



**WIPO's Intergovernmental
Committee on Intellectual Property,
Genetic Resources, Traditional
Knowledge and Folklore**

**Montreal
July 12, 2010**

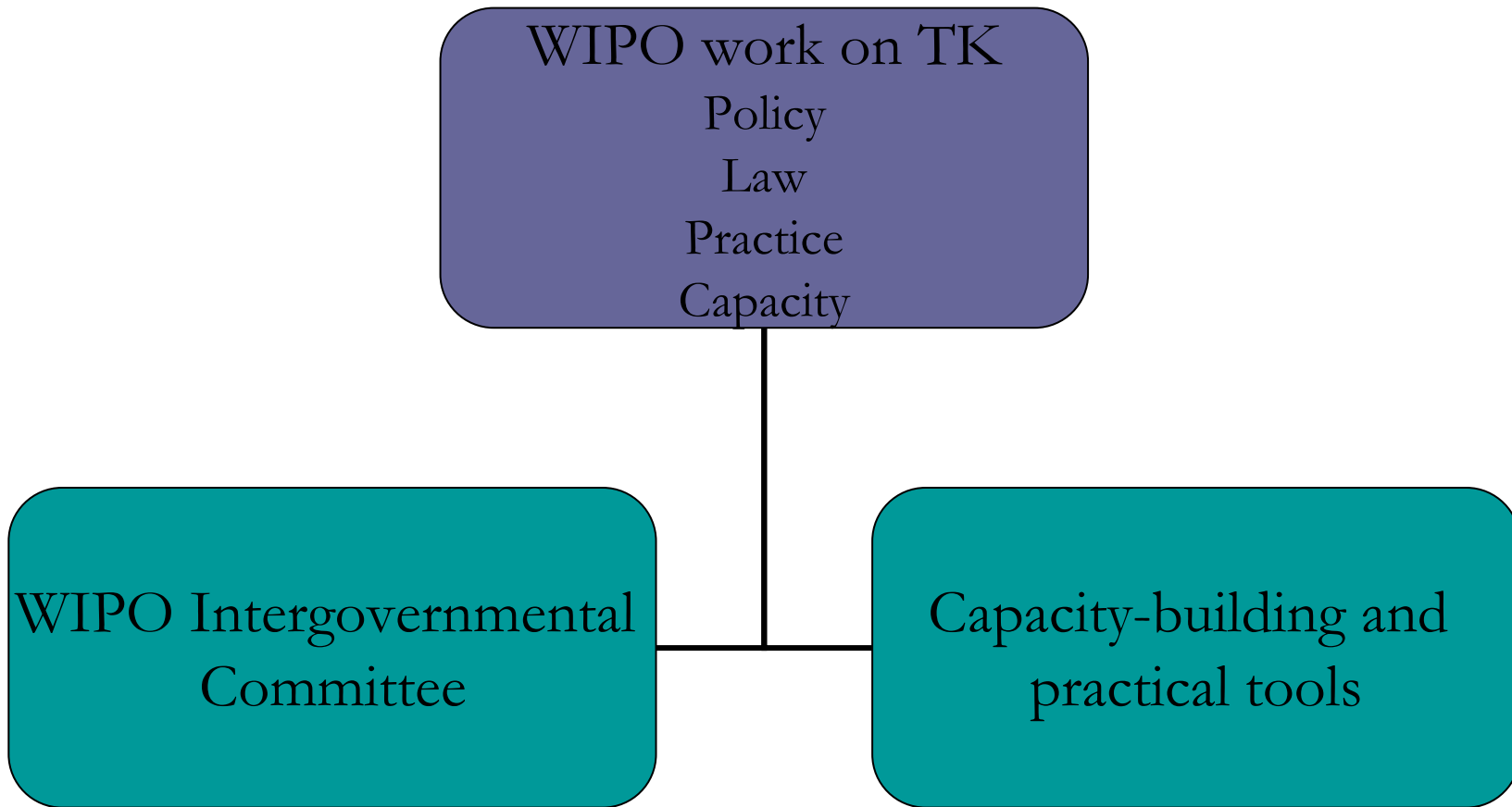
Begoña Venero
Head, Genetic Resources and Traditional Knowledge Section

WIPO Fact-finding missions (1998-1999)

- « The FFMs have shown the richness and diversity of TK on a global scale, both in terms of its inherent creativity and as potential subject matter for protection. The IP system cannot, however, respond fully to all the needs of TK holders. »

WIPO Fact-finding missions (1998-1999)

