



IGE | IPI

Swiss Federal Institute
of Intellectual Property

IP Issues Concerning Genetic Resources and their Interlinkage with Traditional Knowledge and Traditional Cultural Expressions

Some considerations for advancing the work of the IGC on TK and TCEs

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Fostering innovation.

IGC Mandate 2026/2027

... WIPO General Assembly agrees that the mandate of the Committee be renewed, without prejudice to the work pursued in other fora, as follows:

- (a) The Committee will, during the budgetary biennium 2026/2027, in a Member State driven process, continue its work on the protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs), with the objective of finalizing an agreement on an international legal instrument(s), without prejudging the nature of outcome(s), relating to intellectual property, which will ensure the balanced and effective protection of TK and TCEs.
- (b) ..
- (c) Noting the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge adopted in 2024, the Committee will, during the budgetary biennium 2026/2027, continue to discuss intellectual property issues concerning GRs and their interlinkage with TK and TCEs, without normative work on GRs.
- (d) The Committee will follow, as set out in the table below, a work program based on open and inclusive working methods for the 2026/2027 biennium, including an evidence-based approach with actual examples, including national/regional experiences, as set out in paragraph (e). ...



- Recognition of interlinkages between GRs and TK/TCEs.
- No normative work on GR → Focus on issues that help to advance the work on TK/TCEs.

Points to be aware of when discussing IP issues concerning GR and their interlinkage to TK and TCEs

1. IP issues covered by the WIPO Treaty on IP, GR and ATK (WIPO Treaty)
2. IP issues covered by other international IP agreements and fora
3. Non-IP issues covered by other international agreements and fora

1. IP issues covered by the WIPO Treaty

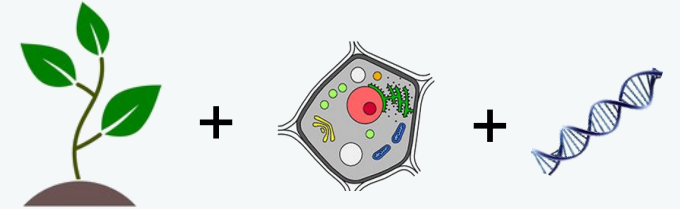
- **Disclosure requirement** of country of origin / source for GR and ATK in patent applications:
 - Recognition of Indigenous Peoples or local communities in the context of ATK as well as the possible source of the GR.
- **Information systems** with appropriate safeguards for Indigenous Peoples and local communities.
- **Review clause:**
 - Commitment to review the scope and contents of the Treaty 4 years after its entry into force, including a possible extension to other areas of IP.
- **Relationship with other international agreements** → Mutually supportive implementation, but also two important footnotes:
 - Consider the need for amendments to the Regulations under the PCT and/or the Administrative Instructions.
 - No derogation from or modification of any other international agreement.

Relevance for the work of the IGC on TK/TCEs

- **Over 20 years of negotiations** for a workable “transparency” measure for GR/ATK in patent applications !
 - The protection of TK/TCE is much more complex → calls for a pragmatic approach.
- **No need to address “disclosure requirements” in the TK/TCEs instrument:**
 - A possible extension to other areas of IP and to TK/TCEs can be addressed through the review clause.
 - Article 7 (disclosure requirement) in the draft TK Instrument should be deleted and replaced by referring to the WIPO Treaty in an appropriate way.
- **The language in Article 5bis (databases) in the TK Instrument** could be simplified, aligned to and/or formulated based on the language in Article 7 (information systems) of the WIPO Treaty.
- **No specific provisions for GR as such are needed** in the TK/TCE instrument(s).

2. IP issues covered by other international IP agreements and fora

Definition of GR: “Genetic resources” are genetic material of actual or potential value, and “genetic material” means any material of plant, animal, microbial or other origin containing functional units of heredity.



- TRIPS Agreement, in particular Art. 27.3 (b), for patents on plants, animals, microorganisms, etc.
- UPOV Convention for the protection of new plant varieties
- Budapest Treaty for the deposit of microorganisms
- Madrid Agreement for trademarks related to GR products
- Lisbon System, including the Geneva Act, for geographical indications
- other WIPO agreements



UPOV



Relevance for the work of the IGC on TK/TCEs

- The IGC should be **aware of IP issues covered by other relevant international IP agreements and fora:**
 - The TK/TCEs instrument(s) must be compatible with the existing international IP agreements
 - No normative work on issues covered by those other international IP agreements
- The TK/TCE instrument(s) could refer to **defensive protection measures** in accordance with the relevant international IP agreements (e.g., the disclosure requirement contained in the WIPO-Treaty).
- Where feasible and in accordance with the rights and interests of Indigenous Peoples and local communities, the TK/TCE instrument(s) should **promote the use of existing IPRs:**
 - **Geographical indications (GI)**, collective trademarks, copyright protection, and others.

Peruvian-Swiss IP cooperation project:

- Two new GIs with interlinkages to GR, TK and TCEs

1. Café Villa Rica

2. Cacao Amazonas Peru

3. Non-IP issues covered by other international agreements and fora

- Convention on Biological Diversity (CBD) and its Nagoya Protocol
 - including the work under Art. 8j and other provisions of the CBD related to Indigenous Peoples and local communities as well as the work on digital sequence information (DSI)
- International Treaty on Plant Genetic Resources of Food and Agriculture (ITPGRFA)
 - in particular Article 9 on Farmers' Rights
- WHO Instruments
 - PIP-Framework, the Pandemic Treaty and its future PABS-Annex
- UNCLOS Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement)
- UNESCO Conventions and Recommendations
- Human Rights Instruments
 - in particular the United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP)

Relevance for the work of the IGC on TK/TCEs and way forward

- The **IGC should be aware of non-IP issues covered by other relevant international agreements and fora** that are relevant to the work of the IGC on TK and TCEs.
- The TK/TCE instrument(s) should **not include normative provisions on non-IP issues** addressed by non-IP agreements and fora.
- The TK/TCE instrument(s) should **promote the mutually supportive implementation** of all agreements that may be relevant for a better protection of TK/TCE.

The TK/TCE instrument(s) should follow **a comprehensive approach**, which may include:

- Rights for TK/TCEs held by Indigenous Peoples and local communities (IPLC) → but compatibility with existing IP agreements must be ensured.
- Promotion of the use of existing IPRs, where feasible and in accordance with the rights and interests of IPLC.
- Additional measures, such as:
 - a reference to the new WIPO Treaty with regard to the disclosure requirement;
 - principles of unfair competition;
 - the establishment of information systems or databases;
 - codes of conducts, best practices, contractual arrangements, cooperation, capacity building, awareness raising and other measures.



Thank you.

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