

**Eleventh Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Geneva, July 3-12, 2007  
(WIPO)**

**Report on the Discussions on General Questions and on the Protection of Folklore**

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Like in previous sessions, the meeting of the Intergovernmental Committee (IGC) was preceded by a panel of representatives of indigenous peoples from different parts of the world who reported about ongoing challenges and developments. The challenges mentioned included difficult relations in general with the own governments, migration of indigenous peoples to the cities and dying out of communities in the countryside, the lack of indigenous experts and training for them in their own languages, the lack of knowledge of existing, diverse protection mechanisms and the fragmentation of protection in different compartments, marginalisation of indigenous communities, generally low standards of living and small resources, the continuous misappropriation, and the production and selling of fake products.

In the IGC-meeting itself, 24 new ad hoc non-governmental organisations were admitted, so that currently overall 180 NGOs are admitted to IGC.

The voluntary fund, which has been established to finance participation of indigenous peoples, seems to work well; voluntary contributions by member countries are currently sufficient to finance indigenous participation for another two years.

**Opening statements and general discussion**

Most countries, especially developing countries, repeated that the existing intellectual property system is not sufficient to properly protect indigenous heritage, but that sui

generis-rights for collective owners would be needed. Many delegations from developing countries urged to proceed faster towards the preparation of a treaty; the African group called for recognition of rights in favour of the state (rather than indigenous communities themselves).

## **Folklore**

Following the decision of the previous session to concentrate discussion on a list of ten substantive issues rather than the concrete draft articles earlier submitted by the WIPO Secretariat, the discussion started with the first item on definitions of traditional cultural expressions/expressions of folklore that should be protected. Different proposals were made; many delegations in principle agreed to the relevant WIPO draft article, in part with amendment proposals. New Zealand stated that too specific definitions would freeze developments and go against the dynamic character of folklore and suggested the insertion of traditional, less intellectual property-related elements. The USA preferred a precise definition – a claim which in fact would lead to enhanced problems. Italy was of the opinion that whatever was not a work protected by the Berne Convention should not be protected. This position deviated from the more open position of the other EC Member States.

Regarding the beneficiaries of protection, the (industrialised) countries that are little interested in a concrete, substantive outcome of the work mainly called for further study and submitted a number of questions to be solved. According to some developing countries that spoke, the collective ownership would have to be recognised and a definition should leave sufficient room for national legislation. On the third item, the objective to be achieved through intellectual property protection (economic rights, moral rights), many delegations indicated the protection against misappropriation and a right against unauthorised exploitation; many also stressed the need to protect cultural diversity and cultural heritage, or to be able to benefit from their own culture. Industrialized countries largely suggested that the existing intellectual property system could well enough serve the needs of indigenous peoples or that more work would first be needed at the national level; Japan opposed any intellectual property or similar system, Australia claimed that the general

objectives first must be determined, and Italy stated that governments should encourage the local communities to use the existing intellectual property rights.

On the question what forms of behaviour should be considered unacceptable or illegal, some delegations submitted detailed lists of such acts, such as uses contrary to customary laws, or basically agreed to the draft WIPO articles, while industrialised countries again expressed concern, for example regarding the development of culture and the possible negative effects of protection of indigenous heritage for the creation of new works, as well as the need to maintain the public domain (under the Western system) as it is.

On exceptions and limitations to rights, several detailed proposals again met with statements by the USA, Canada and other industrialised countries according to which discussions on exceptions would be premature, given that no agreement on rights existed.

At the end of the session, the IGC had to decide on another prolongation of the mandate, which itself was not questioned; rather, the concrete wording of the recommendation to the General Assembly was controversial. In particular, industrialised countries (Group B) opposed any outcome which would give the impression of a too positive substantive result, although in fact the discussion on the individual items was constructive, and a compilation of all statements and proposals would probably lead to a considerable substantive outcome. As a compromise, the Secretariat was only asked to prepare a "factual extraction", "consolidating the view points of questions of members and observers on the list of issues"; the mere expression of a compilation (instead of "factual extraction") seemed too positive for industrialised countries. Also, the IGC stated that it reviewed the progress made on its substantive agenda items and "agreed that progress had been made on its substantive work to date", that it had benefited from indigenous participation, and that it recommended to renew the current mandate of the IGC, among others with a focus, in particular, on a consideration of the international dimension of those questions, specifying that the IGC would be urged to accelerate its work and to present a progress report to the General Assembly in 2008; also, work towards further convergence of views in particular on the lists of issues discussed in this

session should be made. The next session, subject to approval by the General Assembly, is envisaged for February 2008.