



WIPO Informal Information Session on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions

WIPO Headquarters

**Geneva, November 18,
2010**

Overview

1. Introduction
2. Traditional Cultural Expressions/
Expressions of Folklore
3. Traditional Knowledge
4. Genetic Resources
5. Discussion



Introduction

Outline

- Intellectual property and traditional knowledge, traditional cultural expressions and genetic resources: what are some of the issues?
- The WIPO Intergovernmental Committee (the IGC)
 - Background to the establishment of the IGC
 - Outcomes to date
 - Current mandate
 - Arrangements for the first intersessional working group (July 2010)
 - Proposed agenda for IGC 17
 - Schedule of meetings for 2011
- WIPO's technical assistance program on TK, TCEs and GRs

TK and TCEs: what are some of the issues?

- The **value and importance** of traditional knowledge systems and expressions of traditional cultures

“Conserving biodiversity without conserving associated knowledge systems is like building and maintaining a library without a catalogue” (Gupta, 2000)

- The **erosion of local knowledge systems: threats** to their viability and maintenance

Some of the challenges

- How can local knowledge systems be *recognized* as solutions to the problems of food, health and the environment?
- How to generate *reciprocity* among knowledge providers and knowledge users?
- What *incentives* best nurture local knowledge systems and reward their adaptation and evolution to meet contemporary needs?

What role for IP?

- Intellectual property and TK/TCEs – a conceptual and ethical mismatch?

“A song or story is not a commodity or a form of property but one of the manifestations of an ancient and continuing relationship between people and their territory”

(Daes, 1995)

- Yet - protection of TK/TCEs can be achieved through judicious use of IP principles and systems: new applications of core values embedded in IP systems

- Focus has been on prevention of acts by third parties beyond the community that are considered acts of misappropriation and misuse

- The IGC's negotiations could be aimed at addressing those “gaps” that Member States decide should be filled
- “Gaps” can be addressed through *inter alia*
 - adjustments to existing IP systems and/or
 - creation of an entirely new and distinct IP systems for TCEs and/or TK
- See “gap analyses”: WIPO/GRTKF/IC/13/4(b) Rev. and WIPO/GRTKF/IC/13/5(b) Rev.

Some of the key questions

- What are “traditional” knowledge and cultural expressions?
- In whom, if anyone, should private, property rights be vested?
- For how long should such rights last? Should there be any limitations and exceptions?
- How would special protection for TK and/or TCEs interact with protection available under existing IP? What effect would special protection have on the “public domain”?
- How should publicly available and transboundary (“shared”) TK/TCEs be addressed?

Genetic resources: what are the issues?

- Biodiversity conservation and genetic resources access, use and equitable benefit-sharing governed by the CBD and the FAO
- What does the protection of “genetic resources” in relation to IP refer to?
 - GRs as such are not IP; therefore may not be susceptible of direct protection by IP systems
 - Relationship between patent system and conservation, sustainable use and equitable benefit-sharing in biodiversity (objectives of CBD, 1992)
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, 2010
 - addresses ABS in genetic resources *and* associated TK
 - CBD side-event during IGC 17

The Intergovernmental Committee: Background and outcomes to date

- Background – consultation, fact-finding and inclusion
- Recognition of TK within patent system
 - Inclusion of TK journals within PCT minimum documentation (2002)
 - Integration of TK classification tools within International Patent Classification (2003)
 - Technical standards for documentation (2002)
- IP guidance for ABS contracts
 - Database of IP-related clauses in ABS contracts (2002, 2010)
 - IP guidelines for ABS contracts (2004, 2010)
- Proposal for a disclosure requirement
 - Technical study submitted to the CBD (2003)
- Draft provisions on TCEs and TK

