THE PROTECTION OF TRADITIONAL KNOWLEDGE INCLUDING EXPRESSIONS OF FOLKLORE

by

the International Bureau of WIPO

INTRODUCTION

1. Rapid technological change and global integration require active exploration of emerging intellectual property issues, to offer creative and adequate responses to challenges facing the intellectual property system. The WIPO Program on Global Intellectual Property Issues aims at enhancing understanding of the reciprocal relationships between intellectual property and traditional knowledge, biotechnology and biological diversity, and selected aspects of economic, social, cultural and technological development. The activities carried out under this Program complement other WIPO activities concerned with the progressive development of industrial property, copyright, and related rights and cooperation with developing countries. The overall objective of the Global Intellectual Property Issues Division (Global Issues Division) is to promote the continued viability, increased efficiency and broader coverage of the intellectual property system, through exploration of all the challenges that the emergence of new uses and new users of intellectual property rights—such as holders of traditional knowledge—pose to the international community.

2. In a world increasingly characterized as the "global information society," we are witnessing, on the one hand, the rapid emergence of modern information technologies, and, on the other hand, an increasing awareness about "traditional knowledge" and its spiritual, cultural and economic values.

3. At a time when the wealth of nations lies increasingly in the knowledge which their peoples' hold, some groups are claiming their stake to an important element of this new information landscape, "traditional knowledge." However, what do we mean by "traditional" knowledge? How is it different from "modern" knowledge? Who are its holders? And, does it need protection in the "global information society?"

WHAT IS TRADITIONAL KNOWLEDGE? WHY IS ITS PROTECTION IMPORTANT?

4. Traditional knowledge is not limited to any specific field of technology or the arts. The entire field of human endeavor is open to inquiry by traditional methods and the full breadth of human expression is available for its transmission.

5. Traditional knowledge systems in the fields of medicine and healing, biodiversity conservation, the environment and food and agriculture are well known. Other key components of traditional knowledge are the music, dance, and "artisanat" (i.e. designs, textiles, plastic arts, crafts, etc.) of a people. Although there are creations which may be done purely to satisfy the aesthetic will of the artisan, many such creations are symbolic of a deeper order/belief system. When a traditional singer performs a song, the cadence, melody, and form all follow rules, which have been maintained for generations. Thus, a song's performance entertains and educates the current audience, but also unites the current population with the past.

6. Understanding the interplay between practical knowledge, social history, art, and spiritual/religious beliefs provides a valuable foundation for developing an understanding for the people which hold this knowledge (see examples in Boxes A and B). While modern arts and sciences often place individual accomplishment over community development, traditional knowledge systems celebrate the community's cooperative effort.

7. Intertwined within practical solutions, traditional knowledge often transmits the history, beliefs, aesthetics, ethics, and traditions of a particular people. For example, plants used for medicinal purposes also often have symbolic value for the community. Many sculptures, paintings, and crafts are created according to strict rituals and traditions because of their profound symbolic and/or religious meaning.

Box A: Traditional Veterinary Medicine

In Vembur village, Tamil Nadu, India, there is a man by the name of Thiru Palchamy Gounder who has been curing animals since he was sixteen. Developing his trade under the guidance of his guru, Kandavilswamy, this traditional veterinarian has gained fame within his region for being able to cure a variety of bovine ailments. Using medications developed from local plants, he is able to treat such common maladies as fractures, abscesses, broken horns, swollen tongues, swollen faces, and headaches. The treatments can last from two hours to a month, but the continued demand for these services provides little doubt as to the efficacy.

Associations of grassroots innovators are compiling such traditional knowledge to save it from disappearance, to promote respect and protection for it, to disseminate it and to add value to it through research. They see this as a possible avenue for a bottom-up approach to development. For example, some associations hope to market TK-based products, after obtaining patent protection, for the benefit of the communities and innovators that have developed this knowledge.

Compiled from: "Keeping Knowledge Alive: Gounder's cattle cures." Honey Bee Vol. 9 No. 4. October-December, 1998 and results of the South Asia Fact-Finding Mission undertaken by WIPO.

