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WIPO

WIPO/GRTKF/IC/7/7
ORIGINAL: English
DATE: October 4, 2004

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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

## Seventh Session
## Geneva, November 1 to 5, 2004

UPDATE ON TECHNICAL STANDARDS AND ISSUES CONCERNING RECORDED OR REGISTERED TRADITIONAL KNOWLEDGE

*prepared by the International Bureau*

## I. EXECUTIVE SUMMARY

1. In recent years there have been a wide range of local, national and international initiatives to address technical intellectual property (IP) issues related to recorded or registered traditional knowledge (TK) and to develop technical standards that might facilitate a coordinated approach to those issues. These initiatives have aimed at the adaptation of existing technical standards or at the creation of additional standards which specificially address recorded or registered TK. This document provides an update on the current status of such initiatives and contextualizes those activities and outcomes of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ("the Committee") which pertain to standards for recorded TK within those ongoing initiatives.

2. The document reviews the progress of such initiatives and issues in two parts. The first part describes international developments regarding technical standards, including two specific activities of the Committee. These two activities of the Committee concern a Questionnaire on Databases and Registries Related to Traditional Knowledge and Genetic Resources (WIPO/GRTKF/IC/Q.4) and a Data Specification for Technical Aspects of

Databases and Registries of Traditional Knowledge and Genetic/Biological Resources, which was adopted by the Committee at its fifth session.[1] The second part of the present document provides an update on the progress of certain national and local initiatives, which had been reported to the third session of the Committee during an informal panel on traditoinal knowledge databases and registries. In particular, these initiatives include the Traditional Knowledge Digital Library of India, the China Traditional Chinese Medicine Patent Database of China, and the StoryBase of the Tulalip Tribes in the United States of America. The document ends with a brief outlook on future prospects of the Committee's work on technical standards and IP issues concerning recorded or disclosed TK.

## II. UPDATE ON TECHNICAL STANDARDS

### *II.1 International Developments Regarding Technical Standards*

3. A growing number of initiatives seek to use databases and registries to conserve and protect TK and genetic resources. While they vary greatly in what they seek to protect, and how they operate, they have often precipitated considerable concern about their IP implications. A number of international organizations have worked on different aspects of such registries, including the Convention on Biological Diversity (CBD), the United Nations Environment Programme (UNEP), the United Naitons Conference on Trade and Development (UNCTAD) and WIPO. It is important to emphasize that the WIPO program does not promote the establishment or use of databases or registries, or any particular approach to their use. It does promote international discussion about how they can be best used to advance the IP-related interests of custodians of TK and genetic resources. In the past it has done so through two activities, namely the issuance of a Questionnaire and the development of a Data Specification concerning TK databases and registries.

#### II.1.1 Questionnaire on Databases and Registries Related to TK and Genetic Resources

4. At its third session the Committee commissioned a Questionnaire on Databases and Registries Related to TK and Genetic Resources ("the Questionnaire").[2] The Questionnaire sought to ascertain whether databases and registries were considered appropriate mechanisms for the preservation and protection of TK and genetic resources and, if so, for which objectives and with which functions they might be useful. The Questionnaire was meant only to assess existing experiences and needs in this important area. Unitl that time no global, systematic study of stakeholder needs and objectives in databases and registries had been undertaken. The Questionnaire was developed to provide the basis for such a study, which would be available as a resource to assist those planning and undertaking database or registry initiatives. The exercise intended to promote cooperation and sharing of practical lessons and tools between various initiatives, while leaving open the choice of objectives and mechanisms up to the TK holders themselves.

5. The Questionnaire consisted of two separate sets of questions, which were directed at two distinct groups:

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[1] The data specification is contained in document WIPO/GRTKF/IC/4/14. For the adoption of the data spefification see documents WIPO/GRTKF/IC/5/15, para. 109.

[2] WIPO/GRTKF/IC/5/6 and WIPO/GRTKF/IC/6/8

(a) one set of questions[3] contained questions addressed to stakeholders who had *not* established databases or registries, but who were interested in using or creating a database or registry. These questions aimed at assessing their needs and expectations.

(b) a second set of questions[4] contained questions addressed to those stakeholders who had already established databases and registries, or were in the process of establishing them. These questions gathered factual information about existing databases/registries and practical lessons learned by stakeholders during the establishment of the database/registry.

6. Responses to this questionnaire were encouraged from as broad a base of interested parties as possible, so that the results could be most useful in promoting the interests of TK holders. Answers were actively invited from a wide range of stakeholders, including local communities, government agencies, database compilers, scientific and documentation institutions, IP professionals and private companies.

7. To date more than 50 responses from a wide range of stakeholders, including individuals, communities and institutions as diverse as TK holders, compilers, operators and users of databases, and other stakeholders. A systematic compilation of these responses will be made available to the Committee in due course.

II.1.2 Data Specification for Technical Aspects of Databases and Registries of Traditional Knowledge and Genetic/Biological Resources

8. At the fourth session of the Committee the Asian Group submitted a document entitled "Technical Proposals on Databases and Registries of Traditional Knowledge and Biological/Genetic Resources" to the Committee, with certain proposals for decision.[5] The document stated that "there is a need to develop an internationally agreed Data Specification (a set of agreed standards) for databases and registries of TK and biological/genetic resources, including the consideration of related legal questions, such as the relationship of documented TK and recognition of rights associated with TK, and the possibility of creating a legal presumption of ownership on the part of the TK holder with a TK rights system."[6] The document contained a draft of such a Data Specification. Based on the draft, the Asian Group proposed to develop an interregional concensus on the data specification.

