

QUESTIONNAIRE ON CONTRACTUAL PRACTICES AND CLAUSES RELATING TO
INTELLECTUAL PROPERTY, ACCESS TO GENETIC RESOURCES
AND BENEFIT-SHARING

WIPO INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC
RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

I. INTRODUCTION

1. At its third session held in June 2002, the World Intellectual Property Organization (“WIPO”) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee”) decided on the establishment of a database of contractual agreements relating to intellectual property (“IP”), access to genetic resources and benefit-sharing. This activity responded to a widely-felt need for more information about current practices concerning IP aspects of agreements on access to genetic resources and the sharing of consequential benefits.

2. One of the activities undertaken to establish this database was the preparation of a questionnaire of contractual practices and clauses relating to IP, access to genetic resources and benefit-sharing by the Secretariat of WIPO, in cooperation with the Secretariat of the Convention on Biological Diversity (“CBD”), which was circulated as document WIPO/GRTKF/IC/Q.2. Committee members, together with a wide range of stakeholders with practical experience in contracts for access to genetic resources and benefit-sharing, were asked to complete a questionnaire of contractual practices and clauses relating to IP, access to genetic resources and benefit-sharing. The questionnaire was meant only to stimulate the flow of information in this important area. This activity did not aim to pass judgment on the suitability of particular contracts or benefit-sharing arrangements, nor to set rules for how to conclude agreements. It was an information-gathering exercise, intended to provide a practical IP contribution to all those processes and fora working on access to genetic resources and benefit-sharing. It was also intended to provide a practical tool for those involved in reaching agreement on access to genetic resources and who may benefit from the approaches taken by, and practical experience of others, who have entered into such agreements.

3. At its sixteenth session, held from May 3 to 7, 2010, the Committee requested the Secretariat “to update the database of biodiversity-related access and benefit-sharing agreements currently online on the WIPO website and to report, in an information document, on such updating to the next session of the Committee.” To facilitate the updating of this database, this questionnaire has been prepared by the Secretariat of WIPO. It seeks to update information about contracts concerning access to genetic resources, and the sharing of benefits arising from such access. No substantial amendments have been made to structure and content of the original questionnaire WIPO/GRTKF/IC/Q.2. It concentrates especially on the clauses and provisions in those contracts that have a bearing on IP. The parties to such contracts could include local communities, government agencies, private individuals, educational or research institutes, and private companies. This questionnaire is not intended to gather information about multilateral agreements on access to plant genetic resources for food and agriculture that are developed or applied under the International Treaty of the United Nations Food and Agricultural Organization, or other multilateral arrangements which governments may agree.

4. The WIPO Secretariat encourages the widespread distribution of this revised questionnaire, so that as broad as possible a range of stakeholders have the opportunity to answer it: for instance, government agencies, indigenous peoples and local communities, their legal representatives, commercial and industrial organizations, and source country and receiving country research institutions, such as universities and *ex situ* collections.

5. Information provided will:

- Be used to update the existing database of biodiversity-related access and benefit-sharing agreements currently online on the WIPO website and hyper-linked to the web site of the Clearing House Mechanism (“CHM”) of the CBD;
- Be identified in a report on such updating to the next session of the Committee.

It may also contribute to the updated version of document WIPO/GRTKF/IC/7/9 (“Genetic Resources: Draft Intellectual Property Guidelines for Access and Equitable Benefit-Sharing”), as also requested by the Committee at its sixteenth session.

II. STRUCTURE OF THE QUESTIONNAIRE

6. The questionnaire is divided into three Parts:

- Part I requests contributors to provide a copy of the contract in question, preferably as a Word file in electronic form, such as an email attachment. The contract may then be incorporated directly into the database;
- Part II requests specific information relating to the contract in question, in particular, clauses relating to IP; and
- Part III requests contributors to share practical guidance and to pass on any lessons learned whilst drafting, negotiating and concluding the contract in question.

How to respond?

