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for Protecting Traditional Knowledge, Innovations and Practices

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**Intellectual Property and Traditional Knowledge: The  
Work and Role of the World Intellectual Property  
Organization**

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**Intellectual Property and Traditional Knowledge: The Work and Role of the  
World Intellectual Property Organization (WIPO)**

for the

**Expert Meeting on Systems and National Experiences for Protecting  
Traditional Knowledge, Innovations and Practices**

organized by

the United Nations Conference on Trade and Development (UNCTAD)

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1. Introduction
2. WIPO and Traditional Knowledge: 1998-1999
3. WIPO and Traditional Knowledge: 2000-2001
4. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
5. Intellectual Property and the Harnessing of Traditional Knowledge for Trade and Development: The Role of WIPO and other Specialized United Nations Agencies
6. Conclusion

**1. Introduction**

1. The purpose of this document is to inform the UNCTAD Expert Meeting about WIPO's existing work program on "Protection of Traditional Knowledge, Innovations and Creativity," and to assist discussions of the Meeting by drawing attention to the intellectual property needs and activities covered in that work program (Subprogram 11.1 of the WIPO Program and Budget for the 2000-2001 biennium). The present document summarizes WIPO's past, present and future activities (Sections 2, 3 and 4, respectively) and concludes with some reflections on the roles of WIPO and other intergovernmental agencies in the protection of traditional knowledge (Section 5). The document is based on the Background Note issued by the Secretariat of UNCTAD as document TD/B/COM.1/EM.13/2.

2. The fundamental objectives of WIPO includes to “promote the protection of intellectual property throughout the world ... where appropriate, in collaboration with any other international organization” (Article 3(i), Convention Establishing the World Intellectual Property Organization (1967)). Pursuant to this objective, WIPO continues to liaise closely with the Secretariat of the Convention on Biological Diversity (SCBD) on the protection of intellectual property in relation to traditional knowledge, innovations and practices relevant to the *in situ* conservation and sustainable use of biodiversity. Furthermore, WIPO continues its ongoing collaboration with the World Health Organization (WHO) on the protection of intellectual property in relation to traditional medicinal knowledge, and with the Food and Agriculture Organization (FAO) on the protection of intellectual property in relation to traditional knowledge relevant to the preservation and utilization of genetic resources for food and agriculture.

3. WIPO holds considerable expertise on the protection of traditional knowledge by intellectual property. WIPO is willing to contribute its intellectual property expertise to UNCTAD’s work on the utilization of traditional knowledge in trade and development with a view to discharging activities of both organizations within their respective fields of expertise and mandates. WIPO’s contribution of input and comments on the intellectual property passages in the Background Note for the Expert Meeting (document TD/B/COM.1/EM.13/2) exemplifies the modalities for cooperation between WIPO and UNCTAD in the protection of traditional knowledge. This aspect is dealt with further under in Section 5 below.

## **2. WIPO and Traditional Knowledge: 1998-1999**

4. WIPO is one of the specialized agencies of the United Nations (UN) system of organizations. WIPO’s mandate is the promotion of the protection of intellectual property (IP) throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization. The notion “intellectual property” is defined in the Convention Establishing the World Intellectual Property Organization, 1967 to include rights relating to:

- literary, artistic and scientific works;
- performances of performing artists, sound recordings, and broadcasts;
- inventions in all fields of human endeavor;
- scientific discoveries;
- industrial designs;
- trademarks, service marks, and commercial names and designations;
- protection against unfair competition; and,

- all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

5. WIPO has currently 175 Member States and maintains its headquarters in Geneva, Switzerland. Its main activities include:

- facilitating the conclusion of new international treaties and the modernization of national legislation;
- administration of more than twenty international treaties in the fields of copyright, related rights, patents, industrial designs and marks;
- providing technical advice and assistance to developing countries as part of an extensive development cooperation program;
- the assembly and assimilation of information and advice to a diverse range of parties; and,
- the maintenance of services for facilitating the obtaining of protection of inventions, marks and industrial designs for which protection in several countries is desired.

6. WIPO began its work on traditional knowledge-related subject matter in 1978, when it developed model provisions regarding a *sui generis* system for the protection of expressions of folklore in collaboration with the United Nations Educational, Scientific and Cultural Organization (UNESCO). This work resulted in 1982 in the adoption of “Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions.”

7. In 1998, WIPO commenced a new set of activities designed to explore the IP aspects of the protection of traditional knowledge (TK). The main objective of these activities was to identify and explore the IP needs and expectations of the holders of TK, in order to promote the contribution of the intellectual property system to their social, cultural and economic development.

