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**Special theme: Millennium Development Goals
and indigenous peoples**

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Note by the Secretariat

Addendum

- I. World Intellectual Property Organization**
- II. World Trade Organization**
- III. United Nations Framework Convention on Climate Change**

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I. World Intellectual Property Organization

Summary

In the present document, the World Intellectual Property Organization (WIPO) summarizes its response to the recommendations of the United Nations Permanent Forum on Indigenous Issues made at its third session in 2004. In particular, attention is drawn to the development and examination of draft instruments for the protection of traditional cultural expressions/expressions of folklore and of traditional knowledge by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Information is also provided on measures to enhance the participation of indigenous peoples and local communities in the work of the organization, including the sessions of the Intergovernmental Committee.

A. Responses to recommendations addressed or relevant to the World Intellectual Property Organization by the Permanent Forum at its third session

1. The decisions and recommendations of the third session of the Permanent Forum that addressed or were relevant to WIPO were made available as a working document to the seventh session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore in November 2004¹ and were introduced by a member of the Permanent Forum who participated in the session. The recommendations were favourably referred to by several member States and other participants in the session.² It is expected that these recommendations will continue to guide not only the work of the Intergovernmental Committee itself, but also the broader activities of WIPO on related issues.

2. In response to these recommendations, WIPO provides the following information.

Development and examination of draft instruments on traditional cultural expressions and traditional knowledge

3. In late 2003, the member States of WIPO decided on a new and extended mandate for the Intergovernmental Committee, which requires the Committee to accelerate its work and to focus in particular on the international dimension of intellectual property and traditional knowledge and traditional cultural expressions (or “expressions of folklore”). The new mandate of the Committee is not limited in the range of possible results that may eventually be achieved, including the possible development of an international instrument or instruments.

4. At the seventh session of the Intergovernmental Committee, which took place in November 2004, the Committee examined the first drafts of two instruments, one

¹ WIPO/GRTKF/IC/7/13.

² See draft report of session, WIPO/GRTKF/IC/7/15 PROV.

dealing with the protection of traditional cultural expressions/expressions of folklore and the other, in a parallel and linked manner, with traditional knowledge. These draft instruments are aimed at recognizing, among other things, collective interest in traditional know-how and expressions of traditional cultures that are innovative or creative and characteristic of a distinct cultural identity, and at strengthening the legal basis for the prevention of the misappropriation and misuse of such knowledge and expressions held by traditional communities, including indigenous peoples. These draft proposals include compliance with the principle of “free, prior and informed consent” and the recognition of customary laws and practices in the protection of traditional knowledge and traditional cultural expressions.

5. The Intergovernmental Committee called for further comments on the draft instruments, including specific suggestions for wording, before 25 February 2005, and requested the WIPO secretariat to produce, on the basis of the first drafts and all subsequent inputs and comments from participants in the seventh session, further drafts for consideration by the Committee at its eighth session, which will take place in June 2005.

6. All working documents, comments, papers, studies, questionnaires and other materials prepared for consideration by the Intergovernmental Committee, as well as comprehensive reports of its sessions, are available, in English, French and Spanish at <http://www.wipo.int/tk/en/igc/documents/index.html>.

Access to genetic resources and benefit-sharing

7. With regard to the intellectual property aspects of access to and benefit-sharing in genetic resources, discussions within WIPO and in other policy areas have focused largely on examining methods consistent with intellectual property treaties for requiring the disclosure within patent applications of, inter alia: genetic resources and associated traditional knowledge used in the development of a claimed invention; the country of origin, source or legal provenance of such genetic resources and traditional knowledge; and evidence of prior informed consent and equitable benefit-sharing. This work has in large part been undertaken at the request of the Conference of the Parties to the Convention on Biological Diversity, and is intended to support the objectives of the Convention.

