

Survey Summary

This document provides the results of the questionnaire which was sent to 33 countries. Taking into account the responses from 22 countries, “Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions/Folklore: A Guide for Countries in Transition” has been developed separately.

This document does not necessarily represent the views of WIPO. It is not a substitute for legal advice. Its purpose is limited to providing basic information.

1. Existing legislation on the protection of TK/TCEs of the countries in transition

Most countries do not have any special legislation on the protection of TK and/or TCEs. However, the Azerbaijani Republic (hereinafter referred to as Azerbaijan) passed the Azerbaijani Law, dated May 16, 2003, No. 460-IIG on Legal Protection of Expressions of Azerbaijani Folklore in 2003, and the Kyrgyz Republic (hereinafter referred to as Kyrgyzstan) passed the Kyrgyzstan Law, dated July 31, 2007, No. 116 on the Protection of Traditional Knowledge in 2007.

In certain countries, such as the Republic of Kazakhstan (hereinafter referred to as Kazakhstan), the work to identify the principles for legal protection of TK and establish legal mechanisms is in progress. For example, the Intellectual Property Rights Committee under the Kazakh Ministry of Justice developed a Draft Law on Amendments to Certain Legislative Acts of the Republic of Kazakhstan in the Field of Intellectual Property, which prohibits patenting the innovations based on TK in Kazakhstan and designates the competent authority responsible for keeping a register of TK¹.

Although there is a lack of special legislation on TK and TCEs in the region, there are some legislative acts or regulations addressing certain issues relating to TK/TCEs.

Romania introduced Implementing Regulation (Governmental Decision No. 547/2008) to Patent Law 64/1991, which includes a provision relating to the requirement for disclosure of TK (Article 16(c)).

Article 4.3 of the Law of Bulgaria on Copyright and Neighbouring Rights and Article 5.6 of the Law of Lithuania on Copyright and Related Rights provide that works of folklore shall not be considered as subject matter of copyright. The Civil Code of the Russian Federation expressly states that works of folklore without specific authors are not subject to copyright². At the same time the Russian Federation has special legislation on artistic folk crafts that constitute a part of folklore³.

Additionally, there is legislation relating to cultural heritage, such as the Lithuanian Law on the Principles for State Protection of Ethnic Culture; Bulgarian Law on Cultural Heritage; Law of Georgia on Cultural Heritage; Law of Georgia Concerning Culture; Kyrgyz Law on Culture; Macedonian Law on the Protection of Cultural Heritage; Law of the Russian Federation dated October 9, 1992 No. 3612-I on the Fundamentals of Legislation of the Russian Federation on Culture; Federal Law dated June 25, 2002 No. 73-FZ on Objects of Cultural Heritage (Historical and Cultural Monuments) of the Peoples of the Russian Federation; Law of the Republic of Tajikistan (hereinafter referred to as Tajikistan) on the Preservation and Use of Historical and Cultural Heritage; and Law of the Republic of Uzbekistan (hereinafter referred to as Uzbekistan) on the Protection and Use of Objects of Cultural Heritage (No. ZRU-228 dated 09.10.2009).

¹ As of the date of this survey, no information is available as to whether or not the law has been passed.

² Item 3, paragraph 6, article 1259 of the Civil Code of the Russian Federation.

³ Federal Law dated January 6, 1999 No. 7-FZ on Artistic Folk Crafts (as amended).

The examples above show the diversity of national approaches to the protection of TK and TCEs.

There is no uniform answer to the question whether or not there is a need to extend IP protection to TK and TCEs. Kazakhstan believed that there is a need to do so, while Cyprus, Czech Republic, Greece, Latvia, Montenegro, Poland and Romania stated that there is no need to do so. Georgia, Tajikistan and the former Yugoslav Republic of Macedonia (hereinafter referred to as FYR of Macedonia) believed that IP protection could be extended to cover TK and TCEs, in particular, for preventing unauthorized use (FYR of Macedonia). Lithuania believed that the existing IP system should not be interfered with and that double protection of TK and TCEs should be avoided.

The Republic of Belarus (hereinafter referred to as Belarus) believed that special (*sui generis*) protection of TK and TCEs should be developed. However, Greece, Cyprus, Czech Republic, Poland and Romania did not think it is necessary to draft special legislation to protect TK and TCEs. Belarus pointed out that special international protection is required. Serbia believed that in case of misuse and misappropriation of TK or TCEs which are not protectable by existing IP rights, *sui generis* protection could be useful.

2. Traditional knowledge and traditional cultural expressions in countries in transition

Countries in transition are rich in various TK and TCEs. Below are a few examples:

- Azerbaijan: carpet weaving, mugham⁴, the art of Azerbaijani Ashiqs, national cuisine, medications and treatment methods, holy places (such as Əshabi-Kəhf).
- Belarus: objects of skilled crafts (straw toys, etc.).
- Kazakhstan: harness, dombura, cradle, traditional treatment methods, kazy, zhal-zhaya, special quark called kurt, shubat and method of their making.
- Kyrgyzstan: traditional Kyrgyz method of making shakar soap.
- Tajikistan: medicinal herb curing 1000 diseases “Khazor ispan”, traditional embroidery on women’s clothes called Chakan, grape dessert called Shirini.
- Uzbekistan: recipes of national dishes, issirik⁵, Karakul farming, dried pitted and halved apricot, khanatlas⁶, carpets.
- Bulgaria: traditional fire dancing Nestinari, ancient Bulgarian ritual kukeri, folk dances: Tropanka, Pravo horo, Shopsko horo, Rachenitsa, Elenino horo, Dunavsko horo, etc.
- Hungary: awardees of the ‘Master of Folk Art’ distinction and their knowledge and activity, falconry, Busó festivities at Mohács (masked end-of-winter carnival custom), the living tradition of lace-making in Halas, Mutton Stew of the Cumania Region According to the Karcag Tradition, living traditional heritage in the cultural space of Kalocsa (embroidery, ornamental painting, traditional dress and folk dance), pottery tradition of Mezőtúr, Matyó Heritage – living traditions of embroidery, dress and folklore.
- Cyprus: traditional conservation of fruit and making of jams and candies; using olive oil in traditional medicine; using syrup of algarroba in traditional recipes and medicine; traditional knives; traditional national costumes; haircuts; ceramic exhibits; woven plates for storing foods (tsestos); bags made of sheepskin, etc.
- Russian Federation: ceramic goods (Gzhel), wooden goods - varnished miniatures (Palekh, Mstera); goods from birch bark, goods from bones, Vologda lace, Orenburg shawl, Torzhok golden sewing, methods of traditional medicine (herbal medicine, honey treatment, shamanistic ritual), etc.

TCEs can be either intangible or tangible, and may be divided into the following categories:

⁴ A special type of organization of musical speech.

⁵ Medicinal herb.

⁶ Silk tissues with the national Uzbek ornament.

- phonetic or oral expressions (e.g. fairy tales, proverbs, sayings, legends, stories, myths, dastans and bayats (special form of lyrics));
- musical or sound expressions (e.g., folk songs, couplets, folk melodies, tunes, tesnifs (vocal), rengi (instrumental));
- expressions through actions (e.g., folk dances, rituals, Yalli, games, events and holidays);
- expressions of art in tangible form (e.g., decorations, ornaments, works of skilled crafts, folk musical instruments, paintings, pictures, sketches, shadowed drawings, embossing and cutting, works of sculpture, ceramics, goods made of clay, mosaic, works on metal (metal processing), cast products from copper or bronze, sericulture, carpet weaving, works made of copper, jewellery, tanning, embroidery, basketry, tapestry, buta, clothes as an expression of folk arts, joinery and architectural skills).

TK includes information or rules related to traditional lifestyles, information about people's way of life, hunting, fishing, agriculture, and knowledge about traditional use of resources, etc. Some countries believed that TK is a more general notion and consider TCEs to be a part or a type of TK.

Regarding the question whether TK and TCEs should be treated distinctly or holistically, the answers are as follows:

- Kazakhstan believed that approaches can be different depending on specific circumstances. Unfortunately, no examples were given.
- Hungary, Georgia, Lithuania, Serbia, Tajikistan and Uzbekistan believed that TK and TCEs should be considered separately.
- FYR of Macedonia believed that TK and TCEs as cultural heritage should be treated as a whole based on the integral approach methodology, while, regarding IP protection, TK and TCEs should be treated separately with clear and precise legal measures.
- Latvia thought that internationally TK and TCEs should not be treated in a holistic way, but such holistic approach can be used at the national level.
- Hungary, Greece, Cyprus, Romania, Poland and Czech Republic believed that, at the present stage of the IGC process, the negotiations concerning the draft articles on TK and TCEs should be kept separate.
- Armenia, Bosnia and Herzegovina and Montenegro suggested treating TK and TCEs holistically.

Definitions of "traditional knowledge" and "traditional cultural expressions" included in the national legislations are as follows:

- Article 2 of Kyrgyzstan Law N116 of July 31, 2007 on the Protection of Traditional Knowledge defines TK as knowledge, methods and techniques, including those using genetic resources, which are applicable in different areas of human activities and were passed from one generation to another through a certain procedure and with a certain meaning. Such knowledge has been preserved and adapted to certain needs of local communities and TK holders and has specific value for the development of different areas of life.
- A definition of the term "folklore" is provided in Article 1 of Kyrgyzstan Law N119 of April 7, 2009 on Culture. "Folklore" means the totality of works, based on the traditions of the cultural community and created by the people of Kyrgyzstan or its separate individuals and recognized as a reflection of traditional values, world view, peculiarities of the nature of the artistic heritage of Kyrgyzstan, its cultural and social identity.
- According to Article 1 of Law of the Republic of Azerbaijan on the Legal Protection of Expressions of Azerbaijani Folklore, Azerbaijan folklore expressions mean "word art works, folk music, games and dances, works of folk handicraft and applied arts (existing and not existing in a material form) created in a verbal form as well as other

products of folk creative work created and protected by Azerbaijani people, its individuals and reflecting traditional artistic values, world view, hopes and wishes, characteristic features of artistic heritage of Azerbaijani people”.

- Paragraph 39, Article 2 of the Law of Kazakhstan dated June 10, 1996 on Copyright and Related Rights (as amended) defines the term “creations of folk arts” that can be considered to be a synonym of the term “folklore”. “Creations of folk arts” means any creations, including characteristic elements of the traditional artistic heritage (folk tales, folk poetry, folk songs, instrumental folk music, folk dances and plays, artistic form of folk rituals, etc.).
- Article 2.4 of the Lithuanian Law on the Principles of State Protection of Ethnic Culture defines “ethnic culture” as “the sum total of cultural properties, created by the entire nation (ethnos), passed from generation to generation and constantly renewed, which makes it possible to preserve the national identity and consciousness and uniqueness of ethnographic regions”.
- The Law of TŕFYR of Macedonia on Cultural Heritage Protection defined the elements of TK and TCEs in a very narrow framework: ethnological items and folklore goods. Ethnological items are “the movable goods which testify for the manner of living, activities, habits, rituals, beliefs, ideas and creations which are necessary to understand the ethnical characteristics and changes in the material and intangible culture of the Macedonian nation and the minorities in the Republic of Macedonia” (Article 16 (1)). “Folklore goods” are defined as “the habits, rituals, tales, mental creations, folklore songs, stories, legends, adages, riddles, dances, plays, old and rare crafts, traditional crafts and other expressions of the immaterial national creation” (Article 24).
- The Law of Georgia on Cultural Heritage and the Law of Georgia Concerning Culture provide the definition of intangible cultural heritage where the term knowledge and skills related with traditional art is mentioned. The Law of Georgia on Cultural Heritage, in line with the Law of Georgia Concerning Culture, defines intangible cultural heritage as “oral traditions and forms of expression, including language, as a carrier of material cultural heritage, performing art, customs, rites, knowledge and skills related with traditional art, as well as instruments, objects, artifacts and cultural spaces connected with them that are recognized by the society, groups and in some cases by individual persons as a part of their cultural heritage”.

