

**Ad-Hoc Open-Ended Inter-Sessional Working Group on Article 8(j) and
Related Provisions of the Convention on Biological Diversity**

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**Statement by the
World Intellectual Property Organization**

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Introduction

The World Intellectual Property Organization (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.

As this definition indicates, “intellectual property” is not confined only to the specific and known examples of intellectual property, such as inventions or trademarks. The phrase at the end of the definition (“all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields”) makes it clear that “intellectual property” is a broad concept and can include productions and matter not forming part of the existing categories of intellectual property, provided they result “from intellectual activity in the industrial, scientific, literary or artistic fields.”

WIPO has currently 173 Member States. WIPO’s headquarters are in Geneva, Switzerland. WIPO’s 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, such as the Patent Cooperation Treaty, 1970, the Hague Agreement Concerning the International Deposit of Industrial Designs, 1925, and the Madrid Agreement Concerning the International Registration of Marks, 1891, and the Protocol Relating to that Agreement, 1989.

WIPO and Traditional Knowledge: 1998-1999

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 under the WIPO Program and Budget for 1998-1999 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.

During the 1998-1999 biennium, WIPO’s 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 in 1998 and 1999, including:

- 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 has been to date 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>).

A general, and more analytical, report on all the FFMs is being written by WIPO, and a draft will be published for comment by late April, 2000. The report identifies the main IP needs and expectations regarding the protection of TK identified by WIPO during the FFMs. The draft report will be made available for comment electronically (on the WIPO website at <www.wipo.int>) and in paper form, until approximately the end of July, 2000. Thereafter, comments received will be taken into account in producing a final report which will be published in approximately September, 2000.

- 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”, which were held for African countries in Pretoria, South Africa (March 1999), for countries of Asia and the Pacific region in Hanoi, Vietnam (April 1999); for Arab countries in Tunis, Tunisia (May 1999); and for Latin America and the Caribbean in Quito, Ecuador (June 1999). 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>).

- 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>).
- 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.
- WIPO is also undertaking, 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 will produce case studies which WIPO and UNEP intend to submit to the fifth Conference of the Parties to the Convention on Biological Diversity, 1992 (the CBD) taking place in May, 2000.

WIPO and Traditional Knowledge: 2000-2001

WIPO's exploratory work in 1998 and 1999 has shown 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, it is necessary that the workprogram for 2000-2001 move 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, for example, the following:

1. The development of information materials on options under the existing IP system for the protection of TK

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 training activities, including the

national workshops referred to immediately below in activity 2. The materials will also be widely disseminated.

The same materials will also form the basis of an IP/TK Distance Learning Course to be offered by WIPO. 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. A six part Introduction to Intellectual Property course has been developed and tested, and has been available to a worldwide audience since October, 1999, in English, French and Spanish. 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. It is expected that the new Distance Learning Course on IP and TK will be available during the first half of 2001.

2. Practical, national information and training workshops on the IP system and the protection of TK

The workshops will provide information and training on the IP system and the protection of TK to TK holders and other persons at the grassroots level, and to national IP offices. The workshops will be based on the written information materials referred to in activity 1 above. 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.

3. IP information, training and standards for the documentation of TK

The activity would pursue two practical results: (1) it will allow TK documentation initiatives to manage IP rights (IPRs) during the TK documentation process, and (2) it will 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

4. Practical studies of actual examples in which TK protection has been sought under the IP system

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. The results of the activity will be disseminated and used in WIPO's training activities, including those referred to in activity 2 above.

5. Feasibility studies on the applicability of customary laws to TK

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.

6. A pilot project on collective acquisition, management and enforcement of IPRs in TK

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.

7. Meeting on Intellectual Property and Genetic Resources (April 17 and 18, 2000)

WIPO will convene a Meeting on Intellectual Property and Genetic Resources on April 17 and 18, 2000 in Geneva. The participants will be representatives of WIPO's Member States and selected intergovernmental organizations. The purpose of the meeting is to discuss a number of issues that arise in respect of IP and genetic resources, which can include TK. The meeting is expected to identify relevant issues and give guidance to WIPO in carrying out its program of activities in this regard.