8. The diverse approaches towards such disclosure requirements were discussed in the WIPO Technical Study on Patent Disclosure Requirements Related to Genetic Resources and Traditional Knowledge,³ prepared by WIPO at the request of the Conference of the Parties to the Convention on Biological Diversity and submitted to the Conference of the Parties in 2004. Member States, indigenous peoples and traditional communities and other stakeholders continue to explore these complex and sensitive questions in the context of several processes within WIPO and elsewhere.⁴ Within WIPO, the Standing Committee on the Law of Patents, the Working Group on Reform of the Patent Cooperation Treaty and the Intergovernmental Committee have all considered the issue. Following a further invitation from the Conference of the Parties to the Convention on Biological Diversity, WIPO is focusing on some specific issues identified as being of relevance

³ WIPO Publication No. 786 E.

⁴ See WIPO/GRTKF/IC/7/9 and the current database at <http://www.wipo.int/tk/en/databases/contracts/index.html>.

to the Convention. A draft examination of these issues has been prepared and will be considered by a special one-day ad hoc meeting in early June 2005. Relevant proposals and draft materials are currently available at <http://www.wipo.int/tk/en/genetic/proposals/index.html>.

9. WIPO's programme on genetic resources also responds to a widely felt need for more information about current practices concerning the intellectual property aspects of agreements on access to genetic resources and the sharing of consequential benefits. In order to provide a practical contribution in this area, WIPO, in cooperation with the secretariat of the Convention on Biological Diversity, is, inter alia, developing materials on intellectual property issues raised during the establishment of mutually agreed terms for access and benefit-sharing, including through the creation of a public, electronic database on intellectual property provisions in mutually agreed terms.⁴ The Conference of the Parties to the Convention on Biological Diversity has encouraged WIPO to accelerate its work in this area.

Capacity-building

10. The programme of activities in this area includes a range of complementary practical activities, such as capacity-building, legislative assistance, awareness-raising training and cooperation with a broad spectrum of national, regional and international initiatives.

Contribution of expertise and experience by the Permanent Forum

11. The Permanent Forum is represented at sessions of the Intergovernmental Committee and has been represented at other national and regional events organized by WIPO. The Forum has also played a prominent role in the discussions of the Intergovernmental Committee on the enhancement of indigenous participation in the sessions of the Committee and has taken part in a WIPO regional conference on the protection of traditional knowledge and traditional cultural expressions. **WIPO considers that the Forum has already played a significant role in contributing expertise and experience to its activities and appreciates the mutual cooperation between itself and the Forum and WIPO.**

Participation of indigenous peoples and local communities

12. The member States of WIPO have repeatedly stressed the priority attached to enhancing the participation of the Permanent Forum and indigenous representatives in the sessions of the Intergovernmental Committee. There is continuing exploration and consultation on options and modalities for facilitating and generally improving the participation of indigenous peoples in WIPO's work on these issues. **The practical experience and guidance of the Forum and its members are invaluable inputs to achieving this goal. Member States of WIPO have expressed their unanimous support for directly involving representatives of indigenous and local communities as much as possible in the work of the Intergovernmental Committee.**⁵

13. In this regard, a number of practical steps have already been undertaken, including a fast-track accreditation procedure for all non-governmental

⁵ See WIPO/GRTKF/IC/4/15, para. 60.

organizations (NGOs) has been in place since the first session of the Intergovernmental Committee in April 2001. More than 100 NGOs have received accreditation, including many representing indigenous peoples. No applicant has been denied accreditation.

14. The General Assembly of WIPO has extended a formal invitation to the Permanent Forum to take part in the sessions of the Intergovernmental Committee, and many participants have welcomed its active participation. A number of member States have adopted the practice of funding the participation of representatives of indigenous and local communities in the sessions of the Committee.

15. The funds provided by WIPO to support the participation of member States that are developing countries have been used in some cases by such countries to support the participation of leaders of their indigenous or local communities.