8. During this period these new activities were aimed at issue identification, recognizing that basic conceptual groundwork and systematic data collection were required to assess the IP aspects of the protection of TK, and to identify the scope of future work in a way which reflects the interests of all relevant stakeholders. To this end, a range of activities was carried out by WIPO, including those described in paragraphs 9 to 13 below.

9. In July 1998 and November 1999, WIPO organized two Roundtables to facilitate an exchange of views among policymakers, indigenous peoples and other holders of TK on the more effective application of the IP system for the protection of traditional and indigenous knowledge. The Lists of Participants, Programs, and

Papers of these Roundtables are available from the International Bureau of WIPO and on the WIPO website (<[www.wipo.int/traditionalknowledge](http://www.wipo.int/traditionalknowledge)>).

10. Between June 1998 and November 1999, WIPO conducted nine fact-finding missions (FFMs) to 28 countries in the South Pacific, Southern and Eastern Africa, South Asia, North America, Central America, West Africa, the Arab countries, South America and the Caribbean. The FFMs were designed to enable WIPO to gain, first-hand, a sense of the needs and expectations of TK holders relating to the protection of their TK. While the IP needs of TK holders have been referred to in other international fora, there had been no systematic global exercise by international organizations to document and assess the IP-related needs of TK holders. As the United Nations specialized agency responsible for the promotion of IP, WIPO undertook the FFMs as part of its study of current approaches to, and future possibilities for, the protection of the IP rights of holders of TK.

Factual accounts of all the mission activities were repatriated directly to the TK holders and other informants in the form of interim reports. The interim reports from the nine FFMs are available from the International Bureau of WIPO and on the WIPO website (<[www.wipo.int/traditionalknowledge](http://www.wipo.int/traditionalknowledge)>).

A general report on all the FFMs has been published in draft form for public comment until December 15, 2000. The report identifies the main IP needs and expectations regarding the protection of TK identified by WIPO during the FFMs. The draft report has been made available for comment electronically on the WIPO website at <[www.wipo.int/traditionalknowledge](http://www.wipo.int/traditionalknowledge)> and in paper form. After December 15, 2000, comments received will be taken into account in producing a final report which will be published in 2001.

11. WIPO has undertaken, in cooperation with the United Nations Environment Program (UNEP), an On-site Documentation Project on the Role of Intellectual Property Rights in the Sharing of Benefits Arising from the Use of Traditional Knowledge and Associated Biological Resources. This project produced three case studies which WIPO and UNEP jointly submitted to the fifth Conference of the Parties to the Convention on Biological Diversity (CBD), which took place in Nairobi, Kenya, from May 15 to 23, 2000. The case studies focus on cases where intellectual property rights were used as a tool for benefit-sharing in India, Mali and Nigeria. The cases constitute part of a larger Study undertaken jointly by WIPO and UNEP on the role of intellectual property rights in benefit-sharing in respect of biological resources and associated traditional knowledge. The experiences included in these cases may provide lessons as to how the effective protection of intellectual property rights can support the implementation of the CBD with respect to the sharing of benefits arising from the use of biological resources and associated traditional knowledge.

12. In cooperation with the United Nations Educational, Social and Cultural Organization (UNESCO), WIPO organized four regional consultations on the protection of so-called “expressions of folklore.” The consultations were designed to enable representatives of WIPO Member States to exchange views, clarify issues, and provide guidance for WIPO’s future work in relation to the protection of folklore. The Recommendations, Resolutions and other documents from these Consultations are available from the International Bureau of WIPO and on the WIPO website (<[www.wipo.int/traditionalknowledge](http://www.wipo.int/traditionalknowledge)>).

13. The interdisciplinary nature of the subject matter involved made it necessary for WIPO to participate in other international fora and meetings on subjects such as food security, agriculture, the environment, indigenous populations, sustainable development, trade, culture and biological diversity. These were mostly organized by intergovernmental agencies within the UN system and certain national, regional and non-governmental organizations.

### **3. WIPO and Traditional Knowledge: 2000-2001**

14. WIPO’s exploratory work in 1998 and 1999 showed that TK is a rich source of creativity and innovation. The issues are complex, however, and in order to achieve better understanding and promote wider consensus, the workprogram for 2000-2001 moves beyond issue -identification, and into a phase of addressing basic conceptual problems and testing practical solutions for the protection of TK. WIPO’s workprogram for the 2000-2001 biennium responds to several of the needs and expectations identified during 1998 and 1999, and includes the following:

- **The development of information materials and holding of Information Workshops on options under the existing IP system for the protection of TK**

15. These materials will provide practical information on options for the protection of TK under the IP system. The materials will be aimed at two main target groups, being TK holders and the national IP offices responsible for the administration of the IP system in each country. The materials will form the basis of WIPO’s TK -related information and training activities, including the workshops referred to below. The same materials will also form the basis of an IP/TK Distance Learning Course to be offered by WIPO in 2001. The Distance Learning Program of the WIPO Academy takes full advantage of information technology and the Internet, offering new teaching methods, especially designed course materials, evaluation tools, tailored means of delivery, and expanded audiences.

