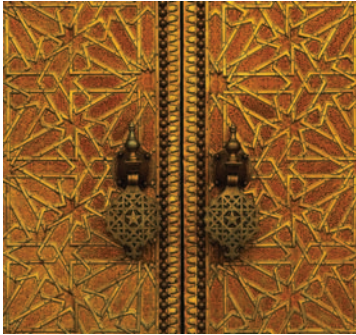


NEXT STEPS FOR INTERNATIONAL PROTECTION OF TRADITIONAL KNOWLEDGE



The WIPO Magazine has featured a series of articles in recent issues highlighting the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). This month's article reports on the most recent meeting of the IGC, which took place in Geneva from July 7 to 15.

The WIPO General Assembly is expected to set directions for the Organization's work on traditional knowledge (TK), folklore, and genetic resources when it takes up the question of the future mandate for the IGC at its September, 2003 meeting. The IGC has already laid down a solid basis in this area, and this has raised the question of what concrete outcomes can now be achieved. The IGC's initial mandate was as a forum for discussion, and it has explored many pressing policy issues in depth, but has also overseen the development of practical tools and mechanisms to support TK holders, custodians of traditional culture, and indigenous and local communities in identifying and promoting their interests in relation to the IP system.

Participants at the IGC's July meeting broadly agreed on the need for immediate steps to safeguard the interests of communities who have developed and preserved TK and traditional cultures. The IGC's work also strengthened understanding of the legal and practical aspects of addressing concerns about inadequate recognition and protection of TK and cultural expressions. In the forefront have been the concerns of communities whose cultural identity and spiritual integrity can depend on how their TK and cultural expressions are used and disseminated, and the need to enhance the participation of local and indigenous communities in the international debate affecting their interests.

As its mandate is due for renewal, the IGC at its recent session debated its future direction extensively, especially how it should move beyond its initial mandate towards more definitive results. A general sense was shared among participants that the IGC could produce concrete results within the next two years, and should focus on the international aspects of its mandate. But unresolved differences remained on what form and legal status these results should take. Some felt that the urgency of the needs expressed meant that a legally binding international instrument should be concluded by 2005; others called for recommendations and principles that would strengthen international consensus in the short term and leave open the possibil-

ity of legally binding outcomes in future. Several NGO participants urged greater international recognition of the customary laws and knowledge protocols that apply within indigenous communities, the subject of a study commissioned by the IGC. Many also called for enhanced involvement of indigenous and local communities in the debate.



Traditional Knowledge Protection

The IGC worked towards greater clarity of the possible practical approaches and policy options for legal protection of TK. A composite study on TK protection (WIPO document WIPO/GRTKF/IC/5/8) explored how to define and protect TK, and options for specific, or *sui generis*, protection of TK. An expert panel reviewed several *sui generis* mechanisms, highlighting the practical and legal mechanisms developed in Costa Rica, Nigeria, Peru, the Philippines, Portugal, the United States and Zambia. An extensive series of surveys, case studies and analysis of legislation was also tabled, ensuring that future work is founded on a rich understanding of existing approaches and the costs and benefits of different policy options.

Genetic Resources and TK – Defenses Against Ill-Founded Patents

A key concern has been how to ensure that TK and genetic resources are not the subject of illegitimate patent claims. The IGC's work has already initiated changes to core elements of the patent system, such as the International Patent Classification (IPC) and international search and examination under the Patent Cooperation Treaty. The International Plant Genetic Resources Institute briefed the IGC on the 'SINGER' database (System-wide Information Network for Genetic Resources), which provides data on genetic resources held in trust internationally. This database is now linked to a WIPO online portal established to help patent examiners take greater account of existing TK and genetic resources when assessing the validity of patent claims. The IGC also reviewed an extensive technical study prepared for the conference of parties of the Conference on Biotechnical Diversity (CBD), on the question of disclosure within patent applications of genetic resources and TK used in inventions (WIPO document WIPO/GRTKF/IC/5/10).



Protection of Expressions of Traditional Culture and Creativity

A composite study on the legal protection of expressions of traditional culture (or folklore) (WIPO document WIPO/GRTKF/IC/5/3) provoked extensive debate over policy choices – for instance, the concern of many indigenous communities about the way the public domain is conceived in the established Intellectual Property (IP) system. TCEs such as songs or designs might be considered under IP law to be in the public domain, when in fact customary law or spiritual restrictions on its use may well still apply from the indigenous perspective. Talks have moved to a detailed, practical phase, aimed at finding workable solutions. WIPO provides assistance with national and regional systems for TCE/folklore protection, and is preparing a "WIPO Practical Guide on the Legal Protection of Traditional Cultural Expressions."

Documentation of TK

Indigenous and local communities in many countries are documenting their TK and associated biological resources, for a host of reasons – for example, to preserve TK for

future generations. But many worry that the very process of documentation can undercut the interests of TK holders. Unless the right steps are taken in advance, documented TK can more readily be accessed, disseminated and used without authorization, which is sometimes contrary to customary laws and practices. To help address these concerns, WIPO is developing a toolkit for managing the IP implications of documentation of TK and biological resources (WIPO document WIPO/GRTKF/IC/5/8).

The toolkit will show how documentation can take place as the community chooses, without placing the documented material in the public domain, so that communities can retain control over their TK and limit access, for cultural, spiritual, legal or commercial reasons. Indigenous and local communities are to be extensively involved in the development of this toolkit. Many indigenous communities view documentation of TK with skepticism, and several participants expressed the desire that the toolkit would not encourage documentation. But if a community does choose to document their TK, for whatever reason, the toolkit will help ensure the community's own interests are protected, and TK is not inadvertently put into the public domain. ◆

The WIPO documents mentioned in this article are available at www.wipo.int/globalissues/igc/documents/.