

11th Session of the Permanent Forum on Indigenous Issues

Comprehensive Dialogue with the World
Intellectual Property Organization (WIPO)

May 10, 2012

Outline

- Introduction – key messages
- What is WIPO?
- Intellectual property and traditional knowledge: what are some of the issues?
- WIPO's activities on traditional knowledge: what does WIPO do?
- How does WIPO's work relate to the Declaration?
- How can Indigenous Peoples participate in WIPO's work?

■ Introduction

Jargon buster . . .

WIPO : World Intellectual Property Organization

TK: Traditional knowledge

GRs: Genetic resources

TCEs: Traditional cultural expressions

IP: Intellectual property

IGC: WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Key messages

- WIPO's IGC is negotiating an **international legal instrument(s)**
- Significant progress in the last two years; but much work remains
- IGC is engaged in a profound 'contest of ideas'
- States will make critical decisions on the future of the negotiations in October 2012
- WIPO's Member States have **explicitly welcomed and encouraged** the effective participation of Indigenous Peoples and of the Forum
- For an intergovernmental process, Indigenous Peoples have remarkable opportunities to participate directly; but there can be improvements
- For those Indigenous Peoples who may seek protection against the misappropriation of their TK, **seize the opportunity** to participate in these negotiations

- What is WIPO and what does it do?

World Intellectual Property Organization (WIPO)

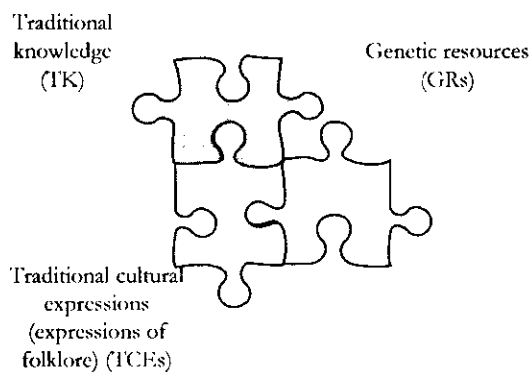
Mission: to promote innovation and creativity for the economic, social and cultural development of all countries, through a balanced and effective international intellectual property system

- **Intellectual ("intangible") property:** results of the **human mind**: music, art, literature, inventions, designs, performances, signs and symbols . . . nature (life) itself is not protectable
- **Intellectual property rights:** giving creators and inventors a say over if and how their creations are used by others, for a limited period and subject to exceptions and limitations
- **Intellectual property policy and law:** mechanism for balancing **competing interests** related to the production of innovation and creativity and the distribution of their benefits

WIPO: a biosketch

- Established 1967
- Specialized agency of the United Nations
- 185 Member States
- Located in Geneva, Switzerland. 1200 staff
- WIPO has no field presence
- Programs, budgets and workplans are set by the Member States for two year periods (we are in the 2012-2013 biennium)
- Traditional Knowledge Division: established 1998; staff of 12

- Intellectual property and traditional knowledge: What are some of the issues?



Indigenous Peoples, local communities and many States call for the greater **protection**, safeguarding, preservation and promotion of traditional knowledge, traditional cultural expressions and genetic resources

However, "protection" can have different meanings . . .

. . . what does an "intellectual property approach" to protection mean . . . ?

TK is recognized as a **form of "intellectual property"** – i.e., as comprising creations and innovations of the human mind

The protection of TK would be provided by a special system or mechanisms **based on the kinds of measures, principles and values** that comprise the system established for the protection of intangibles (the intellectual property system)

This does NOT mean forcing a square peg (TK) into a round hole (the conventional IP system)!

- Protection of "intangible property" is different to the protection of "tangible property" (eg., land)
- Features of this intellectual property system include:
 - **Property rights** (e.g. exclusive rights) and **non-property rights** (e.g. moral rights, unfair competition, right to equitable compensation)
 - **Balance and proportionality:** IP rights do not provide absolute and perfect control: limitations and exceptions/limited term/the role of the 'public domain'
- In some respects, **existing intellectual property rights** can be used to protect TK and TCEs and, especially, their contemporary adaptations and derivations

- TK: what are the specific IP issues?

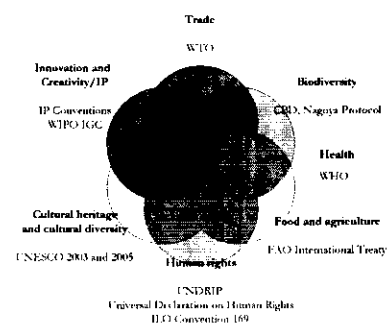
- Innovations based on TK are generally patentable
- But, save for secret TK, the 'underlying' TK is generally unprotected
- So, the basic question is: should underlying TK – which generally 'belongs' to Indigenous Peoples - be 'protected' in the IP sense?

- Is an "intellectual property approach" the only suitable approach?

NO!