New IGC mandate 2010-2011

- text-based negotiations with the objective of reaching agreement on a text of an international legal instrument (or instruments) which will ensure the effective protection of GRs, TK and TCEs
- a clearly defined work program. . . four sessions of the IGC and three inter-sessional working groups, in the 2010-2011 biennium
- build on the existing work of the IGC . . . use all WIPO working documents, including WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5 and WIPO/GRTKF/IC/11/8A
- the Committee is requested to submit to the 2011 General Assembly the text of an international legal instrument (or instruments). The General Assembly in 2011 will decide on convening a Diplomatic Conference
- “without prejudice to the work pursued in other fora”
- “bearing in mind the Development Agenda recommendations”

First Interessional Working Group (IWG 1): July 2010, focused on TCEs

■ Mandate:

- IGC is negotiating and decision-making body. IWGs are to facilitate and support the IGC's "text-based" negotiations
- IWGs shall provide legal and technical advice and analysis, including, where appropriate, options and scenarios
- IWGs shall report to IGC on outcomes and submit recommendations and texts relating to the discussion in the IGC
 - Summary report of IWG 1 (17/8)
 - Draft articles prepared at IWG 1 (17/9)

- Participation:

- IWGs open to all Member States and accredited observers, each to be represented by one technical expert who shall participate in a personal capacity
- Observers participate in same capacity as in IGC
- Separate room at WIPO headquarters from where the IWG's discussions can be followed by representatives of Member States and accredited observers

Agenda for IGC 17 (December 6 to 10)

- No opening statements
- Voluntary Fund
 - Amendments to Rules by WIPO GA; fund-raising drive (see document 17/3)
- Traditional cultural expressions
 - From IGC 16, May 2010: Revised objectives and principles (17/4) and Note on “public domain” (INF/9)
 - From IWG 1, July 2010:
 - Summary report of IWG 1 (17/8) and draft articles prepared at IWG 1 (17/9)
 - Record of deliberations of IWG 1 (INF/7);

- Traditional knowledge
 - Draft provisions (17/5);
 - List and forms of TK (INF/8); Note on the public domain (INF/9)
- Genetic resources
 - Options (17/6); Proposal from Australia, Canada, New Zealand, Norway, USA and comments (17/7, INF/10)
 - Note on updating of ABS database (INF/11); draft IP guidelines (INF/12); glossary (INF/13)
- Any other business

Schedule for next year

- [IGC 17: December 6 to 10, 2010]
- IWG 2 (TK): February 21 to 25, 2011
- IWG 3 (genetic resources): February 28 to March 4, 2011
- IGC 18: May 9 to 13, 2011
- IGC 19: July 18 to 22, 2011
- WIPO General Assembly: October 3 to 14, 2011
- *An intense schedule!*

Technical Assistance Program provided by the TK Division, upon request

- Legislative and policy advice and information
- Facilitation of regional, national and local consultations and other processes
- Guides, analyses, databases and other publications
- Hands-on training programs

www.wipo.int/tk/en

Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore

NEWS

- [IGC Schedule, 2011](#)
- [Intersessional Working Groups on Traditional Knowledge and Genetic Resources: Applications for funding to the Voluntary Fund Advisory Board](#)
- [ARIPO Adopts Traditional Knowledge and Folklore Legal Instrument](#)
- [WIPO Indigenous Intellectual Property Law Fellow](#)
- [IGC Seventeenth Session - December 6 to 10, 2010](#)
- [IGC Sixteenth Session - Decisions](#)
- [IGC Mandate for 2010 and 2011 \[PDF\]](#)

Overview

Traditional knowledge (TK), genetic resources (GRs) and traditional cultural expressions (TCEs, or "expressions of folklore") are economic and cultural assets of indigenous and local communities and their countries. WIPO's work addresses the role that intellectual property (IP) principles and systems can play in protecting TK and TCEs from misappropriation, and in generating and equitably sharing benefits from their commercialization and the role of IP in access to and benefit-sharing in genetic resources.

WIPO's activities comprise:

Policy development and norm-building



[WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore \(the IGC\)](#)

Information on process, documents, accreditation, funding...

