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ROUNDTABLE ON INTELLECTUAL PROPERTY AND TRADITIONAL KNOWLEDGE

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PROTECTION OF TRADITIONAL KNOWLEDGE:
A GLOBAL INTELLECTUAL PROPERTY ISSUE

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1. The emergence of a “global information society” in recent years, characterized by the advent of modern information technologies, has also given rise to increasing awareness of traditional knowledge (TK). TK is thus receiving increased attention in numerous policy fora and debates, ranging from food and agriculture, the environment, health, human rights, and cultural policy, to trade and economic development. The role of intellectual property (IP) in the protection of TK is currently being considered in several of these policy contexts, in addition to discussions taking place in intellectual property circles. As the specialized United Nations agency responsible for the promotion of intellectual property worldwide, WIPO was mandated in its 1998-99 Program to undertake exploratory groundwork in order to provide an informed and realistic analysis of the IP-aspects of TK.

2. WIPO’s past work in this area dates from 1978 and was focused on “expressions of folklore”. Three meetings of experts were convened jointly by WIPO and the United Nations Educational, Scientific and Cultural Organization (UNESCO), which led to the adoption in 1982 of the “Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions” (the Model Provisions).

3. An initial issue relates to appropriate terminology for the subject matter concerned. Section 2 of the Model Provisions defines the term “expressions of folklore” as “productions consisting of characteristic elements of the traditional *artistic* heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of such a community” (emphasis added). Since adoption of the Model Provisions in 1982, international legal instruments in other fields have increasingly used terms such as “traditional knowledge, innovations and practices” (Article 8(j), Convention on Biological Diversity, 1992), or “indigenous knowledge, cultures and traditional practices” (Draft UN Declaration on the Rights of Indigenous Peoples, Preamble). These terms include a broader range of subject matter (for example, traditional agricultural, ecological and medicinal knowledge and practices) than that which is covered by the term “expressions of folklore” in the Model Provisions. For the purposes of the present WIPO workprogram, the scope of inquiry extends to all of the tradition-based creativity and innovation of human beings, irrespective of existing terminology or definitions, and with the exception of the section on the regional consultations on the protection of expressions of folklore (paragraphs 9 to 11 below), the term “traditional knowledge” is used in this paper to refer inclusively to all relevant subject matter.

WIPO Activities during 1998-99

4. In its Program for the 1998-99 biennium, WIPO took an exploratory approach to the IP aspects of TK which have emerged in relevant policy debates and processes. WIPO’s Program recognizes that basic conceptual groundwork and systematic data collection are required to assess the IP aspects of the protection of TK, and to identify the scope of future work in a way which reflects the interests of all relevant stakeholders. To this end a range of activities was carried out under Main Program 11 of the WIPO Program, including: a series of fact-finding missions on traditional knowledge, innovations and culture; the convening of regional consultations on the protection of expressions of folklore; the convening of a Roundtable on Intellectual Property and Indigenous Peoples; and WIPO’s participation as an observer in other relevant international fora. These activities and some of their outcomes and implications are described in the ensuing sections.

Fact-finding missions on traditional knowledge, innovations and culture.

5. While the IP needs of TK holders have been referred to in other international fora, there has been to date no systematic global exercise by international organizations to document and assess the intellectual property needs of TK holders. As the United Nations specialized agency responsible for the promotion of intellectual property, WIPO undertook a series of fact-finding missions (FFMs) “to identify and explore the intellectual property needs and expectations of new beneficiaries, including the holders of indigenous knowledge and innovations, in order to promote the contribution of the intellectual property system to their social, cultural and economic development.” These missions were intended to enable the “study of current approaches to, and future possibilities for, the protection of intellectual property rights of holders of indigenous knowledge, innovations and culture.”

6. WIPO undertook nine FFMs, namely to the South Pacific, South Asia, Southern and Eastern Africa, North America, West Africa, the Arab countries, South America, Central America and the Caribbean. The range of interlocutors included a wide spectrum of stakeholders, including TK holders and their representatives, government officials, research institutes, non-governmental organizations (NGOs), museums, community organizations, village councils, etc. No data was collected and analyzed where forms of TK are held to be secret or sacred by communities or informants. Factual accounts of all the mission activities were repatriated directly to the TK holders and other informants in the form of interim reports. The interim reports from the nine fact-finding missions are available from the International Bureau and a general report will be published in late 1999.

7. From the FFMs, WIPO learned that TK is a rich and diverse source of creativity and innovation. The FFMs revealed that traditional knowledge systems are frameworks for continuing creativity and innovation in most fields of technology, ranging from traditional medicinal and agricultural practices to music, design, and the graphic and plastic arts. Stakeholders consulted during the FFMs considered TK to be a constantly renewed source of wealth, both as an economic asset and as cultural patrimony. This was the case in both developing and developed countries visited during the FFMs.

8. WIPO learned from the FFMs that the IP issues related to TK cut across the conventional branches of intellectual property law, such as copyright and industrial property. In many cases TK holders do not separate “artistic” from “useful” aspects of their intellectual creations and innovations; rather, both emanate from a single belief system which is expressed in daily life and ritual. The FFMs also revealed that numerous indigenous and local communities have protocols for protection of TK and TK-based innovations under customary law. In general, the FFMs showed the richness and diversity of TK on a global scale, both in terms of its inherent creativity and as potential subject matter for IP protection.