3. Criteria for eligibility of protectable traditional knowledge and traditional cultural expressions

Regarding the question whether there should be criteria for the protection of TK and TCEs, the answers are summarized in Diagram 1 and Table 1.

Diagram No. 1

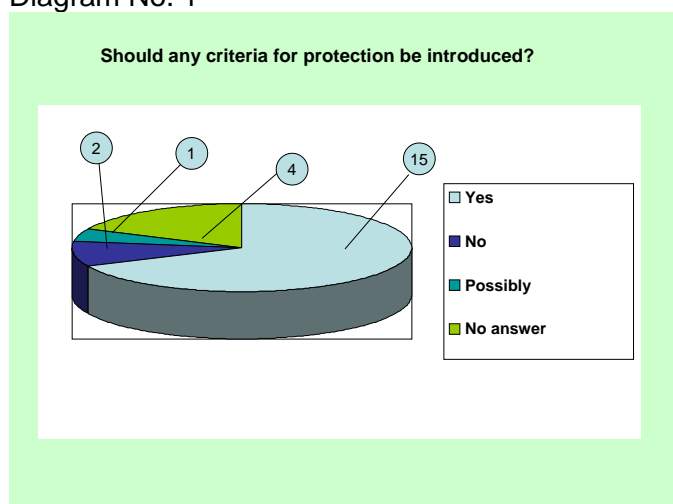


Table 1

Answer	Country
Yes	Armenia, Azerbaijan, Belarus, Cyprus, Czech Republic, Greece, Hungary, Kyrgyzstan, Montenegro, Poland, Romania, Russian Federation, Serbia, Tajikistan, TfyR of Macedonia
No	Bosnia and Herzegovina, Uzbekistan
Possibly	Latvia
No definite answer	Bulgaria, Georgia ⁷ , Kazakhstan, Lithuania

Characteristics of TK and TCEs have to be identified to determine possible criteria. A question “which should be the main features characterizing TK and TCEs” was included in the questionnaire. Several characteristics were proposed as follows:

- Protected TK and TCEs are:
 - collectively generated, preserved and transmitted in a traditional and intergenerational context within an indigenous or local community;
 - integral to the cultural identity of (an indigenous peoples or local community);
 - identified with the cultural identity of a local, indigenous or traditional peoples or communities or nations that is recognized as the owner;
 - transmitted orally or by imitation;
 - reflect the expectations of local communities.

Replies are listed in Table 2 and Diagram 2.

Table 2

№	Country	Protected TK and TCEs are:				
		collectively generated, preserved and transmitted in a traditional and intergenerational context (1)	integral to the cultural identity (of an indigenous people or local community) (2)	identified with the cultural identity of a local, indigenous or traditional peoples or communities or nations that is recognized as the owner (3)	transmitted orally or by imitation (4)	reflect the expectations of a local community (5)
1.	Armenia	Yes			Yes	
2.	Azerbaijan	Yes	Yes	Yes	Yes	Yes
3.	Belarus		Yes	Yes	Yes	
4.	Cyprus	Yes	No	No	No	No
5.	Czech Republic ⁸	Yes	Yes	No	No	No

⁷ Georgia states that “[s]trict requirements should not be used here. Main idea is to consider objects of TK and TCEs as worth protecting and to be precious for those indigenous peoples, local communities, families.”

⁸ Czech Republic believes that the answers apply to TK. TCEs are not part of knowledge. The following may apply to TCEs:

- Tangible or intangible forms of artistic creativity of local peoples, local and cultural communities.
- Unique and characteristic product of the cultural and social identity and cultural heritage of indigenous, local and cultural communities
- Maintained, used or developed by indigenous, local and cultural communities.

6.	Georgia	Yes	Yes	Yes	Yes	Yes
7.	Greece	Yes	Yes	No	No	No
8.	Hungary	Yes (TK)	Yes (TK)	No (TK)	No (TK)	No (TK)
9.	Kyrgyzstan	Yes	Yes	Yes	Yes	Yes
10.	Latvia	Yes				
11.	Lithuania	Yes	Yes	No	Yes	Yes
12.	Montenegro	Yes	Yes			
13.	Poland	Yes	Yes	No	No	No
14.	Romania	Yes	No	No	No	No
15.	Russian Federation	Yes	Yes	Yes	No	No
16.	Serbia	Yes	Yes	Yes	Yes	Yes
17.	Tajikistan	Yes	Yes	Yes	Yes	
18.	TfYR of Macedonia	Yes	Yes	Yes	Yes	Yes
19.	Uzbekistan	Yes	Yes	Yes	Yes	Yes

Diagram 2

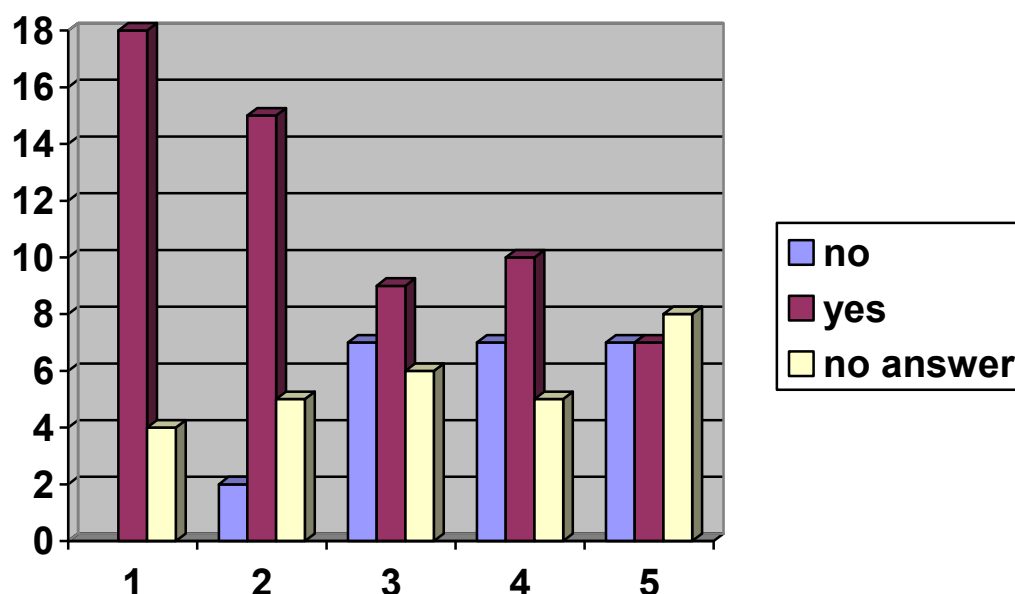


Diagram 2 above shows that:

- regarding characteristic “collectively generated, preserved and transmitted in a traditional and intergenerational context”, positive answers were received from 18 countries while 4 countries gave no answer.

- regarding characteristic “integral to the cultural identity”, positive answers were received from 15 countries, while negative answers were received from 2 countries and 5 countries gave no answer;

- regarding characteristic “identified with the cultural identity of a local, indigenous or traditional peoples or communities or nations that is recognized as the owner”, positive answers were received from 9 countries, while negative answers were received from 7 countries and 6 countries gave no answer;

- regarding characteristic “transmitted orally or by imitation”, positive answers were received from 10 countries, while negative answers were received from 7 countries and 5 countries gave no answer;

- regarding characteristic “reflect the expectations of local communities”, positive answers were received from 7 countries, while negative answers were received from 7 countries and 8 countries gave no answer.

The answers to the question of whether the possible criteria for protection should apply cumulatively are summarized in Table 3.

Table 3

Answer	Country (number of countries)
Yes	Azerbaijan, Belarus, Cyprus, Czech Republic, Georgia, Greece, Hungary, Lithuania, Montenegro, Poland, Romania, Russian Federation, TfYR of Macedonia (13)
No	Armenia, Bosnia and Herzegovina, Kyrgyzstan, Latvia, Serbia, Tajikistan, Uzbekistan (7)
No answer	Bulgaria, Kazakhstan (2)

Additionally, examples of criteria for the protection of TK and TCEs were requested. Some of them are listed below:

- The Republic of Azerbaijan specified availability of facts that prove the traditional nature and the development of traditional nature.
- The Kyrgyz Republic believed that protection shall extend to TK that is practically applicable in any field of human activities and provides a positive result in its application.
- Cyprus, Greece, Poland, Romania, Montenegro and Czech Republic specified the following as important criteria for TK: collectively generated, preserved and transmitted from generation to generation or in a traditional and intergenerational context.
- Hungary believed that, in addition to “intergenerational/passed on from generation to generation” as included in the definition of TK, protection should extend only to TK that is associated/linked with the cultural and social identity and/or cultural heritage of beneficiaries and that is generated, maintained, shared/transmitted in collective context.
- Serbia believed that intergenerational transmission of knowledge is the main characteristic of the term “traditional”.
- Tajikistan specified that the following may be used as criteria: duration of use (TK is transferred from generation to generation), territorial limitation of its use (protection is granted on the entire territory of the country, and, if TK belongs to the entire population, protection would be meaningless).
- The Russian Federation stated:
 - it shall be a unique product of, or expressly connected with an indigenous or local community;
 - it shall be integral to the cultural identity of an indigenous or local community;
 - it shall not be widely spread beyond that indigenous or local community within a reasonable period of time based on prior informed consent; and
 - it shall not apply to any principles, rules, know-how, practices or knowledge that are widely disseminated and generally known.

4. Beneficiaries

A paramount issue is that of identifying the beneficiaries of protection of TK and TCEs.

The following questions regarding beneficiaries were included in the questionnaire, the answers to which are summarized in tables and diagrams:

- Should the holders of TK and TCEs benefit from the protection of TK and TCEs? (Table 4)
- Does the term “holders of TK and TCEs” include indigenous peoples, local communities or traditional communities? (Table 4)

- Can nations, families, individuals, the State or others be the holders of the rights for protected TK and TCEs? (Table 5 and Diagram 3)
- Should customary law of indigenous peoples be taken into consideration when defining the right holders of protected TK and TCEs? (Table 6 and Diagram 4)
- How could the beneficiary be identified if the same TK and TCEs belong to different communities? (Table 7)
- How could the beneficiary be identified if the representatives of traditional community, which have the same traditions and common TK and TCEs, are living in different States, and in this respect apply different regulations and norms at the national level? (Table 8)
- Is there any definition of “indigenous peoples”, “local communities” or “traditional communities” available in the country? (Table 9 and Diagram 5)
- Does national legislation include the definitions of “indigenous peoples”, “local communities” or “traditional communities”? (Table 10 and Diagram 6)
- Could individual members of a community act as the beneficiaries of protected TK and TCEs? Should, if the member leaves the community or uses TK and TCEs in contradiction with the common interests of the said community, the community rights prevail? Should products and works of individual members in the field of TK and TCEs be the property of the community even after their death? (Table 11 and Diagram 7)

The results show the complexity and uncertainty of the issue of beneficiaries.

Regarding the question whether the holders of TK and TCEs should benefit from the protection of TK and TCEs (Table 4), 18 countries confirmed that such holders of TK and TCEs should benefit and 4 countries gave no answer. Most countries also stated that the term “holders” should include indigenous peoples (13), local (16) and traditional communities. Greece, Cyprus, Poland, Romania and Czech Republic stated that the term “holders” should include indigenous communities instead of indigenous peoples.