The work of WIPO is only of interest/use to you if you:

- regard TK as deserving the same kind of protection as is granted to "non-traditional" innovations and creations, and
- want a say over if and how your traditional creativity and innovations are accessed and used by third parties (like other intangible properties)



■ WIPO Member States have:

- mandated that the work of WIPO not prejudice the work of other fora,
- instructed that the Forum be directly and specifically invited to each IGC session, and
- welcomed the continued cooperation of the WIPO Secretariat with other relevant United Nations and regional intergovernmental bodies, programs, organizations and agencies.

■ WIPO's activities on traditional knowledge:
what does WIPO do?

- Norm-setting: the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC)

- Technical assistance and capacity-building: for States, communities, research institutions and museums, archives

WIPO Intergovernmental Committee

- Established in 2000; met for the first time in April 2001
- IGC was preceded by several years of fact-finding, consultation, research; *including two roundtables on intellectual property and indigenous peoples (1998 and 1999) and fact-finding missions to 30 countries (1998 and 1999)*
- IGC participants: Member States, indigenous and local communities, business, civil society and other NGOs

- The IGC is conducting **text-based negotiations** with objective of reaching agreement on an **international legal instrument(s)**
- The WIPO General Assembly in **October 2012** will take stock of progress and decide on convening a Diplomatic Conference

- Current draft text on TK includes references to:
 - Free, prior and informed consent
 - Collective rights, for the benefit of Indigenous Peoples
 - Indefinite term of protection
 - Customary law
 - Disclosure of origin in patent applications

[PF Recommendations: sessions 5, 7 and 8]

Technical assistance and capacity-building

- For example, WIPO Creative Heritage Cultural Documentation and Intellectual Property Management Program, and
 - WIPO TK Documentation Toolkit (forthcoming)
 - assisting indigenous communities to manage their intellectual property interests and rights if they decide to document their cultural traditions:
- ≡ *NOTE: WIPO does NOT promote the documentation as such, as an end in itself!*

[PF Recommendations: session 3]

- Certain activities have specifically addressed Indigenous women:



Opportunities and Challenges

- Historical opportunity: IGC negotiations are first international intellectual property norm-setting process initiated and led mainly by developing countries
- Significant shift: adoption of an international legal instrument would represent significant shift in intellectual property policy
- But:
 - effective participation by indigenous peoples
 - diverse stakeholders and interests
 - 'top-down' legislative approach in absence of widespread national and local experience

- How does WIPO's work relate to the Declaration?

- Article 31 of the Declaration provides overall direction and guidance:
 - for technical assistance and capacity-building program
 - for WIPO negotiations which are aimed at working out the detail:
 - definition of protected subject matter; beneficiaries; scope of rights; management of rights; exceptions and limitations; term of protection; formalities; sanctions; transboundary TK; relationship with conventional IP system
- Declaration also provides direction on participation of indigenous peoples in the work of WIPO

- How can Indigenous Peoples participate in WIPO's work?

[PF Recommendations: sessions 1, 2, 3, 5, 10]

First, some key points (highlights and
lowlights . . .)

Key points related to the IGC

Accreditation: straightforward (over 300 observers
accredited)

Funding: funding is available from WIPO Voluntary Fund
since 2005

Indigenous expertise: Panel

Participation in the negotiations: observers may take the
floor at any time and drafting proposals are accepted if
supported by one State + observers may in principle be
part of Friends of the Chair and co-chair drafting groups

Logistical: WIPO funds a secretariat and interpretation exclusively
for Indigenous Peoples

Recognition: IGC Chair meets with Caucus before and daily
during the session

Preparation: WIPO funds a preparatory meeting before each
session + States support the organization of an Indigenous Expert
meeting, organized by WIPO and the UNPFII

Accessibility: documents are available to all in all 6 UN languages
and sessions of the IGC are webcast

However . . .

Indigenous Peoples (and all observers) do not
have full parity of status with States . . .

Most recently, States have supported Indigenous
Caucus request for a report on implications of
the establishment of a new status of Indigenous
Peoples, separate from States and observers

Now for more detail . . .

Accreditation

- "Fast-track" accreditation process since 2001
- 280 accredited organizations - many are Indigenous Peoples' and local communities' organizations. No organization has been turned away.
- How?
 1. Complete a form
 2. Submit the form two months prior to IGC session
- For accreditation at IGC 22, the deadline is May 14, 2012

Indigenous Panel

- Half-day panel on first day of IGC
- Chaired by representative of Indigenous Peoples or local community
- Not a formal part of the IGC
- Theme and speakers chosen in consultation with Indigenous Peoples and local communities
- Keynote speaker, followed by responses from 3 or 4 indigenous experts
- Panel chair writes a summary report, to be included in IGC report
- Presentations posted on the website

The WIPO Voluntary Fund

Who can apply?

1. Accredited observers which are representatives of Indigenous Peoples or local communities
 - The extent of support that this Voluntary Fund can provide depends on the resources donated to it
 - INTERESTED DONORS ARE WELCOME!

How to apply?