Teaching takes place in the virtual environment of the WIPO Academy's web site at <<http://academy.wipo.int>>. Further information is available at this website.

16. The materials will also be used for WIPO information workshops on the IP system and the protection of TK. The workshops will provide information on the IP system and the protection of TK to TK holders and other persons at the grassroots level, and to national IP offices. In addition to these workshops, TK protection is now almost invariably included in the programs for the many training activities organized by WIPO's Cooperation for Development Sector.

▪ **IP information, training and standards for the documentation of TK**

17. The activity would pursue two practical results: (1) allow TK documentation initiatives to manage IP rights (IPRs) during the TK documentation process, and (2) allow national IP offices to integrate the TK documentation from those initiatives into their existing procedures for filing, examining and granting of IPRs under the existing IP system. For example, by integrating TK documentation into existing procedures and IP information systems, IP offices could include TK documentation into their prior art searches when examining applications for patents in respect of TK-based inventions. The output of the activity would be practical information materials on managing IPRs during the documentation process, written in a "How To"-format and accessible to users with limited IP-background. The information materials would be applied in practical training workshops on IPR management for communities and key documentation institutions. The workshops would seek to link communities, documentation initiatives, and national IP offices so as to initiate cooperation between IP offices and TK documentation initiatives at the national level

▪ **Studies of actual examples in which TK protection has been sought under the IP system, and publication of the lessons learned**

18. The activity will provide practical information on specific and actual examples in which indigenous and local communities have taken advantage of, or attempted to use, the IP system to either protect their TK or to further their own interests in the commercial application and utilization of their TK. The output of the activity will include practical information on difficulties and successes experienced in applying the IP system to TK, lessons learned and divergences between identified needs of TK holders and the protection provided by the existing IP system.

- **Feasibility studies on the applicability of customary laws to TK**

19. TK holders are subject to both customary and modern legal systems, since their knowledge constitutes subject matter to which both may apply. The interfaces, similarities and differences between customary and modern legal systems require understanding and management. This activity would seek ways to manage the relationship between modern and customary understandings of IPRs over TK subject matter. It would record customary law systems and related cultural understandings relevant for TK protection and draw implications how the IP system may recognize and use customary law to manage the relationship with TK holders.

- **A pilot project on collective acquisition, management and enforcement of IPRs in TK**

20. One of the problems in the IP/TK field is the collectivity of creation and ownership of TK. This activity would specifically address this issue by exploring options for the collective acquisition, administration and enforcement of IPRs by TK holders' associations. It would seek to examine the capacity of a selected community or TK holder association to acquire, collectively exercise and enforce all relevant IPRs on behalf of the holders.

#### **4. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore**

21. Following discussions among WIPO Member States which commenced in September 1999 about intellectual property and genetic resources, the WIPO General Assembly, at its 26<sup>th</sup> Session, held in Geneva from September 26 to October 3, 2000, decided that a distinct body should be established within WIPO. The main objective of this body is to facilitate discussions among Member States and that, in addition to the issue of genetic resources, the discussions should also include the results of WIPO's previous work on the related fields of traditional knowledge and expressions of folklore. To this end, the Member States decided to establish an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

22. The Intergovernmental Committee will constitute a forum in which discussions may proceed among Member States on three primary themes: intellectual property issues that arise in the context of (i) access to genetic resources and benefit-sharing; (ii) protection of traditional knowledge, whether or not associated with those resources; and (iii) the protection of expressions of folklore.

23. The Intergovernmental Committee will be open to all Member States of WIPO. As is usual in WIPO bodies, relevant intergovernmental organizations and accredited international and regional non-governmental organizations will also be invited to participate in an observer capacity. It is foreseen that the Committee would hold its first session in the Spring of 2001.

