

COMMENT ON THE DRAFT OF THE “EXAMINATION OF ISSUES RELATING TO THE INTERRELATION OF ACCESS TO GENETIC RESOURCES AND DISCLOSURE REQUIREMENTS IN INTELLECTUAL PROPERTY RIGHT APPLICATIONS”

The Berne Declaration welcomes the opportunity to submit comments on the draft prepared by the WIPO secretariat. We would like to emphasise following points:

1. The wording of the invitation of the Conference of Parties of the CBD, stating that the work of WIPO regarding the interrelation of access and to genetic resources and disclosure requirements should be supportive of and does not run counter to the objectives of the CBD, should be the guiding principle of WIPO’s work.
2. Disclosure requirements are one important tool to make sure that no patents are granted for inventions which are based on genetic resources or traditional knowledge which have been accessed in contradiction to the CBD rules and the relevant national laws.
3. Disclosure requirements will not only support the objectives of the CBD but also preserve confidence in the IP-System. Giving monopoly rights to inventors which have bio-pirated genetic resources or traditional knowledge undermines this confidence.
4. In relation to the Swiss proposal for incorporating the disclosure requirement into national patent law, the Berne Declaration has made some precise recommendations for a practical option for such requirements that should be noted (<http://www.wipo.int/tk/en/igc/ngo/meienberg2.pdf> ).
5. Taking in to account the objectives of the Convention on Biological Diversity, especially the fair and equitable sharing of the benefits and the appropriate access to genetic resources, which shall be on mutually agreed terms and subject to prior informed consent (pic), the Berne Declaration is of the view that disclosure requirements should incorporate the evidence of compliance with pic and with fair and equitable benefit sharing under the relevant national regime. For patent applicants who have chosen the legal path to access genetic resources this disclosure represents no additional effort since they already needed these documents in order to gain access to resources and/or traditional knowledge. It is possible that this information is part of a Material Transfer Agreement (MTA).
6. A regulation only makes sense if disclosure is made an integral part of the application process and false statements are subject to severe penalties. Consequently, any patent based on false statements should be revoked.
7. The right of a country of origin or an indigenous community to claim their share of the benefits deriving from the illegal (i.e. not CBD compatible) use of their resources under a patented invention must be anchored in the law. More thoughts on this often neglected issue could be found at <http://www.wipo.int/tk/en/igc/ngo/meienberg1.pdf> .