

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

Third Intersessional Working Group Geneva, February 28 to March 4, 2011

WIPO/GRTKF/IC/17/11: "SUBMISSION BY AUSTRALIA, CANADA, JAPAN, NORWAY, NEW ZEALAND AND THE UNITED STATES OF AMERICA"

Document prepared by the Secretariat

1. At its seventeenth session, held from December 6 to 10, 2010, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ('the Committee') "requested the Secretariat to make available copies of all relevant documents for the third Intersessional Working Group taking place from February 28 to March 4, 2011 (IWG 3), including: [...] WIPO/GRTKF/IC/17/11 [...]".
2. Pursuant to the decision above, the Annex to this document comprises document WIPO/GRTKF/IC/17/11 ("Submission by Australia, Canada, Japan, Norway, New Zealand and the United States of America").
3. *The Intersessional Working Group is invited to take note of this document and the Annex to it.*

[Annex follows]



WIPO/GRTKF/IC/17/11
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Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Seventeenth Session
Geneva, December 6 to 10, 2010

**SUBMISSION BY AUSTRALIA, CANADA, JAPAN, NORWAY, NEW ZEALAND
AND THE UNITED STATES OF AMERICA**

Document prepared by the Secretariat

1. On December 8, 2010, the Delegations of Australia, Canada, Japan, Norway, New Zealand and the United States of America submitted a working document in relation to agenda item 8 ("Genetic Resources") for the seventeenth session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ("the Committee").
2. *The Committee is invited to take note of this document and the Annex to it.*

[Annex follows]

ANNEX

WORKING PAPER: IP AND GENETIC RESOURCES: OBJECTIVES AND OPTIONS

SUBMITTED BY AUSTRALIA, CANADA, JAPAN, NORWAY, NEW ZEALAND AND
THE UNITED STATES OF AMERICA

1. The Committee has identified possible options for further work on the IP protection of Genetic Resources (WIPO/GRTKF/IC/17/6). The list of ten options for work is split into three main areas:
 - A. *Options on defensive protection of genetic resources*
 - B. *Options on disclosure requirements*
 - C. *Options on IP issues in mutually agreed terms for fair and equitable benefit-sharing.*
2. A more recent discussion paper submitted without prejudice by Australia, Canada, New Zealand, Norway and the United States of America (WIPO/GRTKF/IC/17/7) attempts to identify objectives and principles of IP protection of Genetic Resources. This paper identifies five objectives with underlying principles.
3. To assist Member States in advancing discussion on IP protection of Genetic Resources it may be useful to provide a more targeted discussion on objectives and principles and how the options will help achieve these. The attached paper should assist the Committee in considering how all these options may contribute to achieving objectives and principles for the IP protection of Genetic Resources.
4. Targeted expert discussion on the issues relating to disclosure requirements (option B2) will inevitably draw out issues relevant to other options on disclosure requirements (B1, B3 and B4). Such a focused discussion will also help define whether or to what extent various disclosure options would help achieve objectives like:
 - ensuring inventors using genetic resources and any associated traditional knowledge comply with any conditions for use, access and benefit sharing;
 - preventing patents being granted in error for inventions that are not novel or inventive in light of traditional knowledge associated with genetic resources;
 - ensuring patent offices have available the information needed to make proper decisions on patent grant;
 - the relationship with relevant international agreements and processes; and
 - maintaining the role of the IP system in promoting innovation.
5. A targeted expert discussion will also help to define how useful the other options under A and C may be in meeting objectives and principles of IP protection of Genetic Resources.

[Appendix follows]

APPENDIX

Objectives and Principles (WIPO/GRTKF/IC/17/7)		Options (identified in WIPO/GRTKF/IC/17/6)
Objective 1	Ensure inventors using genetic resources and any associated traditional knowledge comply with any conditions for use, access and benefit sharing.	<p>B.1 Mandatory disclosure</p> <p>B.2 Further examination of issues relating to disclosure requirements</p> <p>B.3 Guidelines and recommendations on disclosure</p> <p>B.4 Alternative mechanisms – Other work on provisions for national or regional patent laws to facilitate consistency and synergy between ABS measure and patent law and practice.</p> <p>C.1 Online Database of IP clauses in mutually agreed terms on ABS</p> <p>C.2 Draft guidelines for contractual practices</p> <p>C.3 Study on licensing practices on GR</p>
Principles:	<p>Sovereign states have the authority to determine access to genetic resources in their jurisdiction.</p> <p>Subject to national legislation, persons accessing traditional knowledge associated with genetic resources from the knowledge holder and applying that knowledge in the development of an invention should obtain the approval from the knowledge holder and seek the knowledge holders involvement in that application.</p>	

	<p>Objective 2</p> <p>Prevent patents being granted in error for inventions that are not novel or inventive in light of traditional knowledge associated with genetic resources.</p>	<p>A.1 Inventory of databases and information resources on GR A.2 Information systems on GR for defensive protection A.3 Guidelines and recommendations on defensive protection B.1 Mandatory disclosure B.3 Guidelines and recommendations on disclosure</p>
<p>Principles:</p>	<p>Patent applicants should not receive a monopoly on inventions that are not new or inventive.</p>	
	<p>The patent system should provide certainty of rights for legitimate users of genetic resources.</p>	
<p>Objective 3</p>	<p>Ensure patent offices have available the information needed to make proper decisions on patent grant.</p>	<p>A.2 Information systems on GR for defensive protection A.3 Guidelines and recommendations on defensive protection B.1 Mandatory disclosure B.3 Guidelines and recommendations on disclosure</p>
<p>Principles:</p>	<p>Patent offices must have regard to all relevant prior art when assessing the patentability of an invention.</p>	
	<p>Patent applicants must indicate the background art which, as far as known to the applicant, can be regarded as useful for the understanding, searching and examination of the invention</p>	
	<p>There is a need to recognise that some holders of traditional knowledge may not want their knowledge documented.</p>	

Objective 4	Relationship with relevant international agreements and processes	B.2 Further examination of issues relating to disclosure requirements C.1 Online Database of IP clauses in mutually agreed terms on ABS
Principles:	Respect for and consistency with other international and regional instruments and processes. Promotion of cooperation with relevant international and regional instruments and processes.	
Objective 5	Maintain the role of the IP system in promoting innovation.	A.1 Inventory of databases and information resources on GR A.2 Information systems on GR for defensive protection A.3 Guidelines and recommendations on defensive protection B.2 Further examination of issues relating to disclosure requirements C.3 Study on licensing practices on GR
Principles	Promote certainty and clarity of IP rights. Protect creativity and reward investments made in developing a new invention. Promote transparency and dissemination of information by publishing and disclosing technical information related to new inventions, so as to enrich the total body of technical knowledge accessible to the public.	

[End of Annex and of document]