- « However, the fact that existing standards of IP may not be in perfect harmony with elements of TK worthy of protection should not be seen as an insuperable obstacle. IP has consistently evolved to protect new subject matter (...) Given its evolutionary and adaptive nature, it is not unconceivable that IP principles might provide effective protection for TK. »



IGC

- 2000: Creation of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) by WIPO General Assembly (to constitute a forum in which discussions could proceed among Member States on IP issues that arise in the context of: (i) access to genetic resources and benefit sharing; (ii) protection of TK; and (iii) protection of expressions of folklore)
- 16 Sessions of the IGC so far

Some outputs

- Review of existing IP protection of TK
- Comparative summary of *sui generis* legislation for the protection of TK
- Overview of legal and policy options: TK
- Policy options and legal mechanisms for the protection of TK
- Elements of a *sui generis* system for the protection of TK

- Objectives and principles for the protection of TK (“Draft provisions”)
- Survey of patent office practice in examining TK-related patent documents
- Recommendations for taking account of TK in patent examination
- Toolkit for managing IP when documenting TK and GR
- Technical study on disclosure requirements related to GR and TK

These outputs ...

- Have been built through consultation and broad-based inputs

Draft Provisions

- Part I: Policy objectives, which could set common general directions for protection and provide a consistent policy framework
- Part II: General guiding principles, which could ensure consistency, balance and effectiveness of substantive principles
- Part III: Specific substantive principles, which could define the legal essence of protection

I. POLICY OBJECTIVES

II. GENERAL GUIDING PRINCIPLES

- (a) Responsiveness to the needs and expectations of traditional knowledge holders
- (b) Recognition of rights
- (c) Effectiveness and accessibility of protection
- (d) Flexibility and comprehensiveness
- (e) Equity and benefit-sharing
- (f) Consistency with existing legal systems governing access to associated genetic resources
- (g) Respect for and cooperation with other international and regional instruments and processes
- (h) Respect for customary use and transmission of traditional knowledge
- (i) Recognition of the specific characteristics of traditional knowledge
- (j) Providing assistance to address the needs of traditional knowledge holders

III. SUBSTANTIVE PRINCIPLES

- 1. Protection Against Misappropriation**
- 2. Legal Form of Protection**
- 3. General Scope of Subject Matter**
- 4. Eligibility for Protection**
- 5. Beneficiaries of Protection**
- 6. Fair and Equitable Benefit-sharing and Recognition of Knowledge Holders**
- 7. Principle of Prior Informed Consent**
- 8. Exceptions and Limitations**
- 9. Duration of Protection**
- 10. Transitional Measures**
- 11. Formalities**
- 12. Consistency with the General Legal Framework**
- 13. Administration and Enforcement of Protection**
- 14. International and Regional Protection**



WIPO TECHNICAL STUDY
ON PATENT DISCLOSURE REQUIREMENTS
RELATED TO GENETIC RESOURCES AND
TRADITIONAL KNOWLEDGE

http://www.wipo.int/export/sites/www/tk/en/publications/technical_study.pdf

NOTICE:

This technical study concerns requirements in patent law systems to disclose information about genetic resources and traditional knowledge relevant to patented inventions. It was prepared by WIPO as part of the work program of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. The immediate context for this study was a request of the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) at its sixth meeting in The Hague from April 7 to 19, 2002 (Decision VI/24C). The preparation of the study was based on responses to a questionnaire circulated to the Member States of WIPO. The Thirtieth Session of the WIPO General Assembly approved the transmission of the study as a technical reference document, for reference by the CBD Conference of Parties and relevant subsidiary working groups of the CBD, subject to the following understanding:

The technical study has been prepared to contribute to international discussion and analysis of this general issue, and to help clarify some of the legal and policy matters it raises. It has not been prepared to advocate any particular approach nor to expound a definitive interpretation of any treaty. It is to be regarded as a technical input to facilitate policy discussion and analysis in the Convention on Biological Diversity and in other forums and it should not be considered a formal paper expressing a policy position on the part of WIPO, its Secretariat or its Member States.

The essence of the patent system is transparency and disclosure (the concept of laying open for public inspection is the source of the English word 'patent'). Patent law has developed a set of exacting standards for information disclosure which have deep policy and legal foundations within the patent system. The grant of a patent, and the effective exercise of patent rights, are founded on the principle of sufficient disclosure. The very operation of the patent system involves making publicly available a great detail of legal, administrative and technological information, in a harmonized and accessible format. Some patent applications do, as a matter of existing practice, disclose significant information concerning GR and TK. Disclosures in patent applications are used to monitor the use (and potential misappropriation) of GR or TK. This monitoring function of the international patent system has been enhanced by the increasing searchability and availability on-line of patent information.

