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of Intellectual Property Rights*

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STATEMENT BY THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) ON INTELLECTUAL PROPERTY, BIODIVERSITY AND TRADITIONAL KNOWLEDGE

This statement was made by WIPO at the 24-25 October 2000 meeting of the Committee on Trade and Environment, and is being circulated to Members as requested by WIPO.

I. INTRODUCTION

1. The World Intellectual Property Organization (WIPO) is one of the specialized agencies of the United Nations (UN) system of organizations. WIPO's mandate is the promotion of the protection of intellectual property (IP) throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization. The notion "intellectual property" is defined in the Convention Establishing the World Intellectual Property Organization, 1967, to include rights relating to:

- Literary, artistic and scientific works;
- performances of performing artists, sound recordings, and broadcasts;
- inventions in all fields of human endeavour;
- scientific discoveries;
- industrial designs;
- trademarks, service marks, and commercial names and designations;
- protection against unfair competition; and
- all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

2. WIPO, whose headquarters are in Geneva, Switzerland, has currently 173 Member States. Its main activities include:

- Facilitating the conclusion of new international treaties and the modernization of national legislation;
- administration of more than 20 international treaties in the fields of copyright, related rights, patents, industrial designs and marks;
- providing technical advice and assistance to developing countries as part of an extensive cooperation for development programme;
- the assembly and assimilation of information and advice to a diverse range of parties; and

* At its meeting of 21-22 September 2000, the Council for TRIPS agreed that future documents to be circulated in the Committee on Trade and Environment in relation to item 8 of the work programme of that Committee concerning "the Relevant Provisions of the TRIPS Agreement" be circulated jointly in the Committee on Trade and Environment and the Council for TRIPS (document IP/C/M/28, paragraph 138).

- the maintenance of services for facilitating the obtaining of protection of inventions, marks and industrial designs for which protection in several countries is desired, such as the Patent Cooperation Treaty (PCT), 1970, the Hague Agreement Concerning the International Deposit of Industrial Designs, 1925, the Madrid Agreement Concerning the International Registration of Marks, 1891, and the Protocol Relating to that Agreement, 1989.

II. WIPO, BIOLOGICAL DIVERSITY AND TRADITIONAL KNOWLEDGE: 1998-1999

3. Since the 1998-99 biennium WIPO has taken an exploratory approach to emerging intellectual property issues related to trade and the environment. Specifically, Main Program 11 of the WIPO Program and Budget, which is entitled "Global Intellectual Property Issues," contains a Subprogram on "Biological Diversity and Biotechnology." The following section provides a summary of the activities undertaken under this Main Program on intellectual property in relation to biological diversity and traditional knowledge.

4. In 1998, WIPO commenced a new set of activities designed to explore the IP aspects of the protection of traditional knowledge (TK). The main objective of these activities under the WIPO Program and Budget for 1998-1999 was to identify and explore the IP needs and expectations of the holders of TK, in order to promote the contribution of the intellectual property system to their social, cultural and economic development.

5. During the 1998-1999 biennium, WIPO's activities were aimed at issue identification, recognizing that basic conceptual groundwork and systematic data collection were 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 by WIPO in 1998 and 1999, including:

- (a) In July 1998 and November 1999, WIPO organized two Roundtables to facilitate an exchange of views among policymakers, indigenous peoples and other holders of TK on the more effective application of the IP system for the protection of traditional and indigenous knowledge. The Lists of Participants, Programs, and Papers of these Roundtables are available from the International Bureau of WIPO and on the WIPO website (<www.wipo.int/traditionalknowledge>).
- (b) WIPO has undertaken, in cooperation with the United Nations Environment Programme (UNEP), an On-Site Documentation Project on the Role of Intellectual Property Rights in the Sharing of Benefits Arising from the Use of Traditional Knowledge and Associated Biological Resources. This project produced three case studies that WIPO and UNEP jointly submitted to the fifth Conference of the Parties to the Convention on Biological Diversity (CBD), which took place in Nairobi, Kenya, from 15-23 May 2000. The studies focus on cases where intellectual property rights were used as a tool for benefit-sharing in India, Mali and Nigeria. The cases constitute part of a larger Study undertaken jointly by WIPO and UNEP on the role of intellectual property rights in benefit sharing in respect of biological resources and associated traditional knowledge. The experiences included in these cases may provide lessons as to how the effective protection of intellectual property rights can support the implementation of the CBD with respect to the sharing of benefits arising from the use of biological resources and associated traditional knowledge.
- (c) Between June 1998 and November 1999, WIPO conducted nine fact-finding missions (FFMs) to 28 countries in the South Pacific, Southern and Eastern Africa, South Asia,

