of the Permanent Forum on Indigenous Issues, COIH is pleased to transmit this briefing report on the work being undertaken by the World Intellectual Property Organisation (WIPO) relevant to indigenous peoples and their concerns regarding intellectual property rights, traditional knowledge, folklore, genetic resources and the future work of WIPO. The work of the Committee on Indigenous Health is based on the fundamental and encompassing premises and perceptions of health held by indigenous peoples throughout the regions of the world. It is envisaged that this briefing will be given due consideration by the members during the second session of the Forum.

COIH affirms the Kimberley Declaration and Indigenous Peoples’ Plan of Implementation on Sustainable Development, Johannesburg, 2002.

1. The Twenty-Sixth World Intellectual Property Organisation (WIPO) General Assembly established an Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore to discuss three primary themes being genetic resources, traditional knowledge and folklore. The IGC has met on four occasions with the fifth and final meeting being held from the 7 - 15 July, 2003. The task of the IGC is to conceptualise and prioritise tasks within each issue, identify new issues and to advance consensus on how these issues should be addressed. The outcomes from this IGC will be put to the Twenty-Ninth General Assembly for consideration.

2. The Committee, since its establishment has dealt with issues of vital importance and concern to indigenous peoples, to a degree which is perhaps unparalleled to any previous work of WIPO or perhaps any body of the United Nations. Genetic Resources, Traditional Knowledge and Expressions of Culture are essential components of indigenous peoples’ lives and rights. They are the fabric of society and the continued appropriation and reproduction of indigenous peoples’ genetic resources, traditional knowledge and expressions of culture without authorisation or compensation is a major cause of concern for indigenous peoples.

THE PARTICIPATION OF INDIGENOUS PEOPLES

3. The IGC, at its first session, approved certain organisational and procedural matters, including ad hoc observer status to a number of non-governmental organisations (NGO’s). Some of these include
organisations devoted to indigenous peoples and intellectual property rights, traditional knowledge and expressions of culture. Since the first session, a growing number of organisations have sought and received accreditation to the IGC. *Ad hoc* observers can make interventions on issues under discussion.

4. Discussions on the active participation of indigenous peoples have regularly arisen during the meetings of the IGC (April and December 2001, June and December 2002) and the Committee has stressed the need for enhanced input from indigenous peoples. Several national delegations have included individuals who are representatives of indigenous communities.

5. In the context of on-going discussions about promoting participation of indigenous peoples, the Delegation of Belgium (speaking on behalf of the European Community and its Member States) raised a proposal at the second session of the IGC concerning the possibility of financial assistance in order to ensure the participation of indigenous and local communities at the sessions of the [IGC]'. It had remarked that a prerequisite for active participation of indigenous and local communities was the availability of financial assistance, whether from Member States or a general mechanism for financial assistance, possibly using WIPO funds. This proposal was supported by a number of Member States, and the IGC adopted the recommendation that 'the Program and Budget Committee should consider the possible financing by WIPO of the participation of indigenous and local communities.'1

6. The third session of the IGC, in June 2002, saw further discussion of this proposal and there was a related discussion on the need for enhanced co-operation with the recently established Permanent Forum on Indigenous Issues (a subsidiary body of ECOSOC, comprising 16 members serving in their personal capacities as independent experts, the mandate of which is includes to "promote the integration and co-ordination of activities relating to indigenous issues within the UN system." The IGC Chair concluded that the IGC encouraged close co-operation with the Permanent Forum, and noted that the Program and Budget Committee would be taking up the issue of financing the participation of indigenous and local communities. At its meeting in September 2002, the Program and Budget Committee referred the matter to regional group co-ordinators for further discussion. The matter was subsequently considered by the WIPO General Assembly at its Twenty-Eighth Session, held from September 23 to October 1, 2002, leading to the decision that:

(i) the Permanent Forum on Indigenous Issues should be invited to participate in the December 2002 session of the intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore;

(ii) Member States should be encouraged to include representatives of indigenous and local communities on their delegations to the Intergovernmental Committee;

(iii) Following consultations including the Secretariat and regional groups, the Intergovernmental Committee should consider suitable further mechanisms, as appropriate, for facilitating the involvement of representatives of indigenous and local communities in its work for the 2003 meetings and to be reflected in its report to the general Assembly in 2003²

7. At its fourth session, the Committee was invited to consider the appropriate mechanisms for facilitating involvement of representatives of indigenous and local communities in its work. The fourth session was attended by a member of the Permanent Forum, Mr. Willie Littlechild.