The study highlights how disclosure functions and how they may serve to enhance disclosure relevant to genetic resources and traditional knowledge. It does not pass judgement on the consistency of specific provisions in national laws with international treaties. Rather, it focuses on the ways patent law systems can support and give effect to policy interests connected with the interaction between genetic resources and traditional knowledge and claimed inventions.

The underlying, key issue is how to characterize the necessary relationship between the genetic resource and traditional knowledge on the one hand, and the claimed invention on the other. Discussion of possible disclosure requirements has already covered many ways of expressing this linkage. Better characterizing this linkage should also clarify the range and duration of obligations that may attach to such resources and knowledge, within the source country and in foreign jurisdictions, and how far these obligations 'reach through' subsequent inventive activities and ensuing patent applications. General patent law principles provide certain more specific ways of expressing this relationship, even if the objective of the requirement is not conceived in traditional patent terms. Patent law may also be drawn on to clarify or implement more generally stated disclosure requirements: for example, a general requirement to disclose genetic resources used in the invention may be difficult to define in practice, and may be implemented through a more precise test that requires disclosure only when access to the resources would be necessary to reproduce the invention.



CBD



**CONVENTION ON
BIOLOGICAL
DIVERSITY**

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GENERAL

UNEP/CBD/COP/8/INF/7
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ORIGINAL: ENGLISH

CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL
DIVERSITY

Eighth meeting
Curitiba, Brazil, 20 –31 March 2006
Item 17 of the provisional agenda*

**INTERRELATION OF ACCESS TO GENETIC RESOURCES AND DISCLOSURE
REQUIREMENTS IN APPLICATIONS FOR INTELLECTUAL PROPERTY RIGHTS:
REPORT OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)**

Note by the Executive Secretary

In response to the invitation by the Conference of the Parties in paragraph 8 of decision VII/19 E on access and benefit-sharing as related to genetic resources (Article 15), the World Intellectual Property Organization (WIPO) has examined issues regarding the interrelation of access to genetic resources and disclosure requirements in applications for intellectual property rights. The report of its findings was sent to the Secretariat for its transmission to the eighth meeting of the Conference of the Parties.

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Conclusions

This examination has drawn on existing materials, the initial comments and observations of WIPO Member States which shaped the initial draft (WIPO/IP/GR/05/1).

The present document is a further revision of the examination, based on the document reviewed at the Ad Hoc Intergovernmental Meeting (WIPO/IP/GR/05/1), with substantive changes limited to the comments and observations received from Member States and accredited observers at that meeting and subsequently. In view of the guidance of WIPO Member States and the requirement to focus on such existing materials, it does not take full account of the more general academic and policy analysis of these issues.



WIPO-UNEP STUDY ON THE ROLE OF INTELLECTUAL PROPERTY RIGHTS IN THE SHARING OF BENEFITS ARISING FROM THE USE OF BIOLOGICAL RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE

Jointly produced by the
World Intellectual Property Organization (WIPO)
and the
United Nations Environment Programme (UNEP)

prepared by
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India

http://www.wipo.int/export/sites/www/tk/en/publications/769e_unep_tk.pdf

The objective of the Study is to identify and explore the role of intellectual property rights in the sharing of benefits arising from the use of biological resources and associated traditional knowledge. The Study was commissioned in response to Decision IV/9 of the Conference of the Parties to the Convention on Biological Diversity (CBD). The subject of the Study – intellectual property rights and benefit-sharing in respect of biological resources – became even more topical when the World Summit on Sustainable Development (WSSD) established a commitment to negotiate “an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources”. (WSSD Plan of Implementation, paragraph 44(o)). In particular, it is hoped that the Study may provide lessons relevant to the role of intellectual property rights in the implementation of Articles 8, 10 and 15 to 19 of the CBD and in the implementation of various WSSD commitments.

The Study highlights the need, when genetic resources are first accessed, for a clear understanding of intellectual property issues. Agreement on how intellectual property derived from access is used and how the benefits are shared is an important part of the exercise of prior informed consent, and an important, practical way of ensuring that access and benefit-sharing is fruitful, equitable and mutually agreeable, and becomes a true partnership between custodian and user of the genetic resource.