(i) Access to Genetic Resources and Benefit-Sharing

24. Intellectual property questions related to access to genetic resources and benefit-sharing arise in four main contexts. These contexts rely upon a shared understanding of the meaning of certain terms, such as “genetic resources,” which should accordingly be the subject of definitions to which attention should be given at the outset. The four main contexts concern the role of intellectual property rights in:

- *Contractual agreements for access to genetic resources.* Access agreements for genetic resources, such as material transfer agreements (MTAs), raise questions on the role of IPRs in respect of: ensuring control over *ex-situ* use of genetic resources; technology transfer and joint research and development; the exploration of the possibility of joint ownership of IPRs; ensuring continued customary use of genetic resources, etc. Member States may wish to consider the development of “best contractual practices,” guidelines and model intellectual property clauses for MTAs and other access agreements.
- *Legislative, administrative and policy measures to regulate access to genetic resources and benefit-sharing.* Issues arising in the development of national and regional access legislation include the role of intellectual property rights regarding: prior informed consent procedures; ensuring the recording of ownership interests in inventions that arise from access to or use of genetic resources; transfer of and access to technology in the context of benefit-sharing; and joint research and development as a form of non-monetary benefit-sharing.
- *Multilateral systems for facilitated access to genetic resources and benefit-sharing.* Multilateral systems, such as the system currently being developed for plant genetic resources for food and agriculture, raise numerous intellectual property issues, including: possible intellectual property-based benefit-sharing mechanisms; acquisition of intellectual property rights over genetic resources placed in the multilateral system; access under the multilateral system to genetic resources covered by intellectual property rights; transfer of and access to technology under the multilateral system; and the rights of holders of

traditional knowledge associated with genetic resources placed in the multilateral system.

- *The protection of biotechnological inventions, including certain related administrative and procedural issues.* Intellectual property issues in the field of biotechnology include: licensing and other issues related to the use of rights in biotechnological inventions; administrative and procedural issues related to the examination of patent applications directed at biotechnological inventions; the relationship between patents and other forms of intellectual property protection for biotechnological inventions; and certain aspects, related to ethical and environmental issues, animal and human health.

25. In each of these four contexts intellectual property issues arise regarding the protection of traditional knowledge related to genetic resources. These issues are dealt with separately under the next heading.

#### (ii) Protection of Traditional Knowledge

26. Based on WIPO's previous work, intellectual property issues regarding the protection of traditional knowledge related to genetic resources, and traditional knowledge, innovations and creativity in general, can be grouped in four categories:

- *Terminological and conceptual issues.* Issues to be discussed in this category include: the selection of appropriate terms to describe the subject matter for which protection is sought; a clear definition or description of what is meant (and not meant) for intellectual property purposes by the selected terms; study of customary laws and regulatory systems that apply to traditional knowledge in local and traditional communities; examination of certain conceptual issues, such as collectivity of creation, innovation and ownership and cultural understandings of property rights.
- *Standards concerning the availability, scope and use of intellectual property rights in traditional knowledge.* Issues include: in the short term, facilitating access to the intellectual property system to enable traditional knowledge holders to acquire and use intellectual property rights where available under current standards; in the longer term, the possible development of new standards to protect traditional knowledge not protected by existing intellectual property tools, the elaboration of an international framework for traditional knowledge protection, and the development of a system of "community" or "collective" rights to protect traditional knowledge.

- *Certain criteria for the application of technical elements of standards, namely legal criteria for the definition of prior art and administrative and procedural issues related to the examination of patent applications.* Issues in this category include: the integration of traditional knowledge into the procedures of IP offices for filing, examination, publication and granting of industrial property titles through the documentation and publication of traditional knowledge as searchable prior art, where so desired by the relevant traditional knowledge holders; an analysis of how prior art is established for purposes of patent examinations in the context of traditional knowledge; and the provision of legal assistance with traditional knowledge documentation.
- *The enforcement of rights in traditional knowledge.* This involves facilitating access to the intellectual property system, to enable traditional knowledge holders to use and enforce rights under the intellectual property system.

(iii) Protection of Expressions of Folklore

27. The four regional consultations on the protection of folklore, mentioned in paragraph 12, above, recommended that WIPO should increase and intensify its work in the field of folklore protection. Recommendations for the legal protection of folklore focused on the development of a *sui generis* form of legal protection at the international level. Three of four consultation meetings considered the UNESCO-WIPO Model Provisions (1982) to be an adequate starting point and relevant groundwork for future work in this direction. One consultation recommended “to develop, in the shortest possible time, a broad consensus among States in favor of an international regime” (African Recommendation). Such a consensus among States seems to require detailed Member State discussions on issues such as those referred to in paragraph 26, above, insofar as they are relevant also to folklore. Furthermore, discussions at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO, held from September 20 to 29, 1999, specified that special attention in this context should be given to the protection of handicrafts (see document A/34/16, paragraphs 29, 113 and 142).