9. The proposal was made while emphasizing the following points:

- "The purpose of Databases and Registries is not to put undisclosed TK and genetic resources into the public domain.

- Databases and Registries should achieve multiple IP objectives in respect of the genetic resources and TK on which they contain information. These objectives include defensive and positive legal protection in respect of the contents of the databases and registries. […]

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3 Annex A, WIPO/GRTKF/IC/Q.4
4 Annex B, WIPO/GRTKF/IC/Q.4
5 WIPO/GRTKF/IC/4/14.
6 See WIPO/GRTKF/IC/4/14, Annex, page 3.

- The rights of the custodians of TK and genetic resources to their continuing control and enjoyment of their knowledge and resources are to be recognized throughout the compilation, operation and use of databases and registries."[7]

10. The document proposed that "the Committee should create a Task in its work program to further develop and adopt the draft Data Specification."[8] The Committee considered the proposal at its fourth session and decided that "this issue would remain on the agenda for the fifth session, including the proposal of the Asian Group".[9] At the fifth session the Committee reconsidered the proposed Data Specification and "supported the proposal …, including the transmission of it to the appropriate body within the Standing Committee on Information Technology (SCIT)."[10]

*II.2 Local, National and Regional Standardization: Update on Recent Progress*

11. At its third session, the Committee heard reports from an informal panel of experts about national experiences with registries and databases of traditional knowledge, including reports from China, India, Venezuela and the Tulalip Tribes of the United States of America. One of the reports concerned the Traditional Knowledge Digital Library (TKDL) project of India, which had been initiated by the Council of Scientific and Industrial Research (CSIR) of the Government of India. Since the time of the informal panel of experts, held on June 17, 2002, there has been a forward movement on this digital library. After completing 36,000 formulations in five international languages, significant work has been carried out on the Ayurvedic system of traditional medicine, which was codified and disclosed in writing in ancient Sanskrit scriptures in the 12th century B.C. With respect to TKDL Unani, a team of 30 Unani experts, information technology experts and scientists is currently working to develop a database of previously disclosed Unani literature. Similary, it is intended to initiate work shortly on the Siddha system of traditional medicine in South Asia.

12. The Chinese version of the "China Traditional Chinese Medicine (TCM) Patent Database" contains more than 12,124 deeply indexed records of TCM patent literature with 32,603 TCM formulas. An English Demo Version, which was prepared for and demonstrated at the third session of the Committee, contained 1,761 records of TCM patent literature in English with 4,177 TCM formulas. At the time of the third session, the Chinese language records covered the time period from April 1985 to June 2001, whereas the 1,761 English language demonstration records cover the period from 1993 to 1994. The database focused on bibliographic type data related to TCM. The China TCM Patent Database was compiled by the State Intellectual Property Office (SIPO) of the People's Republic of China. In addition to the China TCM Patent Database, SIPO uses some other TCM databases, which were not compiled directly by SIPO and are not located on SIPO servers. Most of them are in Chinese.

13. Numerous indigenous and local communities have systematically recorded and registered their TK and, in some cases, have sought to create standards based on their experiences with such registries. In the United States of America the Tulalip Tribes in

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7 See, WIPO/GRTKF/IC/4/14, Annex, page 2
8 See, WIPO/GRTKF/IC/4/14, Annex, page 4
9 See, WIPO/GRTKF/IC/4/15, para. 125
10 See, WIPO/GRTKF/IC/5/15, para. 109

Washington State are compiling a database of their traditional environmental knowledge named "StoryBase".[11] While compiling this database, the tribes have distinguished between "Type A knowledge", which they wished to reserve exclusively for the members of the tribal communities, and "Type B knowledge", which the tribes wished to make available to the public at large. The software which is being developed to operate the database is being programmed to restrict access for Type A knowledge in the StoryBase to community members, whereas Type B knowledge will be disclosed and made available either to the general public or to patent examiners only. In distinguishing between Type A and Type B knowledge, intellectual property considerations are being taken into account and in the technical structure of the database this distinction will be reflected in the access privileges of different users. The access privileges are complex and are still being developed on the basis of discussions within the Tribes. However, the tribes have already identified three "core principles" that should be borne in mind as TK finds expanded use in policy making: tribes are sovereign; good law follows good practice; researchers should perform research in utmost good faith and respect for tribal traditions.[12]

14. There are also various other national and regional initiatives regarding recorded and registered TK, which have made considerable progress in the years since the initial panel presentations on such initiatives.[13]

## III. CONCLUSION

15. The work on standards for registered or documented TK has made rapid progress at the local, national and international levels over the past years. The Committee's work on standardization of technical standards and issues concerning recorded or registered traditional knowledge has, in essence, been successfully completed at the fifth session of the Committee, with the adoption of a data standard. An information gathering exercise on objectives and functionalities of TK registries and databases is ongoing and the results will be presented to the Committee in due course. Furthermore, the Committee will, in the future, continue to provide a forum for exchange of information on the ongoing progress and experiences of local, national and regional intitiatives regarding recorded and registered TK.

*16. The Intergovernmental Committee is invited to take note of the contents of this document and comment upon them.*

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11 See, Tulalip Natural Resources. "Cultural Stories" *ICONS CD-ROM*. 2002. See entry in the Inventory contained in Annex II.

12 See, Hardison, P. "Traditional Knowledge Studies and the Indigenous Trust." Tulalip Tribes and the Indigenous Biodiversity Information Network (IBIN). September 15, 2004 (on file with the author).

13 For example, the work of the Kaska Dene Council in Canada, the Inuit database of traditional environmental knowledge in Canada and numerous other initiatives.