

Fourteenth Session of the United Nations Permanent Forum on Indigenous Issues

New York, 20 April to 1 May 2015

Information Note

from the Secretariat of the World Intellectual Property Organization
December 2014

The present information note provides an update on on-going activities of particular interest to indigenous peoples and local communities that were carried out by the World Intellectual Property Organization (WIPO) in 2014. Those activities are part of a consistent and on-going program of outreach to and support of indigenous peoples and local communities regarding issues of relevance to them in WIPO.

Details regarding past activities are available in similar information notes that were addressed to the United Nations Permanent Forum on Indigenous Issues (UNPFII or the Permanent Forum) in previous years. Most importantly, the UNPFII held a Comprehensive Dialogue with the Secretariat of WIPO, at its Eleventh Session that took place in May 7 to 18, 2012, when extensive consideration was given to issues of common relevance to WIPO and the Permanent Forum.

DEVELOPMENTS IN THE WIPO IGC NEGOTIATIONS

The WIPO General Assembly established the IGC in 2000 as a forum where WIPO Member States and observers could discuss the intellectual property (IP) issues that arise in the context of access to and benefit-sharing in genetic resources (GRs) and the protection of traditional knowledge (TK) and traditional cultural expressions (TCEs)¹.

WIPO Member States decided in 2009 that the IGC should undertake “text-based negotiations” regarding the effective protection of GRs, TK and TCEs². Since then, progress has been made in pursuing international agreement on such protection and developing draft texts.

The negotiating mandate of the IGC was renewed by the WIPO General Assembly for 2014 and 2015 and reads, *inter alia*, as follows: “The Committee will, during the next budgetary biennium 2014/2015, and without prejudice to the work pursued in other fora, continue to expedite its work with open and full engagement, on text-based negotiations with the objective of reaching an agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs.”³

¹ For a detailed description of the Committee’s background, please refer to the Brief available at: http://www.wipo.int/export/sites/www/tk/en/documents/pdf/background_briefs-e-nx2-print.pdf

² For an overview of the questions raised regarding such protection, see the following publication “Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions: An Overview” available at: http://www.wipo.int/freepublications/en/tk/933/wipo_pub_933.pdf. A presentation of the issues involved was also made at the Eleventh Session of the Permanent Forum. See: <http://www.wipo.int/export/sites/www/tk/en/documents/pdf/unpfii.pdf>.

³ The full text of the 2014-2015 mandate is available at: http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc_mandate_1415.pdf.

In September 2013, the WIPO General Assembly adopted a work program for 2014, comprising three IGC sessions, which took place, respectively, from February 3 to 7 (IGC 26), March 24 to April 4 (IGC 27) and July 7 to 9 (IGC 28). The General Assembly requested the IGC to “submit to the 2014 General Assembly the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs.”⁴

In September 2014, the WIPO General Assembly considered the draft texts that were submitted by the IGC and discussed the IGC work program for 2015, but did not take any decision regarding this item⁵. However, the current mandate of the IGC and the WIPO Program and Budget for 2014-2015 envisage continued work on these issues in 2015.

PARTICIPATION OF AND CONTRIBUTION BY INDIGENOUS PEOPLES IN THE WORK OF THE IGC

WIPO Member States have repeatedly expressed their support for involving, to the greatest extent possible, representatives of indigenous peoples and local communities in the work of the IGC. Since the beginning of the IGC and in active dialogue and cooperation with those representatives, the WIPO Secretariat, with WIPO Member States’ support, has taken measures ensuring and enhancing the participation of indigenous peoples in the IGC in the framework of their status as observers.

The most important measures regarding the participation of observers in the IGC include:

Accreditation, funding, invitations

A fast-track accreditation procedure for all non-governmental and intergovernmental organizations has been in place since the beginning of the IGC in 2001⁶.

The WIPO General Assembly established the WIPO Voluntary Fund for Accredited Indigenous and Local Communities (the Fund) in 2005. The Fund facilitates the participation in sessions of the IGC of representatives of indigenous peoples and local communities, and other customary holders or custodians of TK and TCEs, which are already accredited to the IGC⁷. It is worth noting that the extent of support that the Voluntary Fund can provide depends on the resources donated to it. In this regard, the WIPO Secretariat pursues a fund-raising drive in order to have the Fund replenished with new donations. Any potential donors are encouraged to contact the WIPO Secretariat for further information regarding the Fund.

