

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

**Twenty-Third Session
Geneva, February 4 to 8, 2013**

REPORT ON THE IMPLEMENTATION OF CLUSTER C ACTIVITIES (“OPTIONS ON MUTUALLY AGREED TERMS FOR FAIR AND EQUITABLE BENEFIT-SHARING”)

Document prepared by the Secretariat

1. At its nineteenth session, held from July 18 to 22, 2011, and with reference to document WIPO/GRTKF/IC/19/7 (“Options for Future Work on Intellectual Property and Genetic Resources”), the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee”) “requested the Secretariat to finalize, and update regularly as required, the activities referred to in Cluster C (‘Options on Mutually Agreed Terms for Fair and Equitable Benefit-Sharing’) and to provide information thereon to the Committee at each session.”¹
2. Such a report was prepared for the twentieth session of the Committee, held from February 14 to 22, 2012. Document WIPO/GRTKF/IC/20/INF/14 provided background information on each of the options in Cluster C and described the activities undertaken by the Secretariat up to that session.
3. Pursuant to the decision above, the Annex to this document includes a report on the implementation of Cluster C activities since the twentieth session of the Committee.

¹ Report of the Nineteenth Session of the Committee (WIPO/GRTKF/IC/19/12)

4. The present document is a revised version of the *Report on the Implementation of Cluster C Activities ("Options on Mutually Agreed Terms for Fair and Equitable Benefit-Sharing")* (document WIPO/GRTKF/IC/23/INF/7), dated December 3, 2012. The revision consists of an update to include references to the replies received, by January 14, 2013, to the "Questionnaire on Contractual Practices and Clauses relating to Intellectual Property, Access to Genetic Resources and Benefit-Sharing" (WIPO/GRTKF/IC/Q.6), circulated on November 20, 2012.

5. *The Committee is invited to take note of this document and the Annex to it.*

[Annex follows]

1. This document recalls each of the options in Cluster C (“Options on intellectual property (IP) issues in mutually agreed terms for fair and equitable benefit-sharing”) and describes the activities undertaken by the Secretariat so far in this regard since the twentieth session of the Committee.

C.1 Online database of IP clauses in mutually agreed terms on access and benefit-sharing (ABS)

Considering options for the expanded use, scope and accessibility of the online database of IP clauses in mutually agreed terms for access and equitable benefit-sharing. The contents of the online database could be published in additional, more easily accessible forms, such as on CD-ROM, for wider accessibility and easier use by all relevant stakeholders.

2. At its sixteenth session (May 2010), the Committee had requested the Secretariat to update the database of biodiversity-related access and benefit-sharing agreements, which was online on the WIPO website. At that time, to facilitate the updating of this database, the Secretariat had circulated, in June 2010, document WIPO/GRTKF/IC/Q.6 (“Questionnaire on Contractual Practices and Clauses relating to Intellectual Property, Access to Genetic Resources and Benefit-Sharing”). The replies received to that questionnaire at that time allowed the updating of the database and also contributed to providing practical experience and additional sample clauses for document WIPO/GRTKF/IC/17/INF/12 (“Genetic Resources: Draft Intellectual Property Guidelines for Access and Equitable Benefit-Sharing: Updated Version”).

3. In order to facilitate the updating of the database and of document WIPO/GRTKF/IC/17/INF/12 (“Genetic Resources: Draft Intellectual Property Guidelines for Access and Equitable Benefit-Sharing: Updated Version”), the Secretariat circulated once again, on November 20, 2012, among WIPO Member States and observers, the aforementioned “Questionnaire of Contractual Practices and Clauses relating to Intellectual Property, Access to Genetic Resources and Benefit-Sharing” (WIPO/GRTKF/IC/Q.6). The Questionnaire is available at: <http://www.wipo.int/tk/en/databases/contracts/index.html>.