8. The Chair submitted, and the Committee adopted the following conclusions:

(a) There was unanimous support for directly involving, as much as possible representatives of indigenous and local communities in the work of the IGC.

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1 WIPO/GRTKF/IC/4/12, paragraph 11
2 A/37/14 Prov., paragraph 228
A number of delegations expressed support for WIPO directly financing a certain number of representatives of such communities. There was however, no consensus in this issue and there was a strong need expressed to clarify the modalities in this context.

As regards suitable mechanisms for facilitating the involvement of representatives of such communities, the IGC:

- Encouraged member States to include such representatives in their national delegations;
- Endorsed and encouraged the other measures in this respect indicated in paragraph 13 of document WIPO/GRTKF/IC/4/12; and
- Requested the Secretariat to prepare by mid-April for the Committee’s fifth session, a report that outlines a range of options for facilitating a more formalised participation of indigenous and local communities, and indications of modalities on how these options could be implemented by the Committee.

That report should include information on the practice of other United Nations and relevant intergovernmental organisations in facilitating the participation of non-governmental organisations, including the modalities of selection, accreditation and application of funding, if applicable. On the basis of such information about practices in other organisations and on the basis of the Secretariat’s own independent analysis, the report should present a range of detailed possible options available to the Committee. These options should include:

- An analysis and update of the list of measures included in paragraph 13 of document WIPO/GRTKF/IC/4/12; and
- Facilitating the participation of the United Nations Permanent Forum on Indigenous Issues in the future work on the issues dealt with by the Committee;
- Providing financial support for the participation of indigenous and local communities; and
- A transparent mechanism to determine the number of participants, the process for selecting those eligible under some funding process, and the capacity in which they would participate.

This report should form part of the basis for general discussion, which are expected to take place at the Committee’s fifth session on future work on the issues presently dealt with by the Committee.

FOLKLORE

Preliminary Systematic Analysis of National Experiences with the Legal Protection of Expressions of Folklore.

WIPO has provided a technical analysis of the use of existing intellectual property and sui generis approaches for the legal protection of folklore. No new tasks have been proposed but instead built on the WIPO Report on National Experiences, which proposed certain tasks. This analysis has been complemented by oral presentations. Members of the Committee were invited to review this document at the fourth session of the IGC, and to provide written comments before March 31st, 2003, after which a further version of this document will be prepared for the fifth session of the IGC in 2003.

Report on the Technical Co-operation on the Legal Protection of Expressions of Folklore

At its third session, the IGC adopted a proposal for enhanced technical co-operation on the legal protection of expressions of folklore at the national level. The proposal included regular reporting on technical co-operation undertaken by the Secretariat. Activities recorded all relevant activities undertaken by the WIPO Secretariat since the establishment of the Secretariat. The Chair concluded, and the Committee decided that:

(a) The comments received on document WIPO/GRTKF/IC/4/3 and the material provided in the panel presentations on the legal protection of folklore would be taken into account in future work on this issue.
(b) Further comments and observations on document WIPO/GRTKF/IC/4/3 should be sent to the Secretariat as soon as possible, and by March 31, 2003 at the latest; and

c) Further updates to the report on technical co-operation concerning legal protection of folklore, supplementing document WIPO/GRTKF/IC/4/4, would be provided to the Committee at its fifth session.

TRADITIONAL KNOWLEDGE

Initial Checklist of Legal and Practical Issues for an Intellectual Property Toolkit

12. At the first session of the IGC, the Committee expressed support for the revision of existing criteria and developing new criteria, which would allow the effective integration of traditional knowledge documentation into searchable prior art.

13. At its second Session, the Committee considered a Progress Report on the Status of Traditional Knowledge as Prior Art and expressed support for activities aimed at the implementation of the task including, a study on the feasibility of electronic exchange of traditional knowledge documentation data, including through the establishment of international online traditional knowledge databases and digital libraries.