Important dates [\[PDF\]](#)

Capacity-building Program



[Creative Heritage Project](#)

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Traditional cultural expressions

IWG1 Summary Report (17/8) and
Record of the IWG1 Deliberations
(17/INF/7)

Summary report of IWG1 (Annex to 17/8) Record of the IWG1 Deliberations

- Participation (list of participants/format) ;
- Deliberations based on doc. 17/4 Prov., as reflected in a Record thereof (see Annex to 17/INF/7);
 - Methodology that was adopted in preparing the Record ;
 - Inclusion of discussion overviews ;
 - Some brief and selected remarks based on the discussion overviews ;
- A formal recommendation regarding a glossary to be prepared by the Secretariat, if the IGC so requests ;
- Draft Articles as submitted by informal open-ended drafting groups (see Annex to doc. 17/9) ;



Presentation of IWG 1 Draft Articles (17/9)

Article 1 Subject Matter of Protection

■ (1)

- TCEs/EoF are any form
- Tangible or intangible
- Embodying: culture **and** [knowledge]
and
- Have been passed on from generation to generation
- Including, but not limited to...
- 4 categories + examples (reduced list)

■ (2)

- Protection for any TCE that is...
- Unique product of IPLC
and
- Belongs to that IPLC as part of social or cultural identity or heritage

■ (3)

- Choice of term to be left at national, sub-regional and regional level

Article 1 (Alternative Option)

Criteria

- (a) product of creative intellectual activity, including communal creativity
- (b) indicative of being authentic/genuine
- (c) that are:
 - maintained, used or developed by nation, state, community, or individual
 - or
 - has an affiliation with an IPLC

Article 2 Beneficiaries

- Measures shall/should be
- For the benefit of:
 - **[option 1]** Indigenous peoples, local comm. and cultural comm.
 - **[option 2]** Peoples and comm., e.g. Indigenous peoples, local comm., cultural comm. and nations
- Custody and safeguarding is entrusted or held
- In accordance with:
 - **[option 1]** relevant law and/or practices
 - **[option 2]** their law and/or practices
- **And:** maintain, use or develop TCEs as being characteristic or genuine

Article 3 Scope of Protection

Alternative 1	Alternative 2
<p style="text-align: center;">Article A: Secret TCEs</p> <p style="text-align: center;">Means to prevent: fixation, disclosure, use or other exploitation</p> <p style="text-align: center;">Through legal and practical measures</p>	
<p style="text-align: center;">Article B</p> <p>Exclusive and inalienable right to authorize: [copyrights]</p> <p>But: genuine good faith effort to locate</p>	<p style="text-align: center;">Article B</p> <p>Economic and moral interests should be safeguarded in reasonable and balanced manner</p>
<p style="text-align: center;">Article C</p> <p>Moral rights: attribution, reputation, integrity</p>	<p>Moral rights: integrity and attribution</p>

Article 3 (Alternative Option)

- Exclusive rights to:
 - control, authorize or prohibit and benefit from the use of:
 - TCEs and derivatives and adaptations
- Obtain PIC from beneficiaries of:
 - TCEs, derivatives and adaptations
 - to ensure the prevention of:
 - [copyrights]
 - no acknowledgement;
 - violation of right of integrity;
 - false, confusing or misleading indications which draw upon or evoke TCEs, suggest any endorsement by or linkage with IPLC; and
 - Fair and equitable benefit-sharing where use or exploitation is for gainful intent. Terms determined by the relevant comm. in consultation with the authority

Article 4 Management of Rights

- (1) Management belongs to:
 - beneficiaries
 - or
 - competent authority (at request and on behalf)
- Where authority grants authorization:
 - after appropriate consultation and with PIC
 - Benefits: directly to beneficiaries or used for their benefit
- (2) Further roles of the authority:
 - awareness, education, monitor uses, criteria for benefits, assistance in negotiations

Article 5 Exceptions and Limitations

- (1) does not affect use within traditional and customary context
- (2) Three-step test

+

- (3) Regardless of (2),
 - (a) cultural safeguarding
 - (b) original work - inspiration/borrowing

