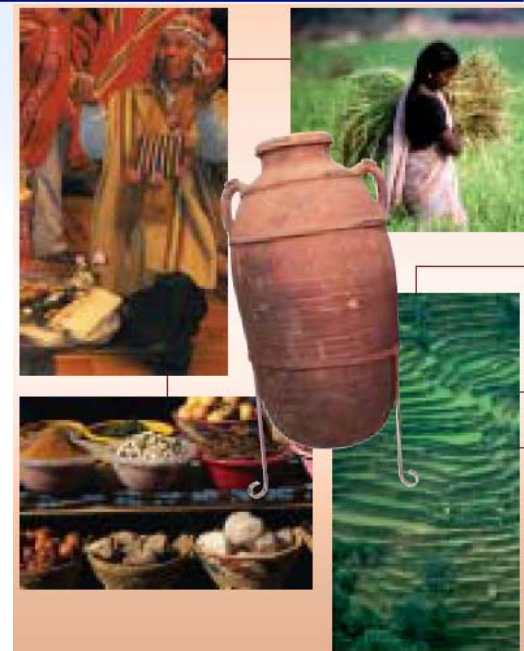


WIPO's work on disclosure and protection of TK & GR

Introduction in the 'Draft Provisions' on TK and 'Revised List of Options' on GR



Dr. Thomas Henninger
Associate Officer, Genetic Resources and Traditional
Knowledge Section
Traditional Knowledge Division
WIPO



WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION

Overview of Presentation

- I. Introduction in WIPO's work at the IGC
- II. Draft Provisions on the Protection of TK
- III. Revised list of options on GR including disclosure requirements



Basic Facts about WIPO

WIPO's Mission:

WIPO is a specialized agency of the UN. It is dedicated to developing a balanced and accessible international IP system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.

