



**Intergovernmental Committee on Intellectual Property and
Genetic Resources, Traditional Knowledge and Folklore
25th Session, Geneva, July 15th to 24th, 2013**

Report to AIPPI

**Special Committee Q166 (Intellectual Property and Genetic Resources, Traditional
Knowledge and Folklore)**

by

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1. After 13 years of negotiations, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is reviewing its most recent mandate, which was granted to the Committee by the WIPO General Assembly for the biennial 2012/2013 (WO/GA/40/7). In this context the Twenty-Fifth Session of the Committee (hereinafter: the Session) took place in Geneva from July 15 to 24. To this Session Mrs Marlies Allan and Mrs Benedetta Ubertazzi participated as observers representing AIPPI Int. Special Committee Q166 on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

2. WIPO Director General Francis Gurry opened the meeting and encouraged delegates to carry forward the spirit that was present in Marrakesh, Morocco, last month when they successfully completed a treaty on copyright exceptions for the visually impaired. The first five days of the Session were devoted to negotiating and finalizing a preliminary text on traditional cultural expressions (TCEs), which included rules on defining the subject-matter and the scope of protection, and establishing who are the beneficiaries and what exceptions should there be.

The Committee decided that this text, as at the close of the Session, be transmitted to the WIPO General Assembly taking place in September 2013, in accordance with the Committee's mandate.

The last three days of the Session were devoted to lengthy discussions on the three preliminary texts related to GR, TK and TCEs. The discussion aimed at converging to prepare a recommendation to the General Assembly to renew the Committee's mandate.

3. The preparation of a preliminary text on TCEs was extremely difficult. In fact, all delegations agreed to describe the Session devoted to preparing such a text, as the most problematic one in the Committee's history. The delegations of the various States together with the representative of the indigenous communities were called to finalize the preliminary text, which was prepared during the Session by the "facilitators" (delegates of New Zealand and South Africa in their personal capacity; delegate of Australia working as a "friend of the chair" in his personal capacity).

The delegations, however, clearly expressed disagreement in numerous areas and on each and every element of the text prepared by the facilitators. Negotiations even broke down at a certain point due to the fact that the African Group expressed dissatisfaction, to the point of leaving the negotiating table. In the end, however, negotiations resumed, but due to time constraints the text could not be discussed in its entirety.

4. The preparation of the recommendation to the General Assembly to renew the Committee's mandate, was also very difficult. Even though all delegations agreed on including in the recommendation, a request to renew the Committee's mandate, the requirements under which such renewal could have been agreed upon, were not clear.

Option I. Several delegations in line with their previous stance, continued pursuing the objective of starting an intergovernmental proceeding with clearly pre-established procedural and time limitations, that could lead the General Assembly to convene a Diplomatic Conference at the latest in 2015. Under such an approach this Diplomatic Conference, would lead to States negotiating a binding treaty.

The delegations supporting this are: Algeria on behalf of African group; Indonesia for like minded countries; Trinidad Tobago for Grulag (Group of Latin American and Caribbean States); Brazil; Nigeria; South Africa; Malaysia; Thailand; India; Iran; Peru; Kenya; Egypt; Chile; Senegal; Ethiopia; Niger; Lebanon; Namibia.

Option II. Other delegations following the second option expressed the need for further studies on the three topics of the Committee's mandate, whereas no procedural and time limitations can be established. Furthermore, the outcome of the Committee's future works, if any, doesn't have to be a binding treaty, but rather could be a declaration.

The delegations supporting this are: Republic of Korea; USA; Australia; Japan; EU; Switzerland; Belgium; Poland; Russian; Canada.

China maintained a more balanced approach.

5. Regarding the recommendation, a facilitator (Australia) presented a preliminary text, which had to be inclusive of all options at stake with regard to the content of the recommendation to be presented at WIPO. The Chair then expressed the view that since clear and distinguished positions emerged, the emerging text could only reflect the different options and various positions at stake, without having any other unlikely reachable aims of combining these options.

Delegations did not accept the text prepared by the facilitators as correctly reflecting their positions. In particular, then, the US delegation presented an option that entirely changed in content, the text prepared by the facilitator. Other delegations, such as India, Indonesia, Grulag, Egypt, Brazil, expressed the view that rather than working on the text presented by the facilitators, then, discussions should have focused on when and how to convene a Diplomatic Conference, which was their preference.

The Chair expressed the view that the negotiations could not focus on the Diplomatic Conference only, since even on that issue various options were at stake, which were unlikely to converge during the debate. Thus, at 9.30 p.m. on the last day of negotiations the Committee decided to reflect ALL options currently under discussion, to represent them properly at the General Assembly..

The text including ALL the options is available at :

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=244366.

6. **Conclusions.** We found that there was little political will to move forward from the status quo. On one side of the divide you have the industrial nations with the US, EU, Japan, Canada amongst others, not being in favour of changes. On the other hand, you have Nigeria, India, Brazil, Indonesia, Namibia, Mexico, Grulag, Algeria, all other African countries including Egypt, pushing for more equitable procedures in IP to protect GR, TK, TCEs.

From our discussions with various delegates it is clear that negotiations on a higher level may be required to make any meaningful headway, such as either Ambassadorial level or even Ministerial level.

