



Convention on Biological Diversity

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SUBSIDIARY BODY ON SCIENTIFIC,
TECHNICAL AND TECHNOLOGICAL ADVICE

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Montreal, Canada, 2-7 July 2018
Agenda item 3

RECOMMENDATION ADOPTED BY THE SUBSIDIARY BODY ON SCIENTIFIC, TECHNICAL AND TECHNOLOGICAL ADVICE

22/1. Digital sequence information on genetic resources

The Subsidiary Body on Scientific, Technical and Technological Advice,

Recalling the coordinated and non-duplicative approach on digital sequence information on genetic resources under the Convention and the Nagoya Protocol adopted in decisions XIII/16 and NP-2/14,

Noting the synthesis of views and information on the potential implications of the use of digital sequence information on genetic resources for the three objectives of the Convention and the objective of the Nagoya Protocol,¹

Noting also the fact-finding and scoping study as well as related peer review comments to clarify terminology and concepts and to assess the extent and the terms and conditions of the use of digital sequence information on genetic resources in the context of the Convention and the Nagoya Protocol,²

Noting further the report of the Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources,³

A. Draft decision for the Conference of the Parties to the Convention on Biological Diversity

1. *Recommends* that the Conference of the Parties to the Convention on Biological Diversity at its fourteenth meeting adopt a decision along the following lines:

[The Conference of the Parties,

Mindful of the three objectives of the Convention,

Recalling Articles 12, 15, 16, 17 and 18 of the Convention and decisions VIII/11, XII/29 and XIII/31,

[Noting the reports of discussions on this issue and related issues in other United Nations bodies, such as the Food and Agriculture Organization of the United Nations, the International Treaty on Plant Genetic Resources for Food and Agriculture, the World Health Organization and the World Intellectual Property Organization,]

1. *Notes* that the term “digital sequence information” may not be the most appropriate term to refer to the various types of information on genetic resources, and that it is used as a placeholder until an alternative term is agreed;

¹ CBD/SBSTTA/22/INF/2.

² CBD/SBSTTA/22/INF/3.

³ CBD/SBSTTA/22/INF/4.

[2. *Recognizes* that digital sequence information includes information on nucleic acids and protein sequences as well as information derived from biological and metabolic processes specific to the cells of the genetic resource;]

3. *Recognizes* the importance of digital sequence information on genetic resources for the conservation of biological diversity and the sustainable use of its components while *emphasizing* that the three objectives of the Convention are interlinked and mutually supportive;

[4. *Recognizes* that digital sequence information on genetic resources has important and very positive effects on the conservation of biological diversity and sustainable use of its components as well as for protection of human, animal and plant health and for food security and safety;]

5. *Recognizes* that the use of digital sequence information on genetic resources and public access to this information contributes to scientific research [that is essential for the characterization, conservation and sustainable use of biological diversity and to food security, food safety and human health] [and provides multiple benefits to society] [which should be shared fairly and equitably];

[6. *Notes* that access to digital sequence information held in public databases is not subject to requirements for prior informed consent;]

[7. *Notes* that the creation of digital sequence information requires initial access to a physical genetic resource, and that, therefore, a benefit arising from the utilization of digital sequence information should be shared fairly and equitably in accordance with the third objective of the Convention, the objective of the Nagoya Protocol and Article 5(1) of the Nagoya Protocol and in a way that directly benefits indigenous peoples and local communities conserving biological diversity so that it serves as an incentive for conservation and sustainable use;]

8. *Recognizes* also that further capacity to use, generate and analyse digital sequence information on genetic resources is needed in many countries and *encourages* Parties, other Governments and relevant organizations to support capacity-building and technology transfer to assist in the use of digital sequence information on genetic resources to contribute to conservation and sustainable use of biodiversity;

[9. *Also recognizes* the need to strike a balance between the interest in open and free access to information on genetic resources and the interest in fair and equitable sharing of benefits with countries and communities providing these genetic resources from which the information was generated which may otherwise not benefit from the results of the research and development activities;]

[10. *Notes* that some Parties have implemented provisions that consider digital sequence information as equivalent to genetic resources;]

[11. *Acknowledges* that mutually agreed terms can cover benefits arising from the commercial use of digital sequence information on genetic resources;]

[12. *Also recognizes* that digital sequence information on genetic resources can facilitate misappropriation if it is used to bypass national access legislation and no alternative benefit-sharing measure is put in place;]

[13. *Acknowledges* that, according to Article 15.7 of the Convention and Article 5 of the Nagoya Protocol, benefits from the commercial use of the results of utilization of digital sequence information on genetic resources arising from access shall be shared in a fair and equitable way;]

[14. *Acknowledges also* that, according to Article 15.2 of the Convention and Article 8 of the Nagoya Protocol, the use of digital sequence information on genetic resources for non-commercial research and development should be subject to simplified measures according to domestic legislation, [taking into account the need to address a change of intent for such research

highlighting that it is the sovereign right of a Party on how they wish to create conditions to promote and encourage research];]

[15. *Invites* Parties, other Governments, indigenous peoples and local communities, relevant organizations and stakeholders to facilitate access and support the exchange and use of digital sequence information [to further the three objectives of the Convention][to further the three objectives of the Convention, including for protection of human, animal and plant health and for food security][for purposes of conservation of biological diversity and sustainable use of its components as well as for protection of human, animal and plant health and for food security];]