14. At its third Session, the Committee decided to establish a toolkit to provide practical information on the intellectual property aspects of documentation of traditional knowledge taking into account (1) the proposed Toolkit should be simple, balanced and developed with an advisory body; (2) concerns that dissemination of the Inventory on the WIPO web site should not have negative implications for TK holders; (3) concerns about technical and financial aspects of the web site, its maintenance and copyright implications of putting lists of publications on the web site; (4) special mention of the oral characteristics of TK and the need to have a proper definition of TK.

15. At its fourth session, the Committee was invited to note and comment upon the content of this checklist and draft outline as the basis for development of a pilot version of the Intellectual Property Management Toolkit for Traditional Knowledge Documentation, and the proposed consultation processes for the further development of this material with the aim that a pilot version of the toolkit can be developed, consulted upon and reviewed in advance of the fifth session in 2003.

16. The Committee was also invited to take note of document WIPO/GRTKF/IC/4/14 - Technical Proposals on Databases and Registries of Traditional Knowledge and Biological/Genetic Resources which had been prepared at the WIPO Asia-Pacific Regional Seminar on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore, held in Cochin, India from November 9 – 11, 2002.

17. The Chair noted that the TK documentation toolkit was intended to be a practical tool and not to replace the other discussions on the legal protection of TK, and commented that there had been no support for the development of a complementary database toolkit. The Chair then concluded, and the Committee agreed that:

(a) There was unanimous support for further work on this project, and some delegations had mentioned it as a priority;

(b) The remarks made during the session would be taken into account in future development of the draft toolkit;

(c) The Committee encouraged the Secretariat to have extensive consultations with not only Member States but also and particularly with TK custodians;

(d) An updated document, in the form of a draft toolkit, would be prepared for consideration by the Committee at its fifth session; and
(e) While the toolkit was an important project, it was not the sole important task or only priority for the Committee.

Review of Existing Intellectual Property Protection of Traditional Knowledge

18. At its first session, the Committee supported that Member States may wish to compile, compare and assess information on the availability and scope of intellectual property protection for traditional knowledge. In general members were supportive that the survey should focus on two major sub-issues: whether existing mechanisms of intellectual property mechanisms of intellectual property can/or have been applied to protect traditional knowledge; and what sort of sui generis intellectual property measures have been established for the protection of traditional knowledge.

19. Based on responses received, WIPO prepared a document containing a preliminary analysis and conclusions and submitted it to the second session of the IGC. Given the small number of responses the deadline was extended and the consolidated responses were presented to the third Session.

20. At its third Session, the Committee considered document WIPO/GRTKF/IC/3/7 entitled “Review of Existing Intellectual Property Protection of Traditional Knowledge” and concluded to leave the document open for further input provided to the Secretariat on the basis of a revised and simplified questionnaire on national experiences of intellectual property mechanisms for the protection of traditional knowledge: see revised questionnaire WIPO/GRTKF/IC/Q.1.

21. At its fourth Session, the Committee was invited to take note of the updated document WIPO/GRTKF/IC/3/7 and the respective Annexes, and continue to provide new or updated information to the Secretariat of WIPO, including in particular and relevant examples of the use of existing intellectual property regimes by Members to protect TK, and copies of any relevant draft or enacted legislative text to protect TK.

Elements of a sui generis system for the protection of Traditional Knowledge

22. At the second session of the IGC, a number of delegations emphasised the relevance of examining possible modalities of intellectual property sui generis systems for the protection of traditional knowledge. WIPO was requested to prepare a document with these elements.

23. At the third session, the Committee received and debated document WIPO/GRTKF/IC/3/8, a discussion of the elements of a possible sui generis intellectual property system for the protection of traditional knowledge. It concluded that this document be updated and revised for presentation to the fourth Session.

24. At its fourth Session, the Committee was invited to note the contents of the document and to comment on, with a view to the preparation of a composite technical study based on existing documents prepared by the Secretariat and input from Member States and other Stakeholders, the study to comprise: an analysis of definitions of TK subject matter; a review of national approaches to protection of TK; and an analysis of the elements of sui generis protection of TK.

Traditional Knowledge – Operational Terms and Definitions

25. In response to calls for greater clarity in relation to terminology and subject matter during the first two sessions of the Committee and in several written submissions and proposals made to the Committee, the WIPO Secretariat set out possible approaches to defining or elaborating the subject matter of traditional knowledge protection.
26. At its third session, the Committee considered this paper (Operational Terms and Definitions), and agreed that the work in this regard would be continued in parallel with the other work of the Committee, and would take into account comments submitted to WIPO by members. To date, no additional comments have been submitted, and member state consultations are continuing. Accordingly, preparation of the updated document on Operational Terms and Definitions of TK has been deferred until the period prior to the fifth session of the Committee in 2003.