4. The Secretariat received the following replies to questionnaire WIPO/GRTKF/IC/Q.6 by January 14, 2013: Six completed questionnaires, including two model agreements. Four Member States and two observers replied that they had no relevant information to provide. An observer sent a Draft Indigenous Protocol.

5. Completed questionnaires were received from the following Member States: Colombia, Guatemala, Kenya, Morocco and South Africa. The Swiss Biodiversity Forum of the Swiss Academy of Science also sent a completed questionnaire. Two model agreements were received from: Republic of Korea and the Swiss Academy of Science. Further replies were received from the following Member States: Ireland, Serbia, Slovakia and Ukraine. Replies were also received from the following observers: the Ibero-Latin-American Federation of Performers (FILAIÉ), the Association of Kunas United for Mother Earth (KUNA) and the Organisation for Economic Co-Operation and Development (OECD).

6. The information received is being used to update the existing WIPO database.

7. It may be noted that the Conference of the Parties to the Convention on Biological Diversity (CBD), at its eleventh session, held from October 8 to 19, 2012, has invited Parties, other Governments, relevant international organizations, indigenous and local communities and all interested stakeholders to submit information to the Executive Secretary of the CBD on model contractual clauses, codes of conduct, guidelines and best practices and/or standards, as indicated in its Decision XI/1 “Status of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization and Related Developments”. Pursuant to this invitation, and since the aforementioned database includes

relevant information, the Secretariat of WIPO envisages submitting information on the database to the Executive Secretary of the CBD.

C.2 Draft guidelines for contractual practices

Considering options for stakeholder consultations on and further elaboration of the draft guidelines for contractual practices contained in the Annex of document WIPO/GRTKF/IC/7/9, updated in information document WIPO/GRTKF/IC/7/INF/12, based on the additional information available and included in the online database.

8. Document WIPO/GRTKF/IC/17/INF/12 (“Draft Intellectual Property Guidelines for Access and Benefit-Sharing Contracts: Updated Version”) was prepared in October 2010. These updated draft Guidelines incorporated various examples of actual and model contractual clauses contained in the WIPO database of sample contracts and received from Member States in response to questionnaires WIPO/GRTKF/IC/Q.2¹ and WIPO/GRTKF/IC/Q.6, showing how IP aspects of access to genetic resources and benefit-sharing had been addressed in existing agreements. (See further under C.1 above).²

9. The Secretariat would welcome receiving comments and guidance from the Committee on future steps to be undertaken regarding the Guidelines.

10. In order to facilitate comments, a shortened, more accessible version of the aforementioned Guidelines is currently being prepared. This new version of the Guidelines will be posted online by the time of the twenty-third session of the Committee.

11. As indicated previously, the Conference of the Parties to the CBD, at its eleventh session, has invited Parties, other Governments, relevant international organizations, indigenous and local communities and all interested stakeholders to submit information to the Executive Secretary of the CBD on model contractual clauses, codes of conduct, guidelines and best practices and/or standards, as indicated in its Decision XI/1 “Status of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization and Related Developments”. Pursuant to this invitation, since the Guidelines include relevant information, the Secretariat envisages submitting information on them to the Executive Secretary of the CBD.

C.3 Study on licensing practices on GRs

Compile information, possibly in the form of case studies, describing licensing practices in the field of genetic resources which extend the concepts of distributive innovation or open source from the copyright field, drawing on experiences such as the Global Public License and other similar experiences in the copyright field.

12. The Secretariat would welcome receiving guidance from the Committee on the scope of any such study to be undertaken.

[End of Annex and of document]

¹ WIPO/GRTKF/IC/Q.2 was circulated after the third session of the Committee, which took place from June 13 to 21, 2002, in order to gather information about contractual practices and clauses relating to Intellectual Property, Access to Genetic Resources and Benefit-Sharing.

² See document WIPO/GRTKF/IC/17/INF/12 (Draft Intellectual Property Guidelines for Access and Benefit-Sharing Contracts: Updated Version), para. 2