Table 4

№	Country	Should the holders of TK and TCEs benefit from TK and TCE protection	In this case “holders of TK and TCEs” includes		
			indigenous peoples	local communities	traditional communities
1	Armenia		Yes		
2	Azerbaijan	Yes	Yes	Yes	Yes
3	Belarus	Yes	Yes	Yes	Yes
4	Bosnia and Herzegovina	Yes	Yes	Yes	Yes
5	Cyprus	Yes	indigenous communities instead of indigenous peoples	Yes	TK: No TCEs: Yes
6	Czech Republic	Yes	indigenous communities instead of indigenous peoples	Yes	TCEs: Yes
7	Georgia	Yes	Yes	Yes	Yes
8	Greece	Yes	TK: indigenous communities	TK Yes	TK: No

			instead of indigenous peoples		
9	Hungary	Yes	No	Yes	Yes (Traditional communities fall within in the definition of local communities.)
10	Kyrgyzstan	Yes	Yes	Yes	Yes
11	Latvia	Yes	Yes		Yes
12	Montenegro	Yes		Yes	
13	Poland	Yes	TK: indigenous communities instead of indigenous peoples	TK: Yes	TK: No
14	Romania	Yes	indigenous communities instead of indigenous peoples	Yes	Yes
15	Russian Federation	Yes	Yes	Yes	Yes
16	Serbia	Yes	Yes	Yes	Yes
17	Tajikistan	Yes	No	Yes	Yes
18	TfYR of Macedonia	Yes	Yes	Not always	Yes
19	Uzbekistan	Yes	Yes	Yes	

Diagram 3 and Table 5 show that the views on whether nations, families, individuals or state could be beneficiaries. 7 countries answered positively regarding nations (1), while 10 answered negatively and 5 failed to answer this question. 7 countries answered positively regarding families (2), while 11 believed that families should not be beneficiaries and 4 did not answer. 7 countries thought that individuals (3) can be beneficiaries, while 11 had the opposite opinion and 4 respondents failed to give an answer. 11 countries supported that the State (4) could be beneficiaries, while 9 thought that it was not possible and 2 did not answer.

It should be noted that TfYR of Macedonia specified “professional representatives of holders, bearers etc.” as beneficiaries.

Diagram 3

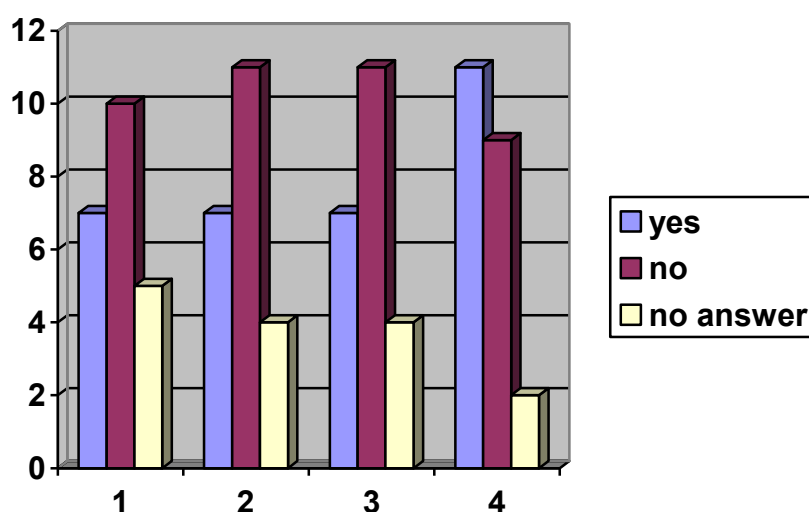


Table 5

№	Country	Whether the followings could be beneficiaries				
		nations (1)	families (2)	individuals (3)	State (4)	others (5)
1	Armenia				Yes	
2	Azerbaijan	Yes	Yes	Yes ⁹	Yes	
3	Belarus	Yes	No	No	Yes	
4	Bosnia and Herzegovina	Yes	Yes	Yes	Yes	
5	Cyprus	No	No	No	No	
6	Czech Republic ¹⁰	No	No	No	No	
7	Georgia	Yes	Yes	Yes	Yes ¹¹	
8	Greece ¹²	No	No	No	No	
9	Hungary	No	No	No	No	
10	Kazakhstan				Yes	
11	Kyrgyzstan	Yes	Yes	Yes	Yes	
12	Latvia	No	No	No	No	
13	Montenegro	No	No	No	No	
14	Poland ¹³	No	No	No	No	
15	Romania	No	No	No	No	
16	Russian Federation	No	No	No	No	
17	Serbia	Yes	Yes	Yes	Yes	
18	Tajikistan	No	No	No	Yes	
19	TfYR of Macedonia	Yes	Yes	Yes	Yes ¹⁴	Yes ¹⁵
20	Uzbekistan		Yes	Yes	Yes	

⁹ If they are the last representatives and holders of TK and TCEs

¹⁰ TK: Beneficiaries of protection should be those indigenous and local communities who are holders of TK.

¹¹ For instance in Georgia in many cases it is not possible to find communities that maintain, use or develop their TK and TCEs and follow their own customary law, in this case right holder of TK and TCEs should be the state.

¹² TK: Beneficiaries of protection should be those indigenous and local communities who are holders of TK

¹³ TK: Beneficiaries of protection should be those indigenous and local communities who are holders of TK.

¹⁴ Through the institutions who recorded in the past the TK and TCEs.

¹⁵ Professional representatives of holders, holders etc.

Table 6 and Diagram 4 show the results of the answers to the question of whether customary law of indigenous peoples should be taken into account when determining the beneficiaries. 9 countries believed that taking into consideration customary law would be appropriate when identifying the beneficiaries. 6 countries were against such approach, and 5 countries did not answer this question. 2 countries were not sure about it.

Table 6

№	Country	Answer	Clarifications
1	Armenia	No	
2	Azerbaijan	No	
3	Bosnia and Herzegovina	Yes	
4	Cyprus	Yes	The provisions of customary law of indigenous peoples and communities should be taken into consideration for the respect of those peoples and communities.
5	Czech Republic		TK: This should be left to national laws and practice. TCEs: Customary laws of indigenous peoples may be taken into consideration at the national level in order to identify the relevant right holders
6	Georgia	No	
7	Hungary	No	TCEs: Customary laws of indigenous peoples may be taken into consideration at the national level in order to identify the relevant right holders.
8	Kyrgyzstan		TK protection shall not be contrary to the rules of customary law.
9	Latvia	No	
10	Lithuania	Yes	
11	Poland	Yes	The provisions of customary law of indigenous peoples and communities should be taken into consideration for the respect for their culture.
12	Romania	Yes	The provisions of customary law of indigenous peoples and communities should be taken into consideration for the respect for their culture.
13	Russian Federation	Yes	In the same way that, for example, business practices are taken into account as one of the additional sources of law used to fill the gaps in the legislation or in addition to it.
14	Serbia	Yes	It should be taken into consideration because indigenous peoples and communities are one of the main beneficiaries in this process and have a well-known reputation.
15	Tajikistan	Yes	The customary practices constitute the law, and the laws shall be followed.
16	TfYR of Macedonia	Yes	Holders of protected TK and TCEs live for and from TK and TCEs, so, this ethical approach has to be taken into consideration. If they have to change the context in which they will practice the TK or TCEs, if they change their views about it, all concept of IP will not stand.
17	Uzbekistan	No	

Diagram 4

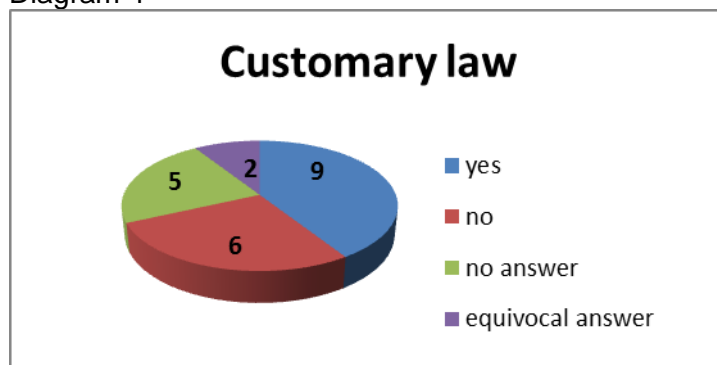


Table 7 summarizes the answers to the question “how could the beneficiary be identified if the same TK and TCEs belong to different communities?”.

Table 7

№	Country	Answer
1	Armenia	Mechanism of identification should be developed
2	Azerbaijan	Based on an agreement between communities
3	Belarus	On the basis of the principle of equal rights to benefits
4	Bosnia and Herzegovina	Not be able to provide an answer, because there is no legislation in place.
5	Bulgaria	No answer
6	Cyprus	TK: All communities holding the same TK should be considered as beneficiaries. TCEs: In cases where TCEs are not protected by copyright law on the basis of existing international legal instruments, the issue of international cooperation should be further discussed within the WIPO IGC.
7	Czech Republic	TK: All communities holding the same TK should be considered as beneficiaries. TCEs: In cases where TCEs are not protected by copyright law on the basis of existing international legal instruments, the issue of international cooperation should be further discussed within the WIPO IGC.
8	Georgia	The benefit should be shared equally between those right holders according to the regulations laid down by the law.
9	Greece	All communities holding the same TK should be considered as beneficiaries.
10	Hungary	All communities holding the same TK should be considered as beneficiaries. TCEs: In cases where TCEs are not copyright protectable on the basis of existing international legal instruments, the issue of cross-border cooperation should be further discussed within the work of the IGC.
11	Kazakhstan	No answer
12	Kyrgyzstan	Benefits should be divided proportionally by agreement between the communities
13	Latvia	No answer
14	Lithuania	All communities holding the same TK should be considered as beneficiaries.
15	Montenegro	No answer
16	Poland	All communities holding the same TK should be considered as beneficiaries.
17	Romania	TK: All communities holding the same TK should be considered as

		beneficiaries. TCEs: In cases where TCEs are not protected by copyright law on the basis of existing international legal instruments, the issue of international cooperation should be further discussed within the WIPO IGC.
18	Russian Federation	It is possible that all the communities holding TK and TCEs should be the beneficiaries. The question of determining the degree of participation of a certain community and rights should be addressed by legal procedures, unless there is a relationship among the communities, for instance, by signing an agreement.
19	Serbia	All communities holding the same TK should be considered as beneficiaries; the issue of cross-border cooperation should be further discussed within the WIPO IGC, although there is possibility for reaching bilateral or multilateral agreement.
20	Tajikistan	The beneficiaries can be both communities subject to registration of TK by them (whether a community holds TK is determined by registration).
21	TfYR of Macedonia	Negotiating or through open market of traditional goods, products, etc. Sometimes is good to think in a way of regionalization of their powers.
22	Uzbekistan	On the basis of mutual agreements

Table 8 summarizes the answers to the question “How could the beneficiary be identified if the representatives of traditional community, which have the same traditions and common TK and TCEs, are living in different States, and in this respect apply different regulations and norms at the national level?”.

Table 8

№	Country	Answers
1	Armenia	No answer
2	Azerbaijan	In accordance with international agreements, which should be developed in this regard
3	Belarus	At the place of application of legislation
4	Bosnia and Herzegovina	We are not able to provide an answer, because there is no legislation in place
5	Bulgaria	No answer
6	Cyprus	TK: In instances where TK is located in territories of different countries, those counties should cooperate by taking measures that are supportive of and do not run counter to the objectives of this instrument. This cooperation should be done with the participation of the TK holders. Parties shall consider the need for modalities of a global mutual benefit sharing mechanism to address the fair and equitable sharing of benefits derived from the use of TK that occurs in cross-border situations for which it is not possible to grant or obtain prior informed consent. TCEs: In cases where TCEs are not copyright protectable on the basis of existing international legal instruments, the issue of international cooperation should be further discussed within the work of the WIPO IGC.
7	Czech Republic	TK: In instances where TK is located in territories of different countries, those counties should cooperate by taking measures that are supportive of and do not run counter to the objectives of this instrument. This cooperation should be done with the participation of the TK holders.