8. An immediate need is to establish a definition of traditional knowledge. What can be said for the time being, and taking into account the purposes of WIPO's on-going work, is that traditional knowledge is a multifaceted concept that encompasses several components. What characterizes traditional knowledge is the fact that, generally, it is not produced systematically, but in accordance with the individual or collective creators' responses to and interaction with their cultural environment. For this reason, existing intellectual property mechanisms, which are intended to function in a trade-related context, may not fully respond to the essentially cultural nature of traditional knowledge. In addition, traditional knowledge, as representative of cultural values, is generally held collectively. This results from the fact that what can be sometimes perceived as an isolated piece of literature (a poem, for example) or an isolated technical invention (the use of a plant resource to heal wounds, for instance) is actually an element that integrates a vast and mostly coherent complex of beliefs and knowledge, control of which is not in the hands of individuals who use isolated pieces of knowledge, but is vested in the community or collective. Furthermore, most traditional knowledge is transmitted orally from generation to generation, and thus remains largely undocumented.

9. A fundamentally important aspect of traditional knowledge is that it is "traditional" only to the extent that its creation and use are part of the cultural traditions of communities. "Traditional," therefore, does not necessarily mean that the knowledge is ancient. "Traditional" knowledge is being created every day, it is evolving as a response of individuals and communities to the challenges posed by their social environment. In its use, traditional knowledge is also contemporary knowledge. This aspect is further justification for legal protection. It is not only desirable to develop a system that documents and preserves traditional knowledge created in the past, which may be on the brink of disappearance: it is also important to envisage a system that contributes to the promotion and dissemination of innovations which are based on continuing use of tradition. Thus, we are not talking only about freezing and preserving knowledge that exists now. We are also talking about preserving what exists as an indispensable and powerful tool for fostering continued traditional innovation and creativity.

10. The protection of traditional knowledge is important for communities in all countries, particularly perhaps in developing and least developed countries. On one level, traditional knowledge plays an important role in the economic and social organization of those countries, and placing value on such knowledge is a viable means of promoting a sense of national cohesion and identity. On another level, developing and least developed countries are engaged in implementing two international agreements—the Convention on Biological Diversity (CBD) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)—that may affect the manner in which knowledge associated with the use of genetic resources (whether "traditional" or not) is protected and disseminated. As an outcome of the Uruguay Round negotiations, many developing and least developed countries have accepted the obligation under the TRIPS

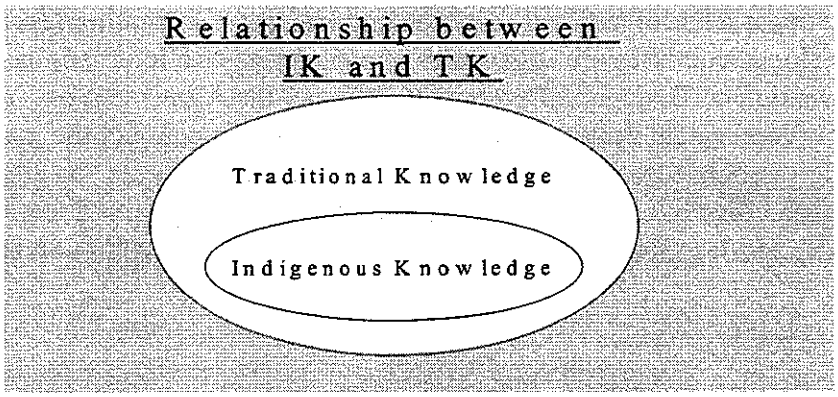
Agreement to establish high standards of intellectual property protection, as a means of promoting free trade. It may be argued that biodiversity, and the traditional knowledge associated with using it in a sustainable manner, are a comparative advantage of those countries that are biodiversity-rich, enabling them to participate more effectively in global markets and thus rise above current levels of poverty and deprivation. This is an example of how protection of traditional knowledge at the national and the international levels may be seen as a potentially powerful tool for advancing the integration of least developed countries into the global economy.

11. Intellectual property, however, is not only about property. It is also about recognition of and respect for the contributions of identifiable, human creators. From this perspective, intellectual property has a very important role to play in protecting the dignity of holders of traditional knowledge and, by conferring property rights in relation to such knowledge, giving those holders a degree of control of its use by others.

'INDIGENOUS' AND 'TRADITIONAL' KNOWLEDGE

12. The distinction between "indigenous knowledge" and "traditional knowledge" is a subtle one. Essentially, "indigenous knowledge" is a term used to identify the knowledge held by "indigenous peoples" (of which there is no universally accepted formal definition). Although indigenous knowledge is generally considered traditional knowledge, not all traditional knowledge is indigenous knowledge. Since indigenous knowledge is otherwise similar to traditional knowledge in its transmission, scope, and diversity, it is appropriate to consider indigenous knowledge a subset of traditional knowledge.