**5. Intellectual Property and the Harnessing of Traditional Knowledge for Trade and Development: The Role of WIPO and other Specialized United Nations Agencies**

28. For more than half a century development policies have been dominated by the idea that the role of national governments and inter-governmental organizations is to provide what poor people lack, for example funding, training, or employment. Development strategies have not built upon resources in which

poor people often are rich, such as their own knowledge, innovations and creativity. A bottom-up approach to trade and development, which reverses the understanding of agency in the development process, might be facilitated by ‘Harnessing TK for Trade and Development,’ as outlined in Section V of document TD/B/COM.1/EM.13/2.

29. Lessons learned from WIPO’s work on intellectual property and traditional knowledge suggest that in order to harness TK for trade and development in this manner, the legal protection of TK by intellectual property rights is a necessary but by no means the only requirement. Apart from intellectual property rights issues, the utilization of TK for trade and development requires additional elements which merit attention from inter-governmental organizations and which the Expert Meeting may wish to focus on. The following paragraphs set out some exemplary elements, which WIPO is not able to cover, and which the Expert Meeting may consider within the mandate of UNCTAD.

30. In order to harness TK for trade and development it is necessary to combine the legal protection of TK with investment and entrepreneurship. As suggested in the Background Note, this may be achieved through “comprehensive strategies to harness TK for development and trade, reflecting the national development objectives and interests of indigenous and local communities” (paragraph 60). In addition to legal protection, such comprehensive strategies might include, *inter alia*, the following three steps:

- (i) documenting and disseminating TK:
  - linking innovators from the private and public, the formal and informal sectors;
  - disseminating TK to link TK holders with investors and entrepreneurs;
  - promoting lateral learning among TK holders;
- (ii) converting TK into products and services:
  - facilitating access to venture capital;
  - facilitating access to micro-credit;
  - scaling up of innovations;
  - establishing R & D partnerships between formal and informal innovators;
- (iii) commercializing the TK-based products and services:
  - market research;
  - market development and generation of consumer demand for TK-based products;
  - trade policy incentives for TK-based products.

31. Comprehensive strategies for TK in trade and development should encompass these three elements which are distinct from the development of new standards concerning the availability of intellectual property rights for TK subject matter, which would be the mandate of WIPO. The establishment of comprehensive strategies for the harnessing of TK in trade and development may require legal protection of TK *inter alia*, but it is not conditional upon the establishment of intellectual property protection for TK. Rather, it requires the provision of accurate intellectual property information for the effective use of intellectual property in such development strategies. Based on its experience with the protection of TK, WIPO would be willing and able to provide accurate intellectual property information as a contribution to the development of such comprehensive strategies.

32. Specifically, Subprogram 11.1 of the WIPO Program and Budget for the 2000-2001 biennium on “Protection of Traditional Knowledge, Innovations and Creativity” provides, *inter alia*, for the following Main Activity:

*Provision of technical intellectual property advice and information to other organizations, United Nations bodies, fora and parties dealing with questions concerning the protection of traditional knowledge, innovations and creativity, such as, the Ad Hoc Open-Ended Inter-Sessional Working Group established in respect of Article 8(j) of the Convention on Biological Diversity (the CBD), the World Health Organization (WHO), the Food and Agriculture Organization (FAO), the United Nations Environment Programme (UNEP), the World Bank, the World Trade Organization (WTO), the United Nations Educational, Social and Cultural Organization (UNESCO), the United Nations Human Rights Commission and the Working Group on Indigenous Populations, and the World Conservation Union (IUCN), through the provision of written materials and participation in relevant conferences, meetings and seminars. (WIPO Program and Budget for the 2000-2001 Biennium, document A/34/2: p. 98-99)*

33. Pursuant to this Main Activity, WIPO is willing to provide technical intellectual property advice and information to UNCTAD in support of its activities relating to traditional knowledge, trade and development.

## **6. Conclusion**

34. WIPO recognizes that intellectual property rights are a necessary but not the only requirement for harnessing traditional knowledge for trade and development. As the specialized UN-agency responsible for intellectual property, WIPO hopes

that its work on intellectual property protection will contribute to the harnessing of traditional knowledge for a sustainable and bottom-up approach to trade and development. Since 1998, WIPO's work has aimed at producing and providing accurate technical intellectual property information to the relevant stakeholders and international organizations, particularly regarding the relevance of intellectual property for traditional knowledge and biological diversity. On the basis of written requests, WIPO can provide further general information on intellectual property to UNCTAD.

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