- Agreement drafted by the International Centre of Insect Physiology and Ecology (ICIPE) for the transfer of Biological Material and/or Related Information, 2000.
- Corn Inbred Release and Licensing Agreement between Agriculture and Agri-Foods, Canada (AAFC) and commercial corn companies
- Exclusive License Agreement (sample) - Harvard College, USA
- Exclusive Variety License Agreement between her Majesty the Queen in Right of Canada, as represented by the Ministry of Agriculture and Agri-Food (AAFC), and the Company
- Licensing Agreement (sample) submitted by Michael A. Gollin, VENABLE Attorneys at Law, 1201 New York Avenue, N.W., Suite 1000, Washington, DC 20005-3917, USA
- Model Agreement between the National Institute for Pharmaceutical Research and Development, Nigeria and a Consultant Herbalist, 1997
- Model Biodiscovery Benefit-Sharing Agreement prepared by the State of Queensland, Australia to facilitate the development of the Queensland Biodiscovery Industry
- Model Letter of Collaboration between the Developmental Therapeutics Program Division of Cancer Treatment/Diagnosis National Cancer Institute, USA (DTP/NCI) and a Source Country Government (SCG)/Source Country Organization(s) (SCO)

<http://www.wipo.int/tk/en/databases/contracts/summaries/index.html>

- [Model Material Transfer Agreement between the American National Cancer Institute \(NCI\) and Applicant Investigators](#)
- [Model Material Transfer Agreement: Consultative Group on International Agricultural Research \(CGIAR\)](#)
- [Model Memorandum of Understanding between the Developmental Therapeutics Program Division of Cancer Treatment and Diagnosis National Cancer Institute, USA \(DTP/NCI\), a Source Country and a Source Country Organization \(SCO\)](#)
- [Non-exclusive License Agreement \(sample\) - Harvard College, USA](#)
- [San Diego State University \(SDSU\), Graduate and Research Affairs, Proprietary Material Transfer Agreement](#)
- [San Diego State University \(SDSU\), Graduate and Research Affairs, Simple Agreement for Transfer of Non-Proprietary Biological Materials](#)
- [Standard Conditions for Project Agreements between the Australian Center for International Agricultural Research \(ACIAR\) and Commissioned Organization\(s\)](#)
- [Uniform Biological Material Transfer Agreement, dated March 8, 1995 for the Transfer of Materials between Non-Profit Institutions and an Implementing Letter for the Transfer of Biological Material](#)

<http://www.wipo.int/tk/en/databases/contracts/summaries/index.html>

- [Access and Benefit-Sharing Agreement between the Lebanese Agricultural Research Institute, Tal Amara, Rayak, Lebanon and The Board of Trustees of the Royal Botanic Gardens, Kew, Richmond, Surrey, TW9 3AE United Kingdom](#)
- [Agreement between Montreal Botanic Garden and Private Companies.](#)
- [Agreement for the Testing of Plant Extracts between the Company and the University \(Sri Lanka\), dated January 1st, 2000](#)
- [Contract for the Production of Hybrid Sorghum Seeds between INSORMIL, WINROCK and INRAN, represented by the Ministry of Rural Development, National Institute of Agronomic Research, Niger and Mr Abdou Garba, Producer, 2000](#)
- [Experimental Licensing Contract between the All-Russian Scientific Research Institute for Selections of Fruit Cultures \(Licensor\) and the Foreign Fruit Selection Organization, France \(Licensee\)](#)
- [Germplasm License Agreement for “Line Ten” between Her Majesty the Queen in Right of Canada \(Licensor\) and Company Canada Inc. \(Licensee\)](#)

<http://www.wipo.int/tk/en/databases/contracts/summaries/index.html>

- International Rice Genome Sequencing Project. Member Institution Registration Agreement between Genoscope ("Principal Investigator") and Pharmacia Corporation (Extract of contract provided).
- Know How Licencing Agreement between The Tropical Botanic Garden and Research Institute, Kerala, India (TBGRI) and The Arya Vaidya Pharmacy (Coimbatore) Ltd, Coimbatore, India (the PARTY), dated November 10th, 1995
- Material Transfer Agreement (MTA) Germplasm and Unregistered Lines between the Department of Agriculture and Agri-Foods, Canada (AAFC) and several public breeding institutions
- Research Agreement between Syngenta Crop Protection AG, Basel, Switzerland and HUBEL Academy of Agricultural Science, Wuhan, China, dated November 1997
- Scientific and Technical Cooperation Agreement between the Horticultural Science Research Institute (Russia) and the All-Russian Plant Science Research Institute.