13. The value of using the term indigenous knowledge arises when one wants to describe the type of knowledge and the people who hold it. For example, information passed down by traditional means amongst the Gagudju of Australia may be referred to as "indigenous knowledge" or "traditional knowledge"; however, the information passed down by early North American colonists through traditional means would be "traditional knowledge" but not "indigenous knowledge."



TRADITIONAL KNOWLEDGE AND FOLKLORE

14. If "traditional knowledge" is distinguishable from "indigenous knowledge" on the grounds of the identification of their respective creators and holders, what differentiates "traditional knowledge" and "folklore" may be even subtler. "Folklore," indeed, has been characterized through many different approaches, the broadest being as a set of literary, artistic, religious, scientific, technological and other traditions and productions, which are transmitted from one generation to another. This sort of expanded approach, which has been adopted in some laws, includes literary works of any kind, oral or written, such as tales, legends, proverbs and myths. It includes styles and artistic productions, such as music and dance, religious traditions and ceremonies, scientific and technical knowledge. Like traditional knowledge, folklore is not necessarily created by indigenous peoples. Its creators and holders are all the individuals who form a whole people, indigenous or not.

15. The reason for the distinction between the two terms is that folklore has been almost invariably approached from a copyright perspective, which may be relevant to protect some aspects of its subject matter, namely literary, musical and artistic works. However, the technological and methodological content of folklore (inventions, crafts, designs, carvings) may not be adequately protected if the holders are given the right to prevent others only from reproducing their creations or disseminating them to the public through performance or broadcasting. Technological content consists of ideas, and ideas are protected by preventing others from using them. Therefore, the mechanisms of industrial property protection (for example, patents, trademarks and industrial designs) are likewise important tools to protect technical ideas from being misappropriated by unauthorized third parties. This explains why the term "traditional knowledge," which is not linked to a specific area of intellectual property, may be broader and more inclusive than "folklore." The work program of WIPO takes a holistic approach, studying the legal and economic features of all forms of intellectual property (both copyright and industrial property) as possible means of protecting traditional knowledge, including folklore. See further under "WIPO-UNESCO Regional Consultations on the Protection of Expressions of Folklore" below.

CUSTOMARY PROTECTION OF TRADITIONAL KNOWLEDGE

16. A related aspect of traditional knowledge is the method of its regulation established within the community. The systems which govern the use and transmission of traditional knowledge within a community, which may bear remarkable similarity to formal intellectual property systems, may be referred to as customary or "informal" regimes.

17. Essentially, an informal regime is a system of rules, rights, and obligations which are generally not written down, but which achieve standing by the community's consensus to be bound by those rules. Customary law results from the accretion and sedimentation of repeated practices. By way of constant repetition, it is assumed that those practices have been accepted by the community. These informal regimes are often monitored and enforced by elders, specialized experts, and religious leaders within the community.

18. These community leaders will generally settle disputes, determine which artisans are eligible to practice which arts, and preserve the history and culture of the people. In modern times, these leaders have represented their communities' views in national courts, such as in certain Australian copyright cases (such as *Milpurrurru* v. *Indofurn Pty Ltd., 1995*). In this case, Aboriginal law and custom were taken into account in fixing the amount of damages. However, such a case may be an exception, since customary law is frequently enforceable only within communities; customary practices will not generally be recognized as binding rules by authorities and courts outside the communities. When the economic interests of industries and consumers, on the one hand, and holders of traditional knowledge, on the other hand, come into contact (so-called "biopiracy" may be a good example), the existing legal mechanisms may not be adequate to protect either side: existing intellectual property mechanisms do not cover informal sets of non-systematic, undocumented knowledge; and customary norms are not applicable to the behavior of individuals and corporations outside the traditional communities. A major task, then, will be to find a common denominator.

PROBLEMS CONFRONTING HOLDERS OF TRADITIONAL KNOWLEDGE

19. Holders of traditional knowledge are faced with a variety of difficulties. A serious problem is the reluctance of the younger generation to learn the "old ways." The rejection of traditions by the young and the encroachment of modern lifestyles often result in the decline of traditional knowledge and practices. Either through acculturation or diffusion, many traditional practices are lost.