Regional consultations on the protection of expressions of folklore

9. The WIPO Program for 1998-99 included four regional consultations on the protection of expressions of folklore, which were held for African countries in Pretoria, South Africa (March 1999), for countries of Asia and the Pacific region in Hanoi, Viet Nam (April 1999); for Arab countries in Tunis, Tunisia (May 1999); and for Latin America and the Caribbean in Quito, Ecuador (June 1999). In total 63 governments of WIPO Member States, 11 intergovernmental organizations, and five non-governmental organizations were represented

at the four consultation meetings. 19 expert speakers on folklore and intellectual property from the respective regions facilitated the consultation sessions.

10. Each of the four regional consultations adopted Resolutions or Recommendations which include proposals for future work addressed to WIPO and UNESCO, on the one hand, and to national governments of the respective regions on the other. The Recommendations and other documents of the four regional consultations are available from the International Bureau.

11. Generally, there was consensus that the WIPO workplan for folklore protection should be expanded significantly to include activities at the national, regional, and international levels. The Recommendations unanimously specify four activities for further work in this field: (i) the provision of legal and technical assistance on the protection of folklore; (ii) specialized training in identification, documentation (including documentation standards), conservation and dissemination of folklore; (iii) the provision of necessary financial resources to relevant national and regional centers and institutions, and (iv) the development of an effective international regime for the protection of expressions of folklore.

Other WIPO activities related to traditional knowledge

12. One subset of traditional knowledge which has received special attention in recent years is "indigenous knowledge", i.e. the knowledge, innovations and creativity embodying the traditional lifestyles of indigenous peoples. To facilitate an exchange of views among policymakers and indigenous peoples concerning the more effective application of the intellectual property system to protect indigenous knowledge, WIPO organized a "Roundtable on Intellectual Property and Indigenous Peoples" (July 23 and 24, 1998). Delegates from 36 WIPO Member States and 104 representatives from 51 indigenous organizations were present at the Roundtable.

13. WIPO also explored the possibility of utilizing existing initiatives and centers of excellence for the identification, collection, documentation and management of expressions of folklore. In 1998 WIPO undertook a fact-finding mission to the Centre des musiques arabes et Méditerranéennes in Sidi Bou Saïd, Tunisia. The mission team recommended that the center serve as the nucleus of a regional approach to the conservation of folklore.

14. Given the interdisciplinarity of the subject matter involved, it has been necessary for WIPO to participate as observers in other international fora and meetings on food, agriculture, the environment, indigenous populations, sustainable development, and cultural and biological diversity. Several of these fora have recently highlighted the intellectual property aspects of TK and requested technical information and cooperation from WIPO.

Conclusion

15. In an era increasingly marked by the globalization of trade, culture and communications, we are witnessing a convergence between the formal intellectual property system, on the one hand, and "informal" systems for protection of traditional knowledge, innovations and creativity, on the other. These systems have been, until recently, like ships passing in the night, integral, highly-developed, effective within their spheres of operation, but existing in virtual independence of each other. Their convergence results from two consequences of current globalization processes, namely, the growing relevance of

intellectual property to an increasing number of countries and users, and the expanding recognition that TK is a valuable economic and cultural asset within the global information society.

16. A hallmark of the new, worldwide relevance of intellectual property is the upcoming entry into force, on January 1, 2000, of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) for developing country Members of the World Trade Organization. At that time, globally-enforceable intellectual property rights will become available to the single largest number of rightsowners having access to legal protection over their innovations and creativity in the history of the formal intellectual property system. As a consequence, new groups with specific needs and uses for intellectual property, including holders of TK, will be brought face to face with existing or incipient national systems for exercise and management of intellectual property rights. The relevance of intellectual property is thus likely to expand both in terms of the number of users of IP systems and the subject matter which they may seek to protect, including traditional knowledge. As has happened so often in the past regarding newly-discovered or -developed forms of protectible subject matter (computer programs, integrated circuits, data bases, for example), constructive engagement with legitimate, if newly-articulated needs for protection of human creativity and innovation will enable the formal intellectual property system to contribute effectively to economic growth and social and cultural progress in the new millennium.

17. In summary, WIPO's exploratory work in 1998-99 has shown that TK is a rich source of creativity and innovation. The issues are complex, however, and in order to achieve better understanding and promote wider consensus, it is necessary that the workprogram for 2000-2001 move beyond exploratory work and issues-identification, and into a phase of addressing basic conceptual problems and testing practical solutions to the protection of TK. Consequently the work program for the 2000-1 biennium includes a number of activities involving exchange of information and consultation activities on identification and documentation of protectable subject matter, pilot projects at national and regional levels on use of the existing intellectual property system to protect TK, exploration of customary law governing custodianship, use and transmission of TK and its relationship to the formal IP system, further consultations among the relevant stakeholders and Member States at regional and international level, and an increase in the level and scope of training and awareness-activities dedicated to TK issues.

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