

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore



Established in 2000, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) is currently undertaking text-based negotiations with the objective of finalizing an agreement on one or more international legal instruments that would ensure the balanced and effective protection of genetic resources, traditional knowledge and traditional cultural expressions (the terms “traditional cultural expressions” and “expressions of folklore” are used interchangeably in WIPO discussions). Such an instrument or instruments could range from a recommendation to WIPO members to a formal treaty that would legally bind countries choosing to ratify it.



In July 2022, WIPO Member States decided to convene a Diplomatic Conference to conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources no later than 2024.

This brief describes the origins and rationale of the IGC, the participation of members and observers including Indigenous Peoples as well as local communities, its achievements and the state of ongoing negotiations under its mandate.

Origins and rationale

Work within the intellectual property (IP) community on the protection of traditional cultural expressions (TCEs) goes back to the 1960s. The impetus came from a growing sense in developing countries that folklore embodied creativity and was part of the cultural identity of Indigenous Peoples as well as local communities; it was therefore seen as worthy of IP protection, especially since new technologies were making folklore increasingly vulnerable to exploitation and misuse.

The 1967 revision of the Berne Convention for the Protection of Literary and Artistic Works, where protection is based on originality and identifiable authorship, fell short of ensuring adequate protection for TCEs. The member states of WIPO and UNESCO (United Nations Educational, Scientific and Cultural Organization) developed in 1982 a set of Model Provisions for national laws to serve as a source of inspiration for interested countries. In 1996, the WIPO Performances and Phonograms Treaty included protection of the rights of performers of expressions of folklore.

Work on the relationship between IP, traditional knowledge (TK) and genetic resources (GRs) is more recent, and stems from concerns regarding the role that IP protection should play in achieving global policy objectives as varied as the conservation of biodiversity (as enshrined in the Convention on Biological Diversity, 1992), food security, free and fair trade, climate change and sustainable development.

These linkages, mainly established by discussions in other international forums, have significant implications for the IP system.

In particular, the spread of new technologies, such as biotechnology, highlighted the potential economic value of GRs and associated TK, which became an increasingly important component of patentable inventions. As a result, many people began to argue that the patent regime should help to prevent misappropriation and promote fair benefit sharing between holders of those assets (mostly biodiversity-rich countries) and those with the modern technologies to access and use them. IP issues regarding access to GRs and associated TK came onto the agenda of the WIPO Standing Committee on Patents in the late 1990s, and were raised in the preparatory work leading up to the WIPO Diplomatic Conference for the adoption of a new Patent Law Treaty in 2000.

In parallel, the WIPO secretariat conducted fact-finding missions, regional consultations, workshops and roundtables on GRs, TCEs and TK, to ascertain the needs and expectations of Indigenous Peoples and also local communities, as well as representatives of government, industry and civil society around the world. These activities were undertaken by a new WIPO division, the Global Issues Division — established in 1997 — which, in 2009, became the Traditional Knowledge Division.

At the same period, the then Director General of WIPO held informal consultations on the question of GRs and associated TK. These ultimately led to a proposal that a distinct body be established within WIPO to facilitate discussions thereon. It was also proposed that the discussions should include the results of WIPO's previous work in the related field of TCEs. In 2000, this body was established as the IGC.

At roughly the same time, Indigenous Peoples' rights and issues began to command greater attention internationally. In 2000, the United Nations Permanent Forum on Indigenous Issues was established as an advisory body to the UN Economic and Social Council. In 2007, the UN Declaration on the Rights of Indigenous Peoples was adopted by the UN General Assembly. Longstanding claims by Indigenous Peoples for control over their cultural property and IP became more pressing.

In sum, the origins of the IGC and its rationales are varied. First, it was established to address three new themes that shared certain distinct features: GRs, TK and TCEs were regarded as the “common heritage of humanity” and as intellectual valuables requiring appropriate forms of IP protection. Second, GRs, TK and TCEs were seen as the intellectual assets of new key players in IP policy-making, namely developing countries, Indigenous Peoples and local communities. Third, and more broadly, the IGC was conceived as part of a larger and structured endeavor by WIPO to move towards a modern, responsive IP system that could embrace non-Western forms of creativity and innovation, be comprehensive in terms of beneficiaries, and be fully consistent with developmental and environmental goals.

Participation

Each session of the IGC usually lasts around five working days and takes place at WIPO headquarters in Geneva. Participants comprise IGC members (WIPO member states) and a wide array of observers.

The IGC’s intergovernmental character gives it the authority to initiate norm-setting discussions and to propose international rules for adoption by a Diplomatic Conference or another WIPO body as appropriate.

Although representatives from the IP offices of WIPO member states constitute a substantial part of the government delegations, the cross-cutting nature of the issues under discussion encourages and calls for a very diverse spectrum of participation. IP office representatives frequently coordinate their views with government experts specialized in issues related to the environment, agriculture, trade, foreign affairs, food, health and culture, to mention only a few.

This diversity of participation goes beyond government officials. It also characterizes the observers, which include relevant intergovernmental organizations and numerous accredited non-governmental organizations (NGOs).

Indigenous Peoples in particular need to be able to participate, express their views and have their voices heard in the IGC decision-making process, in accordance with the 2007 UN Declaration on the Rights of Indigenous Peoples, as any outcomes may affect their rights.

In April 2001, a fast-track accreditation procedure was put in place to register over 400 ad hoc accredited observers, many of whom represent Indigenous Peoples as well as local communities. The IGC decided in 2004 that its sessions should be preceded by panel presentations chaired by and composed of representatives of Indigenous Peoples and local communities, whose participation is funded by WIPO. Among other practical measures to enhance participation, which include briefings, consultative processes and logistical support, one of the most important was the creation in 2005 of the WIPO Voluntary Fund for accredited indigenous and local communities, designed to finance their participation. A large number of representatives of various Indigenous Peoples and also local communities have since been funded through this mechanism.

