



EXCO Lisbon 2002

REPORT

Special Committee Q166 – Intellectual Property Rights and Genetic Resources, Traditional Knowledge and Folklore

Introduction

As a result of extensive discussions on intellectual property and genetic resources at WIPO between September 1999 and September 2000 the WIPO General Assembly established at its twenty-sixth session in Geneva from September 25 to October 3, 2000 the Intergovernmental Committee on Intellectual Property Rights and Genetic Resources, Traditional Knowledge and Folklore for the purpose of discussions on these subjects. More specifically, the Intergovernmental Committee was established to constitute a forum in which discussions could proceed among WIPO Member States on intellectual property issues that arise in the context of (i) access to genetic resources and benefit sharing (ii) protection of traditional knowledge, whether or not associated with those resources; and (iii) the protection of expressions of folklore.

The Bureau believes that AIPPI should monitor and observe the activities of the WIPO Intergovernmental Committee on Intellectual Property Rights and Genetic Resources, Traditional Knowledge and Folklore and thus established a Special Committee Q166 Intellectual Property Rights and Genetic Resources, Traditional Knowledge and Folklore for that purpose. For the time being the Reporter General Team is keeping things under review. Special Committee Q166 will undertake activities once the discussions launched by WIPO require more extensive participation.

The Intergovernmental Committee has held two meetings, the first one on April 30 - June 3, 2001 and the second one on December 10 - 14, 2001, both in Geneva. Ian Karet, Deputy Reporter General, attended the first meeting and Thierry Calame, Assistant to the Reporters General, attended the second meeting of the Intergovernmental Committee as the AIPPI observer. The third session will be held in June 2002.

First Session of the Intergovernmental Committee, Geneva, April 30 - June 3, 2001

The first session of the Intergovernmental Committee had a rather slow start since a substantial part of the time was spent on organisational and procedural matters. In particular, the delegations argued for more than a day about who was going to be the Chairman of the meeting. Eventually, member states agreed on a co-presidency of Canada and Singapore. Furthermore, vice-chairs from Bulgaria and Egypt were chosen.

Most delegations reported on their national legislation and the significance of genetic resources, traditional knowledge and folklore. Many participants stressed the need for further study of the complex topics.

The Intergovernmental Committee suggested a number of topics to work on. These topics can roughly be divided into the following areas:

1. Genetic Resources

- development of "guide contractual practices" guidelines and model intellectual property clauses for contractual agreements on access to genetic resources and benefit-sharing, taking into account the specific nature and needs of different stakeholders, different genetic resources, and different transfers within different sectors of genetic resource policy;
- development of guidelines to allow co-ordination between national patent laws and national measurements related to access to genetic resources;
- development of multilateral systems for access to genetic resources and benefit-sharing (particularly in the field of plant variety protection);
- development of guidelines on the applicability and the scope of patent protection to structures and compositions derived or isolated from naturally-occurring organisms and to early-stage biotechnology inventions.

2. Traditional Knowledge

- development of a definition of the term "traditional knowledge";
- determining whether existing intellectual property provisions are suited to protect "traditional knowledge" according to the developed definition of the term;
- possible ways to integrate traditional knowledge documentation into searchable prior art;
- assisting holders of traditional knowledge in enforcement of intellectual property rights.

3. Folklore

- further development of the UNESCO-WIPO Model Provisions for National Laws on the Protection of Folklore of 1982;
- improvement of the protections for handicrafts and traditional designs.

With respect to traditional knowledge, the Intergovernmental Committee agreed that there are certain conceptual problems with the application of the current intellectual property system. For instance, the intellectual property system generally has a date of creation, a limited duration of protection and an identifiable author. Traditional knowledge, generally, is a living body of knowledge which is supplemented and replenished with time. It lacks a precise date

of creation and there is no individuality, but rather collective authorship. In the end there appeared to be a general sense that traditional knowledge may not be the appropriate subject matter for protection under the current intellectual property system, and thus if protection was appropriate, a *sui generis* system might be necessary.