		<p>Parties shall consider the need for modalities of a global mutual benefit sharing mechanism to address the fair and equitable sharing of benefits derived from the use of TK that occurs in cross-border situations for which it is not possible to grant or obtain prior informed consent.</p> <p>TCEs: In cases where TCEs are not copyright protectable on the basis of existing international legal instruments, the issue of international cooperation should be further discussed within the work of the WIPO IGC.</p>
8	Georgia	This is the most important issue. In this situation, using bilateral agreements would be the most appropriate way.
9	Greece	<p>TK: In instances where TK is located in territories of different countries, those countries should cooperate by taking measures that are supportive of and do not run counter to the objectives of this instrument. This cooperation should be done with the participation of the TK holders.</p> <p>Parties shall consider the need for modalities of a global mutual benefit sharing mechanism to address the fair and equitable sharing of benefits derived from the use of TK that occurs in cross-border situations for which it is not possible to grant or obtain prior informed consent.</p>
10	Hungary	<p>TK: In instances where TK is located in territories of different countries, those countries should cooperate by taking measures that are supportive of and do not run counter to the objectives of this instrument. This cooperation should be done with the participation of the TK holders.</p> <p>TCEs: In cases where TCEs are not copyright protectable on the basis of existing international legal instruments, the issue of cross-border cooperation should be further discussed within the work of the IGC.</p>
11	Kazakhstan	No answer
12	Kyrgyzstan	No answer
13	Latvia	No answer
14	Lithuania	No answer
15	Montenegro	No answer
16	Poland	<p>TK: In instances where TK is located in territories of different countries, those countries should cooperate by taking measures that are supportive of and do not run counter to the objectives of this instrument. This cooperation should be done with the participation of the TK holders.</p> <p>Parties shall consider the need for modalities of a global mutual benefit sharing mechanism to address the fair and equitable sharing of benefits derived from the use of TK that occurs in cross-border situations for which it is not possible to grant or obtain prior informed consent.</p>
17	Romania	<p>TK: In instances where TK is located in territories of different countries, those countries should cooperate by taking measures that are supportive of and do not run counter to the objectives of this instrument. This cooperation should be done with the participation of the TK holders.</p> <p>Parties shall consider the need for modalities of a global mutual benefit sharing mechanism to address the fair and equitable sharing of benefits derived from the use of TK that occurs in cross-border situations for which it is not possible to grant or obtain prior informed consent.</p> <p>TCEs: In cases where TCEs are not copyright protectable on the basis of existing international legal instruments, the issue of</p>

		international cooperation should be further discussed within the work of the WIPO IGC.
18	Russian Federation	Such problems have the universal nature inherent to all relationships related to the application of foreign legislation. At this stage the only decision is the unification and harmonization of national legislations, including the development of private international law in towards the establishment of collision rules in order to overcome the difficulties and contradictions between the law regulations of different countries.
19	Serbia	All communities holding the same TK should be identified as beneficiaries; the issue of cross-border cooperation should be further discussed within the work of the WIPO IGC, although there is possibility for making bilateral or multilateral agreement.
20	Tajikistan	It is necessary to establish legal provisions to allow the registration of TK by foreign applicants
21	TfYR of Macedonia	In that case the beneficiaries from different counties could be identified through establishing an agreement or mechanism for global benefit-sharing mutually.
22	Uzbekistan	On the basis of mutual agreements

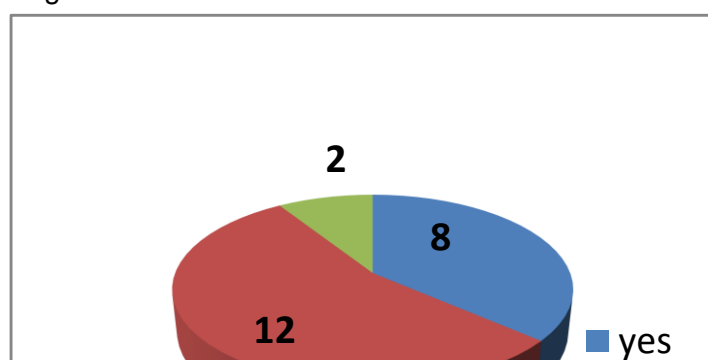
The answer to the question of “are there in your country the terms ‘indigenous peoples’, ‘local communities’ and/or ‘traditional communities’ are listed in Table 9.

Table 9 and Diagram 5 below show that only 8 countries use the terms “indigenous peoples”, “local communities” and/or “traditional communities”, while there are no such terms in 12 countries. 2 countries gave no answer to this question.

Table 9

Answer	Country
Yes	Azerbaijan, Bosnia and Herzegovina, Georgia, Kyrgyzstan, Lithuania, Russian Federation, TfYR of Macedonia ¹⁶ , Uzbekistan
No	Armenia, Belarus, Cyprus, Czech Republic, Greece, Hungary, Latvia, Montenegro, Poland, Romania, Serbia, Tajikistan
No answer	Bulgaria, Kazakhstan

Diagram 5



In addition, some countries provided examples of indigenous peoples, local communities, etc., living in their countries.

In Azerbaijan, for example, the Azerbaijani are indigenous people; other peoples include the Talysh, the Kurds, the Tat people, the Lezgians, the Caucasian Avars, the Aghuls, the Rutuls,

¹⁶ There are many definitions in scientific literature and in public practice, based on anthropological critical thoughts and experience.

the Tabasarans, the Udis, the Tsakhur people, etc. There are also the Russian community, the Polish community and three Jewish communities (the Highland Jews, the Ashkenazi Jews and the Georgian Jews).

Georgia pointed out that there are definitions for the abovementioned terms in the Georgian language, but there are no indigenous peoples in Georgia.

The Russian Federation pointed out that the Russian law does not divide people living in Russia into indigenous and non-indigenous groups. Article 19 of the Constitution of the Russian Federation provides that “the State shall guarantee the equality of rights and freedoms of citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be banned.” However, special attention is paid to minority indigenous peoples in the Russian Federation. For example, Article 1.1 of Federal Law No. 40-FZ of 5 April 2009 to amend the Federal Law on Guarantees of the Rights of Minority Indigenous Peoples defines minority indigenous peoples as peoples living on traditional territories of their ancestors, maintaining their traditional lifestyles, activities and trade practices, having in the Russian Federation less than 50,000 people and recognizing themselves as independent ethnic communities. The list of minority indigenous peoples of the Russian Federation is approved by the Russian Government on the recommendation of competent public authorities of constituent territories of the Russian Federation where such peoples live.

Uzbekistan pointed out that there are a Russian Cultural Center, a Tatar Cultural Center, and a Korean Cultural Center.

Bosnia and Herzegovina provided the following definitions:

- “indigenous peoples” - people living in a certain area or environment from the ancient times;
- “local communities” - people living in certain geographical areas who, through their own and common resources, satisfy most of their basic needs and solve their problems of life.

Table 10 and Diagram 6 show that, among those 7 countries which use the terms “indigenous peoples” or “local community”, only 2 countries reflect this in their legislation (Kyrgyzstan and the Russia Federation).

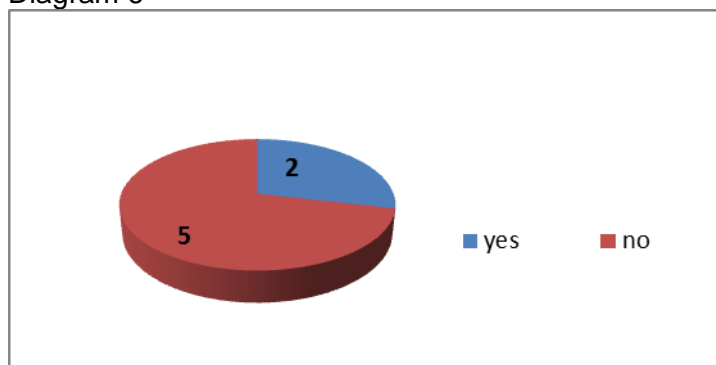
Table 10

Answer	Country
Yes	Kyrgyzstan, Russian Federation,
No	Azerbaijan, Bosnia and Herzegovina, Georgia ¹⁷ , Uzbekistan, TfYR of Macedonia ¹⁸

¹⁷ Georgian law does not cover these definitions directly.

¹⁸ More with respect to the territorial division of the state, for the purposes of the Ministry of Local Government, for the purpose of census, etc.

Diagram 6



The legislation of Kyrgyzstan has definitions for the following terms relating to potential beneficiaries:

- Jamaat (community) is a form of local government representing a voluntary association of the members of local communities living within one street, block or any other territorial formation of a village or city to take the responsibility for making common decisions on matters of local importance (Law of Kyrgyzstan on Jamaats (Communities) and their Associations).
- Association of Jamaats (Communities) is a voluntary foundation created by jamaats (communities) in the form of an association (union) to coordinate their activity, protect and represent common interests, implement joint projects and solve common problems and tasks (Law of Kyrgyzstan on Jamaats (Communities) and their Associations)
- Local Community is the population permanently living within the territory of an ail, village or city kenesh or other territories of Kyrgyzstan and having its own national and cultural traditions, life style and TK in various spheres of human activity, which has potential value for improving the standard of living of the population (Law of Kyrgyzstan on the Protection of Traditional Knowledge).

In the Russian Federation, the definition of “indigenous peoples” is reflected, for example, in Act No. 82-FZ of 30 April 1999 on Guarantees of the Rights of Minority Indigenous Peoples.

Diagram 7 and Table 11 show the results of the answers to the question “Do you agree the only communities and not their individual members can act as the beneficiaries of protected TK and TCEs? Should, if the member leaves the community or uses TK and TCEs in contradiction with the common interests of the said community, the community rights prevail? Should products and works of individual members in the field of TK and TCEs be the property of the community even after their death?”. Most countries (14 countries) tended to think that communities, not their individual members/representatives should be considered as beneficiaries. However, 2 countries (TfYR of Macedonia and Uzbekistan) disagreed with such an approach. 3 countries gave no answer to this question. 3 countries were not able to provide definitive answer.

