

**Report on the WIPO Intergovernmental Committee on Intellectual Property and
Genetic Resources, Traditional Knowledge and Folklore, 12th Session,
Geneva, 25-29 February 2008**

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As 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. One interesting new aspect of several contributions was that folklore and traditional knowledge seem to be increasingly recorded by indigenous peoples themselves who thereby want to keep the control over the research and representation of their folklore and traditional knowledge. So far, problems mostly arose when external researchers got access and documented folklore and traditional knowledge. Several projects seem to have well advanced, so that methods and know-how on such documentation done by indigenous peoples themselves are now being spread to all interested communities. Also, one panellist stressed that the IGC should draw its attention to the topic of collective rights.

In the IGC-meeting itself, 15 new non-governmental organisations were accredited as ad-hoc observers. The voluntary fund, which has been established to finance participation of indigenous peoples in the WIPO IGC, seems to work well; voluntary contributions by member countries are continuously made and are currently sufficient to finance indigenous participation.

After the discussions in previous sessions had focused on ten selected issues, such as the determination of beneficiaries of a sui generis-protection or the duration of such protection, especially the African group pushed forward in the same direction and stressed again the ultimate aim of adopting a legally binding international instrument for the protection of folklore. Yet, a new avenue was opened at this session: The IGC mandated the WIPO Secretariat to prepare a new document for the next session which could be called a "gap analysis". Such document should describe what obligations, provisions and possibilities for the protection of folklore already

exist at the international level, such as under the Berne Convention, and it should describe the gaps which exist at the international level, consider whether those gaps need to be addressed and describe what options (including legal ones) exist or might be developed to address any identified gaps at the national, regional and international levels.

This approach seems rather astonishing, given the fact that at the beginning of the IGCs' work many years ago, WIPO already issued detailed documents which stated the existing situation under different intellectual property rights, and it was then concluded that only a *sui generis*-approach, which could take into account the particularities of folklore, could at all meet the needs of indigenous peoples. Indeed, the level of discussion on a *sui generis*-protection had already been quite high, and it nearly seems to be a step back towards the beginnings if one now restarts talking about the possibilities of protection under existing intellectual property law, which in principle are already known. Yet, one also has to admit that a treaty on a *sui generis*-protection would not seem a realistic option, so that the new approach might at least encourage a new, more realistic way to take.