<http://www.wipo.int/tk/en/databases/contracts/summaries/index.html>

WIPO



WIPO/GRTKF/IC/7/9

ORIGINAL: English

DATE: July 30, 2004

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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

**Seventh Session
Geneva, November 1 to 5, 2004**

GENETIC RESOURCES: DRAFT INTELLECTUAL PROPERTY GUIDELINES FOR
ACCESS AND EQUITABLE BENEFIT-SHARING

Document prepared by the Secretariat

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Since its inception, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ('the Committee') has worked towards guidelines on the intellectual property (IP) aspects of mutually-acceptable terms in agreements that concern access to genetic resources and equitable sharing of benefits from the use of accessed resources. This work has been aimed at producing a resource, to alert custodians of genetic resources to the practical issues that arise when they elect to enter into agreements on access and benefit-sharing. The Committee's work has been based on an empirical survey of experience in this field, and a database collecting actual terms of agreements. As a first step, the Committee agreed on a set of guiding principles to frame this work, then oversaw the collection and analysis of practical experience in this area, and most recently considered a draft set of guidelines (WIPO/GRTKF/IC/6/5, submitted to the sixth session). It agreed to request further comments on these draft guidelines, so that a further draft could be prepared. The present document therefore provides the required update of this material for the further consideration of the Committee.

This draft Guide provides background information for those who are considering whether, and how, to grant access to genetic resources which they own, control or have custody of. Negotiating and granting access to genetic resources, for research or commercial uses, can raise IP questions. Agreements reached on practical management of IP can influence the overall results of access to genetic resources, and how benefits arising from the access are created and shared equitably: this includes the decision whether to use IP rights at all, and if so under what conditions. Yet access and benefit-sharing occurs within a broader legal framework, and IP issues are only one component of the full range of practical and legal questions that may need to be addressed – in fact, IP issues do not arise at all in some access and benefit-sharing scenarios. So this guide should be seen only as supplementary and subordinate to the general principles and legal regimes that cover access and benefit-sharing for genetic resources. This guide has informal status only, and does not offer not authoritative legal advice nor set a policy direction. They draw on practical experience in a very wide range of access and benefit-sharing scenarios, and provide illustrations of issues that have actually arisen in practice and the various approaches taken to resolving them.

Among the IP questions confronting the negotiators of access and benefit-sharing agreements are:

- (a) what IP could result from the access to the genetic resources?
- (b) what conditions or restrictions should apply to seeking and obtaining IP rights?
- (c) how should those IP rights be owned, exercised, maintained and licensed?
- (d) what approach to obtaining, holding and exercising rights best promotes a mutually beneficial outcome, and the equitable sharing of benefits from the permitted access?

The parties may therefore need to review the potential IP resulting from the permitted access, and in particular:

- (a) what subject matter could *potentially* be covered by IP,
- (b) what elements of this material should *actually* be covered by IP (for instance, new products created by the research), and what elements should be excluded (some material transfer agreements, for example, oblige the recipient not to seek IP rights on the transferred material, or require further negotiation and agreement at the stage when basic research begins to deliver outcomes).

The following points summarize the patent-related issues that may be considered:

- (a) Will access to the genetic resources and related information result in the creation of a patentable invention? If not, and where the aim of the access is academic research only, this should be clearly stated in any contractual arrangement, and the purposes of the access clarified accordingly. What is patentable can vary considerably between different countries.

What the access provider and the user of resources believe should be patented will also vary, depending on their perspectives and interests.

- (b) What are the agreed arrangements concerning the obtaining of patents for any inventions resulting from the access? How do the access provider and user of the resources agree that patents should be obtained – are there requirements to report on inventions, to agree on specific patenting arrangements, or a general approach for all inventions resulting from the access?
- (c) If so, who will be the owner(s) of the resulting patent? Will ownership be dependent upon such issues as the value of the contribution of genetic resources and TK, the level of scientific contribution and other contributions? Will the patent be jointly owned by the provider and user, regardless of contribution to the invention? Or will the access provider retain ownership? Consideration may need to be given to the demands of a sponsoring private organization or government body on the ownership, and use of, any patents arising out of the collaboration.

These basic questions then lead to specific practical IP questions such as:

- (a) who will decide whether to acquire IP rights on various categories of subject matter; what kind of consultation and further agreement may be necessary before IP rights are acquired and exercised, if at all;
- (b) who will have ownership of IP rights;
- (c) licensing arrangements that should apply to ensure access to new technologies;
- (d) payment for acquisition and maintenance of IP rights;
- (e) who will police and enforce IP rights in the market place;
- (f) participation in decisions on sublicensing;
- (g) ownership or licensing implications if certain performance standards are not met (for example, if the party that gains access to the resources decides not to develop the resources, or takes too long to do so, then the party giving access may wish to reserve rights over intellectual property and any research outcomes);
- (h) obligations to report on any actions taken to take out IP rights, and obligations to disclose the source or conditions of access to the genetic resources.