Diagram 7

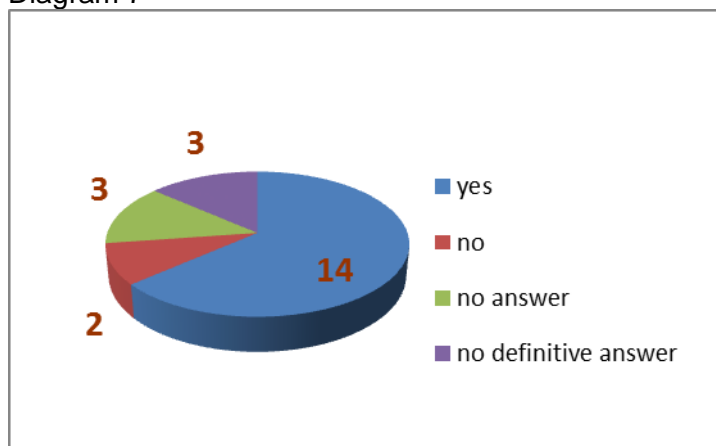


Table 11

No	Country	Answers	Clarifications
1	Armenia	Yes	Only communities can act as beneficiaries of protected TK and TCEs, have the rights to works and products.
2	Azerbaijan	Yes	
3	Belarus	Yes	
4	Bosnia and Herzegovina		We are not able to provide an answer, because there is no legislation in place.
5	Bulgaria	No answer	
6	Cyprus	Yes	TK: YES for the first two questions. For the third question: yes, but without prejudice to the existing IP regime. TCEs: If TCEs fulfill the criteria for copyright protection, as defined in the existing international legal IP framework, then copyright should prevail. In cases where TCEs are not copyright protectable on the basis of existing international legal instruments, these issues should be further discussed within the work of the IGC.
7	Czech Republic	Yes	TK: YES for the first two questions. For the third question: yes, but without prejudice to the existing IP regime. TCEs: If TCEs fulfill the criteria for copyright protection, as defined in the existing international legal IP framework, then copyright should prevail. In cases where TCEs are not copyright protectable on the basis of existing international legal instruments, these issues should be further discussed within the work of the IGC.
8	Georgia		As mentioned above the international treaty and national laws based on it should regulate relations concerning TK and TCEs, which should consider the interest of indigenous peoples and local communities, families and also individuals. This instrument should find the way of finding mutual solution and also keeping balance between interested parties. If a member leaves the community or uses TK and TCEs in contradiction with the common interests of the said community, the rights of the community shall

			prevail.
9	Greece	Yes	TK: YES for the first two questions. For the third question: yes, but without prejudice to the existing intellectual property regime.
10	Hungary	Yes	TK: YES for the first two questions. For the third question: yes, but without prejudice to the existing IP regime. TCEs: If TCEs fulfill the criteria for copyright protection, as defined in the existing international legal IP framework, then copyright should prevail. In cases where TCEs are not copyright protectable on the basis of existing international legal instruments, these issues should be further discussed within the work of the IGC.
11	Kazakhstan	No answer	
12	Kyrgyzstan	Yes	By the decision of the community in its interests via an agreement.
13	Latvia	Yes	
14	Lithuania	Yes	
15	Montenegro	No answer	
16	Poland	Yes	TK: YES for the first two questions. For the third question: yes, but without prejudice to the existing intellectual property regime.
17	Romania	Yes	TK: YES for the first two questions. For the third question: yes, but without prejudice to the existing IP regime. TCEs: If TCEs fulfill the criteria for copyright protection, as defined in the existing international legal IP framework, then copyright should prevail. In cases where TCEs are not copyright protectable on the basis of existing international legal instruments, these issues should be further discussed within the work of the IGC.
18	Russian Federation		Yes and no. In respect of the rights to TK and TCEs of individual members of the community, it should be noted that due to the specifics of the question it seems that a special legal regime, different from the conventional institutions of intellectual property rights, is needed to protect the TK and TCEs. There is a point that since TK and TCEs are products of collective efforts of several generations, they shall be applied and used collectively. As for works of individual members of the community, it will be their personal IP, it will be subject to the general rules on IP rights, regardless of its belonging or non-belonging to the community; a different approach discriminates them in relation to other subjects of intellectual property rights (authors, inventors, etc.).
19	Serbia	Yes	Only community should have benefit from TK and TCEs. Someone who leaves community would lose any rights on TK or TCEs. The community should continue benefit from TK/TCEs after death of individual member only if at least one member of that community has the same knowledge.

20	Tajikistan	Yes	
21	TfYR of Macedonia	No	Traditional communities in the 21st century consist of individuals who contribute with their capacities for the benefit of the community. In fact, the progress of every community, even the traditional, realized thanks to the initiatives of individuals. Only in the event of proven abuse of the TK and TCEs agreements, rules, his family or legal representative, or professional association in the community can take away his rights.
22	Uzbekistan	No	Only an individual can be the owner of TK. Accordingly, an individual can be the beneficiary.

5. Objectives of protection and the rights of beneficiaries

A question regarding objectives to be achieved through the IP protection was asked. Table 12 provides the results.

Table 12

Objectives	Armenia	Azerbaijan	Belarus	Bosnia and Herzegovina	Cyprus	Czech Republic	Georgia	Hungary	Kyrgyzstan	Latvia	Lithuania	Montenegro	Poland	Romania	Russian Federation	Serbia	Tajikistan	TfYR of Macedonia	Uzbekistan
- recognition of value of TK and TCEs		Yes	Yes	Yes	Yes	TCEs Yes, ¹⁹ TK	Yes	Yes	Yes	No	Yes	Yes	TK Yes	Yes	Yes	Yes	Yes	No	Yes
- promote respect for traditional cultures, the intellectual and spiritual values of the peoples and communities that preserve and maintain TK and TCEs	Yes	Yes	Yes	Yes	TK Yes	TCEs Yes, ²⁰ TK	Yes	Yes	Yes	No	Yes	Yes	TK not applicable	Yes	Yes	Yes	Yes	No ²¹	Yes
- consider the aspirations and expectations expressed directly by the communities, and contribute to the welfare and sustainable economic, cultural, environmental and social development of such peoples and communities		Yes		Yes	Yes	TCEs ²² , TK ²⁰	Yes	TK Yes, ²² TCEs	Yes	Yes	Yes		TK Yes	TK Yes ²² TCEs ²²	Yes	Yes	Yes	Yes	Yes
- provide indigenous peoples and communities and traditional and other cultural communities with the legal and practical means, including effective enforcement measures, to prevent the misappropriation of their cultural expressions and		Yes	Yes	Yes	TK Yes	TCEs ²² , TK ²⁰	Yes	TK Yes, ²² TCEs	Yes	Yes			TK Yes	TK Yes ²² TCEs ²²	Yes	Yes	Yes	Yes	Yes

¹⁹ There is no need to extend IP protection in regard to TK. .

²⁰ All those objectives should be analyzed because of the ongoing negotiations of the IGC.

²¹ Mostly no, but in contemporary societies the economic prosperity can provide the respect in or outside the communities.

²² Some of those aspirations and expectations could be met within the framework of current international copyright systems.

control ways in which they are used beyond the customary and traditional context																			
- promote the equitable sharing of benefits arising from the use of TK and TCEs		Yes	Yes	Yes	Yes	TCEs Yes ²³ , TK ²⁰	Yes	TK Yes, TCEs ²³	Yes	Possible			TK Yes	TK Yes TCEs ²²	Yes	Yes	Yes	Yes	Yes
- promote the development of indigenous peoples and traditional and other cultural communities and legitimate trading activities through the development and expansion of marketing opportunities for tradition-based creations and innovations		Yes	Yes	Yes	No	TCEs No, TK ²⁰	Yes	No		Yes			No	No	Yes	Yes	Yes	Yes	Yes

²³ As far as the acts and the TCEs are within the scope of protection.

Almost every country (19 countries answered the question) agreed that the following objectives should be emphasized:

- recognition of value of TK and TCEs - 16 “yes” answers (except for Latvia and TfYR of Macedonia; and Czech Republic for TCEs only, Poland for TK only), and 4 countries found it difficult to give any answer;
- promote respect for traditional cultures, the intellectual and spiritual values of the peoples and communities that preserve and maintain TK and TCEs - 17 “yes” answers (except for Latvia and TfYR of Macedonia), 3 countries found it difficult to give any answer. Cyprus pointed out that this goal applies to TK only, while Czech Republic stated that this goal applies to TCEs only. Poland pointed out as well that this goal cannot be applied to TK and no reply was given on TCEs.
- consider the aspirations and expectations expressed directly by the communities, and contribute to the welfare and sustainable economic, cultural, environmental and social development of such peoples and communities: 15 “yes” answers (6 countries found it difficult to give any answer and the opinion of 1 country was not clear.).

15 countries believed that indigenous peoples and communities, as well as traditional and other communities should be provided with legal and other practical tools, including effective remedies to prevent the misappropriation of their TK and TCEs and control the ways, in which their TK and TCEs are used outside of the traditional context.

Almost all countries agreed that there is a need to promote the equitable benefit-sharing arising from the use of TK and TCEs.

However, Hungary, Cyprus, Poland and Romania doubted that protection could promote “the development of indigenous peoples and communities and traditional and other cultural communities and legitimate trading activities through the development and expansion of marketing opportunities for tradition-based creations and innovations”.

Additionally, there is one question regarding which rights should be granted, such as moral rights and economic rights.

Most countries (19) pointed out that it was possible to provide moral rights. The results are provided in Table 13 and Diagram 8.

Diagram 8

Should moral rights be granted?

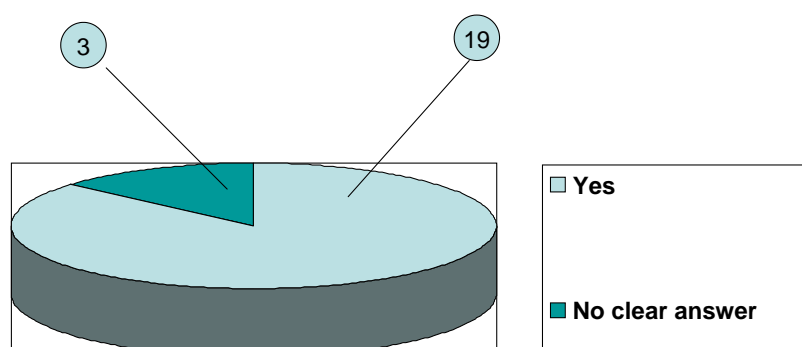


Table 13

Answer	Country
Yes	Azerbaijan, Armenia, Belarus, Bosnia and Herzegovina, Cyprus, Czech Republic, Georgia, Hungary, Kyrgyzstan, Latvia, Lithuania, Montenegro, Poland, Romania, Russian Federation, Serbia, Tajikistan, TfYR of Macedonia, Uzbekistan
No clear answer	Bulgaria, Greece ²⁴ , Kazakhstan

Some countries specified such moral rights as:

- the right to be acknowledged (or mentioned) as the holder (guardian, holder, etc.) was pointed out by 19 countries;
- the right to prohibit the use of TK, which may damage the integrity or reputation, was mentioned by 8 countries.

In addition, several countries pointed out moral rights regarding the protection of TCEs “should be safeguarded in a reasonable manner”.

More details about the answers to the question on moral rights are available in Table 14.

Table 14

№	Country	Answers
1	Armenia	The right to be mentioned as an author. The right to forbid the possible distortion, modification or other infringements which may harm the integrity or reputation.
2	Azerbaijan	The right to be mentioned as a holder.
3	Belarus	The right to be mentioned as a holder.
4	Bosnia and Herzegovina	The right to be mentioned as a holder or owner.
5	Cyprus	TK: The right to require that those using TK beyond its traditional context: (a) acknowledge the source of TK and attribute the TK holder where known, unless the TK holders decide otherwise; and (b) use TK in a manner that respect the reputation and integrity of TK. TCEs: Moral interests should be safeguarded in a reasonable manner.
6	Czech Republic	TK: the right to be mentioned as a bearer (holder, owner, etc.). TCEs: Moral interests should be safeguarded in a reasonable and balanced manner. To some extent, protection of moral rights to TCEs could be met within the framework of current international copyright systems.
7	Georgia	The right to be recognized as the owners of the right; The right to authorize other persons to make modifications to the objects of TK and TCEs; The right to safeguard the objects of TK and TCEs from any distortion or other encroachment which would be prejudicial to right owners (indigenous people, local communities etc.) honor, integrity or reputation.
8	Hungary	TK: The measures to require that those using TK beyond its traditional context: (a) acknowledge the source of TK and attribute the TK holder where known, unless the TK holders decide otherwise; and (b) use TK in a manner that respect the reputation and integrity of TK. TCEs: Moral interests should be safeguarded in a reasonable

²⁴ No legislative policy is available.

		manner.
9	Kyrgyzstan	The right to be mentioned as a TK holder.
10	Latvia	The right to be mentioned as a creator
11	Lithuania	The right to be recognized as the source or the holder of TK
12	Montenegro	The right to be recognized as a holder of TK and TCEs.
13	Poland	TK: The right to require that those using TK beyond its traditional context: (a) acknowledge the source of TK and attribute the TK holder where known, unless the TK holders decide otherwise; and (b) use TK in a manner that respect the reputation and integrity of TK. TCEs: Moral interests should be safeguarded in a reasonable manner.
14	Romania	TK: The right to require that those using TK beyond its traditional context: (a) acknowledge the source of TK and attribute the TK holder where known, unless the TK holders decide otherwise; and (b) use TK in a manner that respect the reputation and integrity of TK. TCEs: Moral interests should be safeguarded in a reasonable manner.
15	Russian Federation	The right to be protected from distortion or any other degrading acts against TK and TCEs, which damages the reputation and integrity of TCEs and business reputation.
16	Serbia	The right of authorship, the right to be named, the right of disclosure, the right of protection of the work's integrity, the right to oppose unbecoming exploitation of the work.
17	Tajikistan	Community's right to be identified as the registrant
18	TfYR of Macedonia	The right to be mentioned as a holder (owner), source of inspiration.
19	Uzbekistan	The right to be mentioned as an owner.