GENETIC RESOURCES


27. At its first session, the Committee supported the development of ‘guide contractual practices, guidelines, and model intellectual property clauses for contractual agreements on access to genetic resources and benefit-sharing, taking into account the specific nature and needs of different stakeholders, different genetic resources, and different transfers within different sectors of genetic resource policy’.

28. At its second session, the Committee considered a document entitled “Operational Principles for Intellectual Property Clauses of Contractual Agreements Concerning Access to Genetic Resources and Benefit Sharing”. This document provided information on existing intellectual property clauses and contractual practices for access and benefit-sharing, and offered options relating to the development of non-binding contractual practices, guidelines and model intellectual property clauses for consideration by the Committee.

29. At its third session, the Committee decided on the establishment of a database of contractual practices concerning intellectual property, access to genetic resources and benefit sharing. Following this decision, WIPO circulated a questionnaire to Member States and a wide range of stakeholders to secure information about relevant contracts and licences. WIPO has created a pilot database, incorporating responses to the questionnaire.

30. At its fourth session, the Committee was invited to approve the extensions of time in which the questionnaire (WIPO/GRTKF/IC/Q.2.) be disseminated and responses to by March 28, 2003; and to approve the further development of the Contracts Database as a permanent, freely available resource for contracts concerning intellectual property, access to genetic resources and benefit-sharing. See http://www.wipo.int/globalissues. The Chair proposed, and the Committee confirmed:

(a) Its approval for the proposed extension of time in which the Questionnaire (WIPO/GRTKF/IC/Q.2.) may be disseminated and answered up to the end of March 2003, and its approval for the further development of the Contracts Databases as a permanent, freely available resource for developing contracts concerning IP, access to genetic resources and benefit-sharing, in accordance with paragraph 32 of document WIPO/GRTKF/IC/4/10.

Initial Report on Technical Study on Disclosure Requirements Related to Genetic Resources and Traditional Knowledge

31. Among the tasks proposed for the IGC at its first session was consideration of intellectual property questions related to genetic resources, including:

(a) Contractual agreements for access to genetic resources and benefit sharing;

(b) Legislative, administrative and policy measures to regulate access to genetic resources and benefit sharing;
(c) Protection of biotechnological inventions, including certain related administrative and procedural issues;
(d) Multilateral systems for facilitated access to genetic resources and benefit sharing.

32. The Committees work on IP issues concerning genetic resources has focussed on IP related provisions in licensing and contractual agreements concerning access to genetic resources and benefit sharing. The Committee had also received reports on related developments and policy decisions in other fora.

33. At its third session, the Committee approved an invitation issued to WIPO on paragraph 4 of Section C of decision VI/24 of the COP and transmitted by the Executive Secretariat of the CBD. The Committee also agreed upon a work schedule (proposed in document WIPO/GRTKF/IC/3/12) to prepare a technical study for consultation and then be transmitted as a technical information document to the seventh COP.

34. At its fourth session, the Committee was invited to comment on the initial report which gives an overview of significant aspects of the patent system and of legal mechanisms concerning access to genetic resources and associated TK, and summarises the previous consideration given to this issue in WIPO forums. It also reviews the responses to a questionnaire circulated to WIPO Members States (WIPO/GRTKF/IC/Q.3.). The Committee was also invited to provide additional responses to the Questionnaire by March 14, 2003, with a view to shaping a further version of the report for distribution and further consideration. The Chair concluded, and the Committee agreed:

(a) That additional responses to questionnaire WIPO/GRTKF/IC/Q.3 were to be made by March 14, 2003, with a view to shaping a further version of document WIPO/GRTKF/IC/4/11 for distribution in April 2003 and for further consideration at the fifth session. The Chair stated that in so far as the specific cases raised concerned the application of national or regional law in individual situations, they were outside the mandate of the Committee. On the other hand, the cases could probably be used as illustrative examples in the work of the Committee.

