CALL OF THE EARTH

Ancient Wisdom for Sustainable Livelihoods

An Indigenous Peoples' Initiative on Intellectual Property Policy

Statement at the Fifth Session of the

WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

8th July 2003

I would first like to thank the WIPO Secretariat and the Member States for enabling us to host this forum today, and to thank you for joining us.

As you have heard, Call of the Earth is an indigenous peoples' initiative on intellectual property rights. Call of the Earth aims to enable indigenous peoples to reframe the debate on intellectual property rights and traditional knowledge from an indigenous perspective. In so doing, we aim to develop responses at local, national, regional and international levels to all policy and legal developments that impact upon our tradition of preserving our cultural heritage for future generations.

At the last WIPO IGC meeting (in December 2002) Call of the Earth emphasized that indigenous peoples must be able to decide for themselves, on their own terms, the role, if any, that intellectual property rights will play in ensuring that their cultural traditions of innovation and expression are respected and preserved for future generations.

While the views and circumstances of indigenous communities differ, many indigenous peoples see IP claims in relation to indigenous knowledge and cultural expressions as 'technically, spiritually and morally wrong'. They argue that cultural knowledge must be valued for its intrinsic worth, not simply for its instrumental value'

The Call of the Earth called on Member States to help rectify the minimal systematic participation of indigenous peoples in the IGC process. We drew attention to the limited opportunities for indigenous peoples to, monitor, analyze or critique the many papers, reports and recommendations being produced'.

Since making these statements considerable progress has been made. More still must be achieved if indigenous peoples are to feel that the IGC process can accommodate our need for our cultural perspectives to be fully integrated into IGC debate and outcomes.

We gather this week for the 5th Meeting of the Committee. For indigenous peoples, this meeting is particularly significant because you will be deciding the future direction of the process.

Today, we focus our comments on two of the fundamental issues that governments must grapple with in order to realize such a transformation. First, we would like to offer several observations on the proposals for greater participation by indigenous peoples in the WIPO IGC process. Second, I will focus on the substantive agenda of the WIPO IGC.

Indigenous Participation

The Secretariat has prepared for us a number of proposals for greater participation by indigenous and local communities in the IGC process. Call of the Earth commends the Secretariat for the effort put into this submission and trusts that Member States will give due weight to the proposals.

Particularly valuable aspects of the proposal include participation in the IGC process by the Permanent Forum and greater linkages with the work of the Forum. Also important would be the:

- creation of a mechanism for direct interaction between Member States and Permanent Forum representatives;
- the funding of accredited ad hoc observers; and
- greater capacity for observers to make critiques, comments and national experiences available to Member States through inclusion on a web site.

As important as these proposals are, we note that they do not change the essentially intergovernmental nature of the process. The extent to which indigenous perspectives brought into the process by indigenous participation actually result in constructive outcomes will be the true test of success and we thus call on the good will of Member States to ensure that any greater participation of indigenous peoples leads to positive outcomes.

In addition to supporting participation at the international level, we encourage Member States to ensure a diverse range of indigenous opinion is taken into account in national policy formation processes.

In addition, we would like to make two further comments on participation.

First, we would like to learn more about the capacity in which Permanent Forum representatives would engage in the IGC process, particularly with reference to the significance and extent of their advisory role.

Second, we suggest that the selection process for funding of ad hoc observers be independent. An accountable, but light and efficient model involving an independent Indigenous Board of Trustees would best ensure that a diversity of indigenous opinion is included within the IGC process.

The Substantive Agenda

Several of the Secretariat's documents, for example, 'Overview of Activities and Outcomes of the Intergovernmental Committee'[1] refer to criticisms that have been made by indigenous peoples on the potentially negative impact of intellectual property rights on the capacity of indigenous peoples to preserve and transmit culture to future generations.

Yet, while noting indigenous concerns, the agenda of WIPO and the Member States remains focused on moving forward with the expansion of intellectual property rights to cover traditional knowledge and cultural expressions.

It is important here to draw, as the Secretariat does in its document, on the useful distinction between positive protection and defensive protection of traditional knowledge.

Defensive protection, on the other hand, calls the IP system to account, demanding that strategies be put into place to prevent the misuse and misappropriation of indigenous knowledge and cultural expressions by outsiders. Defensive protection can be achieved, it is suggested, through mechanisms that, for example, preclude the granting of patent rights over subject matter that makes 'direct use of traditional knowledge or is based on unauthorised access to and use of genetic resources'[2]. Other defensive strategies involve preventing the grant of inappropriate trademarks, and preventing the assertion of copyright that makes 'illegitimate use of traditional cultural works or traditional performances'[3]. The exploration and advancement of these strategies within WIPO and other fora is important. Indeed, many would argue that is the responsibility of international intellectual property rights instruments and national intellectual property procedures to ensure that IP rights are not granted invalidly.

Positive protection, on the other hand, is more complex and controversial. Positive protection generally refers to the active pursuit of **intellectual property** rights type mechanisms both to prevent the misuse of traditional knowledge and cultural expressions by outsiders, and also to facilitate the use and commercialization of such knowledge and expressions, for economic benefit, by indigenous communities.

Given WIPO's overarching focus on strengthening intellectual property rights and their protection, it is not surprising that a WIPO process would give pre-eminence to discussion of expansion of the application of intellectual property rights. But this does not mean it is the correct path to pursue. The IGC process must not simply roll on ahead without regard to the stage of discourse on intellectual property rights within indigenous communities and in society at large, both at the national and international level.

As we all know, in the last two decades a number of societal trends converged, leading to an important increase in the value of information to many national economies, and to the globalisation and expansion of intellectual property rights.

These changes occurred faster than other regulatory mechanisms within society coped with. Decisions to expand and globalise intellectual property rights were made in a vacuum, before truly democratic processes could inject diverse perspectives to the defining of the new regime.

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[1] WIPO/GRTKF/IC/5/12

[2] WIPO/GRTKF/IC/5/12 at paragraph 28.

[3] WIPO/GRTKF/IC/5/12 at paragraph 28.

Suddenly the very building blocks of life, and the sacred elements of our cultures became global commodities. We suggest that Member States should not underestimate the level of discomfort that many within society, not just indigenous people, feel in relation to these changes.

Diverse sectors within society, not just indigenous peoples, must be given a chance to catch up and to put their perspective into an agenda that has an extremely important practical and symbolic meaning for all humankind. To this end, meaningful interaction with human rights and environmental based bodies and instruments should continue to be pursued. Importantly, we call upon Member States to give due regard to their responsibilities to all of their constituents in the positions they take within WIPO.

Specifically, we feel that any agenda for positive protection of indigenous traditional knowledge and cultural expressions needs to take full account of diverse indigenous opinion.

As the direction of the ICG is being reviewed here and now, there has been no better opportunity for Member States to ensure that indigenous voices are central to this debate and have real influence within it.

I thank you again for joining us here today and hope that you stay on and join us for our informal reception.