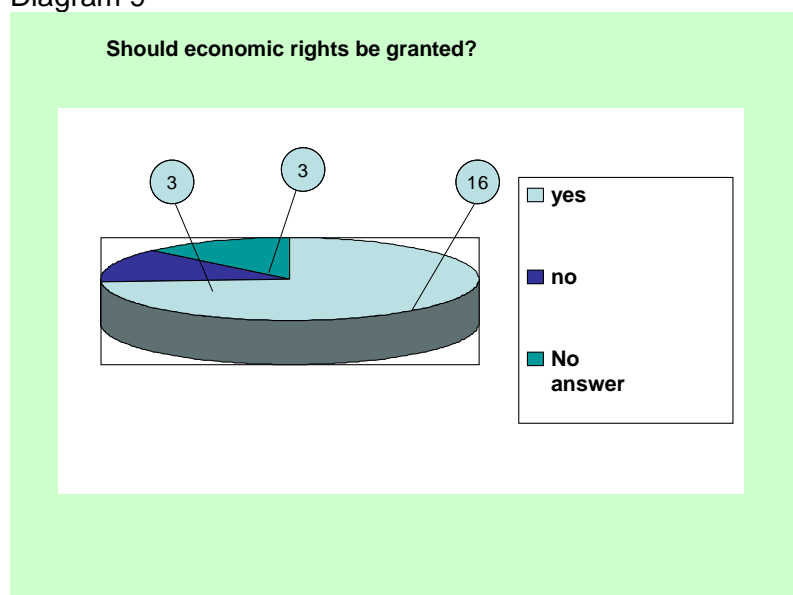
Regarding economic rights, the opinions differ from the denial of economic rights to providing exclusive rights. Answers to this question are provided in Table 15 and Diagram 9.

Table 15

№	Country	Answers
1.	Armenia	The right to reproduce a work The right to distribute a work
2.	Azerbaijan	The right to obtain benefits
3.	Belarus	No
4.	Bosnia and Herzegovina	The right to remuneration and benefits derived from the use of TK or TCEs
5.	Cyprus	TK: adequate and effective legal means/measures to exercise control and exploit their TK, to authorize the access and use of their TK, to have a fair and equitable share of benefits arising out of the use of their TK and to prevent any unauthorized disclosure, use, or other exploitation. TCEs: economic interests should be safeguarded in a reasonable and balanced manner. To some extent, protection of economic rights to TCEs could be met within the framework of current international copyright systems.
6.	Czech Republic	TK: sharing benefits TCEs: economic interests should be safeguarded in a reasonable and balanced manner. To some extent, protection of economic rights to TCEs could be met within the framework of current international copyright systems.
7.	Georgia	The right to reproduce objects of TK and TCEs; The right to prohibit others, without owner's permission, from

		production, sale, offer for sale, use, import or other market use of a product protected by TK and TCEs etc.
8.	Hungary	TK: adequate and effective legal, policy or administrative measures, as appropriate, to, inter alia, discourage the unauthorized disclosure, use or other uses of TK and ,where TK is knowingly used outside the traditional context, to encourage beneficiaries and users to establish mutually agreed terms. TCEs: economic interests should be safeguarded in a reasonable and balanced manner. To some extent, protection of economic rights to TCEs could be met within the framework of current international copyright systems.
9.	Kyrgyzstan	Right for the remuneration for the use of TK, the conditions for the use and development of TK
10.	Latvia	No
11.	Lithuania	The right to share benefits
12.	Montenegro	No
13.	Poland	Adequate and effective legal means/measures to exercise control and exploit their TK, to authorize the access and use of their TK, to have a fair and equitable share of benefit arising out of the use of their TK and to prevent any unauthorized disclosure, use, or other exploitation.
14.	Romania	TK: appropriate and effective legal means/measures to control the use of TK, to authorize access to and use of TK, to have a fair and equitable share of the benefits derived from the use of TK and to prevent any unauthorized disclosure, use, or other exploitation. TCEs: economic interests shall be guaranteed in a reasonable and balanced manner. To some extent, the protection of economic rights on TK could be determined within the framework of the current international system of copyright.
15.	Russian Federation	For example, the right to receive remuneration for the use of TK non-disclosed to the public.
16.	Serbia	The TK /TCEs holder and users should make agreement about the type of remuneration if the local community has interest in it.
17.	Tajikistan	Economic, i.e. exclusive rights.
18.	TfYR of Macedonia	The right to remuneration due to the gain derived from the use of TK or TCE.
19.	Uzbekistan	When used for commercial purposes, in the form of agreements.

Diagram 9



Answers to the question regarding whether prior informed consent be used for the protection of TK and TCEs are summarized in Table 16 and Diagrams 10(1) and 10(2).

Diagram 10(1) regarding TK

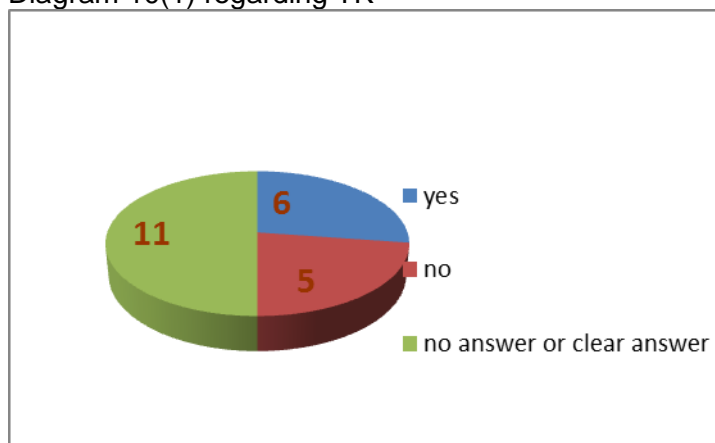


Diagram 10 (2) regarding TCEs

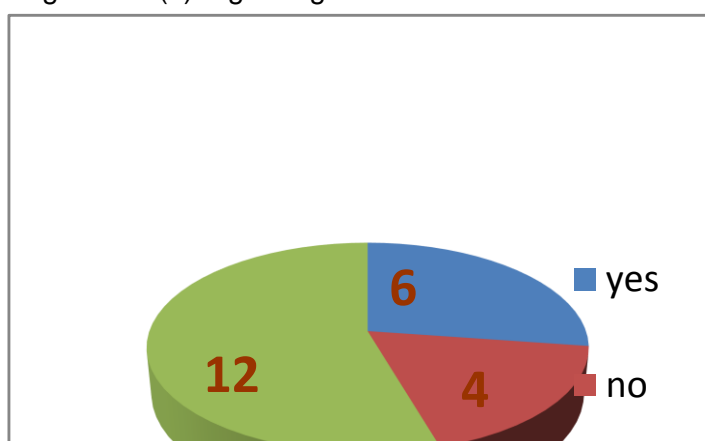


Table 16

Answer	Country
Yes	Azerbaijan, Georgia, Kyrgyzstan, Lithuania, Russian Federation ²⁵ , Serbia
No	Armenia, Hungary (TCEs), Latvia, TŷYR of Macedonia ²⁶ , Uzbekistan
No answer or clear answer	Belarus, Bosnia and Herzegovina ²⁷ , Bulgaria, Cyprus*, Czech Republic*, Greece*, Hungary*, Kazakhstan, Montenegro, Poland*, Romania*, Tajikistan ²⁸

*Cyprus, Czech Republic, Greece, Hungary, Poland and Romania pointed out that, regarding TK, the countries may, in consultation with the holders of TK in accordance with their national laws, establish or appoint an appropriate national or regional competent authority or authorities. Its functions may include, but not be limited to, the following:

- ascertaining whether prior informed consent has been obtained;
- supervising fair and equitable benefit-sharing;

²⁵ Only in cases when it is possible and appropriate. As long as the legal status of TK and TCEs remains unclear, it is also unclear who should give such informed consent.

²⁶ Comment: since very often the holders do not know or are not informed, or do not have enough time to deal with the state bureaucracy.

²⁷ We cannot provide an answer, since there is no appropriate legislation.

²⁸ The term "prior informed consent" is not clear.

- assisting, whenever possible and appropriate, the holders of TK in the use, exercise and enforcement of their rights over their TK.

They considered that the TCEs which are copyright-protectable can be used in accordance with the existing national and international legal instruments. The protection of other TCEs should be safeguarded in a reasonable and balanced manner; however, this issue still should be further discussed within the IGC.

In response to the question of whether or not exclusive IP rights should be used for the protection of TK and TCEs, different opinions were presented, including the opposite ones: “YES” and “NO” (see Table 17 and Diagram 11).

Some countries explained that the existing IP system can be used for the protection of TK and TCE, provided that TK and TCEs fulfil the criteria of protection. Copyright protection for TCEs (Armenia), confidential information or patent protection of a recipe of traditional medicine, and trademark protection of traditional symbols and other marks (Georgia) were specified as possible protection.

Diagram 11

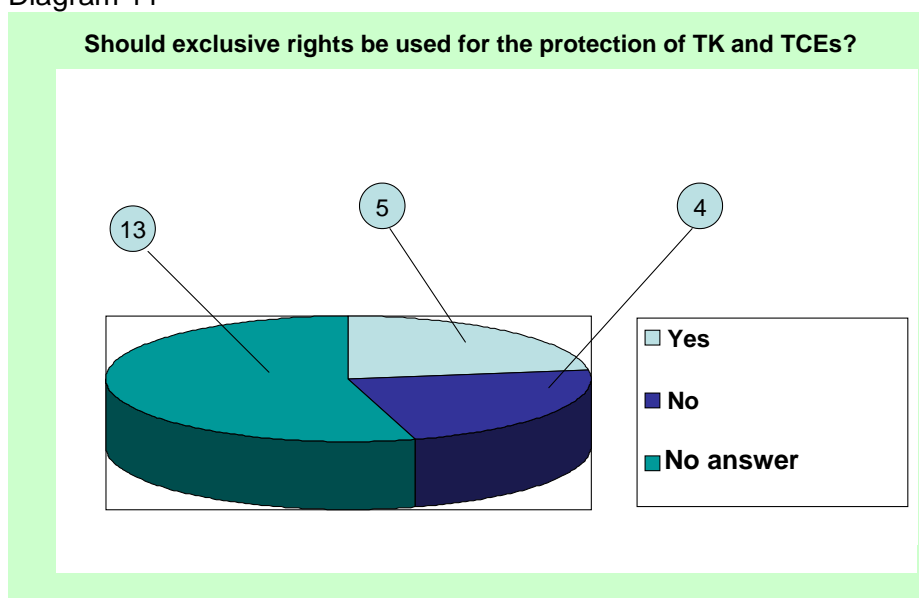


Table 17

Answer	Country
Yes	Armenia, Azerbaijan, Serbia, Tajikistan, Uzbekistan
No	Belarus, Latvia, Lithuania, Poland
No answer	Bosnia and Herzegovina, Bulgaria, Cyprus, Czech Republic, Greece, Georgia, Hungary, Kazakhstan, Kyrgyz Republic, Montenegro, Romania, Russian Federation, TfyR of Macedonia

There is no common opinion as to whether or not access to TK and/or TCEs should be restricted. However, more than a half of the countries thought that access to TK and TCEs should be restricted. The Russian Federation thought that, in case TK is not disclosed and is not known outside the community, representatives of indigenous peoples and traditional communities may take steps to prevent its unauthorized disclosure by third parties. Uzbekistan believed that, if TK is used for commercial purposes, access may be granted in the form of agreements, such as licenses.