20. Thus, a primary need is to *document and preserve* the knowledge that is held by elders and communities throughout the world. The absence of willing heirs to this knowledge has resulted in the precarious situation where the death of a TK holder can result in the demise of an entire tradition and knowledge system.

21. Another difficulty facing holders of traditional knowledge is the lack of *respect* and appreciation for such knowledge. The true understanding of the value of TK is often overlooked within the modern reductionist approach to science. Unless information is developed under aseptic clinical conditions by scientific methods, it is sometimes viewed

as "inferior." For example, when a traditional healer provides a mixture of herbs to cure a malady, the healer may not describe the effects on the body as molecular interactions in the terms of modern biochemistry, but the healer bases his "prescription" upon generations of "clinical" trials undertaken by healers before him.

22. At times, modern society has displayed a prejudice against TK since it does not conform to accepted methods of learning. Some of the vernacular references to TK carry negative connotations e.g., denigrating traditional medicine as "primitive" and its practitioners as "quacks."

23. However, after even a simple inquiry into the field, one is soon aware of the true vitality and value of this knowledge. Contemporary examples of this recognition are evident in fields ranging from music to medicine, biology, and ecology. For example, music producers have sampled traditional music in chart topping hits, and native swidden farming in South America has been recognized as an ecologically sustainable form of agriculture.

Box B: Agricultural Innovation

The wealth and diversity of local knowledge systems surrounding traditional agriculture includes traditional knowledge about the uses of plants, plant conservation strategies, pest and disease management, environmental monitoring for ecological change, and traditional selection and breeding methods. For example, such methods allowed Dhularam Mondal, a small innovative farmer from India, to develop a new broad bean variety with larger pods than the previous varieties. Furthermore, the UN Food and Agriculture Organization (FAO) has documented that women cultivators of the Aguaruno Jivaro community in northern Peru identify and select the cassava cultivars on the basis of characteristics that show the greatest phenotypic variation. Panicle harvesting by Mende farmers in Sierra Leone has allowed them to select rice varieties of short, medium and long duration. The same FAO Report found that differences between Cuban and Mexican maize are linked to maize being prepared and eaten in different ways in the two countries, which has led farmers to select varieties for different properties in the two countries.

Compiled from: "Farmer breeds a broad bean variety." Honey Bee Vol. 9 No. 1. Jan-March 1998; and FAO, The State of the World's Plant Genetic Resources for Food and Agriculture., FAO, 1997.

24. Yet another problem confronting holders of traditional knowledge is the commercial exploitation of their knowledge by others, which raises the question of *legal protection* of TK. Cases involving artistic designs (such as the "Morning Star Pole" in Australia) and natural products (such as oil from the neem tree in large parts of Asia, Africa and Latin America) all bear evidence to the value of traditional knowledge in the modern global economy.

25. Unfortunately, many of the commercial interactions between traditional communities and private corporations can result in one-sided deals from which legal uncertainty arises for both parties. A lack of experience with existing formal systems, economic dependency, lack of a unified voice, and, in many cases, a lack of clear national policy concerning the utilization of traditional knowledge, results in these populations being placed at a decided disadvantage. On the other hand, the lack of clear rules protecting traditional knowledge creates risks for business interests, which prefer closing deals under well-established, reliable and enforceable rules.

INTELLECTUAL PROPERTY AND TRADITIONAL KNOWLEDGE: THE WORK OF WIPO

26. The potential role of intellectual property rights in the protection of traditional knowledge is an emerging field, which requires thorough exploration. Although there are at present no clear, specific international intellectual property standards for protecting such knowledge, there are a growing number of instances where individuals and organizations are resorting to existing patent, trademark or copyright systems to protect their knowledge and culture. These efforts have met with mixed success, but greater appreciation and respect for traditional knowledge is drawing international attention to these issues.

27. In search of a model that makes the intellectual property system and traditional knowledge more compatible, the World Intellectual Property Organization (WIPO) has initiated a program of activities to assess and address the needs of the holders of traditional knowledge and its Member States. One of the projects undertaken in the past two years has been a global assessment of the needs and expectations of holders of traditional knowledge.