16. Consultations and workshops at the national and regional level and other forums aimed at developing focused input for the Intergovernmental Committee have included representatives of the Permanent Forum and indigenous and local communities as speakers and participants. The WIPO web site provides for written contributions by accredited NGOs on the issues before the Committee. Specific briefings and consultations for representatives of NGOs, particularly representatives of indigenous and local communities, are also undertaken within the framework of meetings of the Committee.

17. The WIPO secretariat has continued its practice of consulting with interested representatives of indigenous and local communities on draft documents and other material being developed for the Intergovernmental Committee, as well as related capacity-building and informational documents, including a series of case studies and a distance learning course contributed to by indigenous experts.

18. Steps have also been undertaken to encourage voluntary donors to support the immediate participation of representatives of accredited observers in the sessions of the Intergovernmental Committee. The Committee has also requested the development of a proposal to establish a voluntary fund at WIPO to fund the participation of representatives of indigenous peoples and local communities in its sessions. A draft proposal for a voluntary fund will be considered at the next session of the Committee, when its future directions will be considered for possible referral to the General Assembly.

19. At its most recent session in November 2004, the Intergovernmental Committee gave priority to extensive discussions on how to enhance the participation of indigenous and local communities. It agreed, among other things, that sessions of the Committee should be preceded by panel presentations chaired by a representative of an indigenous or local community. Such a panel will be held at the commencement of the eighth session of the Committee in June 2005.

20. Apart from the Intergovernmental Committee, the WIPO General Assembly stipulated that the one-day meeting on patent disclosure requirements in June 2005 should be timed so as to facilitate the participation of indigenous and local communities. For this reason, it is proposed to hold it back to back with the indigenous consultative forum, the indigenous panel and the next session of the Committee.

Cooperation with other organizations and agencies

21. As requested by the member States of WIPO and as recommended by the Permanent Forum, the organization continues to cooperate with other organizations and agencies on issues of concern to the Permanent Forum and to ensure that its work on recognition and protection of traditional cultural expressions and traditional knowledge is complementary to and supportive of their work, including: the secretariat of the Convention on Biological Diversity, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Environment Programme (UNEP), the United Nations Conference on Trade and Development (UNCTAD), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the World Health Organization (WHO), the United Nations Development Programme (UNDP) and the United Nations Industrial Development Organization (UNIDO). WIPO has also coordinated with the World Bank, the World Trade Organization and a range of regional bodies and NGOs.

B. Information and suggestions regarding the special theme of the fourth session, “Millennium Development Goals and indigenous peoples”

22. As noted in the technical position paper on the Millennium Development Goals and indigenous peoples prepared by the Inter-Agency Support Group on Indigenous Issues, **the knowledge systems and cultural expressions of indigenous peoples are of immense value for the peoples themselves as well as for the world as a whole. Thus, preserving, promoting and protecting traditional knowledge and cultural expressions contribute towards the achievement of the Millennium Development Goals.**

II. World Trade Organization

Summary

In the present document, the World Trade Organization provides updated information regarding the debate on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) relating to the protection of traditional knowledge at its committees and councils with regard to the review of the implementation of the Agreement. The World Trade Organization also provides information about its technical cooperation activities and training in this area.

23. The issues of the relationship between the TRIPS Agreement and the Convention on Biological Diversity and the protection of traditional knowledge and folklore, issues of interest to indigenous peoples, were first raised in the World Trade Organization in the Committee on Trade and Environment in 1995 and later in the TRIPS Council in 1999 under the review of article 27.3 (b). Article 27.3 (b), which allows exceptions from patentability in the case of certain plants and animals

other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes, came up for review in the TRIPS Council, as foreseen in the provision itself, in 1999 and this review continues to date.

