



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 23 February 2004**

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**NOTE**

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from : Presidency

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to : Working Party on Intellectual Property (Patents)

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Subject : Coordination for the sixth session of the WIPO "Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore" to be held in Geneva on 15-19 March 2004

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Delegations will find attached a Presidency background note as a basis for discussions in the Working Party on 1 March 2004.

## 1. THE RENEWED MANDATE OF THE IGC

The initial mandate of the IGC expired at the end of 2003. The WIPO General Assembly, held from September 22 to October 1, 2003 decided on an extended mandate (see document WO/GA/30/8, paragraphs 93-95). The full text of the mandate reads as follows:

*“(...) mindful of the importance of intellectual property in relation to genetic resources, traditional knowledge and folklore, the WIPO General Assembly decided that:*

- (i) the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) will continue its work for the next budgetary biennium on questions included in its previous mandate,*
- (ii) its new work will focus, in particular, on a consideration of the international dimension of those questions, without prejudice to the work pursued in other fora, and*
- (iii) no outcome of its work is excluded, including the possible development of an international instrument or instruments.*

*The General Assembly urged the IGC to accelerate its work and to present a progress report to the session of the General Assembly in September 2004.*

*The General Assembly further requested the International Bureau to continue to assist the IGC by providing Member States with necessary expertise and documentation.”*

## 2. TRADITIONAL KNOWLEDGE

*Traditional Knowledge: Policy and Legal Options for Protection (document WIPO/GRTKF/IC/6/4)*

During the Fifth Session of the IGC, some delegations felt that in particular in the field of Traditional Knowledge the time has come to start working on the conclusion of a legally binding international instrument by 2005. Other delegations called for drafting non-binding recommendations.

In document WIPO/GRTKF/IC/6/4 the IGC is invited to:

- (i) consider the contents of this document;*
- (ii) consider the possibilities for focusing and accelerating its substantive work on protection of traditional knowledge, including by developing first drafts of:*
  - an overview of policy objectives and core principles for TK protection;*
  - an outline of the policy options and legal elements for the protection of TK subject matter, together with a brief analysis of the policy and practical implications of each option and element.*

*Defensive Protection Measures relating to Intellectual Property, Genetic Resources and Traditional Knowledge (document WIPO/GRTKF/IC/6/8)*

In this document, the IGC is invited:

- i) to call for further responses to be submitted on the Questionnaire on Databases and Registries Related to TK and Genetic Resources (WIPO/GRTKF/IC/Q.4);*
- (ii) to consider practical steps to promote further use and development of the technical proposals contained in document WIPO/GRTKF/IC/4/14 and adopted at its fifth session; and*
- (iii) to consider future work including a questionnaire on prior art criteria and development of draft recommendations to authorities responsible for patent search and examination to take greater account of traditional knowledge systems.*

### **3. GENETIC RESOURCES**

*3.1 Genetic Resources and Patent Disclosure Requirements: Transmission of Technical Study to the Convention on Biological Diversity (document WIPO/GRTKF/IC/6/9)*

In document WIPO/GRTKF/IC/6/9 the IGC is invited:

- (i) to take note of the transmission of the Technical Study and of recent developments in other fora on this issue; and*

(ii) *in the light of such developments and other proposals to consider possible future work for the Committee on this issue, including the proposals in paragraph 12(ii) of document WIPO/GRTKF/IC/5/10 (being:*

- *the continued exchange of national experience and case studies, and*
- *the development of guidelines and recommendations concerning the interaction between access to genetic resources and patent disclosure).*

### 3.2 “Swiss Proposals”

In document PCT/R/WG/5/11 Rev submitted to the Fifth Session of the Working Group on Reform of the Patent Co-operation Treaty (PCT), Switzerland proposes to amend the Regulation under the PCT to explicitly enable the Contracting Parties of the PCT to require patent applicants, upon or after entry of the international application into the national/ regional phase of the PCT procedure, to make a declaration regarding the source of genetic resources and/ or traditional knowledge, if an invention is directly based on such resource or knowledge. The applicants should either declare the source if they do have information about it or to declare that the source is unknown to them. National law may provide that a failure to make the required declaration may stand in the way of the grant of patent and that a lack or incorrect declaration resulting from fraudulent intention may affect the validity of the patent.

### 3.3 *Commission Communication on the implementation of the Bonn Guidelines*

On 23 December 2003, the Commission has published a Communication to the European Parliament and the Council on the implementation by the EC of the “Bonn Guidelines” on access to genetic resources and benefit-sharing under the Convention on Biological Diversity (COM (2003) 821 final). In this document, the Commission expressed the view that there should be a debate over the possible unilateral development, under EC law, of a self-standing obligation for patent applicants to disclose the origin of genetic resources (p. 19). Such a disclosure requirement should be shaped along the line of what has been proposed in the Communication by the EC and their Member States to the TRIPs Council on the review of Article 27.3(B) of the TRIPs Agreement, and the relationship between the TRIPs Agreement and the Convention on Biological Diversity (CBD) and the protection of traditional knowledge and folklore (document IP/C/W/383).

#### **4. INTERNATIONAL DIMENSION**

*Traditional Knowledge and Traditional Cultural Expressions: The International Dimension*  
(document WIPO/GRTKF/IC/6/6)

The renewed mandate addresses explicitly the international dimension of Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources. The WIPO Secretariat has drafted a document in which a range of overlapping possibilities of potential relevance to the IGC's mandate is discussed. The IGC is invited:

- (i) *to take note of the contents of this document;*
- (ii) *to identify those aspects of the Committee's mandate that are international in character; and*
- (iii) *to draw on these considerations as needed when deciding on possible outcomes of the Committee's substantive debate on the protection of traditional knowledge, of folklore or traditional cultural expressions, and of intellectual property aspects of genetic resources.*

#### **5. PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES**

*Participation of Indigenous and Local Communities, document WIPO/GRTKF/IC/6/10*

At the Fifth Session, IGC delegations shared the unanimous view that the participation of local and indigenous communities is of great importance for the work of the Committee and that all appropriate measures should be undertaken to facilitate that participation. As regards the source of the funding of participation of these communities, there was no agreement in the Committee. The developing countries and representatives of the involved local and indigenous communities in general supported the establishment of a voluntary fund in coordination with the existing UN Voluntary Fund for Indigenous Populations, or funding of WIPO's regular budget. The EC and its Member States agreed to support assistance of participation through a voluntary fund which represented the most flexible solution, provided its administration was streamlined and low in cost, with maximum transparency and objectively and emphasis on broad geographical distribution.

In document WIPO/GRTKF/IC/6/10 (paragraph 17) the Committee is invited:

- (i) *to note the existing informal consultative processes and voluntary funding initiatives that contribute to the enhanced involvement of Indigenous and local communities in its work;*
- (ii) *to welcome the creation of an informal consultative forum for Indigenous and local representatives in advance of sessions of the Committee, based on the elements in paragraph 11 of the document;*
- (iii) *to encourage voluntary donors to support the immediate participation of representatives of accredited observers in any such consultative forum and in the Committee's sessions; and*
- (iv) *on the basis of an updated proposal, to continue its consideration and elaboration of possible establishment of formal structures for a Voluntary Fund, depending upon the overall directions set for the Committee or other bodies within WIPO.*

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