(a) *Fact-Finding Missions on Traditional Knowledge, Innovations and Culture*

28. In 1998 and 1999, WIPO's Global Issues Division undertook a series of nine Fact-Finding Missions (FFMs) to collect information on the intellectual property needs and expectations of holders of traditional knowledge. From the FFMs, WIPO learned that folklore and TK are rich and diverse sources of creativity and innovation. The FFMs revealed that traditional knowledge systems are frameworks for continuing creativity and innovation in most fields of technology, ranging from traditional medicinal and agricultural practices to music, design, and the graphic and plastic arts. Stakeholders consulted during the FFMs considered TK to be a constantly renewed source of wealth, both as an economic asset and as cultural patrimony. This was the case in both developing and developed countries visited during the FFMs.

29. WIPO learned from the FFMs that the intellectual property issues related to TK cut across the conventional branches of intellectual property law, such as copyright and industrial property. In many cases TK holders do not separate "artistic" from "useful" aspects of their intellectual creations and innovations; rather, both emanate from a single belief system which is expressed in daily life and ritual. The FFMs also revealed that numerous indigenous and local communities have protocols for protection of TK and TK-based innovations under customary law. In general, the FFMs showed the richness and diversity of TK on a global scale, both in terms of its inherent creativity and as potential subject matter for intellectual property protection.

30. From the preliminary data gathered during the FFMs, one can already see areas where the existing intellectual property system might be used to meet expressed needs of TK holders. For example, under the umbrella of an association of grassroots innovators, fifteen traditional healers from India intend to collectively file a patent application for a veterinary medical kit consisting entirely of natural plant medicines and compiled from their traditional practices and formulations (comparable to those described in Box A). The patent application names the 15 healers as inventors and the association as the applicant. This collective filing allows the healers—who individually could not afford the patent filing fees—to share the costs of the application, the research on commercialization possibilities, and the risks of disclosure in case of rejection of the application. They suggested to WIPO to use this experience as a basis for the exploration of possible collective filing and management of patent rights by TK holders and their associations.

31. The full results of the FFMs were published by WIPO in draft form for public comment. The draft Report, entitled "Intellectual Property Needs and Expectations of Traditional Knowledge Holders: World Intellectual Property Organization (WIPO) Draft Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999)" is available on WIPO's website at <www.wipo.int/traditionalknowledge/report/>. Comments received will be incorporated and a final Report issued in 2001.

(b) *WIPO-UNESCO Regional Consultations on the Protection of Expressions of Folklore*

32. A specific area of study related to traditional knowledge has been the protection of so called "expressions of folklore." The international community has recognized the need to protect expressions of folklore since the 1970's. In 1982, a set of model provisions were developed under UNESCO/WIPO auspices which could be incorporated into national legislation to help protect expressions of folklore. These are entitled "Model Provisions for National Laws on the Protection of Expressions of Folklore

Against Illicit Exploitation and Other Prejudicial Actions" ("the Model Provisions"). According to the Model Provisions, expressions of folklore include "productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community . . . or individuals reflecting the traditional artistic expectations of such a community . . .". These productions included verbal, musical, and tangible expressions, as well as "expressions by action" (e.g. folk dances, plays, and artistic forms).

33. The provisions would provide economic rights to authorize or prevent the exploitation of a specific expression of folklore, and rights would be exercised by a governmental authority or the community concerned. Currently, 33 countries have established provisions within their national legislation (usually under copyright) for the protection of expressions of folklore.

34. Unfortunately, effective international regimes for the exercise and administration of these rights have yet to develop; however, at the 1997 World Forum on the Protection of Folklore, UNESCO and WIPO were requested to convene regional consultations on these issues.

35. Since then the Global Issues Division has convened four consultations, namely for African countries, for countries of Asia and the Pacific region, for Arab countries and for Latin America and the Caribbean. The primary purpose of these consultations was to enable representatives of countries from these regions to exchange views and clarify issues in relation to the protection of folklore. The consultations produced recommendations to countries in their regions and to WIPO and UNESCO for future work on the protection of folklore.

36. The recommendations from these consultations, which are addressed to States and to WIPO and UNESCO, generally focus on three areas: (1) the need for identification and documentation of expressions of folklore (including the development of international standards for documentation), (2) the need for study of a regional approach to exercise/administration of rights in expressions of folklore which originate or are used in more than one country of a region, and (3) the possible development of *sui generis* forms of protection (whether under national law or an international treaty, or under a "soft law" approach such as the preparation of guidelines) for expressions of folklore. Another important recommendation emerging from the regional consultations calls for WIPO to undertake work towards protecting traditional knowledge (e.g. medicinal, agricultural, ecological) which is not included in the subject matter covered by the 1982 Model Provisions.