FURTHER WORK

35. On the basis of conclusions reached under earlier agenda items, the Chair concluded, and the Committee decided, that the following work would be undertaken at the fifth session of the Committee:

- Consideration of the legal expressions of folklore (traditional cultural expressions), on the basis of an updated and extended version of the document WIPO/GRTKF/IC/4/3 that would take into account input provided to the Secretariat. This input should be provided preferably by February 28, 2003, but by March 31 at the absolute latest;
- Consideration on an updated version of WIPO/GRTKF/IC/4/4 on technical co-operation on the legal protection of folklore.
- Consideration on whether the Committee should take up the issues of legislative guidance in the form of Model Provisions and of elements of a possible sui generis system for the protection of folklore, on which no consensus currently existed;
- Consideration of a draft toolkit for IP management in the documentation of TK, prepared on the basis of comments submitted in document WIPO/GRTKF/IC/4/5
- Consideration of the issue of technical co-operation and possible standards for TK databases and registries, including the proposal in document WIPO/GRTKF/IC/4/14
- Consideration of updated information on national experience with the protection of traditional knowledge provided to the Secretariat in addition to the information contained in documents WIPO/GRTKF/IC/3/7 and WIPO/GRTKF/IC/4/7
- Consideration of the elements of *sui generis* systems for the legal protection of traditional knowledge, on the basis of a composite study incorporating approaches to definition of TK, national experiences of TK protection and analysis of elements of a *sui generis* system for protection of TK, drawing in particular on documents WIPO/GRTKF/IC/3/9 and WIPO/GRTKF/IC/4/8;
- Consideration of an updated and further developed database on contractual practices concerning IP and access to genetic resources and benefit sharing;
- Consideration of the issue of enhanced participation of indigenous and local communities in the work of the Committee, on the basis of a study to be prepared by the Secretariat before mid-April;
- Consideration of patent disclosure requirements relating to genetic resources and associated TK, and in particular consideration of the draft study to be developed by the Secretariat on the basis of document WIPO/GRTKF/IC/4/11, comments on that document, and further responses provided to questionnaire WIPO/GRTKF/IC/Q.3.

**Ongoing and Future Program Activities on Genetic Resources, Traditional Knowledge and Folklore**

36. The Committee has indicated that WIPO should address these issues in conjunction with the Secretariats of the CBD and FAO, to ensure that WIPO’s work continues to be consistent with and complementary to the work being done by the CBD, FAO and UNESCO. The CBD has requested technical studies on certain IP-issues from WIPO. The Committee also observed that synergies should be ensured with the work in the WTO on the basis of Article 19 of the Doha Ministerial Declaration. Activities contained in WIPO’s 2000-2001 Program and Budget included: (1) practical studies of cases in which TK protection has been sought under the IP system; (2) possible study of customary laws protecting TK and any interfaces with IP; and (3) training workshops, information materials and distance learning courses on IP and TK.

**COI/II RECOMMENDATIONS TO THE PERMANENT FORUM**

37. The fifth session of the IGC will be held from July 7 – 15, 2003. Considering the above the Committee of Indigenous Health recommends that the appropriate member of the Permanent Forum attend the fifth session of the IGC. In doing so, the member of the Permanent Forum should:

(i) Encourage Member States to include representatives of indigenous and local communities on their delegations to the Intergovernmental Committee;
(ii) Actively pursue consultations with the IGC Secretariat to develop a report that outlines a range of options for facilitating a more formalised participation of indigenous and local communities, and indications of modalities on how these options could be implemented by the Committee. This report should contain:
  - information on the practice of other United Nations and relevant intergovernmental organisations and processes in facilitating the wide participation of indigenous peoples’ organisations and non-governmental organisations, including the modalities of selection, accreditation and application of funding, if applicable;
  - mechanisms for determining the number of participants while keeping equitable regional participation in mind, the process for selecting those eligible under some funding process, and the capacity in which they would participate;
(iii) Facilitate caucus meetings of indigenous peoples during the IGC to ensure informed and prominent interventions by indigenous peoples.
(iv) Request WIPO to continue its important work in complementary with and in consistency with the ongoing work of the Convention on Biological Diversity, Food and Agricultural Organisation, UNESCO and the Comunidad Andina de Naciones (Community of Andean Nations).
• Inclusion of environmental, human rights and sustainable development issues within the work of the IGC
• Adoption of *sui generis* legal protection regimes that acknowledge customary or traditional law, for IPR, TK, Folklore and GR rather than within the existent IP system