



MEETING REPORT

Meeting: *11th Session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*

Location: WIPO Headquarters, Geneva, Switzerland

Date: July 3 to 12, 2007

CIEL participated in the 11th session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) as a permanent observer at WIPO, and as one of the organizations that has been instrumental in its creation in 2000. This meeting was the last of the ones under the 2005 WIPO General Assembly Mandate to “accelerate its work”, “to focus particularly on the international dimension of intellectual property, genetic resources, traditional knowledge and TCEs¹” and “to exclude no outcome”, including the possible development of an international instrument in this field”.² The final two sessions were meant to be devoted to more substantive discussions rather than the arguments about how to proceed that had dominated the earlier part of this mandate. Under a decision from the 10th session, to facilitate substantive discussion, several issues and questions were put forward to be addressed in two documents including comments from member states and observers collated during an intersessional process, one on Traditional Cultural Expressions (WIPO/GRTKF/IC/11/4(a)) and one on Traditional Knowledge (WIPO/GRTKF/IC/11/5(a)). The Agenda of the meeting and other documents are available at http://www.wipo.int/meetings/en/details.jsp?meeting_id=12522.

While the issue of genetic resources was on the agenda, it was not discussed. The committee also had to determine what to recommend to the 2007 WIPO General Assembly as to the renewal of the IGC Mandate.

CIEL carried out two surveys during the meeting to provide a basis for further work. The first was directed at delegates to determine the nature and stage of protection of TK in their national legislations. The second was directed at indigenous groups to try and determine their goals for the IGC process. The results of these will be collated and analyzed for the next session of the IGC in February 2008.

What happened at the meeting?

The substantive discussion of the list of issues was comprehensive and presented a good start. Indigenous peoples’ representatives also had a good opportunity to respond, although substantive participation was limited to a few groups. Developed countries, particularly the US and Japan continued to insist that it was too soon to address substantive issues, calling for further studies and further work. The US emphasized that national experiences should be examined and that a first step would be to examine the role that existing intellectual property mechanism can play.

¹ Traditional Cultural Expressions/Folklore

² Document WO/GA/30/8, paragraph 93.

Japan simply stated that it saw no necessity for providing intellectual property protection to traditional knowledge and that it was not yet time to have a substantive discussion. Variation these themes were restated by the European Union and other Group B industrialized countries.

However, developing countries were unanimous in their desire for further, deeper discussion and actively engaged in stating the positions and opinions on the issues. What emerged was a strong agreement on the nature, scope and application of the protection of traditional cultural expressions and traditional knowledge. This stance was mirrored in many ways by the comments of indigenous people's groups, although there remain some significant differences between these groups and developing countries including:

- full recognition of customary
- indigenous people's sovereignty over TCE and TK.

While the discussion was useful in identifying an almost unanimous approach on the part of developing countries, which had views generally in accord with indigenous people's groups, it remained difficult to determine the direction in which the discussion was heading. A question that has not been answered is 'to what end' the committee's discussion were aimed. Again, developing countries and indigenous groups were unanimous in arguing that a binding legal instrument was required. The substantive discussion concluded without any decision and was followed by two days of informal meetings to negotiate the recommendation regarding the renewal of the mandate of the IGC.

Decisions

The full decision is available in Annex 1. It essentially recommends that the mandate be renewed for an additional two years under the same conditions directed by the 2005 WIPO General Assembly. Unfortunately, attempts by developing countries to include language directing the committee to converge on agreement about the outcome of the IGC failed, leaving vague and innocuous language on:

“With respect to the content of paragraph (iii) [the mandate], the Committee agreed to work towards further convergence of views on the questions included in its previous mandates, in particular, within the areas of TCEs and TK, on the Lists of Issues agreed at its Tenth Session, with a view to making appropriate recommendations to the General Assembly.”

In addition, while the discussion reflected real unanimity on the part of the majority of WIPO member states, the secretariat has been directed to make a factual extract of the discussion, meaning that it is not to make any evaluation of the tone or nature of the discussion that suggests any convergence around any points.

Further Comments

The 2007 WIPO General Assembly is likely to accept these recommendations without any changes, providing that the IGC does not become a bargaining chip in discussion about the mandate and agenda of the Standing Committee on Patents. Given the lack of progress in the IGC, it has become increasingly difficult for industrialized countries to argue that issues of disclosure and traditional knowledge should be kept out of the SCP's agenda. The further involvement of other stakeholders in the IGC process is key, including not just more indigenous groups but also Geneva-based IP NGOs, Library Associations, educational interest groups, and academics.

ANNEX 1

Full decision available at

http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_11/wipo_grtkf_ic_11_www_81852.pdf

DECISION ON ITEM 10: FUTURE WORK

8. The Intergovernmental Committee reviewed the progress made on its substantive agenda items at the current and previous sessions of its current mandate, and

- (i) Agreed that progress had been made on its substantive work to date;
- (ii) Agreed that its work had greatly benefited from the enhanced participation of representatives of indigenous and local communities made possible by various initiatives including the successful launch of the WIPO Voluntary Fund, and also from the participation of intergovernmental organizations;
- (iii) Agreed to recommend to the WIPO General Assembly that the current mandate of the Committee be renewed as set out in document WO/GA/30/8, paragraphs 93 to 95, namely that:
 - the Committee “will continue its work for the next budgetary biennium on questions included in its previous mandate”;
 - “its new work will focus, in particular, on a consideration of the international dimension of those questions, without prejudice to the work pursued in other fora,” and
 - “no outcome of its work is excluded, including the possible development of an international instrument or instruments”;
 - the IGC would be urged “to accelerate its work and to present a progress report to the session of the General Assembly” in September 2008.
 - The General Assembly would further request “the International Bureau to continue to assist the IGC by providing Member States with necessary expertise and documentation.”
- (iv) With respect to the content of paragraph (iii), the Committee agreed to work towards further convergence of views on the questions included in its previous mandates, in particular, within the areas of TCEs and TK, on the Lists of Issues agreed at its Tenth Session, with a view to making appropriate recommendations to the General Assembly.
- (v) Agreed concerning its substantive working document on item 7 (TCEs/EoF) that:
 - the Secretariat should prepare a factual extraction, with attribution, consolidating the view points and questions of Members and Observers on the List of Issues considered during the Eleventh Session including their comments submitted in writing for the

Eleventh Session, subject to review of Member States and observers and without prejudice to any position taken on these issues, and

- As agreed at the Tenth session, document WIPO/GRTKF/IC/11/4 (c) remains on the table in its existing form and comments made in relation to it are noted.
- (vi) Agreed concerning its substantive working document on item 8 (TK) that:
- the Secretariat should prepare a factual extraction, with attribution, consolidating the view points and questions of Members and Observers on the List of Issues considered during the Eleventh Session including their comments submitted in writing for the Eleventh Session, subject to review of Member States and observers and without prejudice to any position taken on these issues, and
 - As agreed at the Tenth session, document WIPO/GRTKF/IC/11/5 (c) remains on the table in its existing form and comments made in relation to it are noted.
- (vii) Agreed concerning its substantive working documents on item 9 (genetic resources) that:
- the Secretariat should prepare a further update of international developments based on document 11/8(b) which would include omissions identified in the current session, more recent developments, and any other relevant developments reported to the Committee, and
 - document WIPO/GRTKF/IC/11/8 (a) remains on the table in its existing form and comments made in relation to it are noted.