The WIPO General Assembly has extended a formal invitation to the Permanent Forum to take part in sessions of the IGC and participants have welcomed the active and direct participation of the Permanent Forum in the IGC.

⁴ Idem

⁵ See http://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_46/wo_ga_46_12_prov.pdf (paragraphs 151 to 172)

⁶ See the accreditation form: http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc_accreditation_form.pdf

⁷ Details on the WIPO Voluntary Fund are available at: <http://www.wipo.int/tk/en/igc/participation.html>

Participation of and contributions by indigenous peoples in the IGC

WIPO welcomed the comprehensive statements made by the Permanent Forum at its Twelfth Session⁸, emphasizing the importance for indigenous peoples of the IGC negotiations. The IGC recognizes that the participation of indigenous peoples and local communities, as intended beneficiaries of any instrument of protection of TK and TCEs, is one of the key elements in its work.

In accordance with the General Rules of Procedure of WIPO, accredited observers to the IGC can take the floor on any agenda item and can make any relevant suggestion regarding any issue on the agenda, including submitting suggested drafting text. Member States may then decide to endorse drafting suggestions by observers as formal proposals to be considered by the IGC. Further, the Chair of the IGC has invited indigenous caucus representatives to participate in informal consultations and drafting groups on the texts being negotiated at the IGC. On many occasions, drafting proposals by indigenous representatives have been taken up in the negotiating texts in 2014 and in previous years.

An Indigenous Consultative Forum is organized on the day preceding each IGC sessions at the WIPO premises. The WIPO Secretariat is on hand at the Consultative Forum to provide input on substantive and organizational issues, if so invited.

During the IGC, WIPO finances the logistical, secretarial, interpretation and translation support that is provided by the Indigenous Peoples' Center for Documentation, Research and Information (DoCip) for the Indigenous Consultative Forum on the day before the session and during the daily meetings of the indigenous caucus. Such support significantly facilitates developing the information and communications capacity of participating representatives and is highly appreciated by indigenous observers.

A distinct WIPO webpage on the WIPO TK website is dedicated to comments, submissions and papers from observers, including drafting suggestions on the IGC negotiating texts and other working documents for consideration by Member States⁹.

Each IGC session is preceded by panel presentations by indigenous peoples' and local community's experts. The presentations are a rich source of information on the experiences, concerns and aspirations of indigenous peoples and local communities on the protection, promotion and preservation of TK, TCEs and GRs. Those presentations are made available on the WIPO TK webpage.¹⁰

⁸ Report on the Twelfth Session of the UNPFII (E/2013/43-E/C.19/2013/25) Paragraph 67. "The Permanent Forum, noting the significance for indigenous peoples of the negotiations under way at WIPO on intellectual property and genetic resources, traditional knowledge and traditional cultural expressions, strongly encourages representatives of indigenous peoples to participate in those negotiations, consistent with article 18 of the United Nations Declaration on the Rights of Indigenous Peoples."

⁹ See <http://www.wipo.int/tk/en/igc/ngo/index.html>

¹⁰ See <http://www.wipo.int/tk/en/igc/panels.html>

FOLLOW-UP BY WIPO ON THE PERMANENT FORUM'S RECOMMENDATIONS

Initiatives taken by the WIPO Secretariat as a follow up to Permanent Forum recommendations that have been addressed to WIPO went on in 2014, in addition to those that took place in previous years as illustrated in previous and similar information notes.

Technical review of the key intellectual property-related issues of the IGC draft texts within the framework of indigenous human rights

The Permanent Forum recommended at its Eleventh Session (May 7 to 18, 2012), in the aftermath of its comprehensive dialogue with WIPO, that “WIPO commission a Technical Review, to be conducted by an indigenous expert, focusing on the draft texts concerning traditional knowledge, genetic resources and traditional culture expressions, and to provide comments thereon to the Intergovernmental Committee through the Forum. The review should be undertaken within the framework of indigenous human rights.” (see paragraph 50 of the UNPFII Report on its Eleventh Session, E/2012/43 –E/C.19/2012/13). In consultation with the Permanent Forum Secretariat, Mr. James Anaya, Professor of Human Rights Law and Policy, University of Arizona, United States of America, was commissioned by WIPO in 2014 to undertake this technical review in accordance with the recommendation, with the view to its submission to, and its further circulation by, the Permanent Forum in 2015.