Funding is also available for representatives of developing countries and certain countries in Europe and Asia, in order to facilitate their participation in the IGC process.

The IGC usually elects its chair and vice-chairs every two years. The WIPO secretariat plays a facilitating role and provides administrative support, from preparing documentation to providing briefings, organizing consultations, producing studies on specific subjects, and generally assisting the chair in the performance of his or her functions. Working documents and interpretation of the proceedings are available in the six official United Nations languages. The Traditional Knowledge Division carries out the role of the secretariat of the IGC process.

Achievements to date

The founding mandate of the IGC in 2000 left open what tangible outcomes might arise from its work. The issues were largely new to WIPO, and, at that stage, the IGC was described as a “forum for discussion.” Subsequently, and formalized in 2009, the IGC has conducted “text-based negotiations” towards the adoption of an international legal instrument or instruments. In the meantime, however, it can claim some important achievements.

For example, the IGC process stimulated increased recognition of TK within the patent system. In 2002, certain TK journals were included in the minimum documentation for applications under WIPO’s Patent Cooperation Treaty, and TK classification tools were integrated within the International Patent Classification in 2003.

In order to provide guidance on the IP aspects of mutually-agreed terms for fair and equitable benefit-sharing related to GRs, WIPO has developed, and regularly updates, an online database of relevant contractual practices. It has also prepared a guide on IP clauses in access and benefit-sharing agreements.

Under the auspices of the IGC, WIPO has carried out numerous studies and developed other resources (such as glossaries, surveys of national experiences, a laws database and training programs), which have proved useful for member states and others. They are the result of a wide exchange of data and views between member states based on questionnaires and surveys of relevant national experiences and practices, from existing sui generis (special, specific) national or regional protection systems for TK and TCEs to IP-related clauses in contracts framing access to and use of GRs. These resources illustrate the very rich and living cultural traditions that are the subject of the IGC’s negotiations and help to better identify the different policy and legal options available.

Inter-sessional seminars and briefings have provided informal opportunities for WIPO members and observers to share regional and national community practices, and experiences, as well as to exchange views on critical IGC issues. Since 2018, ad hoc Expert Working Groups have met to address specific legal, policy and

technical IGC issues, thereby supporting and facilitating the negotiations of the IGC's plenary.

Since its first session in 2001, the IGC's achievements also include certain "intangibles" such as:

- Inclusion and consultation: the IGC has established new benchmarks for inclusion and consultation;
- Clarity and understanding: age-old IP terms, such as "protection," "originality," "novelty" and the "public domain" are being re-thought;
- Content and context: the IGC is considering innovative and sui generis (special, specific) approaches. Through coordinating closely with other relevant forums, its work has helped to re-energize WIPO's engagement with the rest of the United Nations system and other intergovernmental bodies.

In parallel, an international treaty on the protection of audiovisual performances, adopted in June 2012 in Beijing, includes the performers of expressions of folklore among its beneficiaries, thereby extending the rights already granted to them by the WIPO Performances and Phonograms Treaty of 1996.

In 2020 and 2021, the negotiations were interrupted by the COVID pandemic. Since then, new tools are being used to conduct certain technical activities virtually as a complement to the formal negotiations.

In July 2022, the WIPO General Assembly decided to convene a Diplomatic Conference to conclude an international legal instrument, as mentioned above.. This new international legal instrument would address IP questions related to genetic resources and traditional knowledge associated with them, including a possible disclosure requirement and the enhanced use by patent examiners of informational databases on genetic resources and associated traditional knowledge.

Progress in ongoing negotiations

By providing a specialized forum for the structured exchange of information and views within WIPO, the IGC process has succeeded in building up a robust international understanding of the issues. The exploratory “forum” has since evolved into a true negotiating body, framed by clear schedules and sound working methods.

The negotiating texts on TK and TCEs owe their origins to draft “objectives and principles” first published by the WIPO secretariat in 2005. The draft texts reflect the many views and comments of member states and observers who have participated in the IGC over several years. “Gap analyses” prepared in 2008 and updated in 2018 have also contributed to clarifying the issues and options.

On GRs, an initial “list of options” prepared by the WIPO secretariat and several Member States’ proposals have been consolidated into a single document. Options around a new patent disclosure requirement became clearer with pressure mounting for an agreement on this question. The possible implications of new technological advances, such as genetic sequencing and gene editing, began to be felt. In 2019, a former IGC Chair prepared, under his own authority, a draft international legal instrument on GRs and associated TK, commonly known as “the Chair’s text”. The Chair’s text will form the basis of the substantive articles of the Basic Proposal for the Diplomatic Conference in 2024.

Further Information

For the fact-finding report on the needs and expectations of indigenous and local communities as well as government representatives and representatives of industry and civil society, see www.wipo.int/edocs/pubdocs/en/tk/768/wipo_pub_768.pdf

On the creation of the IGC, see document WO/GA/26/6 at www.wipo.int/edocs/mdocs/govbody/en/wo_ga_26/wo_ga_26_6.doc

For the texts, which are being negotiated at the IGC as well as further information regarding the IGC and its mandate, see www.wipo.int/tk/en/igc/index.html

For the United Nations Declaration on the Rights of Indigenous Peoples, see www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

On the WIPO Voluntary Fund, see www.wipo.int/tk/en/igc/participation.html

On the 2024 Diplomatic Conference, see www.wipo.int/diplomatic-conferences/en/genetic-resources/index.html

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