

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

Nineteenth Session
Geneva, July 18 to 22, 2011

DRAFT OBJECTIVES AND PRINCIPLES RELATING TO INTELLECTUAL
PROPERTY AND GENETIC RESOURCES

Document prepared by the Secretariat

INTRODUCTION

1. The Third Intersessional Working Group ('IWG 3'), which met from February 28 to March 4, 2011, first discussed objectives and principles relating to intellectual property (IP) and genetic resources (GR). The text of objectives and principles as originally proposed in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ('the Committee') by Australia, Canada, New Zealand, Norway and the United States of America (as contained in document WIPO/GRTKF/IWG/3/7), as amended by the African Group (as reflected in document WIPO/GRTKF/IWG/3/8), was commented on. Drafting proposals were incorporated in the text.
2. An open-ended drafting group, which was established at IWG 3, reviewed the text and presented it to the plenary of IWG 3. IWG 3 noted the text of objectives and principles and requested that the text, together with the rapporteur's introduction and comments on the text made during the IWG 3 plenary, be compiled as document WIPO/GRTKF/IWG/3/17, and be transmitted to the Committee for its consideration. At the Committee's eighteenth session, held from May 9 to 13, 2011, the text was published as WIPO/GRTKF/IC/18/9.
3. At its eighteenth session the Committee established an open-ended informal drafting group to further develop the draft objectives and principles. The text of the informal drafting group was presented to the plenary on May 13, 2011. The Committee "took note of the text of the draft objectives and principles on intellectual property and genetic resources prepared by the open-ended informal drafting group established by the Committee, based on WIPO/GRTKF/IC/18/9. The Committee requested that the text be made available as a working document for the Committee at its next session."¹

Preparation and structure of this document

4. The objectives and principles as prepared by the open-ended informal drafting group established by the Committee at its eighteenth session appear in the annex to this document.

Related documents

5. The following document also made available at this session of the Committee is directly related to the present document:

"Options for Future Work on Intellectual Property and Genetic Resources"
(WIPO/GRTKF/IC/19/7).

¹ Draft Report of the Eighteenth Session of the Committee (WIPO/GRTKF/IC/18/11 Prov.)

6. *The Committee is invited to review and comment on the objectives and principles contained in the Annex towards developing a revised and updated version thereof.*

[Annex follows]

OBJECTIVE 1

Objective 1 - Option 1

Ensure those accessing genetic resources and associated traditional knowledge comply with specific conditions for access, use and benefit-sharing under national law.

Objective 1 - Option 2 DELETED

Objective 1 – Options 3 and 4 NEW CONSOLIDATED TEXT

Ensure that those accessing and/or using genetic resources, their derivatives and/or associated traditional knowledge in particular applicants for intellectual property rights comply with national law and requirements¹ of the country providing² for prior informed consent, mutually agreed terms, fair and equitable benefit-sharing and disclosure of origin.

¹ National law and requirements include customary norms.

² Country providing is the country of origin or that has acquired the genetic resources / with traditional knowledge in accordance with the CBD.

PRINCIPLES OF OBJECTIVE 1

Principles of Objective 1 - Option 1

Recognize the wide variety of ownership arrangements pertaining to genetic resources, their derivatives and/or associated traditional knowledge, including the sovereign rights of States, the rights of indigenous peoples and local communities, as well as private property rights.

Principles of Objective 1 - Option 2

Recognize the wide variety of ownership arrangements pertaining to genetic resources and associated traditional knowledge, including the sovereign rights of States, the rights of indigenous peoples and local communities, as well as private property rights.

Principles of Objective 1 – Option 3

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(s) and applying that knowledge in the development of an invention should obtain approval from the knowledge holder(s) and seek their involvement.

Principles of Objective 1 – Option 4

States have the authority to determine access to genetic resources. Persons accessing traditional knowledge associated with genetic resources from the knowledge holder(s) and applying that knowledge in the development of an invention should obtain approval from the knowledge holder(s) and seek their involvement.

Principles of Objective 1 – Option 5

Ensure respect for the principle of self determination of indigenous peoples and local communities, including peoples partially or entirely under occupation and their rights over genetic resources and associated traditional knowledge, including the principles of prior informed consent, mutually agreed terms, and full and effective participation, noting the United Nations Declaration on the Rights of Indigenous Peoples.