- (d) In cases of joint ownership of a patent, how will responsibilities flowing from co-ownership be apportioned? For instance, relating to filing, maintenance and enforcement. Where will the resources come from to carry out these activities?
- (e) What is the most appropriate model for the exploitation of the patent and for the use and dissemination of the new technology developed – for instance, a license, assignment or joint venture? Who will negotiate and agree the terms of any subsequent arrangement to exploit the patent? The parties could negotiate licenses to commercialize the research outcomes, or a separate commercial or industrial partner could be brought in once the research outcomes were proven.
- (f) How, when and between whom will any monetary or non-monetary benefits arising from the commercial exploitation of the patent be apportioned? The provider of access to the genetic resources and any related information may retain certain contractual rights in relation to the sharing of benefits, regardless of ownership of the patent itself. Licensing royalties could be shared with the provider; alternatively, the provider may prefer to receive more immediate, short term benefits. In any event, consideration may need to be given to the establishment of specific structures or procedures to ensure that agreed benefits flow back to the provider; for instance, contract monitoring provisions and a benefit-sharing trust fund.

- (g) How will the parties maintain confidentiality? The principle of confidentiality plays a central role in the patent system and the leaking of any confidential information into the public domain can adversely affect the securing of future patents. It is therefore vitally important that confidentiality is maintained until adequate protection is in place. Consideration should also be given to agreeing terms related to publications, in order to ensure that prior publication does not destroy any future patent rights.
- (h) In carrying out the research, what use may be made of material or data covered by IP owned by others? Do warranties need to be sought, or given, relating to such IP?

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

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

**Sixteenth Session
Geneva, May 3 to 7, 2010**

GENETIC RESOURCES: REVISED LIST OF OPTIONS

Document prepared by the Secretariat

- The options listed below are derived exclusively from proposals put to the Committee by Member States and other Committee participants, including national and regional submissions, proposals by other participants, and the Committee's working documents. Each option would be subject to the overarching requirement in the current mandate of the Committee that its work should not prejudice the work of other fora, both within and beyond WIPO. In some instances, this work corresponds to direct invitations or encouragements of other forums, in particular the Conference of Parties of the Convention on Biological Diversity.

A. Options on defensive protection of GR

A.1 *[Inventory of databases and information resources on GR]*

Extension of already approved defensive protection mechanisms for traditional knowledge to address genetic resources more specifically, including the review and greater recognition of further sources of already disclosed information about genetic resources. The Committee could compile an inventory of existing periodicals, databases and other information resources which document disclosed genetic resources, with a view to discussing a possible recommendation that certain periodicals, databases and information resources may be considered by International Search Authorities for integration into the minimum documentation list under the PCT.

A.2 *[Information systems on GR for defensive protection]*

An Online Portal of Registries and Databases, established by the Committee at its third session, could be extended to include existing databases and information systems for access to information on disclosed genetic resources (additional financial resources would be required to implement this option). A concrete proposal for such a system was presented at the ninth session and proposed that “a new system has to be a one-stop system where genetic resources ... can be searched once and comprehensively and not a system in which each database created by each country has to be searched separately. The one-stop database system thus proposed could be an all-in-one consolidated system or be composed of multiple systems easily searchable with one click. Sufficient discussion has to be conducted to determine how to create the most efficient database in the foreseeable future.”

A.3 *[Guidelines and recommendations on defensive protection]*

Recommendations or guidelines for search and examination procedures for patent applications to ensure that they better take into account disclosed genetic resources. The Committee could discuss the possible development of recommendations or guidelines so that existing search and examination procedures for patent applications take into account disclosed genetic resources, as well as a recommendation that patent granting authorities also make national applications which involve genetic resources subject to ‘international-type’ searches as described in the PCT Rules.

B. Options on disclosure requirements

B.1 *[Mandatory disclosure]*

Development of a mandatory disclosure requirement such as has been tabled in the Committee.

B.2 *[Further examination of issues relating to disclosure requirements]*

Further examination of issues relating to disclosure requirements, such as the questions addressed or identified in earlier studies and invitations. Related analysis of patent disclosure issues making use of the information submitted by Committee Members in the context of questionnaire WIPO/GRTKF/7/Q.5 (Questionnaire on recognition of TK and GR in the patent system). The Committee could consider whether there is a need to develop appropriate (model) provisions for national or regional patent or other laws which would facilitate consistency and synergy between access and benefit-sharing measures for genetic resources, on the one hand, and national and international intellectual property law and practice, on the other.