WIPO and the Convention on Biological Diversity, 1992

As is apparent from the above, WIPO's focus extends to traditional knowledge in general, and not only to knowledge, innovations and practices "*relevant for the conservation and sustainable use of biological diversity*" (Article 8(j), Convention on Biological Diversity, 1992). However, since 1998 WIPO has paid particular attention to the role of IP in the preservation, conservation and dissemination of global biological diversity. Several activities have addressed the IP aspects of the Convention on Biological Diversity, 1992 (the CBD), and of access to and benefit-sharing in genetic resources. While IP is only one of several factors that can influence the allocation and flow of benefits from the use of genetic resources, WIPO recognizes that "*intellectual property rights may have an influence on the implementation of the Convention,*" as stated in Article 16.5 of the CBD, and is cooperating with the Secretariat of the CBD in order to ensure that such rights are supportive of and do not run counter to the objectives of the Convention.

For example, and as mentioned above, WIPO is undertaking, 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, Innovations and Creativity and Associated Biological Resources. This project will produce case studies which WIPO and UNEP intend to submit to the fifth Conference of the Parties to the CBD taking place in May, 2000.

WIPO's Response to the Indicative List of Activities that Could be Carried Out Under the Tasks Identified in the Programme of Work on Article 8(j) and Related Provisions of the Convention on Biological Diversity, 1992 (UNEP/CBD/WG8J/1/INF/1)

WIPO is willing to collaborate, within the scope of its mandate and resources, with the Secretariat of the CBD (the SCBD) and other related organs as appropriate, with a view to assisting in the discharge of certain of the activities listed in the Indicative List of Activities that Could be Carried Out Under the Tasks Identified in the Programme of Work on Article 8(j) and Related Provisions of the Convention on Biological Diversity, 1992 (UNEP/CBD/WG8J/1/INF/1) (the Indicative List). WIPO has identified certain activities on which it would be willing to provide intellectual property assistance. However, WIPO does not have any position in respect of the overall Tasks under which the identified activities are carried out.

More specifically, should the following activities, currently included in the Indicative List, be adopted by the Working Group and by the Conference of the Parties, WIPO is willing to assist the Working Group in discharging the activities in the ways set out against each activity below:

- **Task 3.** Establish a roster of indigenous and local community experts (and corresponding database) to provide advice on aspects of the implementation of Article 8(j) and related articles.

Activity 3.1.1: Invite Governments, research institutions, and indigenous and local community organizations to submit names of suitable people for inclusion in the roster of experts to be made available through the clearing-house mechanism, in particular, find best ways through which indigenous and local community experts could be identified and included.

WIPO's Assistance: Subject to the criteria according to which such a roster will be established and the agreement of the persons concerned, WIPO can make available to the Executive Secretary of the SCBD the names and contact details of indigenous and local community persons with whom WIPO has dealt in its work relating to the IP aspects of the protection of TK.

- **Task 9.** Develop guidelines and mechanisms to ensure that holders of traditional knowledge share equitably the benefits arising from the (wider) application of their knowledge.

Activity 9.1.1: Review case-studies and other relevant information on benefit-sharing, including in particular those submitted in response to relevant decisions of the Conference of the Parties.

Activity 9.1.2: Review case-studies and other relevant information on mutually agreed terms for benefit-sharing, including in particular those submitted in response to relevant decisions of the Conference of the Parties.

WIPO's Assistance: Principally in response to Decision IV/9 (paragraph 10), WIPO will submit to the Working Group the results of two activities:

- In cooperation with UNEP, the On-site Documentation Project on the Role of Intellectual Property Rights in the Sharing of Benefits Arising from the Use of Traditional Knowledge, Innovations and Creativity and Associated Biological Resources, referred to above; and,
 - The practical studies of actual examples in which TK protection has been sought under the IP system (activity 4 above).
- **Task 10.** Develop mechanisms to facilitate the exchange and dissemination of information on traditional biodiversity-related knowledge, innovations and practices with the full participation and consent of holders/customary owners of traditional knowledge.