Article 6 Term of Protection

■ [Option 1]

- Same as 17/4
- as long as the TCEs continue to meet the criteria
- (a) registered TCEs: as long as they remain registered
- (b) secret TCEs: as long as they remain secret
- (c) moral rights: indefinitely

■ [Option 2]

- (1) as long as the TCEs continue to meet the criteria
- (2) moral rights: indefinitely

■ [Option 3]

- (1) as long as the TCEs continue to meet the criteria
- (2) economic aspects: limited in time

Article 6 Term of Protection [Questions]

1. Purpose of protection influence the term?
2. Impact on different stakeholders?
3. Balance with freedom of expression and creativity
4. Public domain
5. Scope of protection
6. Secret TCEs
7. Economics
8. Collectively and individually held rights?

Article 7 Formalities

- General principle: protection not subject to formalities
- National authorities may maintain registers/records

Article 8 Sanctions, Remedies and Exercise of rights

■ [Option 1]

- Necessary measures in accordance with existing national systems

■ [Option 2]

- Enforcement measures are available
- Criminal sanctions: only willful misappropriation on a commercial scale

■ [Option 3]

- (1) measures are available
- (2) assistance of competent authority
- (3) legislation where protection is claimed (forum)
- (4) cooperation between parties

Article 8 (Alternative Option, as Article 12)

TRANSBOUNDARY COOPERATION

- TCEs located in neighboring countries: cooperation and support implementation of instrument
- Shared TCEs: cooperation of countries, in close consultation and involvement with indigenous and local comm., if any.

Article 9 Transitional Measures

■ [Option 1]

- (1) TCEs, which, at time of coming into force, fulfill criteria
- (2) Continuing acts brought into conformity within reasonable period **subject to** respect for rights previously acquired through prior use in good faith

■ [Option 2]

- (1) TCEs, which, at time of coming into force, fulfill criteria
- (2) Necessary measures to secure the rights acquired by third parties

■ [Option 3]

- (1) TCEs, which, at time of coming into force, fulfill criteria
- (2) Continuing acts brought into conformity within reasonable period **subject to** respect for rights previously acquired *but*
- (3) Comm. have right to recover TCEs special significance

Article 9 Transitional Measures [Questions]

1. Institutions are working in good faith?
2. Third party rights legitimately acquired?
3. How *sui generis* system affect other legal systems?
4. Comm. to pay compensation to third parties to recover TCEs?
5. State ensure measures to secure rights acquired by third parties on behalf of TCE stakeholders?

Article 10 Relationship with IP Protection and other Forms of Protection, Preservation and Promotion

■ [Option 1]

- Protection does not replace and is complementary to:
 - IP protectionand
 - safeguarding, preservation, promotion of cultural heritage and cultural diversity

■ [Option 2]

- Leave intact and in no way affect IP protection
- No provision may be interpreted as prejudicing such protection

■ [Option 3]

- Where TCEs are protected by IP with a limited term, protection under this instrument shall take precedence

Article 11 National Treatment

- Rights and benefits available to:

- nationals

or

- residents

- Eligible foreign beneficiaries should enjoy

- the same rights and benefits as nationals

and

- rights and benefits granted by these provisions



Traditional knowledge

Decision on TK – IGC 16

- The Committee invited the Secretariat to prepare and make available for the next session of the Committee:
 - as a working document, a further draft of document WIPO/GRTKF/IC/16/5. The further draft should be made available by the Secretariat by September 30, 2010. This draft should clearly identify drafting proposals and comments made by Committee participants during the sixteenth session and proposals and comments submitted to the Secretariat in writing before July 31, 2010. Specific drafting proposals should be attributed in footnotes. Comments made should be reflected, with attribution, in a commentary in the document. The draft should explain clearly how proposed additions, deletions, other amendments and comments have been reflected. Drafting proposals made by observers should be identified in the commentary for consideration by Member States;
 - as an information document for the next session of the Committee, a list and brief technical explanation of various forms in which traditional knowledge may be found (such as “codified/non-codified”, “disclosed”/”non-disclosed”);
 - for the next session of the Committee, a technical information document on the meanings of the term “public domain” in the intellectual property system, with special reference to the protection of traditional knowledge and traditional cultural expressions.