Status: An int'l intergovernmental organization, specialized agency of the UN

Member States: 184

Staff: 944 from 98 countries based in Geneva

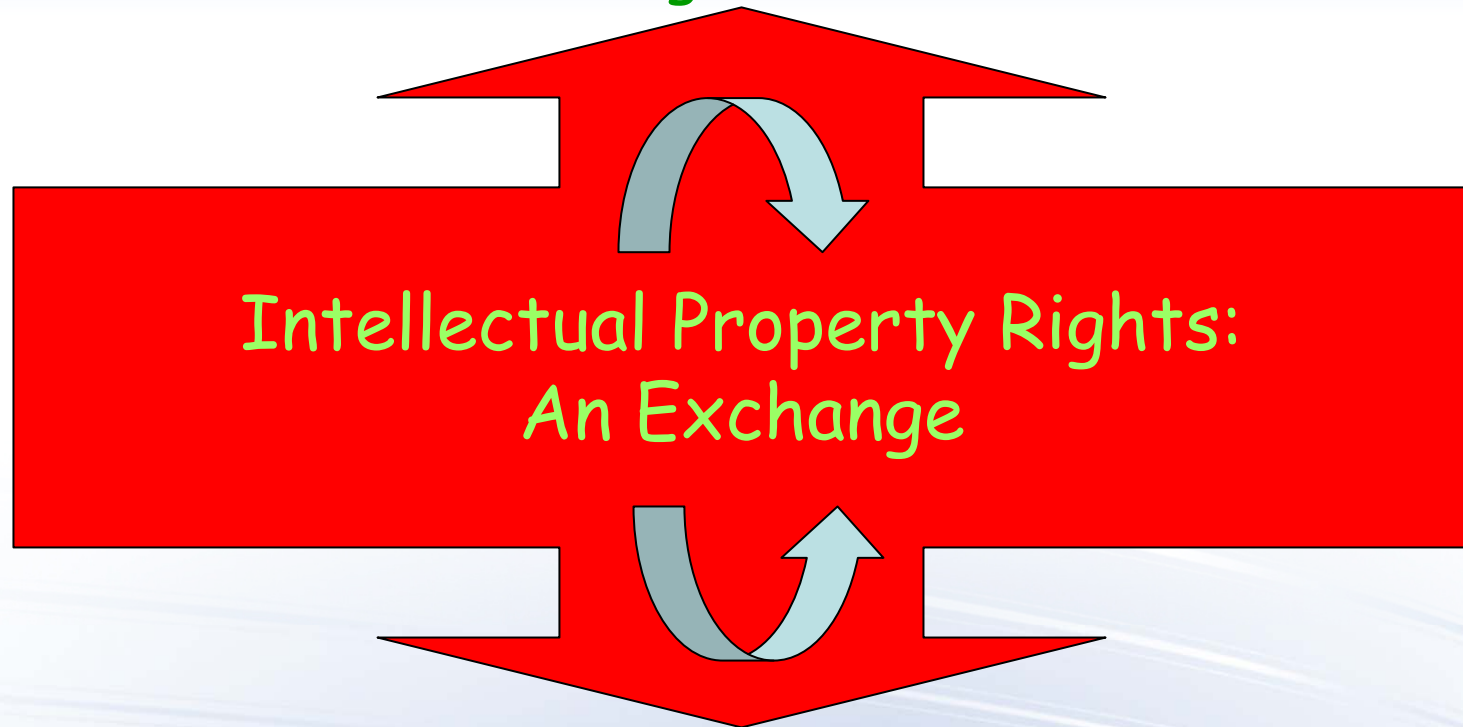
Treaties Administered: 24

Decisions by: GA, CC, WIPO Conference



WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION

Protection of the moral and economic rights of creators



Public access to the fruits of creativity



WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION

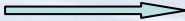
Norm Setting at the IGC

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, Genetic Resources and Folklore (IGC)

Aim: Generate practical benefits from IP System to support: socio-economic development; cultural integrity of communities; address concerns of indigenous peoples ...

IGC: Debate broad policy and legal questions; share practical experience; and develop practical tools and mechanisms

Status: Since 2001 Maturing process - common objectives/core principles.

Mandate: Text-based negotiations:  international instruments that will ensure the effective protection of GRs, TK, TCEs.



New IGC Mandate for 2010-2011

General Assembly 2009 decided

- Text-based negotiations
 - Including Documents WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5 and WIPO/GRTKF/IC/11/8A
- International **legal instrument** for the effective protection of GRs, TK and TCEs
- Clearly defined **work program** for the 2010/2011 biennium, 4 IGC and 3 IWG
- 2011 GA: text submitted to **Diplomatic Conference**
- **Without prejudice** to work at other fora



Effective Protection of TK

An overview of the 'Draft Provisions'

WIPO/GRTKF/IC/9/4 – 16/6 Prov



WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION

IGC 16 (2010) Draft Provisions

- Part I: **Policy objectives**, which could set common *general directions* for protection and provide a consistent policy framework
- Part II: **General guiding principles**, which could *ensure consistency, balance and effectiveness* of substantive principles
- Part III: **Specific substantive principles**, which could *define the legal essence* of protection



Policy Objectives

WIPO/GRTKF/9/4

I. POLICY OBJECTIVES

- (i) Recognize value
- (ii) Promote respect
- (iii) Meet the actual needs of traditional knowledge holders
- (iv) Promote conservation and preservation of traditional knowledge
- (v) Empower holders of traditional knowledge and acknowledge the distinctive nature of traditional knowledge systems
- (vi) Support traditional knowledge systems
- (vii) Contribute to safeguarding traditional knowledge
- (viii) Repress unfair and inequitable uses
- (ix) Concord with relevant international agreements and processes
- (x) Promote innovation and creativity
- (xi) Ensure prior informed consent and exchanges based on mutually agreed terms
- (xii) Promote equitable benefit-sharing
- (xiii) Promote community development and legitimate trading activities
- (xiv) Preclude the grant of improper intellectual property rights to unauthorized parties
- (xv) Enhance transparency and mutual confidence
- (xvi) Complement protection of traditional cultural expressions



WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION

General Guiding Principles

II. GENERAL GUIDING PRINCIPLES

- (a) Responsiveness to the needs and expectations of traditional knowledge holders
- (b) Recognition of rights
- (c) Effectiveness and accessibility of protection
- (d) Flexibility and comprehensiveness
- (e) Equity and benefit-sharing
- (f) Consistency with existing legal systems governing access to associated genetic resources
- (g) Respect for and cooperation with other international and regional instruments and processes
- (h) Respect for customary use and transmission of traditional knowledge
- (i) Recognition of the specific characteristics of traditional knowledge
- (j) Providing assistance to address the needs of traditional knowledge holders



Substantive Principles

III. SUBSTANTIVE PRINCIPLES

1. Protection Against Misappropriation
2. Legal Form of Protection
3. General Scope of Subject Matter
4. Eligibility for Protection
5. Beneficiaries of Protection
6. Fair and Equitable Benefit-sharing and Recognition of Knowledge Holders
7. Principle of Prior Informed Consent
8. Exceptions and Limitations
9. Duration of Protection
10. Transitional Measures
11. Formalities
12. Consistency with the General Legal Framework
13. Administration and Enforcement of Protection
14. International and Regional Protection