16. *Invites* Parties, other Governments, indigenous peoples and local communities, and relevant stakeholders to submit views and information to clarify the concept of digital sequence information;

17. *Invites* Parties and other Governments to submit information on how they address digital sequence information in their domestic legislation and other measures related to digital sequence information on genetic resources;

[18. *Decides* to establish an [Ad Hoc Technical Expert Group⁴][open-ended working group] and *requests* the Executive Secretary, subject to the availability of financial resources, to convene a meeting of this group in accordance with the terms of reference contained in the annex;]

[19. *Decides* to establish an open-ended working group to develop modalities for sharing benefits from digital sequence information, including possible multilateral approaches and approaches for publically accessible databases, taking into account the report of the ad hoc technical expert group established pursuant to paragraph 18 above, to meet at least once in the next biennium and to report to the Conference of the Parties at its fifteenth meeting;]

20. *Requests* the Executive Secretary, subject to the availability of financial resources:

(a) To compile and synthesize the views and information submitted;

[(b) To commission a [peer-reviewed] study on ongoing developments in the field of traceability, including how traceability is addressed by databases, and how these could inform discussions on digital sequence information on genetic resources;]

[(c) To commission a [peer-reviewed] study on benefit-sharing associated with digital sequence information, including examining different forms of benefit-sharing for non-commercial and commercial uses and how digitization of information in other sectors has impacted benefit-sharing, including possible lessons from the music, software, publishing and other industries;]

(d) To make the studies and the synthesis of views available for the Parties and for the consideration of the Ad Hoc Technical Expert Group;

(e) To convene a moderated open-ended online forum to support the work of the Ad Hoc Technical Expert Group established in paragraph 10 above in meeting its terms of reference;

[21. *Requests* the Subsidiary Body on Scientific, Technical and Technological Advice to consider the outcomes of the Ad Hoc Technical Expert Group and to make a recommendation for the consideration of the Conference of the Parties at its fifteenth meeting;]

22. *Recognizes* that the generation, use and management of digital sequence information is dynamic and subject to technological and scientific developments, and *notes* that regular horizon scanning of developments in the field of digital sequence information on genetic resources is needed for reviewing their potential implications for the objectives of the Convention and the Nagoya Protocol;

⁴ The Ad Hoc Technical Expert Group will be convened in accordance with the modus operandi of the Subsidiary Body on Scientific, Technical and Technological Advice, except that there will be five experts nominated by each of the five regions.

23. *Notes* that the issue of digital sequence information on genetic resources is being considered in a number of different international forums, and *requests* the Executive Secretary to continue to engage and collaborate with relevant ongoing processes and policy debates to collect information on current discussions on the use of digital sequence information on genetic resources of relevance to the Convention and the Nagoya Protocol.

[*Annex*

TERMS OF REFERENCE FOR THE SECOND AD HOC TECHNICAL EXPERT GROUP ON DIGITAL SEQUENCE INFORMATION ON GENETIC RESOURCES

The Ad Hoc Technical Expert Group shall:

- (a) Take into account:
 - (i) The compilation and synthesis of views and information related to digital sequence information on genetic resources submitted pursuant to decision XIII/16;⁵
 - (ii) The fact finding and scoping study to clarify terminology and concepts and to assess the extent and the terms and conditions of the use of digital sequence information on genetic resources in the context of the Convention and the Nagoya Protocol prepared pursuant to decision XIII/16;⁶
 - (iii) The report of the first Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources;⁷
- (b) Consider the synthesis of views and information and additional studies referred to in paragraph 20 (a), [(b)] and [(c)] of the decision;
- (c) Clarify the concept of digital sequence information in the context of the Convention and the Nagoya Protocol and identify an operational term;
- [(d) Consider how ongoing developments on traceability can inform discussions on digital sequence information on genetic resources;]
- [(e) Consider simplified measures for utilization of digital sequence information on genetic resources;
- (f) Consider mechanisms for the fair and equitable sharing of benefits derived from the commercial utilization of digital sequence information on genetic resources including the specific cases of transboundary situations or for which it is not possible to identify the country of origin of the genetic resource;
- (g) Consider mechanisms to ensure compliance with benefit-sharing obligations from the utilization of digital sequence information on genetic resources as well as subsequent applications and commercialization;]
- (h) Meet at least once face-to-face, subject to the availability of financial resources, prior to the fifteenth meeting of the Conference of the Parties and make use of online tools to facilitate its work, as appropriate;
- (i) Submit its outcomes for consideration by a meeting of the Subsidiary Body on Scientific Technical and Technological Advice to be held prior to the fifteenth meeting of the Conference of the Parties.]]

⁵ CBD/SBSTTA/22/INF/2 and addenda 1 and 2.

⁶ CBD/SBSTTA/22/INF/3.

⁷ CBD/SBSTTA/22/INF/4.

B. Draft decision for the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol

2. *Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol, at its third meeting, adopt a decision along the following lines:

[The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol,

Mindful of the objective of the Nagoya Protocol,

[Recalling Articles 5(1), 8, 17, 20, 22 and 23 of the Nagoya Protocol,]

Acknowledging decision 14/--,

1. *Decides* that the ad hoc technical expert group referred to in paragraph x of decision 14/-- will also serve the Nagoya Protocol;

2. *Requests* the Subsidiary Body on Scientific, Technical and Technological Advice to consider the outcomes of the ad hoc technical expert group and to make a recommendation for the consideration of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol at its fourth meeting.]