24. At the Doha ministerial meeting of November 2001, Ministers instructed the TRIPS Council, in pursuing its work programme, including under the review of article 27.3 (b), the review of the implementation of the TRIPS Agreement under article 71.1 and the work foreseen pursuant to paragraph 12 of the Doha Ministerial Declaration (on so-called outstanding implementation issues), to examine, inter alia: the relationship between the TRIPS Agreement and the Convention on Biological Diversity; the protection of traditional knowledge and folklore; and other relevant new developments raised by Members pursuant to article 71.1. The Ministers further instructed the Council that, in undertaking this work, the TRIPS Council should be guided by the objectives and principles set out in articles 7 and 8 of the TRIPS Agreement and should take fully into account the development dimension (WT/MIN(01)/DEC/1, para. 19).

25. In the light of these instructions, the Council for TRIPS has worked since 2002 on three agenda items, namely: the review of article 27.3 (b); the relationship between the TRIPS Agreement and the Convention on Biological Diversity; and the protection of traditional knowledge and folklore.

26. These issues are also among the outstanding implementation issues being dealt with in a consultative process under the auspices of the Director-General of the World Trade Organization. The Director-General is to report to the Trade Negotiations Committee and the General Council no later than May 2005. The General Council is to review progress and take any appropriate action no later than July 2005.

27. The World Trade Organization also undertakes training and technical cooperation activities, both in and outside Geneva, in which the above-mentioned topics are dealt with as a part of the overall programme in the intellectual property area.

III. United Nations Framework Convention on Climate Change

Summary

In the present document, the United Nations Framework Convention on Climate Change provides background information on the consideration of recommendations from the second session of the Permanent Forum in 2003 by the Parties of the Subsidiary Body for Implementation of the United Nations Framework Convention on Climate Change in June 2004. The Subsidiary Body for Implementation would not reconsider recommendation 78 of the third session of the Permanent Forum at its upcoming session. The parties were however prepared to take some steps to enhance the participation of NGOs, including indigenous peoples organizations, within the Framework Convention on Climate Change process, albeit without any financial support. From the conclusions it may be understood that Parties do not intend to return to the issue in the immediate future.

A. Recommendations specifically addressed to the United Nations Framework Convention on Climate Change by the Permanent Forum at its second and third sessions

28. The recommendations of the Permanent Forum on Indigenous Issues at its second session addressed to the United Nations Framework Convention on Climate Change, contained in paragraphs 47 and 61 of the report of the Permanent Forum (E/2003/43, chap. I, paras. 47 and 61) were considered by the Parties to the United Nations Framework Convention on Climate Change in June 2004 during the twentieth session of the Subsidiary Body for Implementation within the discussions based on the document “Effective participation in the Convention process” (FCCC/SBI/2004/5). The report of the Subsidiary Body for Implementation summarizes the discussions by the parties (FCCCC/SBI/2004/10, paras. 105-109) and indicates that although Parties were reluctant to provide a status to indigenous peoples’ organizations beyond the traditional observer status, they were prepared to take some steps to enhance participation by NGOs, including indigenous peoples organizations, within the Framework Convention on Climate Change process, albeit without recourse to financial support. From the conclusions it may be understood that the parties do not intend to return to the issue in the immediate future.

29. The recommendation, contained in the report of the Permanent Forum on its third session (E/2004/43, chap. I, para. 78) addressed to the United Nations Framework Convention on Climate Change, to “sponsor a workshop to discuss the merits and mechanisms for the establishment of a working group on indigenous peoples within the Conference of the Parties process, ensuring the participation of indigenous peoples from developed and undeveloped countries as well as interested member States” would require financial support.

30. In discussions during the twentieth session of the Subsidiary Body for Implementation, the Parties, although recognizing the importance of enhanced participation and wishing to encourage a fuller participation by indigenous peoples organizations, were not in a position to commit themselves to any action with financial implications or which envisaged new institutions. The Subsidiary Body for Implementation invited individual Parties to consider initiating ways to facilitate participation by indigenous peoples’ organizations.

31. Consideration of the matter in the Subsidiary Body for Implementation has been concluded and is not likely to be resumed at upcoming sessions of the Subsidiary Body. There will, however, be opportunities for representation by indigenous peoples in sessions of the Convention bodies and at workshops on substantive issues on the agenda of the United Nations Framework Convention on Climate Change. The Parties have also been encouraged to draw upon the expertise of indigenous peoples organizations when discussing matters of concern to them.