Tajikistan believed that the applicant receives exclusive rights after the registration of TK, and he or she would become the holder of rights and restrict access to TK.

Table 18 and Diagram 12 provide a summary of answers to the question “[s]hould the protection be applied retroactively or only in future?”.

Table 18

Answers	Country
Retroactively	None
Only in future	Armenia, Azerbaijan, Cyprus, Czech Republic, Georgia, Greece, Hungary, Kyrgyz Republic, Latvia, Montenegro, Poland, Romania, Russian Federation, Serbia, Tajikistan, Uzbekistan
No answer	Belarus, Bosnia and Herzegovina, Bulgaria, Kazakhstan, Lithuania, TfYR of Macedonia

Diagram 12

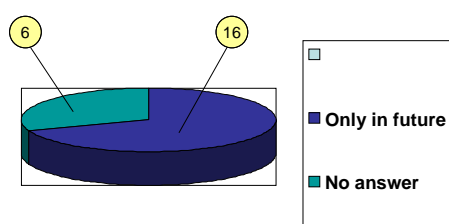


Diagram 13 and Tables 19 and 20 shows the answers to the question “Should the use of TK or TCEs, which continued after the entry into force of respective laws, be restricted or prohibited?”.

Most countries believed that the use of TK and TCEs should not be restricted after the entry into force of relevant laws. Their argument is the right of prior use existing in the national and international IP systems. However, Bosnia and Herzegovina believed that the use of TK and TCEs after the entry into force of relevant laws should be restricted as unauthorized, and Azerbaijan believed that the use could be restricted by the holder of rights.

Diagram 13

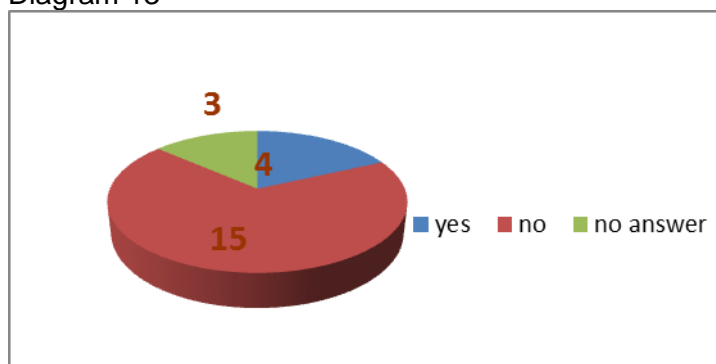


Table 19

Answers	Country
Yes	Armenia, Azerbaijan, Bosnia and Herzegovina, TfYR of Macedonia
No	Belarus, Cyprus, Czech Republic, Georgia, Greece, Hungary, Kyrgyz Republic, Latvia, Lithuania, Poland, Romania, Russian Federation, Serbia, Tajikistan, Uzbekistan
No answer	Bulgaria, Kazakhstan, Montenegro

Table 20

№	Country	Replies	Comments
1	Armenia	Yes	
2	Azerbaijan	Yes	May be restricted at the initiative of the owner (holder) of TK and TCEs
3	Belarus	No	By analogy with prior use
4	Bosnia and Herzegovina	Yes	This would limit the misuse, misappropriation and exploitation of TK and TCEs by natural persons and legal entities
5	Cyprus	No	For reasons of legal certainty and consistency with the existing international legal framework
6	Czech Republic	No	For reasons of legal certainty and consistency with the existing international legal framework
7	Georgia	No	After the entry into force of respective legal acts, the use of TK and TCEs which are in contradiction with the new regulations should be restricted. Users who already use TK and TCEs according to the new regulations should continue using these objects. Also it would be appropriate to grant them a special transitional period.
8	Greece	No	For reasons of legal certainty and consistency with the existing international legal framework
9	Hungary	No	For reasons of legal certainty and consistency with existing international legal framework
10	Kyrgyzstan	No	protection should not be retroactive
11	Latvia	No	All you have already in the public domain should remain freely accessible
12	Lithuania	No	
13	Poland	No	For reasons of legal certainty and consistency with the existing international legal framework
14	Romania	No	For reasons of legal certainty and consistency with the existing international legal framework
15	Russian Federation	No	By analogy with prior use
16	Serbia	No	Should be recommended that the existing use be complied with respective laws.
17	Tajikistan	No	For bona fide persons, the right of prior use must be established.
18	TfYR of Macedonia	Yes	For example: A musician or dancer cannot be a teacher of TCEs, or organize informal educational program if he or she is not recognized by the local community, the knowledge of which he or she wishes to transfer (sell).
19	Uzbekistan	No	By analogy with prior use

6. Formalities

Regarding the question on whether there is a need of any formality for the protection of TK and TCEs, Diagram 14 and Tables 21 and 22 show the result.

Diagram 14

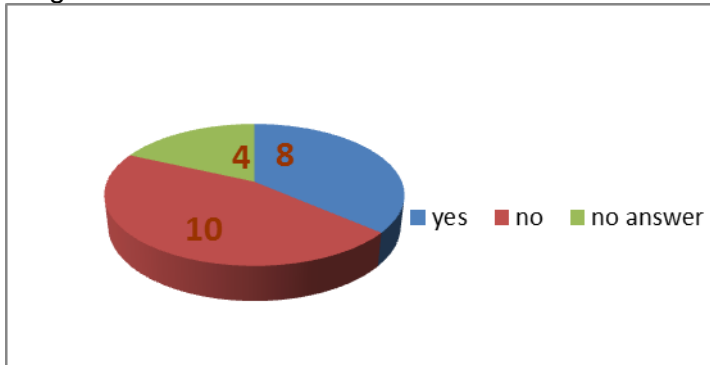


Table 21

Answer	Country
Yes	Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyz Republic, Tajikistan, TfyR of Macedonia, Uzbekistan
No	Cyprus, Czech Republic, Georgia, Greece, Hungary, Latvia, Lithuania, Poland, Romania, Serbia
No answer	Bosnia and Herzegovina, Bulgaria, Montenegro, Russian Federation

Cyprus, Czech Republic, Greece, Hungary, Poland and Romania pointed out that beneficiaries should not be burdened with having to meet with formal requirements in order to be able to benefit from protection.

Belarus believed that there is a need of mandatory registration.

The Russian Federation emphasized the negative consequences for the registration of non-disclosed TK.

A complete list of answers is provided in Table 22.

Table 22

№	country	Answer
1	Armenia	Registration, which provides a sufficient and necessary disclosure and which is optional.
2	Azerbaijan	Deposit, to gain more privileges.
3	Belarus	Must be a registered TK or TCEs.
4	Bosnia and Herzegovina	Could not respond, as it is not foreseen by law.
5	Cyprus	Beneficiaries should not be burdened with having to meet with formal requirements in order to be able to benefit from protection.
6	Czech Republic	Beneficiaries should not be burdened with having to meet with formal requirements in order to be able to benefit from protection.
7	Georgia	<p>Protection of TK and TCEs should not be the subject to any formality as registration, declaration or deposit. However this is the most important issue. Some consider that fixation is necessary and others do not agree. Some representatives of indigenous people, families and communities consider that TK and TCEs should not be registered. Others consider that only those TK and TCEs should enjoy protection are registered at a special state agency.</p> <p>This would create legal security for those who want to use TK and TCEs and also for those who have to enforce the protection. At the same time, such a requirement might be difficult to be fulfilled. In fact, it is very difficult to register all existing TK and TCEs and that this process would take too long. In addition, TK and TCEs, (especially folklore) are living heritage and are changed through practice, so that any requirement of registration would hinder new variations of TK and TCEs from being protected. It also should be taken into consideration that TK and TCEs in many communities were never fixed, they were passed from generation to generation orally.</p>
8	Greece	Beneficiaries should not be burdened with having to meet with formal requirements in order to be able to benefit from protection.
9	Hungary	No. But there could be voluntary (optional) registers of TK or TCE
10	Kazakhstan	Registration
11	Kyrgyzstan	Registration in the authorized body. Registration should be done on a voluntary basis.
12	Latvia	There should be no formalities, because of too complicated considering the diverse nature of TK and TCEs.
13	Lithuania	There should be no formalities.
14	Poland	There should be no formalities.
15	Romania	Beneficiaries should not be burdened with having to meet with formal requirements in order to be able to benefit from protection. But it is possible to provide a voluntary, declarative registration on TCEs.
16	Russian Federation	The answer to the question is not straightforward, because on the one hand for the defensive protection of fixation (reflected, for example, in writing), documentation, an inventory, registration, are useful, as will

		prevent, for example, a patent for the known innovation. On the other hand, registration usually requires disclosure to the third parties, which could have negative consequences for undisclosed TK
17	Serbia	The process should be simplified for beneficiaries.
18	Tajikistan	For the granting of protection for TK an application must be submitted, containing information recorded in the register of TK. Registration must be voluntary and the decision is taken by the community, which owns TK.
19	TfYR of Macedonia	Should establish formalities according to the applicable laws and regulations in each country Perhaps it could be established by professional commissions, which will issue the certificates upon request, audit, etc. There could be registration, statement or deposit.
20	Uzbekistan	Registration can take place at the option of the owner of TK &TCEs.

7. Term of protection

Regarding the term of protection, Armenia, Republic of Belarus, Bosnia and Herzegovina, Georgia, Hungary, Kazakhstan, Lithuania, TFYR of Macedonia, Poland and Serbia stated that the term of TK and TCE protection should not be fixed. Uzbekistan believed that TK and TCEs are part of the cultural heritage and should have no validity period.

Romania had the opposite view.

Azerbaijan, Kyrgyz Republic, Kazakhstan and Tajikistan believed that protection should be granted for an indefinite period of time. Tajikistan believed that indefinite protection is possible against infringements of both moral and property rights, while the Republic of Belarus has a different opinion and believed that indefinite protection should apply only to infringements of the moral rights.

The Russian Federation thought that indefinite protection is possible against the following infringements:

- misappropriation of TK and TCEs;
- use of TK and TCEs negatively affecting the dignity of the peoples, whose creations are used;
- use of TK and TCE, which prejudices the interests of indigenous peoples and local communities in general, e.g. use of sacred TK and TCEs;
- use of TK and TCE, which may be offensive for the holders of TK and TCEs.

Azerbaijan stated that TK and TCEs should be protected indefinitely in order to preserve the tangible and intangible cultural heritage.

The Kyrgyz Republic believed that indefinite protection may be provided as protection against unauthorized patenting of innovations based on TK, as well as against unfair benefit-sharing from the use of TK.

Latvia believed that protection should exist as long as TK and TCEs exist and are used by local peoples or communities.

Azerbaijan, Armenia, Bosnia and Herzegovina, Georgia, TFYR of Macedonia, Kyrgyz Republic, Tajikistan and Uzbekistan stated that property rights should not be limited in time. Azerbaijan thinks that the protection of property rights should not be limited in time, otherwise the interests of the holders of TK and TCEs can be prejudiced. Macedonia also believes that indefinite protection should be provided to prevent abuse.