B.3 *[Guidelines and recommendations on disclosure]*

The Committee could consider the development of guidelines or recommendations concerning the interaction between patent disclosure and access and benefit-sharing frameworks for genetic resources. The Committee could consider the development of guidelines or recommendations on achieving objectives related to proposals for patent disclosure or alternative mechanisms and access and benefit-sharing arrangements.

B.4 *[Alternative mechanisms]*

Other work on provisions for national or regional patent laws to facilitate consistency and synergy between access and benefit-sharing measures for genetic resources and national and international patent law and practice. The Committee could consider the creation of a dedicated international information system on disclosed genetic resources as prior art in order to prevent the erroneous grant of patents on genetic resources. This was submitted at the ninth session as an alternative proposal for dealing with the relationship between intellectual property and genetic resources (WIPO/GRTKF/IC/9/13).

C. Options on IP issues in mutually agreed terms for fair and equitable benefit-sharing

C.1 *[Online Database of IP clauses in mutually agreed terms on ABS]*

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

C.2 *[Draft guidelines for contractual practices]*

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

C.3 *[Study on licensing practices on GR]*

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

WIPO/GRTKF/IC/16/7
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Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Sixteenth Session
Geneva, May 3 to 7, 2010

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

Document prepared by the Secretariat

DRAFT Genetic Resources Objectives and Principles

Objective 1

Ensure inventors using genetic resources and any associated traditional knowledge comply with any conditions for access, use and benefit sharing.

Principles

Sovereign states have the authority to determine access to genetic resources in their jurisdiction.

Subject to national legislation, persons accessing traditional knowledge associated with genetic resources from the knowledge holder and applying that knowledge in the development of an invention should obtain the approval from the knowledge holder and seek their involvement.

Objective 2

Prevent patents being granted in error for inventions that are not novel or inventive in light of genetic resources and associated traditional knowledge

Principles

Patent applicants should not receive a monopoly on inventions that are not new or inventive.

The patent system should provide certainty of rights for legitimate users of genetic resources.

DRAFT Genetic Resources Objectives and Principles

Objective 3

Ensure patent offices have available the information needed to make proper decisions on patent grant.

Principles

Patent offices must have regard to all relevant prior art when assessing the patentability of an invention.

Patent applicants must indicate the background art which, as far as known to the applicant, can be regarded as useful for the understanding, searching and examination of the invention.

There is a need to recognize that some holders of TK may not want their knowledge documented.

Objective 4

Relationship with relevant international agreements and processes

Principles

Respect for and consistency with other international and regional instruments and processes.

Promotion of cooperation with relevant international and regional instruments and processes.

DRAFT Genetic Resources Objectives and Principles

Objective 5

Maintain the role of the IP system in promoting innovation

Principles

Maintain the role of the IP system in promoting innovation.

Promote certainty and clarity of IP rights.

Protect creativity and reward investments made in developing a new invention

Promoting transparency and dissemination of information by publishing and disclosing technical information related to new inventions, so as to enrich the total body of technical knowledge accessible to the public

Committee's current mandate (2010/11)

- The Committee will, without prejudice to the work pursued in other fora, continue its work and undertake text-based negotiations with the objective of reaching agreement on a text of an international instrument (or instruments) which will ensure the effective protection of GRs, TK and TCEs.

Committee's current mandate (2010/11)

- The Committee is requested to submit to the 2011 General Assembly the text (or texts) of an international legal instrument (or instruments) which will ensure the effective protection of GRs, TK and TCEs. The GA in 2011 will decide on convening a Diplomatic Conference.

■ Next IGC session (IGC 17):
December 6 to 10, 2010

Decision on TK – IGC 16

- The Committee invited the Secretariat to prepare and make available for the next session of the Committee:
 - as a working document, a further draft of document WIPO/GRTKF/IC/16/5. The further draft should be made available by the Secretariat by September 30, 2010. This draft should clearly identify drafting proposals and comments made by Committee participants during the sixteenth session and proposals and comments submitted to the Secretariat in writing before July 31, 2010. Specific drafting proposals should be attributed in footnotes. Comments made should be reflected, with attribution, in a commentary in the document. The draft should explain clearly how proposed additions, deletions, other amendments and comments have been reflected. Drafting proposals made by observers should be identified in the commentary for consideration by Member States;
 - as an information document for the next session of the Committee, a list and brief technical explanation of various forms in which traditional knowledge may be found (such as “codified/non-codified”, “disclosed”/“non-disclosed”);
 - for the next session of the Committee, a technical information document on the meanings of the term “public domain” in the intellectual property system, with special reference to the protection of traditional knowledge and traditional cultural expressions.