37. In 1998 and 1999, the Global Issues Division also organized two Roundtables on intellectual property and traditional knowledge in Geneva. The multidisciplinary nature

of this work necessitated WIPO's participation in meetings and processes on traditional knowledge taking place within other policy forums, such as UNESCO, the Office of the High Commissioner for Human Rights, the Secretariat of the Convention on Biological Diversity, the Food and Agricultural Organization, the World Health Organization, the World Trade Organization and the United Nations Environment Programme.

38. WIPO's exploratory work in 1998 and 1999 showed that TK (including, as mentioned above, folklore) 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 was necessary that the workprogram for 2000-2001 move beyond issue-identification, and into a phase of 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 below in activity 2 below. 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, specially 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.

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 on how the IP system may recognize and use customary law to manage the relationship with TK holders.

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

39. At the Twenty-Sixth Session of the General Assembly of the Member States of WIPO, held in Geneva from September 25 to October 3, 2000, the Member States established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore for the purpose of discussions on these subjects. The Intergovernmental Committee constitutes a forum in which discussions can proceed among Member States on three primary themes, namely 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.

40. Each one of these themes cuts across the conventional branches of intellectual property law and does therefore not fit into existing WIPO bodies, such as the Standing Committee on the Law of Patents, the Standing Committee on Copyright and Related Rights, the Standing Committee on Trademarks, Industrial Design and Geographical Indications, and the Standing Committee on Information Technologies. At the same time, the three themes are closely interrelated, and none can be addressed effectively without considering aspects of the others.

41. The Intergovernmental Committee is open to all Member States of WIPO. As is usual in WIPO bodies, relevant intergovernmental organizations and accredited international and regional non-governmental organizations are invited to participate in an observer capacity.

42. The Intergovernmental Committee held its first session from April 30 to May 3, 2001. The first session was attended by 102 states members of WIPO or the Paris Union for the Protection of Industrial Property, 18 intergovernmental organizations and secretariats, and 15 accredited non-governmental organizations. The working documents of the session can be obtained from the Secretariat and are also available on WIPO's website at <http://www.wipo.int/globalissues>. The working documents included four documents submitted to the Committee by Member States and regional integration organizations.

43. At the first session of the Intergovernmental Committee, WIPO Member States expressed support for a workprogram intended to advance discussion on the three themes, which comprises the following items:

Genetic resources

- considering the 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.

Traditional knowledge

- delineating the scope of subject matter in respect of which the Member States wish to discuss the application of intellectual property protection, for the purpose of having a definition of the term "traditional knowledge."

- compiling, comparing and assessing information on the availability and scope of intellectual property protection for traditional knowledge within the scope of subject matter which was delimited under Task B.1 and identifying any elements of the agreed subject matter which require additional protection.

- considering the revision of existing criteria and developing new criteria which would allow the effective integration of traditional knowledge documentation into searchable prior art.

- Considering ways of assisting traditional knowledge holders in relation to the enforcement of intellectual property rights, in particular by assisting them to strengthen their capacity to enforce their rights.

Expressions of Folklore

- undertaking a collection and analysis of national experiences with regard to the protection of folklore.

44. The second Session of the Intergovernmental Committee is expected to take place in Geneva from December 10 to 14, 2001.

CONCLUSION

45. The immediate work ahead requires that basic conceptual problems be addressed, and practical solutions tested, in respect of the relationship between tradition-based creativity and invention, on the one hand, and the formal intellectual property system as reflected in the TRIPS Agreement and in the treaties administered by WIPO, on the other. Only when that basic, technical work is done will the needs for progressive development of intellectual property norms be clear and measurable.

46. An efficient intellectual property system that protects traditional knowledge will, at a minimum, recognize the value of documentation and preservation of existing knowledge, and promote continued creation and innovation based on that knowledge. The cultural and ethical values of new stakeholders must be taken into account, but at the same time the established intellectual property regime must be the foundation for future work, in order to create confidence in prospective partners in the use of traditional knowledge. The fact that existing standards of intellectual property may not be in perfect harmony with elements of traditional knowledge worthy of protection, should not be seen as an insuperable obstacle. Intellectual property has consistently evolved to protect new subject matter, such as software and layout-designs, the emergence of which was unforeseeable even twenty years earlier. It is now moving forward to protect databases and copyright in a digital environment. Likewise, it is not inconceivable that the intellectual property system might further evolve to provide effective protection for traditional knowledge.