B. Recommendation addressed to one or more agencies or to the United Nations system in general by the Permanent Forum at its third session

32. The recommendation contained in the report of the Permanent Forum on its third session (E/2004/43, chap. I, para. 85) to “support indigenous peoples’

organizations in order to develop capacity on research, work and proposals on human indicators applicable to the implementation of the environmental conventions and the plans and programmes of work of the Convention on Biological Diversity” is outside the direct remit of the Convention secretariat.

33. The parties are sympathetic to the relevance of the Convention and its Protocol to indigenous peoples organizations and encourage their participation by ensuring that opportunities are available to them under the Convention process, including access to workshops and assistance with catalysing informal contacts. The Convention secretariat has no mandate to develop the capacity of observer organizations on research, work and proposals to develop human indicators applicable to the United Nations Framework Convention on Climate Change. Ongoing work on capacity-building for developing countries is focused at improving capacity-building in and for the Parties to the Convention and is not addressed specifically at indigenous peoples organizations.

34. In summarizing, the recommendation of the third session of the United Nations Permanent Forum on Indigenous Issues addressed to the UNFCCC, contained in paragraph 78 of the report would have financial implications and consequently can be said to have been addressed by the Subsidiary Body for Implementation. The recommendation contained in paragraph 85 concerning support for capacity-building within indigenous peoples organizations is outside the direct mandate of the Convention secretariat.

Annex I

Recent publications of the World Intellectual Property Organization relevant to indigenous peoples

- Two booklets on: “Intellectual Property and Traditional Cultural Expressions/Folklore” and “Intellectual Property and Traditional Knowledge”;
- Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions, by Ms. Terri Janke;
- A study on the Protection of Expressions of Folklore/Traditional Cultural Expressions, by Mrs. P. V. Valsala Kutty;
- Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions/Expressions of Folklore;
- World Intellectual Property Organization-United Nations Environment Programme Study on the Role of Intellectual Property Rights in the Sharing of Benefits Arising from the use of Biological Resources and Associated Traditional Knowledge

The publications listed above are available upon request from the WIPO secretariat and at <http://www.wipo.int/tk/en/publications/index.html>

Annex II

Extract from the report of the Subsidiary Body for Implementation on its twentieth session

The following extract from the report of the Subsidiary Body for Implementation (SBI) on its twentieth session is taken from document FCCC/SBI/2004/10:

“Participation of indigenous peoples

“105. The SBI considered the recommendations of the Permanent Forum on Indigenous Issues, as well as other requests by indigenous peoples organizations, summarized in document FCCC/SBI/2004/5.

“106. The SBI noted that indigenous peoples organizations have been admitted as observers in accordance with Article 7, paragraph 6, of the Convention and that the secretariat has an officer responsible for liaising with observer organizations, including the indigenous peoples organizations. It also noted that the agendas of the Convention bodies include items relevant to the concerns of indigenous peoples. The SBI encouraged the indigenous peoples organizations to make full use of the existing bodies and the opportunities currently afforded to them under the Convention.

“107. The SBI invited Parties to consider drawing on the expertise of indigenous peoples organizations when discussing matters of concern to them. It encouraged individual Parties to give consideration to ways of enhancing the participation of indigenous peoples organizations in the Convention process.

“108. The SBI acknowledged the importance of an enhanced participation by indigenous peoples organizations in the Convention process, in particular through discussions on relevant agenda items, participation in workshops and informal contacts. The SBI invited the chairs of relevant Convention bodies and the secretariat to facilitate such participation to the extent possible, without recourse to financial support.

“109. The SBI concluded that opportunities exist for fostering a full and effective participation by indigenous peoples organizations in the Convention process. It requested the secretariat to convey its conclusions to the Permanent Forum on Indigenous Issues.”