At this 25th Session, negotiations have been lengthy and tedious with very little progress. Many sessions were in the breakout room, not intended for all delegates nor for observers. We were however both able to follow the negotiations via earphones, which was beneficial in giving us a meaningful insight to the debates/contributions and negotiations of the various delegations.

7. We made the following contacts, informing them of AIPPI and its role in IP:

Academics

1. Ruth Okediji, Professor of Law, University of Minnesota, rokediji@umn.edu
2. Dr. Okani A. Rachel-Claire, Vice Rector, African University for Cooperative Development, Benin, okalany2013@gmail.com

Delegations

1. Oliver Allen, EU delegate
2. delegate of Brasil for Ministry of External Relations: Natasha Pinheiro Agostini, Natasha.agostini@itamaraty.gov.br
3. delegate of India: Cochin University of Science and Technology, HRD Chair on IPR and director Inter University Center for IPR Studies Prof. Dr. N.S. Gopalakrishnan gopalakrishnan.n.s@gmail.com
4. delegate of Japan: permanent mission of Japan to the International Organizations in Geneva, hiroshi.kamiyama@mofa.go.jp
5. Bianca Simatupang, delegate of Indonesia: Permanent Mission of Indonesia: e-mail: bianca.simatupang@mission-indonesia.org
6. US delegation: Senior Counsel, Office of the Administrator for Policy and External Affairs, Mr Michael Shapiro: Michael.shapiro@uspto.gov
7. Spain delegation: Juan José Clopés Burgos, Ministerio de educacion, cultura y deporte, juani.clopes@mecd.es
8. Australian delegation: Mr. Ian Patrick Goss: <ianpatrickgoss@gmail.com>; steven.bailie@ipaaustralia.gov.au (he even said that AIPPI resolutions are very helpful in his work).
9. New Zealand delegation: Dominic Kebbell, Ministry of Business Innovation and Employment, Principal Policy Advisor, Intellectual Property, dominic.kebbell@mbie.govt.nz

IGOs

1. Wend Wendland: Director TK division wend.wendland@wipo.int
2. representative for UNESCO intangible cultural heritage Antoni Durski antekolurski@gmail.com
3. South Centre, Mrs Yuan Zhang, yuan.zhang@unil.ch, http://www.southcentre.org/index.php?option=com_content&view=article&id=13&Itemid=173&lang=en
4. WHO, Mrs Zhao Zhao, innovation and intellectual property department of the World Health Organization, zhaoz@who.int
5. European Patent Office, Mr Marko Schauwecker, Lawyer: mschauwecker@epo.org

NGOs

1. Mrs Helena Nyberg, Incomindios, NGO based in Zurich, www.incomindios.ch, e-mail: www.incomindios.ch
2. Mrs Aleksandra Burda, ELSA, The European Law Students' Association, Delegate to WIPO: elsa@elsa.org
3. IP Watch alessandro.marongiu@gmail.com
4. International centre for trade and sustainable development: ICTSD, IP Programme, ipprogramme@ictsd.ch

5. Health and Environment Program: Mrs Madeleine Scherb, Président, Genève, e-mail: madeleine@health-environment-program.org
6. Indigenous Peoples (Bethechilokono) of Saint Lucia, Mr. Albert Deterville, aldetcentre@gmail.com
7. expert mechanism on the rights of indigenous peoples, Mr. Albert Deterville, aldetcentre@gmail.com
8. GRTKF International, Mr. Albert Deterville, aldetcentre@gmail.com
9. Arts Law Centre of Australia, Mrs Robyn Ayres, Executive Director, rayres@artslaw.com.au
10. Natural Resources Treaty Rights Office, Terry Williams, Commissioner, terrywilliams@tulaliptribes-nsn.gov
11. EcoLomics International, Research Director, Genève, nikkiyaji@hotmail.com, <http://www.ecolomics-international.org>
12. CSIRO, Jim Walker, manager office of indigenous engagement, jim.walker@csiro.au; www.csiro.au
13. Biotechnology Industry Organization, Mrs Lila Feisee Vice President International Affairs, Washington, ifeisee@bio.org, bio.org
14. Eli Lilly and Company, Mrs. Manisha A. Deai, Assistant General Patent Counsel, Emerging Markets, Indianapolis Indiana U.S., madesai@lilly.com, www.lilly.com
15. Kei (Knowledge Ecology International) www.keionline.org; Mr Thiru Balasubramaniam, Geneva Representative, thiru@keionline.org
16. Copyrightagency Viscopy, Mrs Patricia Adjei, Indigenous communications, padjei@copyright.com.au, www.copyright.com.au
17. IFTPA, International Federation of Pharmaceutical Manufacturers & Associations - <http://www.ifpma.org/#sthash.6XypOfnD.dpuf>;
Dr. Axel Braun, European Patent Attorney, Basel, axel.braun@roche.com
18. Capaj, Comisión Jurídica Para el Autodesarrollo de los Pueblos Originarios Andinos, www.capaj.org, Mr Thomas, capaj_internacional@yahoo.com
19. ADMOR, Mr Mohamed Abba, Président, www.adjmor.org, tassanafalte@yahoo.fr