Principles of Objective 1 – Option 6 DELETED

OBJECTIVE 2

Objective 2 - Option 1 DELETED

Objective 2 – Options 2 and 6 NEW CONSOLIDATED TEXT

Prevent intellectual property rights involving the access and utilization of genetic resources, their derivatives and/or associated traditional knowledge from being granted where there is no prior informed consent, mutually agreed terms and/or fair and equitable benefit-sharing, and disclosure of origin.

Objective 2 - Option 3

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

Objective 2 - Option 4

Prevent intellectual property rights from being granted in error and/or bad faith for intellectual property applications relating to genetic resources, their derivatives and/or associated traditional knowledge that do not satisfy the eligibility conditions.

Objective 2 - Option 5

Ensure that no patents on life and life forms are granted for genetic resources and associated traditional knowledge, because they do not comply with the requirements of novelty and inventive step.

Objective 2 - Option 7

Increase transparency in access and benefit-sharing.

PRINCIPLES OF OBJECTIVE 2

Principles of Objective 2 - Option 1

Patent applicants should not receive exclusive rights on inventions that are not new or inventive. The patent system should provide certainty of rights for legitimate users of genetic resources.

Principles of Objective 2 - Option 2

The intellectual property system should provide certainty of rights for legitimate users and providers of genetic resources, their derivatives and/or associated traditional knowledge. The intellectual property system must provide for mandatory disclosure requirements ensuring that the intellectual property offices become key checkpoints for disclosure and monitoring the utilization of genetic resources, their derivatives and/or associated traditional knowledge. Administrative and/or judicial authorities shall have the right to (a) prevent the further processing of the intellectual property applications or (b) prevent the granting of intellectual property rights, as well as (c) revoke intellectual property rights subject to Article 32 of the TRIPS Agreement and render unenforceable intellectual property rights when the applicant has either failed to comply with the objectives and principles or provided false or fraudulent information.

Principles of Objective 2 - Option 3 DELETED

Principles of Objective 2 - Option 4 DELETED

Principles of Objective 2 - Option 5 DELETED

Principles of Objective 2 - Option 6

Intellectual property rights applicants should not receive exclusive rights where free, prior and informed consent and fair and equitable benefit-sharing requirements for accessing and using genetic resources have not been met.

Principles of Objective 2 - Option 7

Persons applying for intellectual property rights involving the use of genetic resources and/or associated traditional knowledge have a duty of good faith and candor to disclose in their applications all background information relating to the genetic resources and associated traditional knowledge, including the country of source or origin.

OBJECTIVE 3

Objective 3 - Option 1

Ensure patent offices have available the information needed to make proper decisions in granting patents.

Objective 3 – Options 2 and 4 NEW CONSOLIDATED TEXT

Ensure that intellectual property offices have appropriate and available information on genetic resources, their derivatives and/or associated traditional knowledge needed to make proper and informed decisions in granting intellectual property rights. Such information shall include confirmation through the mandatory disclosure requirements that prior informed consent has been obtained and access has been granted on mutually agreed terms which can be made through an internationally recognized certificate of compliance.

Objective 3 - Option 3 DELETED

Objective 3 - Option 5 DELETED

Objective 3 - Option 6 DELETED

PRINCIPLES OF OBJECTIVE 3

Principles of Objective 3 - Option 1

Patent offices must consider 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 traditional knowledge may not want their knowledge documented.

Principles of Objective 3 - Option 2

Intellectual property offices should consider all relevant prior art information relating to genetic resources, their derivatives and associated traditional knowledge when assessing the eligibility for grant of intellectual property rights.

Intellectual property applicants should disclose all background information of genetic resources, their derivatives and associated traditional knowledge relevant for determining the eligibility conditions.

Principles of Objective 3 - Option 3 DELETED

Principles of Objective 3 - Option 4 DELETED

Principles of Objective 3 - Option 5 DELETED

OBJECTIVE 4

Objective 4 - Option 1

Promote a mutually supportive relationship with relevant international agreements and processes.

Objective 4 - Options 2 and 3 NEW CONSOLIDATED TEXT

Establish a coherent system and promote mutually supportive relationship between intellectual property rights involving the utilization of genetic resources, their derivatives and/or associated traditional knowledge and existing international and regional agreements and treaties.

Objective 4 - Option 4

Ensure consistency with international legal standards in the promotion and protection of the collective rights of indigenous peoples to their genetic resources and/or associated traditional knowledge by establishing a transparent, independent, accessible mechanism for oversight and dispute resolution, with associated rights to local communities.

PRINCIPLES OF OBJECTIVE 4

Principles of Objective 4 - Option 1

Promote respect for and seek consistency with other international and regional instruments and processes.