WIPO/GRTKF/IC/17/5



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**WIPO/GRTKF/IC/17/5
ORIGINAL: ENGLISH
DATE: SEPTEMBER 15, 2010**

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

**Seventeenth Session
Geneva, December 6 to 10, 2010**

**THE PROTECTION OF TRADITIONAL KNOWLEDGE:
REVISED OBJECTIVES AND PRINCIPLES**

Document prepared by the Secretariat

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WIPO/GRTKF/IC/17/5

- Revised version of working document WIPO/GRTKF/IC/16/5, reflecting the amendments proposed and the comments made during the sixteenth session of the Committee and the written comments received thereon during the intersessional written commenting process.

WIPO/GRTKF/IC/17/5

- I. POLICY OBJECTIVES
- II. GENERAL GUIDING PRINCIPLES
- III. SUBSTANTIVE PRINCIPLES
 - 1. Protection Against Misappropriation
 - 2. Legal Form of Protection
 - 3. General Scope of Subject Matter
 - 4. Eligibility for Protection
 - 5. Beneficiaries of Protection
 - 6. Fair and Equitable Benefit-sharing and Recognition of Knowledge Holders
 - 7. Principle of Prior Informed Consent
 - 8. Exceptions and Limitations
 - 9. Duration of Protection
 - 10. Transitional Measures
 - 11. Formalities
 - 12. Consistency with the General Legal Framework
 - 13. Administration and Enforcement of Protection
 - 14. International and Regional Protection

WIPO/GRTKF/IC/17/INF/9



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WIPO/GRTKF/IC/17/INF/9
ORIGINAL: ENGLISH
DATE : NOVEMBER 5, 2010

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

Seventeenth Session
Geneva, December 6 to 10, 2010

**LIST AND BRIEF TECHNICAL EXPLANATION OF VARIOUS FORMS IN WHICH
TRADITIONAL KNOWLEDGE MAY BE FOUND**

Document prepared by the Secretariat

WIPO/GRTKF/IC/17/INF/9

- The Annex is a list and brief technical explanation of several forms in which traditional knowledge may be found.
- To facilitate the reading of this document, the Appendix to the Annex comprises a brief glossary of certain of the terms as used in this document.

WIPO/GRTKF/IC/17/INF/9

- Fixed TK and Unfixed TK
 - Fixed TK: TK recorded in some sufficiently stable material or tangible form
 - Unfixed TK: TK which is not recorded in tangible form.
- Documented TK and Non-Documented TK
 - To document is to record for purposes of furnishing evidence, among others.
- Codified TK and Non-Codified TK
 - Codified TK: TK which is in some systematic and structured form, in which the knowledge is ordered, organized, classified and categorized in some manner.

WIPO/GRTKF/IC/17/INF/9

- Disclosed TK and Non-Disclosed TK
 - “Disclosed TK” refers to TK which is accessible to persons beyond the indigenous or local community which is regarded as the “holder” of the TK. Such TK might be widely accessible to the public and might be accessed through physical documentation, the internet and other kinds of telecommunication or recording. TK might be disclosed to third parties or to non-members of the indigenous and local communities from which TK originates, with or without the authorization of the indigenous and local communities.
 - publicly disclosed TK, which can be accessed through physical documentation, the internet and other kinds of telecommunication or recording.
 - publicly available TK with limited accessibility.
 - TK held within indigenous and local communities, which is disclosed and known within such communities.
 - secret and confidential TK held by specific individuals or a class of individuals within indigenous and local communities who are their traditional custodians.

WIPO/GRTKF/IC/17/INF/9

- TK Directly Controlled by Indigenous and Local Communities and TK No Longer in the Control of Indigenous and Local Communities

- TK Held by Indigenous and Local Communities
 - In the Nagoya Protocol, paragraph 1 of Article 5 *bis* states that “[i]n accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.”

