

26th Session of WIPO Intergovernmental Committee on Intellectual property and Genetic Resources, Traditional Knowledge and Folklore

(Geneva, 3-7 February 2014)

Ambassadorial/ Senior Capital Based Officials' Meeting, Opening Statement

Chairman,

On behalf of the European Union and its Member States we thank you for your continued, able stewardship of this process. We would like to reaffirm our commitment to the IGC process. We fully support the objective of a balanced approach towards the subjects discussed and acknowledge the importance of genetic resources, traditional knowledge, and traditional cultural expressions and the role they play in our cultural and natural heritage.

Chairman, the EU and its Member States have demonstrated their engagement and flexibility in the IGC process. We have proposed a mechanism under which we could contemplate agreeing a requirement to disclose the origin, or source, of genetic resources in patent applications. This does not mean we could accept any form of disclosure requirement, but one having a specific form with safeguards existing as part of an overall agreement to ensure legal certainty, clarity, and appropriate flexibility. A disclosure requirement which discouraged, or created legal uncertainty in, the use of the patent system would not facilitate the sharing of benefits, and would not be in anybody's best interests. If we achieved this, and in accordance with our position expressed in document GRTKF/IC/8/11, we could eventually consider a mandatory requirement in this regard.

However, I think we all agree that all components of the IGC are complex issues, with potentially far reaching ramifications. It is imperative that we get things right. In our view this can only be ensured if our work is guided by solid evidence of the implications, and feasibility, in social, economic, and legal terms. We have to note, though, that especially in relation to Traditional Knowledge and Traditional Cultural Expressions, there is an absence of evidence of the effect the instruments under negotiation would have on stakeholders, be they holders, users, or society at large.

Chairman, many members of this Committee would see our work as being to develop *sui generis* IP rights which afford economic protection – and the right to exclude others – from knowledge and cultural expressions that are deemed 'traditional', regardless of whether that knowledge or those cultural expressions are in the public domain. If we build such a system, we build it on a paucity of

national experiences, and little clear view of the potential effects. Evidence that the contemplated measures would encourage innovation and creativity, while safeguarding the rights of not just indigenous, but all, peoples in society, should be the foundation upon which our work proceeds. At this stage, we do not see that such evidence has been presented. This is probably one of the reasons why, despite many years of work, we have not yet been able to establish even common objectives for our work.

Against that background, in our view it is becoming increasingly clear that the IGC will not succeed in balancing both a better recognition of Traditional Knowledge and Traditional Cultural Expressions and safeguarding existing freedoms and the public domain, if we continue working in the context of binding instruments. Consequently, we propose that other, non-binding, solutions should be considered. From an intellectual property perspective, actions including raising awareness and encouraging use of the existing national legal frameworks, including the patent, trade mark, design and copyright systems, and improving access to those frameworks to safeguard both Traditional Knowledge and Traditional Cultural Expressions can in our view usefully be explored and would provide important progress compared with the status quo. Such an approach could sit usefully alongside encouraging the prevention of un-authorised disclosure, preserving use within the traditional context, and uses which do not disrespect the cultural norms and practices of holders.

In conclusion: we clearly reaffirm our commitment to the IGC process, and fully support and commit to continued negotiations in which we will, of course, engage constructively and with appropriate representation; however, the work of this committee should not continue down a blind alley, but must be pragmatic, efficient, guided by economic evidence, clear objectives, and a clear picture of the likely effects.

Thank you Chairman.