Decision on GR – IGC 16

- The Committee invited the Secretariat to prepare and make available for the next session of the Committee:
 - as a working document, a further draft of document WIPO/GRTKF/IC/16/6. The further draft should include proposed amendments to and comments made by Committee participants during the sixteenth session of the Committee, as well as written comments on that document submitted to the Secretariat before July 31, 2010. The further draft of WIPO/GRTKF/IC/16/6 should also include a factual update on relevant developments in the CBD, FAO and the WTO;
 - as an information document, an updated version of document WIPO/GRTKF/IC/7/9 (“Genetic Resources: Draft Intellectual Property Guidelines for Access and Equitable Benefit-Sharing”);
 - as an information document, a glossary of key terms related to intellectual property and genetic resources.
- The Committee also 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.
- The Committee invited IGC participants to provide written comments on document WIPO/GRTKF/IC/16/7 (DRAFT Genetic Resources Objectives and Principles, a submission by Australia, Canada, New Zealand, Norway and the United States of America) before July 31, 2010 and requested the Secretariat to compile such comments in an information document and to issue document WIPO/GRTKF/IC/16/7 as a working document for the next session of the Committee.

Decision on Arrangements for the Intersessional Working Group – IGC 16

■ *Mandate*

- The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) is the negotiating and decision-making body. The Intersessional Working Groups (IWGs) are to support and facilitate the negotiations of the IGC.
- The IWGs shall provide legal and technical advice and analysis, including, where appropriate, options and scenarios for consideration of the IGC. The IWGs shall report to the IGC on the outcomes of their work and submit recommendations and texts relating to the discussion in the IGC.

■ *Subject Matter*

- All three subjects of the IGC shall be treated on an equal footing and the total time for discussion allocated to each subject in the IGC and in the IWGs should be equal.
- The following subjects shall be considered at the respective IWG meetings:
 - IWG 1: TCEs
 - IWG 2: TK or GRs (to be decided at the 17th session of the IGC)
 - IWG 3: GRs or TK (to be decided at the 17th session of the IGC).

■ *Composition*

- Participation in the IWGs shall be open to all Member States and accredited observers. Each Member State and accredited observer shall be represented by one technical expert who shall participate in his/her personal capacity.
- Funding for each IWG shall be provided by WIPO for one representative each from 71 developing countries and countries with economies in transition, on a proportional basis, as follows: Africa: 25; Asia-Pacific: 17; Latin America and the Caribbean: 15; Central Europe and Baltic: 8; Eastern Europe and Central Asia: 5; and, China: 1. The names of the countries to benefit from the funding shall be communicated to the WIPO Secretariat by the representatives of the regional groupings in the usual way.
- The funding shall comprise travel in economy class on the most economical and direct route, hotel accommodation (bed and breakfast) and a daily stipend of 75 Sfr. Regarding hotel accommodation, WIPO shall directly cover the cost of hotel reservations for each of the funded participants. Funding shall not include a daily subsistence allowance, terminal expenses or any other incidental expenses. This funding arrangement for the IWGs does not constitute a precedent for other WIPO meetings.
- Indigenous representatives shall be funded by the Voluntary Fund as decided by the Advisory Board on the same basis as applicable to State representatives and subject to availability of funds in the Voluntary Fund. The Secretariat is requested to prepare proposed administrative changes to Rules of the Voluntary Fund needed to implement this decision, for adoption by the WIPO General Assembly in 2010.
- Observers would participate in the same capacity as in the IGC.
- There will be a separate room at WIPO headquarters from where the discussions in the IWGs can be followed by representatives of Member States and accredited observers.

- *Methods of Work*

- The IWGs will take, as a basis of their work, all WIPO working documents, including WIPO/GRTKF/IC/16/4, WIPO/GRTKF/IC/16/5 and WIPO/GRTKF/IC/16/6, as may be revised, in line with the IGC's current mandate. The working languages of the IWGs shall be the six official languages of the United Nations.

- *Chairmanship of the IWGs*

- The Chair and Vice-Chairs of the IGC shall be invited to the IWG meetings. Each IWG shall elect its own Chair and Vice-Chairs.

- *Duration and Venue of Meetings*

- The duration of IWG 1 shall be 5 days. Based on the experience of IWG 1, the duration of IWGs 2 and 3 could be adjusted as appropriate, but in no case would the duration be less than 5 days.
- The IWG meetings will take place at WIPO Headquarters, Geneva.

Thanks!

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