

**WIPO Fourth Session of the Intergovernmental Committee (IGC) on
Intellectual Property and Genetic Resources, Traditional Knowledge and
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**Statement by Tim Roberts, on behalf of the ICC Commission on
Biosociety**

Thank you, Chairman. ICC (in this instance) stands for International Chamber of Commerce. We are a world organisation representing business: both international business, and national business, with members in over 80 countries of the world. Like the other ICC, we are circumpolar!

This document 4/8 is excellent. Important features of the challenges in protecting TK by a sui generis system (to some of which ICC has drawn attention in the past, see for example our paper Protecting Traditional Knowledge (Document n° 450/937 Rev. 3 December 2001) are highlighted and developed. There are real and difficult problems – but they are not necessarily insuperable.

In protecting TK (according to some views at least), business is part of the problem – if not necessarily the most important part. Business certainly needs to be part of the solution – again, not necessarily the most important part. Business is part of the social mechanism of nearly all societies. It is driven by profit. But – ideally, at least – it makes profit by doing useful work – providing goods and services that people want. In its work, it must conform to the norms that society agrees and imposes. But to conform to these norms, it needs to know what they are.

There would be benefits to industry from an agreed system of sui generis TK protection. It would have to be a workable system, of course. That is not necessarily easy to obtain. Paragraph 19 of 4/8 emphasises the benefits of certainty, not least to business. If we in business know what the rules are, and they are feasible, we can follow them. If they are too obscure or too difficult to follow, we may have to work on other things. Sometimes that might be seen as a benefit – but more generally it would be a loss.

Two issues featured prominently in this morning's discussion: whether national or international protection is more important; and, also, whether TK protection should be generic, or specifically adapted to particular sectors. On the former, we suggest that an international protection system will have to wait until there is international agreement on the common policy objectives that an international system should promote. Meanwhile national legislation can experiment. Each nation can pick its preferred objectives and varied experience will show us what works and what does not. But there is not complete freedom to pick objectives, because of existing treaty commitments. Thus, the Convention on Biological Diversity (and specifically Article 16.5) binds most of the governments here today. For genetic resources at least, those countries are surely obliged, if they have laws on sui generis IP protection, to ensure that they promote the objectives of the CBD: conservation of biological resources, sustainable use of their components, and equitable sharing of the benefits. May I emphasise the second: the sustainable use of TK can be for the benefit of the whole world, as well as particular TK holders.

We also suggest that it will be better to construct systems adapted to particular sectors, rather than a single all-embracing system. This is probably a case where one size doesn't fit all. An example in this area is the success in reaching the International Agreement on

the exploitation of Plant Genetic Resources for Food and Agriculture. There are many problems to be worked out in implementing that, but the agreement itself is an encouraging first step. A similar agreement for other plant resources would be very useful. Particularly so, as this is where most accusations of biopiracy occur.

ICC looks forward to the continuing discussion of possible *sui generis* systems, and to contributing constructively, in particular on practical working detail. Technical details need to work – if they break down, they cause delay and inconvenience. We hope for an early resolution of the discussions that will put an end to uncertainty.

Thank you, Sir.