



SUBJECT: REPORT ON A "GAP ANALYSIS"  
PREPARED BY THE SECRETARIAT  
OF THE IGC ON THE "GAPS" IN  
PROTECTION OF TRADITIONAL  
CULTURAL EXPRESSIONS /  
EXPRESSIONS OF FOLKLORE AND  
TRADITIONAL KNOWLEDGE

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PURPOSE: For information

DATE: June 28, 2008

REFERENCE: EXCO/IT08/CET/1801

MEETING: ExCo Florence, Italy

MEETING DATE: October 5-8, 2008

At the 12<sup>th</sup> Session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the "IGC meeting") which took place in February 2008, the Secretariat of the IGC was requested to prepare a "Gap Analysis" in respect of existing gaps in the protection of both traditional cultural expressions and traditional knowledge.

On 30 May 2008, the Secretariat of the IGC published two separate documents, the one dealing with the Gap Analysis on the Protection of Traditional Cultural Expressions / Expressions of Folklore and the other dealing with the Gap Analysis on the Protection of Traditional Knowledge. The 13<sup>th</sup> session of the IGC is scheduled for 13 to 17 October, 2008 when these reports will be discussed.

The purpose of this report is to provide a brief summary of the two gap reports.

The two gap reports are available on the WIPO website at

<http://www.wipo.int/tk/en/igc/gap-analyses.html>.

As with all the documents prepared by the IGC, the current documents are very thorough and

detailed. Both provide detailed analyses of the current protection available on national level, regional level and internationally. The reports also provide an overview to what extent existing Intellectual Property Legislation provides protection to Traditional Cultural Expressions and Traditional Knowledge. The documents also point out certain "gaps" in respect of the current protection afforded on national level, regional level and internationally. The documents do not endeavour to provide specific solutions for the perceived gaps.

As previously reported, there are two camps within the IGC; those who believe that the only solution is in an "international legally-binding instrument" and those who believe that the issues are complex and require further discussion or for the time being should be left to be taken care of on the national level by way of *sui generis* legislation.

From the gap reports it is clear, at least to CET 8, that most of the "gap issues" will have to be addressed on the national



level. The gap reports do however point out the shortcomings in the “international dimension” in respect of the protection of Traditional Cultural Expressions and Traditional Knowledge. (When the current mandate of the IGC was extended it was urged to focus strongly on the international dimension) The developing countries will no doubt focus strongly on this issue in their discussions of the gap reports. Due to the inherent “gap” between the nature of conventional intellectual property and traditional cultural expressions and traditional knowledge, it is simply not possible to “bridge the gap” between the type of protection required by traditional cultural expressions / traditional knowledge and modern intellectual property rights. The documents may well lead to a fair amount of debate within the IGC. Although the IGC has made some progress to identify suitable protection mechanisms unique to the protection of traditional cultural expressions and traditional knowledge there are many delegations who believe that traditional knowledge/traditional cultural expressions should enjoy protection on an equal basis as that enjoyed by modern Intellectual Property. And that the only way to deal with protection of traditional knowledge/traditional cultural expressions is by way of an international legally binding instrument.

Comments on the two documents have to be supplied to the Secretariat by 30 June 2008. It is not believed necessary for FICPI to prepare any comments at this point in time. It is unlikely that the final version of the document will change much and any comments will probably only be added if they are directed at additional gaps not already identified. Those countries having concerns with the practicalities of an international legally-binding instrument will probably provide comments in this regard.

It is recommended that Group 8 monitors the final version of the document and the outcome of the discussions of the IGC at its next meeting, the 13<sup>th</sup> Session, which is scheduled to take place from 13 - 17 October, 2008.

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