WIPO/GRTKF/IC/17/INF/9

- TK “as such” and TK-based Innovations and Creations
 - “TK ‘as such’”: knowledge systems, creations and innovations which have generally been transmitted from generation to generation; are generally regarded as pertaining to a particular people or its territory; and, are constantly evolving in response to a changing environment.
 - “TK-based innovations and creations” refer to innovations and creations based on TK as such, developed and innovated beyond a “traditional context”.

WIPO/GRTKF/IC/17/INF/9

■ Individual TK and Collective TK

- “Collective TK”: TK developed collectively and/or regarded as belonging collectively to an indigenous or local community or to groups of individuals within such a community
- a particular individual member of a community, such as a certain traditional healer or individual farmer, might hold specific knowledge.

WIPO/GRTKF/IC/17/INF/9

- Indigenous Knowledge and Traditional Knowledge
- Sacred TK and Secular TK
- Commercialized TK and Non-Commercialized TK

WIPO/GRTKF/IC/17/INF/8

- Definitions of the public domain
- Specific definitions of the public domain in the various fields of intellectual property:
 - Copyright
 - Trademark
 - Patent
 - Trade secrets
- Identification and meanings of related terms and concepts
 - Common heritage of mankind
 - *Domaine Public Payant*
 - Prior Art
 - Res nullius
 - Res communis or Commons

WIPO/GRTKF/IC/17/INF/8

- Discussion of the public domain in other WIPO bodies
 - Committee for Development and Intellectual Property
 - Standing Committee on Copyright and Related Rights
 - Standing Committee on the Law of Patents
 - Standing Committee on the Law of Trademarks
- Discussion of the public domain in the IGC
- TK and TCE national and regional legislation referring to the public domain

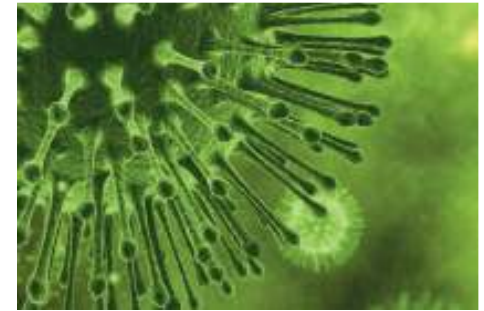


Genetic resources

Decision on GR – IGC 16

- The Committee invited the Secretariat to prepare and make available for the next session of the Committee:
 - as a working document, a further draft of document WIPO/GRTKF/IC/16/6. The further draft should include proposed amendments to and comments made by Committee participants during the sixteenth session of the Committee, as well as written comments on that document submitted to the Secretariat before July 31, 2010. The further draft of WIPO/GRTKF/IC/16/6 should also include a factual update on relevant developments in the CBD, FAO and the WTO;
 - as an information document, an updated version of document WIPO/GRTKF/IC/7/9 (“Genetic Resources: Draft Intellectual Property Guidelines for Access and Equitable Benefit-Sharing”);
 - as an information document, a glossary of key terms related to intellectual property and genetic resources.
- The Committee also requested the Secretariat to update the database of biodiversity-related access and benefit-sharing agreements currently online on the WIPO website and to report, in an information document, on such updating to the next session of the Committee.
- The Committee invited IGC participants to provide written comments on document WIPO/GRTKF/IC/16/7 (DRAFT Genetic Resources Objectives and Principles, a submission by Australia, Canada, New Zealand, Norway and the United States of America) before July 31, 2010 and requested the Secretariat to compile such comments in an information document and to issue document WIPO/GRTKF/IC/16/7 as a working document for the next session of the Committee.