7. The questionnaire seeks to provide information on the general approach taken in concluding licensing, rather than to serve as a database of legal texts and precedents. Accordingly, it is not necessary to provide the actual text, or the detailed provisions of any contract, especially if the details are sensitive or confidential, or the text of the provisions is particularly complex. A general description of each provision would be welcome and useful, if this is preferred.

8. Completed questionnaires may be sent to the Traditional Knowledge Division, preferably by email to grtkf@wipo.int, or otherwise at WIPO, 34 chemin des Colombettes, 1211 Geneva 20 (Switzerland), Fax: (41) 22 338 8120.

9. Any information that is confidential and/or that is commercially sensitive and that should not be referred to and/or exhibited in any database published on the WIPO web site and/or in any WIPO document(s) should be deleted from the contract provided.

What Parts to complete?

10. Contributors who provide a copy of the contract under consideration are encouraged to answer Part II but need not do so. They may wish to move directly to Part III. Contributors who do *not* provide a copy of the contract under consideration are encouraged to complete both Part II and Part III of the questionnaire. Contributors may submit several different completed questionnaires, depending upon the number of different contracts between different parties with differing IP-related clauses that are under consideration.

Which languages?

11. Contract provisions or descriptions may be submitted in any of the six official languages of WIPO (Arabic, Chinese, English, French, Russian and Spanish).

Will copyright apply to contract provisions?

12. Since any information provided will be circulated widely, it should be contributed in the understanding that it may be used and copied in the course of research and discussion concerning contracts relating to access to genetic resources and benefit-sharing. Specific texts of legal provisions may possibly be drawn upon or substantially copied by those making use of the database for guidance on drafting specific provisions.

13. However, any material placed in the database will have clear attribution of its source. If copyright is asserted in any portion of material that is provided, this should be clearly indicated, although submission of material will imply a license for the reproduction and making available to the public of the text. If there is concern about the possible use by others of exact portions of a contract, then it is suggested that a general description of the provision be substituted for the actual text in responses to the questionnaire. WIPO will not charge for use or access to the database, and it is intended as a public resource.

III. DEFINITIONS

14. For the purposes of this questionnaire, please consider these terms to have the following meanings:

- “*Genetic resources*” means genetic material of actual or potential value;
- “*Genetic material*” means any material of plant, animal, microbial or other origin containing functional units of heredity;
- “*Functional units of heredity*” could include whole organisms, parts of organisms, and biochemical extracts from tissue samples that contain deoxyribonucleic acid (DNA) or, in some cases, ribonucleic acid (RNA), such as genes, plasmids, etc.; and
- “*Traditional Knowledge*” refers to the content or substance of knowledge resulting from intellectual activity in a traditional context, and includes the know-how, skills, innovations, practices and learning that form part of traditional knowledge systems, and knowledge embodying traditional lifestyles of indigenous and local communities, or contained in codified knowledge systems passed between generations. It is not limited to any specific technical field, and may include agricultural, environmental and medicinal knowledge, and knowledge associated with *genetic resources*. For the purposes of this questionnaire, it does not include “expressions of folklore” / “traditional cultural expressions”.

QUESTIONNAIRE

Contact Details

Name:

Title:

Office/Organization:

Member State:

Address:

Email:

Telephone:

Facsimile:

PART I

COPY OF THE CONTRACT

Where possible, please provide a copy of the contract in question, preferably as a Word file in electronic form, such as an email attachment.

Contracts may be provided in Arabic, Chinese, English, French, Russian or Spanish.

PLEASE DELETE FROM THE CONTRACT PROVIDED ANY INFORMATION THAT IS CONFIDENTIAL AND/OR COMMERCIALY SENSITIVE AND THAT YOU DO NOT WISH TO BE REFERRED TO AND/OR EXHIBITED IN ANY DATABASE PUBLISHED ON THE WIPO WEB SITE AND/OR IN ANY WIPO DOCUMENT(S).