North America, Central America, West Africa, the Arab countries, South America and the Caribbean. The FFM's were designed to enable WIPO to gain, first-hand, a sense of the needs and expectations of TK holders relating to the protection of their TK. 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 IP-related needs of TK holders. As the United Nations specialized agency responsible for the promotion of IP, WIPO undertook the FFM's as part of its study of current approaches to, and future possibilities for, the protection of the IP rights of holders of TK.

Factual accounts of all the mission activities were transmitted directly to the TK holders and other informants in the form of interim reports. The interim reports from the nine FFM's are available from the International Bureau of WIPO and on the WIPO website (<www.wipo.int/traditionalknowledge>).

A general report on all the FFM's has been published in draft form for public comment until 15 December 2000. The report identifies the main IP needs and expectations regarding the protection of TK identified by WIPO during the FFM's. The draft report has been made available for comment electronically on the WIPO website at <www.wipo.int/traditionalknowledge> and in paper form. After December 15, 2000, comments received will be taken into account in producing a final report which will be published in 2001.

- (d) In cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO), WIPO organized four regional consultations on the protection of so-called "expressions of folklore." The consultations were designed to enable representatives of WIPO's Member States to exchange views, clarify issues, and provide guidance for WIPO's future work in relation to the protection of folklore. The Recommendations, Resolutions and other documents from these Consultations are available from the International Bureau of WIPO and on the WIPO website (<www.wipo.int/traditionalknowledge>).
- (e) The interdisciplinary nature of the subject matter involved made it necessary for WIPO to participate in other international fora and meetings on subjects such as food security, agriculture, the environment, indigenous populations, sustainable development, trade, culture and biological diversity. These were mostly organized by intergovernmental agencies within the UN system and certain national, regional and non-governmental organizations.

III. WIPO, BIOLOGICAL DIVERSITY AND TRADITIONAL KNOWLEDGE: 2000-2001

6. WIPO's exploratory work in 1998 and 1999 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 work programme for 2000-2001 move beyond issue-identification, and into a phase of addressing basic conceptual problems and testing practical solutions for the protection of TK. WIPO's work programme for the 2000-2001 biennium responds to several of the needs and expectations identified during 1998 and 1999, and includes, for example, the following:

- (a) The development of information materials on options under the existing IP system for the protection of TK

7. These materials will provide practical information on options for the protection of TK under the IP system. The materials will be aimed at two main target groups: TK holders and the national IP offices responsible for the administration of the IP system in each country. The materials will form the basis of WIPO's TK-related training activities, including the national workshops referred to immediately below. The same materials will also form the basis of an IP/TK Distance Learning Course to be offered by WIPO. The Distance Learning Program of the WIPO Worldwide Academy takes full advantage of information technology and the Internet, offering new teaching methods, specially designed course materials, evaluation tools, tailored means of delivery and expanded audiences. Teaching takes place in the virtual environment of the WIPO Worldwide Academy's web site at <<http://academy.wipo.int>>. Further information is available at this website. The materials will also be used for WIPO Training Workshops on the IP System and the Protection of TK. The workshops will provide information and training on the IP system and the protection of TK to TK holders and other persons at the grass-roots level, and to national IP offices. In addition to these workshops, TK protection is now almost invariably included in the programmes for the many training activities organized by WIPO's Cooperation for Development Sector.