Promote cooperation with relevant international and regional instruments and processes.

Principles of Objective 4 - Option 2

Promote respect for and seek consistency with other international and regional instruments and processes.

Promote cooperation with relevant international and regional instruments and processes.

The work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore should not prejudice the work pursued in other fora.

Principles of Objective 4 - Option 3

Respect the decisions adopted by the United Nations treaty bodies pertaining to cases submitted by indigenous peoples.

Principles of Objective 4 - Option 4

Support, in particular, the implementation of the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization to the Convention of Biological Diversity.

Principles of Objective 4 - Option 5 DELETED

Principles of Objective 4 - Option 6

Promotion of awareness raising and information sharing among different relevant and related international and regional agreements, instruments and processes related to genetic resources.

OBJECTIVE 5

Objective 5 - Options 1 and 10 NEW CONSOLIDATED TEXT

Preventing the adverse effects of the intellectual property system on the indigenous peoples' customs, beliefs and rights with the aim of recognize and protect the rights of indigenous peoples to use, develop, create and protect their knowledge and innovation in relation to genetic resources.

Objective 5 - Option 2

Maintain the role of the intellectual property system in promoting innovation.

Objective 5 - Option 3

Recognize and maintain the role of the intellectual property system in promoting innovation and transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, noting the relationship with genetic resources, their derivatives and/or associated traditional knowledge.

Objective 5 - Option 4

Recognize the role of the intellectual property system in the protection of traditional knowledge, genetic resources and traditional cultural expressions.

Objective 5 - Option 5 DELETED

Objective 5 - Option 6 NEW TEXT

Recognize and maintain the role of the intellectual property system in promoting innovation, transfer and dissemination of technology, to the mutual advantage of holders and users of genetic resources, their derivatives and/or associated traditional knowledge in a manner conducive to social and economic welfare, while contributing to the protection of genetic resources, their derivatives and/or associated traditional knowledge.

Objective 5 - Option 7 DELETED

Objective 5 - Option 8 DELETED

Objective 5 - Option 9 DELETED

Objective 5 - Option 11 DELETED

PRINCIPLES OF OBJECTIVE 5

Principles of Objective 5 - Option 1

Maintain the incentives for innovation provided by the intellectual property system.
Promote certainty and clarity of intellectual property rights.
Protect creativity and reward investments made in developing a new invention.
Promote 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.

Principles of Objective 5 - Option 2

Recognize and maintain the role of the intellectual property system in promoting innovation, noting the relationship with genetic resources and associated traditional knowledge.
Promote certainty and clarity of intellectual property rights, noting the relationship with genetic resources and associated traditional knowledge.
Protect creativity and reward investments.
Promoting transparency and dissemination of information by publishing and disclosing technical information related to new inventions, where appropriate and when publicly available, so as to enrich the total body of knowledge accessible to the public.

Principles of Objective 5 - Option 3

Recognize and maintain the role of the intellectual property system in promoting innovation, noting the relationship with genetic resources, their derivatives and/or associated traditional knowledge and in the protection of traditional knowledge, genetic resources, their derivatives and/or associated traditional knowledge and traditional cultural expressions and fair and equitable sharing of benefits arising from their use.
Promote certainty and clarity of intellectual property rights, noting the relationship with genetic resources, their derivatives and/or associated traditional knowledge and obligations with respect to the protection of traditional knowledge, genetic resources, their derivatives and/or associated traditional knowledge and traditional cultural expressions and certainty and clarity for prior informed consent and fair and equitable benefit-sharing.
Protect creativity, reward investments and ensure prior informed consent and fair and equitable benefit-sharing with the knowledge holders.
Promoting transparency and dissemination of information by disclosing country of origin and publishing and disclosing technical information related to new inventions, where appropriate and where publicly available, so as to enrich the total body of technical knowledge accessible to the public.

Principles of Objective 5 - Option 4 DELETED

Principles of Objective 5 - Option 5

Increase legal certainty and trust between users and providers of genetic resources and traditional knowledge through a mandatory disclosure of origin or source.

Principles of Objective 5 - Option 6 DELETED

Principles of Objective 5 - Option 7 DELETED

Principles of Objective 5 - Option 8 DELETED

Principles of Objective 5 - Option 9 DELETED

Principles of Objective 5 - Option 10 DELETED

Principles of Objective 5 - Option 11 DELETED

Principles of Objective 5 - Option 12

Promote transparency and dissemination of information where not in contrast with public morality and/or public order.

End of Annex and of document]