OUTREACH TO INDIGENOUS PEOPLES AND CAPACITY-BUILDING

WIPO undertakes a pro-active program of outreach to indigenous peoples, in conjunction with its capacity building activities directed specifically to them. Both orientations are aimed at raising awareness among indigenous peoples on the issues and opportunities that the current IP system may raise and offer concerning the protection of TK and TCEs, as well as facilitate effective indigenous peoples' participation in the IGC and in the work of WIPO where it is relevant and of interest to them.

Outreach

As part of its outreach, the WIPO Secretariat participated in relevant UN meetings in 2014. On the margins of some of those meetings, it organized briefings and side-events on the work of the IGC or other issues of interest to representatives of indigenous peoples and local communities.

Most importantly, the WIPO Secretariat participated in the World Conference on Indigenous Peoples (WCIP) that was organized by the UN General Assembly, on September 22 and 23, 2014 in New York. At this occasion, the WIPO Secretariat provided detailed information regarding WIPO's work and activities.

The WIPO Secretariat participated in the Thirteenth Session of the Permanent Forum (May 12 to 23, 2014), and organized a side-event on May 20, 2014 on “Indigenous perspectives on recent developments in the WIPO negotiations on Intellectual Property and Traditional Knowledge”.

The WIPO Secretariat participated in three Regional Capacity-Building Workshops on Traditional Knowledge and Customary Sustainable Use that took place under the auspices of the Convention on Biological Diversity (CBD) during 2014. More specifically, WIPO organized

and funded an extra day for discussions, back-to-back with those CBD Workshops, focusing on IP and the protection of TK.

The WIPO Secretariat took part in the activities of the Inter-Agency Support Group on Indigenous Issues (IASG) in 2014.

In parallel, WIPO has maintained and extended collaborative contacts with local, regional and national indigenous and local community organizations and individuals, to and from whom WIPO can collect and disseminate indigenous peoples' concerns, views and analysis concerning IP issues from their own perspective.

Practical Workshop for Indigenous Peoples and Local Communities on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Following up on its first edition that took place in December 2013, the WIPO Secretariat organized a Practical Workshop for Indigenous Peoples and Local Communities on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, which took place at the WIPO Headquarters in Geneva, from December 3 to 5, 2014¹¹.

The objectives of the Practical Workshop were (i) impart basic knowledge of the main principles of the IP system from a TK perspective, emphasizing both the potential value that IP could bring in support of TK protection and the gaps within the IP system that might need to be filled; (ii) explain the rationale, objectives and methodology of the negotiations that are taking place in the IGC; (iii) raise awareness of the available IP tools and WIPO materials that are relevant to the protection of TK.

The Workshop included thirteen participants from the seven geo-cultural regions recognized by the Permanent Forum. Mr. Les Malezer, Co-Chair of the National Congress of Australia's First Peoples, was invited to make a keynote presentation on "Indigenous peoples' rights and TK protection: Key principles and observations from an indigenous perspective".

The participants were selected following a public call for expressions of interest, in line with the interactive and practical character of the Workshop. Information regarding practical workshop(s) that will take place in 2015 will be provided in due time.

WIPO Indigenous Fellowship Program

Since 2009, WIPO offers the opportunity for an Indigenous Fellow¹² to participate directly in the delivery of core program outputs of WIPO's Traditional Knowledge Division and facilitate outreach toward indigenous peoples. Following open and competitive selection processes, six successive Indigenous Fellows have been selected to work at WIPO since the inception of this program. Ms. Hai-Yuean Tualima from Samoa will join the WIPO Secretariat, as the newly appointed WIPO Indigenous Fellow in January 2015, succeeding Mr. Q'apaj Conde from the Plurinational State of Bolivia.

¹¹ See <http://www.wipo.int/tk/en/indigenous/workshop.html>

¹² <http://www.wipo.int/tk/en/indigenous/fellowship/>

Indigenous Portal on the WIPO Website

As part of its outreach towards indigenous peoples and local communities, WIPO has developed an “Indigenous Portal” on its website¹³. The “Indigenous Portal” collects, on a single page, links to information of particular interest to indigenous peoples and local communities, including WIPO training programs, information tools, publications and news on current developments.

[End of the Information Note]

¹³ <http://www.wipo.int/tk/en/indigenous/>