Please indicate whether a copy of an existing contract or model agreement is attached to this response:

Response:

Yes

No

If the answer is "Yes": Contributors who have provided a copy of an existing contract or model contract are encouraged to answer Part II, but are not required to do so. They may wish to move directly to Part III of the questionnaire.

If the answer is "No": Contributors who have not provided a copy of an existing contract or model contract are encouraged to answer both Part II and Part III of this questionnaire.

PART II

PLEASE DO NOT PROVIDE ANY INFORMATION THAT IS CONFIDENTIAL AND/OR COMMERCIALY SENSITIVE AND THAT YOU DO NOT WISH TO BE REFERRED TO AND/OR EXHIBITED IN ANY DATABASE PUBLISHED ON THE WIPO WEB SITE AND/OR IN ANY WIPO DOCUMENT(S).

GENERAL DESCRIPTIONS OF CONTRACT PROVISIONS MAY BE SUPPLIED IN PLACE OF THE ACTUAL CONTRACT TEXT, IF THIS WOULD FACILITATE ANSWERS

Question 1: *Please give the contract title.*

Response:

Question 2: *Please identify the contract parties.*

Response:

Question 3: *Please specify the contract parties or, in the case of model contracts, the proposed contract parties. Please also state whether the party is the provider (P) or the recipient (R) of the genetic resources and/or of any associated traditional knowledge.*

Response:

Description of party	Yes/No	Provider (P)/ Recipient (R)
Government: e.g. Government Ministries, Inter-Governmental Agencies (national, regional or local), etc.	<input type="checkbox"/>	
Commerce or Industry: e.g., Pharmaceutical, Food and Agriculture, Horticulture, Cosmetics, etc.	<input type="checkbox"/>	
Research Institution: e.g., Universities, National Research Institutions, Gene banks, Botanic gardens, Zoological collections, Microbial collections, etc.	<input type="checkbox"/>	

Traditional knowledge holders: e.g., Associations of Healers, Indigenous Peoples or Local Communities, Peoples' Organizations, Traditional Farming Communities, etc.	<input type="checkbox"/>	
Other parties. Please list below: e.g., Private land owner, Conservation Group, etc.	<input type="checkbox"/>	

Question 4: *Please state the overall contract's purpose.*

Response:

Yes/No

Commercial or Industrial Application

Research or Educational Application only

Other: Please list below:

Question 5: *Please state the contract's objective.*

Response:

Question 6: *Please identify the scope of the contract.*

Response:

	Yes/No
Plant Genetic Resources	<input type="checkbox"/>
Animal Genetic Resources	<input type="checkbox"/>
Microbial Genetic Resources	<input type="checkbox"/>
Uncharacterized Genetic Material transferred inadvertently e.g., microbes or parasites present in samples of plant material	<input type="checkbox"/>
Associated Traditional Knowledge and Know-How	<input type="checkbox"/>

Other. Please list below:

Question 7: *Please state whether the genetic resources are being supplied from in-situ conditions or from ex-situ conditions. "In-situ conditions" means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties. "Ex situ conditions" means conditions where genetic resources exist outside their natural habitats; for instance, a germplasm bank or microbial collection:*

In-Situ Conditions

Ex-Situ Conditions

Question 8: *Contract Activities: Please state the permitted uses of the genetic resources under the contract.*

Response:

Question 9: *Contract Activities: Please state the permitted uses of any associated traditional knowledge under the contract.*

Response:

Question 10: *Please state the date that the contract came into force.*

Response:

Question 11: *Please state the contract's duration.*

Response:

Question 12: Please identify and record all intellectual property (IP) related clauses in the contract.
For example:

Response:

Clause(s) relating to:	Please set out relevant clause(s) or summary of clause(s) including, if appropriate, explanation of the context of the clause(s) in relation to the contract and/or project as a whole
Industrial property incl. patents, trademarks, geographical indications and appellations of origin, etc.	
Copyright and related rights	
Plant Breeders' Rights	
Trade Secrets	
<i>Sui generis</i> protection of Traditional Knowledge	
Licensing	
Assignment	
Monetary Benefit-sharing as relates to IP: e.g. up-front payments, royalties, milestone payments, ethno-botanical premiums, trust funds, etc.	
Non monetary Benefit-sharing as relates to IP: e.g. IP-related training, technology transfer, exchange of results, etc.	
Ongoing traditional and customary use: i.e. clarification of future use of genetic resources and any associated traditional knowledge by local peoples or traditional communities, such as farmers' rights.	
Termination (insofar as it relates to IP).	
Other. Please list below: e.g. publications, exclusivity of supply, future supply of resources in the event of successful research, etc.	

Question 13: Please state whether any IP rights have been obtained as a result of activities carried out pursuant to the contract. For instance, whether any patents have been granted (citing, where possible, a Patent Number); whether any trademarks have been registered, etc.

Response:

Question 14: *Confidentiality: Please set out any Confidentiality clause(s) or a summary of such clause(s) in the contract including, if appropriate, an explanation of the context of the clause(s) in relation to the contract and/or project as a whole.*

Response:

Question 15: *Please share any additional information that may give useful perspective to the IP aspects of the contract. For instance, relevant contractual definitions; terms of transfer to third parties, etc.*

Response:

In order to give a legal context to the IP clauses in question, please provide the following information:

Question 16: *Please identify any laws and regulations applicable to the contract in question, in particular any relevant IP-related clauses in legislation regulating access to genetic resources and in any sui generis legislation to protect associated traditional knowledge:*

Response:

Existing Laws and Regulations	Please state name and date of law and, if possible, relevant clause number(s)
National laws and regulations in provider country	
National laws and regulations in receiving country	
Regional laws and regulations	
International laws and regulations	
Other	

Question 17: *Please give information on any customary laws and protocols applicable to the contract in question, in particular those related to the IP aspects of the contract:*

Response:

Question 18: *Please state the Governing Law of the Contract.*

Response:

Question 19: *Dispute Resolution: Please state how the parties have agreed to resolve any disputes that might arise under the contract (mediation, conciliation, arbitration, national jurisdiction etc) identifying, in particular, the agreed dispute resolution body (international, regional, national, or local).*

Response:

Question 20: *Please state whether the contract in question has been challenged at law; for instance, has it been subject to judicial review or subject to a claim for damages for breach? If so, is there any reported case law arising out of such a challenge? Please give full case name and full citation.*

Response:

PART III

PRACTICAL GUIDANCE AND LESSONS LEARNED

Question 21: *Please share any practical advice that you may have arising out of the drafting, negotiation and conclusion of the contract in question, in particular, any advice relating to the IP aspects of the contract.*

For instance:

- *Prior informed consent (PIC): In particular, what steps were taken to obtain PIC, what role, if any, was played by government bodies such as National IP Offices, CBD National Focal Points, CBD Competent National Authorities, etc?*
- *Benefit-Sharing: For example, how were IP related benefits identified and agreed? With whom will benefits be shared? What are the agreed timing of benefits (short, medium, long term). Please include any non IP-related benefit-sharing clauses that may be of interest.*
- *Local or indigenous communities: For example, (i) the mechanisms/consultative arrangements, if any, that existed to facilitate the involvement of local or indigenous communities: e.g. national consultative committees, indigenous organizations (ii) whether any intermediaries were used: e.g. mediators, facilitators (iii) whether a local or centralized register of traditional knowledge exists or is planned?*
- *Legal Advice: Was legal advice obtained by any/all of the parties?*
- *Model Contracts/Clauses: Was a model contract or were individual model clauses used? If so, at what stage in the negotiations was it/they introduced and by whom? How useful was it/they in clarifying the issues and in facilitating an agreement?*

Response:

Question 22: *Please share any "lessons learned" arising from your work in the field of contractual agreements for access to genetic resources and benefit-sharing.*

Response:

Thank you.

[End of questionnaire]