

**WIPO Intergovernmental Committee on Intellectual Property, Genetic Resources,  
Traditional Knowledge and Folklore, Sixth Session, 15-19 March 2004**

**Statement by the Secretariat of the Convention on Biological Diversity**

Thank you for the opportunity to once again brief Committee members on recent developments within the framework of the Convention on Biological Diversity, which are of relevance to the work of this Committee.

The seventh meeting of the Conference of the Parties (COP) was held in Kuala Lumpur Malaysia, from 9 to 20 February 2004. For further information on the Convention and recent developments at COP 7, a side event will be held on Tuesday 16 March 2004 at lunch time, in room B.

The decisions adopted by the Conference of the Parties of greatest relevance to this committee are those related to: access to genetic resources and benefit-sharing; traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable of biological diversity; and technology transfer and cooperation.

Access and Benefit-sharing

You will recall that, at the World Summit on Sustainable Development, Governments called for action to “negotiate within the framework of the Convention on Biological Diversity, bearing in mind the Bonn Guidelines, an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources.”

Following up on WSSD’s request, the COP considered the process, nature, scope, elements and modalities of such an international regime on access and benefit-sharing.

The COP decided to mandate the existing Working Group on ABS to negotiate an international regime on access to genetic resources and benefit-sharing with the aim of adopting (an) instrument(s) to effectively implement the provisions of Article 15 (on access to genetic resources and benefit-sharing) and Article 8(j) of the Convention (regarding the protection of traditional knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biological diversity) .

The COP also agreed on the terms of reference for such negotiation and requested the Executive Secretary to make necessary arrangements for the Working Group to be convened twice before COP 8 and to report on progress at this meeting. COP-8 will be held in the first half of 2006 in Brazil.

The Conference of the Parties specifically invited the World Intellectual Property Organization (WIPO) - among other organizations - to cooperate with the Working Group on ABS in elaborating the international regime.

The terms of reference of the Working Group on ABS address the process, nature, scope and possible elements of such an international regime.

One of the elements to be considered by the Working Group for inclusion in the international regime, which relates directly to the work of the WIPO, is the issue of disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights.

WIPO conventions and treaties were also identified as existing instruments and processes, which need to be examined in the development of the international regime.

A number of additional elements are also relevant to the work of this committee. For a complete overview of these, I invite you to consult decision VII/19 available on the website of the Convention ([www.biodiv.org](http://www.biodiv.org)).

As you know, collaboration has been ongoing between WIPO and the CBD Secretariat including, recently, on the issue of disclosure requirements related to genetic resources and traditional knowledge in intellectual property rights applications. In response to the invitation by the sixth meeting of the Conference of the Parties (decision VI/24C, paragraph 4), the technical study prepared by WIPO was tabled at the seventh meeting of the Conference of the Parties in Kuala Lumpur. No doubt that the study will be most useful during the negotiation of the contemplated international regime.

In decision VII/19, section E, the Conference of the Parties noted with appreciation the technical study and considered its contents to be helpful in the consideration of intellectual property-related aspects of user measures.

Building on this work, the COP requested “the Ad Hoc Open-ended Working Group on Access and Benefit-sharing to identify issues related to the disclosure of origin of genetic resources and associated traditional knowledge in applications for intellectual property rights, including those raised by a proposed international certificate of origin/source/legal provenance, and transmit the results of this examination to the World Intellectual Property Organisation and other relevant forums”.

The COP further invited “the World Intellectual Property Organisation to examine, and where appropriate address, taking into account the need to ensure that this work is supportive of and does not run counter to the objectives of the Convention, issues regarding the interrelation of access to genetic resources and disclosure requirements in intellectual property rights applications, including, inter alia:

- (a) Options for model provisions on proposed disclosure requirements;
- (b) Practical options for intellectual property rights application procedures with regard to the triggers of disclosure requirements;

- (c) Options for incentive measures for applicants;
- (d) Identification of the implications for the functioning of disclosure requirements in various World Intellectual Property Organisation-administered treaties;
- (e) Intellectual property-related issues raised by proposed international certificate of origin/source/legal provenance;

And regularly provide report to the Convention on Biological Diversity on its work, in particular on actions or steps proposed to address the above issues, in order for the Convention on Biological Diversity to provide additional information to the World Intellectual Property Organisation for its consideration in the spirit of mutual supportiveness.”