Tajikistan believed that the expediency of indefinite property rights over TK is justified by the fact that many generations contribute to the creation of TK.

Georgia pointed out that "Unlike in IP laws, there is no particular event, such as the death of an author, after which one could count a limited time of protection. More importantly, the purpose of protection is different: TK and TCEs are to be protected because it allows the people to feel connected and identify themselves with a certain place or other part of the country and thus serve their social and cultural self-identification. Accordingly, as long as TK and TCEs in fact fulfil the function of reaffirming the social and cultural identity, it should be protected. Therefore, it seems most appropriate to provide for protection as long as the TK and TCEs are alive, practised and serve as means to characterise the cultural and social identity of ethnicities that would feel offended in case of distortion and misrepresentation of their own TK and TCEs".

Cyprus, Czech Republic, Hungary, Poland, Romania and Serbia believed that TK protection should last as long as TK satisfies the criteria for protection. However, Cyprus, Hungary and Romania also pointed out that for TCEs that are protectable by copyright, the rules on the term of protection as defined in the existing international legal instruments should apply. In other cases,

at least as concerns the economic aspects, the protection of TCEs should be limited in time. The duration and rules determining the term of protection should be left to national legislation.

Bulgaria and Montenegro provided no answers to this question.

8. Exceptions and limitations

Countries were asked the following question “Should there be any exceptions or limitations to the rights attaching to protectable TK and/or TCEs, for example:

- for information purposes;
- for scientific or research purposes;
- for educational purposes;
- for personal purposes;
- other.

The answers are provided in Table 23.

Table 23

Exceptions	Armenia	Azerbaijan	Belarus	Bosnia and Herzegovina	Cyprus	Czech Republic	Georgia	Greece	Hungary	Kyrgyz Republic	Latvia	Lithuania	Montenegro	Poland	Romania	Russian Federation	Serbia	Tajikistan	TfYR of Macedonia	Uzbekistan
For information purposes		No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
For scientific or research purposes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
For educational purposes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No ²⁹	No
For personal purposes		No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	No

²⁹ Such restriction should not apply to persons organizing non-official educational programs, seminars and summer schools for commercial purposes.

Regarding other exceptions and limitations, the Russian Federation stated that exceptions and limitations are needed to avoid abuse and infringement of lawful interests of the holders of TK and TCEs.

Specifically regarding TK, Cyprus, Greece, Hungary, Poland and Romania pointed out that the application and implementation of protection of TK should not prejudice the continued availability of TK for the customary practice, exchange, use or transmission of TK by its holders. They also believed that it shall be a matter of national law to permit appropriate limitations or exceptions, provided such exceptions are limited and do not conflict with the normal use of the TK by the beneficiaries and do not unreasonably prejudice the legitimate interests of the beneficiaries.

Specifically regarding TCEs, Cyprus, Czech Republic, Hungary and Romania pointed out that, with reference to *sui generis* protection, these issues should be further discussed within the IGC.

9. Infringement of rights

One question in the questionnaire is what forms of behavior in relation to the protectable TK/TCEs should be considered unacceptable/illegal. The following options/examples were given:

- misappropriation of TK and TCEs;
- offensive use of TK which would be prejudicial to the dignity of the indigenous peoples, who bear the rights for them;
- offensive use of TK which would be prejudicial to the reputation of indigenous peoples or local communities, e.g. use of sacred forms of TK (see Table 24).
- the use of TK and access to it without prior informed consent of the right holders of TK;
- breach of terms of use, agreed with the right holders of TK;
- non-transparent distribution of benefits, arising from the commercial use of TK;
- other

This question turned out to be difficult. Some decided not to answer it. Many agreed that the behaviors suggested in the questionnaire could be qualified as illegal, but those who answered the question made a lot of reservations and proposed their own detailed answers.

Doubts were caused by sacred forms of TK, of which there is no clear definition, so some decided not to answer at this stage.

Some countries believed that unacceptable/illegal behavior should be defined by national law, including applicable copyright law.

Table 24

	Armenia	Azerbaijan	Belarus	Bosnia and Herzegovina	Cyprus	Czech Republic	Greece	Hungary	Kyrgyz Republic	Latvia	Lithuania	Montenegro	Poland	Romania	Russian Federation	Serbia	Tajikistan	TYR of Macedonia	Uzbekistan
misappropriation of TK and TCEs	Yes	Yes	Yes	Yes	See ³⁰ TK: Yes; TCEs: No ³¹	TK: Yes; TCEs: No	Yes	Yes	Yes		Yes		TK Yes	see ³² TK: Yes ; TC Es: No ³³	Yes	Yes	Yes	Yes	Yes
offensive use of TK and TCEs which would be prejudicial to the dignity of the indigenous peoples, who bear the rights for them	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	TK Yes	Yes	Yes	Yes	Yes	Yes	Yes
offensive use of TK and TCEs which would be prejudicial to the reputation of	Yes	Yes	Yes	Yes	Yes ³⁴	Yes	Yes	Yes	Yes	Yes	Yes	Yes	See ³⁵	TK Yes ³⁶	Yes	Yes	Yes	Yes	Yes

³⁰ Regarding TCEs, a general, not a specific approach should be considered. Economic and moral interests of the beneficiaries of TCEs should be guaranteed in a “reasonable and balanced way”, and the definition of certain unacceptable/illegal behavior should be left to state law, including applicable copyright law.

³¹ These conditions are too vague and it is difficult to provide copyright protection.

³² Regarding TCEs, a general, not a specific approach should be considered. Economic and moral interests of the beneficiaries of TCEs should be guaranteed in a “reasonable and balanced way,” and the definition of certain unacceptable/illegal behavior should be determined by national law, including applicable copyright law.

³³ This condition is too vague and is difficult to provide the protection of copyright.

³⁴ In the case of the sacred forms of TK, however, since there is no clear definition of sacred TK, we would prefer to refrain from giving an answer at this stage.

³⁵ TK: this can not be decided at this stage.

³⁶ In the case of the sacred forms of TK, however, since there is no clear definition of sacred TK, we would prefer to refrain from giving an answer at this stage.

	Armenia	Azerbaijan	Belarus	Bosnia and Herzegovina	Cyprus	Czech Republic	Greece	Hungary	Kyrgyz Republic	Latvia	Lithuania	Montenegro	Poland	Romania	Russian Federation	Serbia	Tajikistan	TYR of Macedonia	Uzbekistan
indigenous peoples or local communities, e.g. use of sacred forms of TK and TCEs																			
the use of TK and TCEs and access to them without prior informed consent of the right holders of TK and TCEs		Yes		Yes	See ³⁷	TK Yes	Yes	Yes	Yes		No		TK Yes	TK ³⁸		Yes ³⁹	Yes	Yes	Yes
breach of terms of use, agreed with the right holders of TK and TCEs		Yes		Yes	See ⁴⁰	TK Yes	Yes	Yes	Yes	Yes			TK Yes	TK Yes	Yes	Yes	Yes	Yes	Yes
non-transparent distribution of benefits, arising from the commercial use of TK and TCEs		Yes		Yes	Yes	TK Yes	Yes	Yes	Yes	No			TK Yes	TK Yes		Yes	Yes	Yes	Yes

³⁷ Depending on the negotiations in the IGC.

³⁸ Depending on the negotiations in the IGC.

³⁹ For commercial use only.

⁴⁰ Depending on the negotiations in the IGC.

10. Sanctions

Table 25 shows the results of several questions regarding sanctions.

Table 25

Sanctions	Armenia	Azerbaijan	Belarus	Bosnia and Herzegovina	Cyprus	Czech Republic	Georgia	Greece	Hungary ⁴¹	Kyrgyz Republic	Latvia	Montenegro	Poland	Romania	Russian Federation	Serbia	Tajikistan	TYR of Macedonia	Uzbekistan
- criminal sanctions		Yes		Yes	No		Yes			Yes	No	Yes		No	No	Yes	Yes		
- civil sanctions		Yes		Yes	Yes		Yes			Yes	Possible	Yes		Yes	Yes	Yes	Yes		
- administrative sanctions		Yes		Yes	No		Yes			Yes	No			No	Yes	No	Yes		
- custom measures		Yes		Yes	No		No			Yes	No			No	No	No	Yes		
- measures and enforcement tools ensuring the efficient actions against any act of infringement	Yes	Yes		Yes	TK, TCEs ⁴²	See ⁴³		See ⁴⁴		Yes	Possible	See ⁴⁵	See ⁴⁶	See ⁴⁷	Yes		Yes	See ⁴⁸	Yes
Whether there should be a distinction between the	Yes	Yes	Yes	Yes	Yes	TCEs Yes,	Yes	See ⁵⁰		Yes	Yes	See ⁵¹	Yes	Yes	Yes	Yes	Yes ⁵²	Yes	Yes

⁴¹ TK: This issue should be left to national laws. Countries should ensure that enforcement procedures are available under their laws against the willful or negligent infringement of the protection provided to TK sufficient to constitute a deterrent to further infringements.

TCEs: this issue should be left to national laws.

⁴² TK: civil sanctions and measures, and enforcement tools.

TK: Countries should ensure that enforcement procedures are available under their laws against the willful or negligent infringement of the protection provided to TK sufficient to constitute a deterrent to further infringements

TCEs: This question should be decided at the level of national law.

⁴³ This question should be decided at the level of national law.

⁴⁴ This question should be decided at the level of national law.

⁴⁵ This question should be decided at the level of national law.

⁴⁶ TK: civil sanctions and measures, and enforcement tools.

TK: Countries should ensure that enforcement procedures are available under their laws against the willful or negligent infringement of the protection provided to TK sufficient to constitute a deterrent to further infringements

⁴⁷ TK: civil sanctions and measures, and enforcement tools.

TK: Countries should ensure that enforcement procedures are available under their laws against the willful or negligent infringement of the protection provided to TK sufficient to constitute a deterrent to further infringements

TCEs: This question should be decided at the level of national law.

⁴⁸ Possible, it would be better to join all these measures.

sanctions of malicious and unintentional actions						TK ⁴⁹													
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⁵⁰ TK: the issue remains unresolved.

⁵¹ This question should be decided at the level of national law.

⁵² In case insignificant damage is caused by such actions.

⁴⁹ This question should be decided at the level of national law.

11. Dispute resolution

One question regarding dispute resolution was included in the questionnaire, which is “[w]hen disputes concerning the alleged infringement of TK or TCE arise [...], how should they be resolved in the light of the opinion expressed by the WIPO IGC that, firstly, there shouldn’t be any obligatory formal documentation of TK and CE and, secondly, the burden of proof shouldn’t be put on representatives of indigenous peoples?”.

Armenia, Macedonia and the Russian Federation believed that it is the holders (owners of TK and TCEs) who should bear the burden of proof, while Romania believed that this should only apply to TK, not TCEs.

Azerbaijan, Georgia, Kyrgyz Republic and Tajikistan believed that the burden of proof should not be put on the representatives of indigenous peoples and traditional communities.

There were two further questions regarding who should provide such proof and what exactly can be used as a proof.

Based on the answers, the followings can be used as a proof: records, video, archives, evidence from books or registers, any information about any facts relevant to the case as stipulated in procedural law, such as pleadings; testimony of third parties; affidavits; material evidence; reproduced audio and video records; expert opinions.

Some believed that the State should ensure that proper procedures stipulated by law exist for protection against infringements. Some believed that disputes should be resolved at court. Some believed that a special competent authority should be set up to resolve such disputes.

However, most countries found it difficult to answer this question, and they either gave no answer or emphasized that the issue should be left for national law.