- (b) IP information, training and standards for the documentation of TK

8. This activity would pursue two practical results: (i) it will allow TK documentation initiatives to manage IP rights (IPRs) during the TK documentation process, and (ii) it will allow national IP offices to integrate the TK documentation from those initiatives into their existing procedures for filing, examining and granting of IPRs under the existing IP system. For example, by integrating TK documentation into existing procedures and IP information systems, IP offices could include TK documentation in their prior art searches when examining applications for patents in respect of TK-based inventions. The result would be practical information materials on managing IPRs during the documentation process, written in a "How To" format and accessible to users with a limited IP background. The information materials would be applied in practical training workshops on IPR management for communities and key documentation institutions. The workshops would seek to link communities, documentation initiatives and national IP offices so as to initiate cooperation between IP offices and TK documentation initiatives at the national level.

- (c) Studies of actual examples in which TK protection has been sought under the IP system, and publication of the lessons learned

9. This activity will provide practical information on specific and actual examples in which indigenous and local communities have taken advantage of, or attempted to use, the IP system to either protect their TK or to further their own interests in the commercial application and utilization of their TK. The output of the activity will include practical information on difficulties and successes experienced in applying the IP system to TK, lessons learned and divergences between identified needs of TK holders and the protection provided by the existing IP system.

- (d) Feasibility studies on the applicability of customary laws to TK

10. TK holders are subject to both customary and modern legal systems, since their knowledge constitutes subject matter to which both may apply. The interfaces, similarities and differences between customary and modern legal systems require understanding and management. This activity would seek ways to manage the relationship between modern and customary understandings of IPRs over TK subject matter. It would record customary law systems and related cultural understandings

relevant for TK protection and draw implications on how the IP system may recognize and use customary law to manage the relationship with TK holders.

(e) A pilot project on collective acquisition, management and enforcement of IPRs in TK

11. One of the problems in the IP/TK field is the collectivity of creation and ownership of TK. This activity would specifically address this issue by exploring options for the collective acquisition, administration and enforcement of IPRs by TK holders' associations. It would seek to examine the capacity of a selected community or TK holder association to acquire, collectively exercise and enforce all relevant IPRs on behalf of the holders.

IV. THE WIPO INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

12. Following discussions about intellectual property and genetic resources among WIPO's Member States since September 1999, the WIPO General Assembly, at its 26th Session, held in Geneva from 26 September to 3 October 2000, decided that a distinct body should be established within WIPO to facilitate discussions among Member States and that, in addition to the issue of genetic resources, the discussions should also include the results of WIPO's previous work on the related fields of traditional knowledge and expressions of folklore. To this end, the Member States decided to establish an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

13. The Intergovernmental Committee will constitute a forum in which discussions may proceed among Member States on the three primary themes which they identified during their consultations: intellectual property issues that arise in the context of (i) access to genetic resources and benefit sharing; (ii) protection of traditional knowledge, whether or not associated with those resources; and (iii) the protection of expressions of folklore.

14. The Intergovernmental Committee will be open to all Member States of WIPO. As is usual in WIPO bodies, it is proposed that relevant intergovernmental organizations and accredited international and regional non-governmental organizations be invited to participate in an observer capacity. It is foreseen that the Committee would hold its first session in the Spring of 2001.

V. CONCLUSION

15. WIPO recognizes that intellectual property rights may be of relevance in the fields of trade as well as environmental policy. As the specialized UN-agency responsible for intellectual property protection, WIPO is well equipped to provide accurate technical information on trade-related as well as environmental aspects of intellectual property rights. Since 1998, WIPO's work has aimed at producing and providing such information for the relevant stakeholders, particularly regarding the relevance of intellectual property for biological diversity and traditional knowledge. On the basis of written requests, WIPO can provide general information on intellectual property to the Committee on Trade and Environment.