Finally, the COP also invited “the United Nations Conference on Trade and Development and other relevant international organizations to examine the issues in, and related to, these matters in a manner supportive of the objectives of the Convention on Biological Diversity and prepare a report for submission to the ongoing process of the work of the Convention on Biological Diversity on access and benefit-sharing.”

#### Traditional knowledge

With respect to the issue of traditional knowledge, the main issues considered by COP include:

- The Composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biodiversity;
- The Akwe: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessment regarding developments proposed for to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, endorsed by the COP;
- Participatory mechanisms for indigenous and local communities; and
- Development of *sui generis* systems for the protection of traditional knowledge, innovations and practices

In decision VII/16 on Article 8(j) and related provisions, when addressing the development of *sui generis* systems for the protection of traditional knowledge, innovations and practices, the COP recognized the need for continued collaboration with other relevant organizations working on issues related to the protection of traditional knowledge, innovations and practices of indigenous and local communities, such as the World Intellectual Property Organization and others to ensure mutual supportiveness and avoid duplication of efforts (Preamble, section H, decision VII/16).

The COP requested the Working Group on Article 8(j) and related provisions to explore the potential of and conditions under which the use of existing as well as new forms of intellectual property rights can contribute to achieving the objectives of Article 8(j) and related provisions of the Convention, taking into account the work of WIPO and the

United Nations Permanent Forum on Indigenous Issues (par. 6(f), section H, decision VII/16).

In addition, the COP invited WIPO to make available to the Working Group on Article 8(j), the results of its work on issues relevant to the implementation of Article 8(j), in particular in relation to the protection of traditional knowledge and its recognition as prior art (par. 11 section H, decision VII/16).

### Technology Transfer and Cooperation

The COP adopted a programme of work on technology transfer and cooperation in order to develop meaningful and effective action to enhance the implementation of Articles 16 and 19 of the Convention, which relate to access to and transfer of technologies relevant for the conservation and sustainable use of biological diversity or which make use of genetic resources.

The work programme includes 4 programme elements: technology assessments, information systems, creating enabling environments, and capacity-building and enhancement.

Activities of most relevance to WIPO are planned under programme elements 2 and 3.

Programme element 2 addresses the development or strengthening of national, regional and international systems for the gathering and dissemination of relevant information on technology transfer and cooperation and technical and scientific cooperation, including the establishment of effective networks of electronic databases of relevant technology.

At the international level, these systems, using the Clearing House Mechanism or the Convention, would provide, inter alia, information on the availability of relevant technologies, data on patents, models of contracts and associated legislation, identified technology needs of Parties, as well as case studies and best practices on measures and mechanisms to create enabling environments for technology transfer and technology cooperation.

Activities established in this context of particular relevance to WIPO include:

- the development of advice and guidance on the use of new information exchange formats, protocols and standards to enable interoperability among relevant existing systems of national and international information exchange, including technology and patent databases. (Activity 2.1.3)
- Implementation of proposals for enhancing the clearing-house mechanism as a central mechanism for exchange of information on technologies, as a core element in its role to promote and facilitate scientific and technical cooperation, for facilitating and promoting technology transfer and for the promotion of technical and scientific cooperation as adopted by the Conference of the Parties, in full

synergy with similar initiatives and mechanisms of other Conventions and international organizations. (Activity 2.1.4)

Creating enabling environments, under programme element 3, involves identifying and putting in place institutional, administrative, legislative and policy frameworks conducive to private and public sector technology transfer and cooperation, taking also into account existing work of relevant international organizations and initiatives.

Activity 3.1.1 provides for the preparation of technical studies that further explore and analyse the role of intellectual property rights in technology transfer in the context of the CBD and identify potential options to increase synergy and overcome barriers to technology transfer and cooperation, consistent with paragraph 44 of the Johannesburg Plan of Implementation. The benefits as well as the cost of intellectual property rights should be fully taken into account. The main actors identified to carry out this activity are the Secretariat of the CBD, WIPO, UNCTAD and other relevant organizations, prior to the eighth meeting of the COP.

In conclusion, Mr. Chairman, as you will appreciate the various elements of the most recent decisions of the Conference of the Parties, particularly as regards access and benefit-sharing and traditional knowledge, call for a continued close cooperation between the CBD Secretariat and the WIPO. The Memorandum of Understanding signed between the Secretariat of the CBD and the WIPO in June of 2002 certainly provides a good basis for this collaboration between our two organizations.

The Secretariat looks forward to a fruitful collaboration during the next biennium.

Thank you for your attention.