With respect to folklore, the Chair indicated that there appeared to be some support for addressing issues relating to folklore, but that work on this issue appeared to be premature. However, the Chair suggested that a first step would be the collection and analysis of national experiences with regard to the protection of folklore.

Second Session of the Intergovernmental Committee, Geneva, December 10 - 14, 2001

In the second session, the following issues were on the agenda:

1. Genetic Reserve

- Operational Principles for Contractual Agreements Concerning Access to Genetic Resources and Benefit-Sharing

2. Traditional Knowledge

- Operational Definitions,
- Review of Existing Intellectual Property Protection,
- Progress Report on Traditional Knowledge as Prior Art; and

3. Folklore

- Discussion of National Experiences with the Legal Protection of Expressions of Folklore.

In the area of genetic resources, the Intergovernmental Committee approved further work on the establishment of model intellectual property clauses for contractual agreements regulating access to and benefit-sharing in genetic resources. This could involve the establishment of a database of model clauses submitted by states and other stakeholders to serve as a guide in negotiation of contracts.

The Intergovernmental Committee also approved further work within WIPO on the intellectual property aspects of the documentation of public domain traditional knowledge and its inclusion in the patent examination process as part of searchable prior art. This would make a useful contribution to addressing widely-publicised complaints relating to the grant of patents on traditional knowledge.

On traditional knowledge and folklore, the Intergovernmental Committee discussed interim reports of some member states which on the basis of empirical information describe the extent to which the traditional intellectual property system is sufficient in addressing these forms of knowledge. Final reports will be considered at the third meeting which is scheduled for June 2002. In this regard, work will also continue to identify those components of traditional knowledge that might be protected by intellectual property rights.

The meeting also confirmed that WIPO should continue to address these issues in collaboration, where appropriate, with the secretariat of the Convention on Biological Diversity (CBD) and the Food and Agriculture Organisation (FAO) and its Commission on Genetic Resources, as well as the United Nations Educational, Scientific and Cultural Organisation (UNESCO).

Further Developments

On January 21 - 22, 2002, the WIPO International Forum on "Intellectual Property and Traditional Knowledge: Our Identity, Our Future" met in Muscat, Oman. Representatives of some 30 countries and several regional organisations attended the meeting. The objective of the meeting was to provide policy makers and senior government officials with the opportunity to exchange their views and share experiences on the social, cultural and economic impact of the protection of traditional knowledge. Speakers addressed issues relating to national efforts to preserve and promote traditional knowledge; the relevance of the intellectual property system as a tool to protect traditional knowledge and the use of the intellectual property system to generate valuable traditional knowledge assets. The WIPO International Forum adopted a declaration (the Muscat Declaration) which recognises that the intellectual property system provides a flexible legal mechanism which may be adapted to suit the specific features of traditional knowledge and take into account the needs of the respective stake holders.

The third session of the Intergovernmental Committee will be held in Geneva, June 13 - 21, 2002. The draft agenda and additional working documents may be found on the WIPO website (www.wipo.int). The draft agenda for the third session of the Intergovernmental Committee indicates that the issues to be considered are:

1. Genetic Resources

- Possible Format for an Electronic Database of National and Regional Clauses and Practices Concerning Access to Genetic Resources and Benefit Sharing

2. Traditional Knowledge

- Inventory of Traditional Knowledge related Periodicals, Gazettes and Newsletters
- Inventory of Existing Databases of Disclosed Traditional Knowledge
- Review of Existing Intellectual Property Protection of Traditional Knowledge
- Elements of a *sui generis* System for the Protection of Traditional Knowledge
- Operational Definitions Traditional Knowledge

3. Folklore

- Final Report on National Experiences with the Legal Protection of Expressions of Folklore

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Zurich, June 7, 2002

Thierry Calame, Assistant to the Reporters General