List of Documents on GRs



- Working Documents
 - 17/6: Revised List of Options and Factual Update
 - 17/7: Draft GRs Objectives and Principles (Submission by Australia, Canada, New Zealand, Norway and the United States of America)
- Information Documents
 - 17/INF/10: Compilation of comments on 16/7 (reissued as 17/7)
 - 17/INF/11: Note on Updating of WIPO's online Database of biodiversity-related access and benefit-sharing agreements
 - 17/INF/12: Draft IP Guidelines for access and equitable benefit-sharing (update of 7/9)
 - 17/INF/13: Glossary of key terms related to IP and GRs

Coherence of Documents

How are the documents and options related to each other?

■ General Documents

- Glossary of key terms on IP and GR (17/INF/13)

=> *Choice of key terms based on 17/6 and 17/7*

- Submission for Draft Objectives and Principles (17/7)

(ensure ABS, prevent erroneous patents, ensure information for patent offices, relationship with other forums, maintain innovation in IP)

=> *Some objectives and principles are generally linked to the options (e.g. Comments refer to the options)*

- Compilation of comments on 16/7 (17/INF/10)

(Received from Chile, Colombia, Russian Federation, EAPO, AECG)

■ Specific Measures and Options

- Revised List of Options (17/6)

- A. Defensive Protection (Inventory, Information Systems, Guidelines)

- B. Disclosure Requirements (Mandatory, further examination, Guidelines, Alternatives)

- C. IP Aspects of ABS

- C.1 Database on IP and ABS (17/INF/11)

- C.2 Draft IP Guidelines (17/INF/12)

(+ Licensing Practices)

1. Revised List of Options/Factual Update

(WIPO/GRTKF/IC/17/6)

■ List of Options

- Revised version of document WIPO/GRTKF/IC/16/6
- It reflects amendments proposed and comments made during IGC 16 and comments received during the intersessional written commenting process
- 10 options
 - Three different clusters
 - Different legal and policy options and practical measures

■ Factual Update

- CBD
- FAO (Governing Body ITPGRFA, Commission GRFA)
- WTO (TRIPS Council, DG Consultations)
 - => Updates included until September 15, 2010

2. Draft GR Objectives and Principles (WIPO/GRTKF/IC/17/7 and WIPO/GRTKF/IC/17/INF/10)

- Submission by Australia, Canada, New Zealand, Norway and the United States of America
- Comments received are reproduced in 17/INF/10

3. Note on Updating of the Database (WIPO/GRTKF/IC/17/INF/11)

- **Background**
- **Purpose of database** (capacity building + source for IP Guidelines)
- Q.6 was circulated in order to facilitate the updating of the database
- The Database contained 16 model agreements and 11 actual agreements. The updated Database contains 23 model agreements and 13 actual agreements.
- The note has used the information contained in these agreements to illustrate some issues, such as the types of agreements and the different purposes they may have, benefit-sharing, IP rights and other related issues.
- **This Database will continue to be updated and its structure and accessibility will be improved.**



WORLD INTELLECTUAL PROPERTY ORGANIZATION

ABOUT WIPO IP SERVICES PROGRAM ACTIVITIES RESOURCES NEWS & EVENTS

Home > Program Activities > Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore > Dat

TRADITIONAL KNOWLEDGE, GENETIC RESOURCES AND TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE

- Traditional Knowledge
- Genetic Resources
- Traditional Cultural Expressions
- Intergovernmental Committee
- Creative Heritage Project
- Training Programs
- Key Resources
- Databases
 - Cultural Documentation Database
 - Database of Biodiversity-related Access and Benefit-sharing Agreements
 - Laws Database

RELATED LINKS

- Human Rights
- WIPO Lex

E-NEWSLETTERS

Database of Biodiversity-related Access and Benefit-sharing

Search Database

Contractual Clauses Search Full Text Search

OR (one or more of these words) Search Reset

Intellectual Property Related Clauses

- Intellectual Property (general)
- Patents
- Distinctive Signs
- Plant Breeders' Rights
- Trade Secrets
- Copyright and Related Rights
- Ongoing Traditional and Customary Use
- Sui generis Protection of Traditional Knowledge
- Licensing
- Assignment

Other Clauses

- Definitions
- Ownership
- Confidentiality
- Transfer to Third Parties
- Monetary Benefit-Sharing
- Non-monetary Benefit-Sharing
- Dispute Resolution
- Governing Law of the Contract
- Contract Verification
- Termination

**DITIONAL
WLEDGE, GENETIC
OURCES AND
DITIONAL CULTURAL
RESSIONS/FOLKLORE**

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Database of Biodiversity-related Access and Benefit-sharing Agreements

Search Results

Patents AND Ownership

18 results found.