Activity 10.11: Conduct a desk-top analysis of case-studies and other relevant information which concern existing and proposed registries or repositories of indigenous and local community biodiversity-related knowledge and associated codes of access and use.

WIPO's Assistance: WIPO will submit to the Working Group the results of two activities:

- IP information, training and standards for the documentation of TK (activity 3 above); and,
- The practical studies of actual examples in which the TK protection has been sought under IP system (activity 4 above).

Activity 10.1.2: Identify and analyze methods and existing centers of collection, storage and dissemination, including databases and other holdings of information in private and public institutions such as corporations and universities, for relevance and broad application to traditional knowledge,

including issues of shared ownership, effectiveness, cultural appropriateness and broad application.

Activity 10.1.3: Identify centers and activities where traditional indigenous and local community biodiversity-related knowledge is ready for dissemination.

WIPO's Assistance: WIPO will submit to the Working Group the results of its activity on IP information, training and standards for the documentation of TK (activity 3 above).

- **Task 11.** Identify, compile and analyze, in consultation with indigenous and local communities, existing and customary codes of ethical conduct to guide the development of models for codes of ethical conduct for research, access to, use, exchange and control of information concerning traditional knowledge, innovations and practices for the conservation and sustainable use of biological diversity.

Activity 11.1.1: Identify, compile and analyze for key principles, in consultation with indigenous and local communities, existing and customary codes of conduct.

WIPO's Assistance: WIPO will submit to the Executive Secretary of the SCBD and the Working Group the results of its case studies on the applicability of customary law and practice to IP and TK protection (activity 5 above).

- **Task 17.** Establish an inter-agency task force to review and recommend on the development of legal and other appropriate forms of protection for the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

Activity 17.1.1: Invite relevant international agencies, and representatives of indigenous and local community organizations to form an inter-agency task force to address the issue of the protection of the knowledge, innovations and practices of indigenous and local communities.

WIPO's Assistance: Subject to the terms of reference of such a task force and subject to guidance from WIPO's internal bodies and Member States, WIPO would be willing to participate, within the scope of its mandate, in such a task force.

- **Task 18.** Develop guidelines that will assist States in the establishment of legal frameworks, including *sui generis* systems that recognize, safeguard and fully guarantee the protection of the cultural heritage, customary laws, innovations and traditional knowledge of indigenous and local communities relevant for the conservation and sustainable use of biological resources.

Activity 18.11: Identify, analyze and evaluate IPR regimes including those alternatives and models which have been proposed, and assess the feasibility of such alternatives for wider application.

WIPO's Assistance: WIPO will submit to the Working Group the results of its practical studies of actual cases in which TK protection has been sought under the IP system (activity 4 above).

Activity 18.2.1: Develop standards and guidelines for mechanisms for the legal recognition of customary systems of protection and internal control of knowledge, innovations and practices and biological resources within the lands and territories of indigenous and local communities.

WIPO's Assistance: WIPO will submit to the Working Group the results of its studies on the applicability of customary law to IP and the protection of TK (activity 5 above).

- **General:** Subject to the outcome of the meetings of the Working Group and of the Conference of the Parties in Nairobi, Kenya in May, 2000, WIPO would be interested in exploring the possibility of collaborating with the SCBD or other related organs as appropriate in undertaking certain of WIPO's activities, or parts thereof, such as:

IP information, training and standards for the documentation of TK (activity 3 above);

The practical studies of actual examples in which TK protection has been sought under the IP system (activity 4 above); and,

The feasibility studies on the applicability of customary laws to TK (activity 5 above).

On the basis of written requests, WIPO can also provide general information on intellectual property to the Working Group.

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