1. Fill in application form
 2. Submit the form 60 days before the session which precedes the session for which funding is sought
- For participation in IGC 23, the deadline is May 14, 2012

The WIPO Voluntary Fund

- Advisory Board – 9 members, serving in an individual capacity:
 - Chair of the IGC, appointed *ex-officio*, or one of the Vice-Chairs
 - 3 representatives of Indigenous Peoples and local communities
 - 5 from delegations of WIPO member States
- Donors since 2005
 - The Christensen Fund
 - Swedish International Biodiversity Program
 - Swiss Federal Institute of Intellectual Property (2x)
 - Government of Australia
 - Government of France
 - Government of Norway
 - Government of South Africa (2x)

Preparatory Consultative Arrangements

- Each IGC session is preceded by a meeting of the Indigenous Peoples and local communities consultative forum (ICF)
- Attendance to ICF covered by Voluntary Fund
- The ICF provides a space for, *inter alia*:
 - Briefing from the Secretariat, IGC Chair, Member State delegates
 - Preparation for substantive negotiations
 - Election of a Caucus Chair and a Panel Chair

Interventions at IGC

- During the IGC sessions, representatives of Indigenous Peoples and local communities may intervene as observers on any issue on the agenda
- They may intervene at any time (ie, interspersed with States)
- Their views are reflected in the reports of the session
- Drafting proposals remain in the text when supported by a Member State

Administrative Support

- WIPO funds logistical, secretarial, interpretation, translation services for Indigenous Peoples and local communities
 - i.e. secretariat room, computers, internet, telephone, fax, printer, scanner
 - Languages – English, French, Spanish, Russian
- Delivered through the Indigenous Peoples' Center for Documentation, Research and Information (doCip)

Other measures

The IGC Chair meets with the Indigenous Caucus before each session and with the Chair of the caucus on a daily basis

Representatives of observers may in principle serve as members of "Friends of Chair" and as co-chairs of working and drafting groups

States have supported organization of an indigenous expert workshop preceding an upcoming IGC session, together with the UNPFII

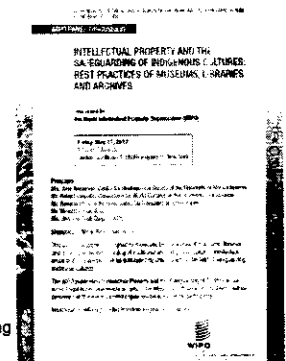
States have requested report on implications of establishment of a new status of Indigenous Peoples, separate from States and observers

Briefings

- Specific briefings and consultations for Indigenous Peoples and observers held at IGC meetings

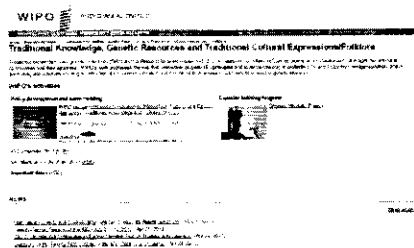
Beyond the IGC...

- Upon invitation or on its own initiative, the Secretariat also provides briefings at:
 - UNPFII Sessions
 - EMRIP Sessions
 - Relevant working group meeting of the CBD



Information Tools and Resources

- The WIPO TK, TCEs and GRs webpage makes publicly available, at the same time for everyone, all documents prepared for consideration of the IGC in the 6 official UN languages



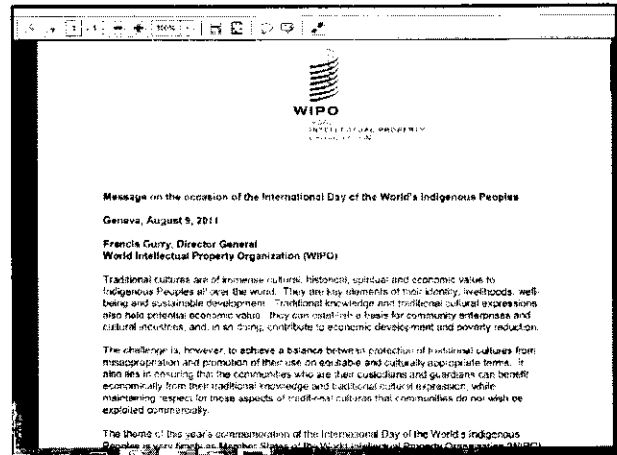
- The website is being re-structured to improve accessibility and to enable contributions by observers in the observers' comments section.

Engaging Indigenous expertise

- Consultancies by Indigenous Experts
 - WIPO has appointed several indigenous experts as WIPO Consultants on specific projects
- The Indigenous Intellectual Property Law Fellowship:
 - 4 fellows since 2009
 - Opportunity for indigenous lawyers and policy advisors to directly participate in the delivery of core program outputs of the TK Division for a period of 6 to 9 months
- Participation of expert Members of the Permanent Forum in the work of the IGC



- Closing remarks



Sign up for the WIPO TK e-
Newsletter and Updates

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THANK YOU