- [Uniform Biological Material Transfer Agreement, dated March 8, 1995 for the Transfer of Materials between Non-Profit Institutions and an Implementing Letter for the Transfer of Biological Material \(100 %\)](#)
MATERIAL: Original material, progeny, and unmodified derivatives. The material shall not include: (a) modifications, or (b) other substances created by the recipient through the use of the material which are not modifications, progeny, or unmodified derivatives
- [Exclusive License Agreement \(sample\) - Harvard College, United States of America \(97 %\)](#)
Exclusive License Agreement for biological materials supplied by HARVARD (identified in Appendix B) together with any progeny, mutants, or derivatives thereof supplied by Harvard or created by Licensee
- [International Rice Genome Sequencing Project. Member Institution Registration Agreement between Genoscope \("Principal Investigator"\) and Pharmacia Corporation \(Extract of contract provided\) \(87 %\)](#)
Data from rice genome sequencing
- [Model Material Transfer Agreement of the Korean Research Institute of Bioscience and Biotechnology \(77 %\)](#)
Model MTA for non-commercial use of Plant Genetic Resources
- [San Diego State University \(SDSU\), Graduate and Research Affairs, Proprietary Material Transfer Agreement \(76 %\)](#)
Proprietary Biological Materials include progeny, unmodified derivatives and any modification to material, if such modified material is substantially based on or incorporates a substantial element of original material, or any modification which is not new or not unobviously distinct from original material
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4. Draft IP Guidelines

(WIPO/GRTKF/IC/17/INF/12)

- Updated version of WIPO/GRTKF/IC/7/9
- Its structure has been simplified
- Sample Clauses have been added from replies to Questionnaires Q.2 and Q.6
- Sectoral approaches have been added
- Includes as appendixes: Benefits / Agreements used

Draft IP Guidelines

(WIPO/GRTKF/IC/17/INF/12)

- **Executive Summary, Introduction and General Provisions**
 - Purpose and Scope of IP Guidelines and terms used
 - General conditions and nature of IP Guidelines
- **Preliminary and basic steps for negotiations**
 - Practical steps to consider in negotiations (confidentiality, shared understanding, PIC, setting goals, different factors)
- **Main IP Considerations**
 - Overall IP Questions (Structured by different clusters: General and Specific IP Questions, Project planning and Exploitation of benefits)
 - Specific IP Rights (Patents, TM, PVP...) and aspects of Licensing
- **Considerations for Sectoral Approaches**
 - Pharmaceutical and biotech, Food and Agriculture, Non commercial research, Ex situ conservation (based on Experts meeting at CBD)

5. Glossary of key terms related to IP and GRs (WIPO/GRTKF/IC/17/INF/13)

- **Working method:** Agreed terms in international conventions and instruments
 - Existing international instruments and glossaries: e.g. at CBD, ITPGRFA, PCT
 - Definitions in regional and national legislation (e.g. US, EU, CH, Andean community, etc ...)
 - WIPO Documents (e.g. 17/INF/11, 17/INF/12 and 17/INF/8)
 - => In case of different definitions: several definitions
- **Selection of key terms**
 - Important terms in working documents (17/6 and 17/7) on GRs
 - Terms related to definition of GRs (e.g. biodiversity)
 - Terms related to IP and GRs (e.g. inventive step)
- Examples of terms defined:
 - E.g. ABS, biotechnology, defensive protection, GRs, inventive step, prior art ...



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Thank you!