Art. 1: Protection against misappropriation

III. SUBSTANTIVE PROVISIONS

ARTICLE 1

PROTECTION AGAINST MISAPPROPRIATION

1. *Traditional knowledge shall be protected against misappropriation.*
2. *Any acquisition, appropriation or utilization of traditional knowledge by unfair or illicit means constitutes an act of misappropriation. Misappropriation may also include deriving commercial benefit from the acquisition, appropriation or utilization of traditional knowledge when the person using that knowledge knows, or is negligent in failing to know, that it was acquired or appropriated by unfair means; and other commercial activities contrary to honest practices that gain inequitable benefit from traditional knowledge.*



Art. 6: Fair and Equitable Benefit-Sharing

ARTICLE 6

FAIR AND EQUITABLE BENEFIT-SHARING AND RECOGNITION OF KNOWLEDGE HOLDERS

- 1. The benefits of protection of traditional knowledge to which its holders are entitled include the fair and equitable sharing of benefits arising out of the commercial or industrial use of that traditional knowledge.*
- 2. Use of traditional knowledge for non-commercial purposes need only give rise to non-monetary benefits, such as access to research outcomes and involvement of the source community in research and educational activities.*
- 3. Those using traditional knowledge beyond its traditional context should mention its source, acknowledge its holders, and use it in a manner that respects the cultural values of its holders.*
- 4. Legal means should be available to provide remedies for traditional knowledge holders in cases where the fair and equitable sharing of benefits as provided for in paragraphs 1 and 2 has not occurred, or where knowledge holders were not recognized as provided for by paragraph 3.*
- 5. Customary laws within local communities may play an important role in sharing benefits that may arise from the use of traditional knowledge.*



Art. 7: Prior Informed Consent

ARTICLE 7

PRINCIPLE OF PRIOR INFORMED CONSENT

- 1. The principle of prior informed consent should govern any access of traditional knowledge from its traditional holders, subject to these principles and relevant national laws.*
- 2. The holder of traditional knowledge shall be entitled to grant prior informed consent for access to traditional knowledge, or to approve the grant of such consent by an appropriate national authority, as provided by applicable national legislation.*
- 3. Measures and mechanisms for implementing the principle of prior informed consent should be understandable, appropriate, and not burdensome for all relevant stakeholders, in particular for traditional knowledge holders; should ensure clarity and legal certainty; and should provide for mutually agreed terms for the equitable sharing of benefits arising from any agreed use of that knowledge.*



Art. 12: Consistency with biodiversity legislation

ARTICLE 12

CONSISTENCY WITH THE GENERAL LEGAL FRAMEWORK

1. *In case of traditional knowledge which relates to components of biological diversity, access to, and use of, that traditional knowledge shall be consistent with national laws regulating access to those components of biological diversity. Permission to access and/or use traditional knowledge does not imply permission to access and/or use associated genetic resources and vice versa.*



Effective protection of GRs

In particular disclosure requirements



- Introduction in the 'Revised list of options' for the text based negotiations under the new mandate



IGC 16 (2010)

- Revised List of options 2009
- Three sets of options:
 - Options for possible activities on **defensive protection**
 - Options for possible activities on **disclosure requirements**
 - Options for possible activities on **IP and MAT for fair and equitable benefit sharing**

WIPO



WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

WIPO/GRTKF/IC/16/6 Prov
ORIGINAL: English
DATE: January 22, 2010

INTERGOVERNMENTAL COMMITTEE ON
INTELLECTUAL PROPERTY AND GENETIC RESOURCES,
TRADITIONAL KNOWLEDGE AND FOLKLORE

Sixteenth Session
Geneva, May 3 to 7, 2010

GENETIC RESOURCES: REVISED LIST OF OPTIONS

Document prepared by the Secretariat



WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION



IGC 16 (2010): Options for continuing or further work

A. Options for possible activities on defensive protection (first cluster)

- I. Inventory of Databases and information resources on GR
- II. Informations systems on GR for defensive protection
- III. Guidelines and recommendations on defensive protection



Options for continuing or further work

B. Options for possible activities on disclosure requirements (second cluster)

I. Mandatory disclosure

II. Further examination of issues relating to disclosure requirements

III. Guidelines and recommendations on disclosure

IV. Alternative mechanisms





Options for continuing or further work

- C. Options for possible activities on IP and MAT for fair and equitable benefit sharing (third cluster)**
 - I. Online-Database of IP clauses in MAT on ABS
 - II. Draft Guidelines for contractual practices
 - III. Study on licensing practices



Thank you for your attention!

For any questions:

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

Subscribe to our Newsletter and Updates (EN, FR, SP):

grtkf@wipo.int

Email: thomas.henninger@wipo.int



WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION