

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

**Twentieth Session**  
**Geneva, February 14 to 22, 2012**

### **DRAFT OBJECTIVES AND PRINCIPLES RELATING TO INTELLECTUAL PROPERTY AND GENETIC RESOURCES**

*Document prepared by the Secretariat*

#### **INTRODUCTION**

1. At its nineteenth session, held from July 18 to 22, 2011, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee”) requested that “document WIPO/GRTKF/IC/19/6 (‘Draft Objectives and Principles Relating to Intellectual Property and Genetic Resources’) be transmitted as a working document to the next session of the Committee, as amended by the text presented to the Committee by the facilitators on genetic resources, Mr. Ian Goss (Australia) and Mr. Hem Pande (India) and incorporating the amendments thereto made by the Committee in plenary.”<sup>1</sup>

2. Pursuant to the decision above, the objectives and principles as prepared by the facilitators appear in the annex to this document.

3. *The Committee is invited to take note of this document and the Annex to it.*

[Annex follows]

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<sup>1</sup> Draft Report of the Nineteenth Session of the Committee (WIPO/GRTKF/IC/19/12 Prov.)

## DRAFT OBJECTIVES AND PRINCIPLES RELATING TO INTELLECTUAL PROPERTY AND GENETIC RESOURCES

### OBJECTIVE 1

Ensure [that] those accessing [and/or using] genetic resources [, their derivatives] and associated traditional knowledge [in particular applicants for intellectual property rights] comply with national law and [requirements<sup>1</sup> of the country providing<sup>2</sup> for prior informed consent, mutually agreed terms, fair and equitable] benefit-sharing [and disclosure of origin.]

### PRINCIPLES OF OBJECTIVE 1

#### Principle 1

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

#### Principle 2

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.

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<sup>1</sup> National law and requirements include customary norms.

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

## OBJECTIVE 2

### *Option 1*

Prevent [intellectual property rights] [patents] involving the access and utilization of genetic resources, [their derivatives] and associated traditional knowledge from being granted [in bad faith]

- [in error for inventions that are not novel or inventive]
- [where there is no prior informed consent, mutually agreed terms and/or fair and equitable benefit-sharing, and disclosure of origin]

or

- [or that was granted in violation of the inherent rights of the original owners]

### *Option 2*

Ensure that no patents on life and life forms are granted for genetic resources and associated traditional knowledge.

## PRINCIPLES OF OBJECTIVE 2

### Principle 1

Patent applicants should not receive exclusive rights on inventions that are not new or inventive.

### Principle 2

#### *Option 1*

The patent system should provide certainty of rights for legitimate users of genetic resources [and their derivatives] and associated traditional knowledge.

#### *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 judicial review] / 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.

### Principle 3

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 [and their derivatives] [and their associated traditional knowledge] have not been met [ensuring free prior informed consent and fair and equitable benefit-sharing for indigenous peoples and local communities].

#### Principle 4

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

Ensure that intellectual property [Patent] offices have appropriate information on genetic resources, [their derivatives] and associated traditional knowledge needed to make proper and informed decisions in granting intellectual property rights [patents]. [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.]

#### PRINCIPLES OF OBJECTIVE 3

##### Principle 1

Intellectual property [Patent] offices should [must] consider all relevant prior art [as far as known to the applicant] relating to genetic resources, [their derivatives] and associated traditional knowledge when assessing the eligibility for grant of intellectual property rights [a patent].

##### Principle 2

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

##### Principle 3

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

## OBJECTIVE 4

Establish a coherent and mutually supportive [system] 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, [including ensure consistency with international legal standards in the promotion and protection of the collective rights of indigenous peoples]

### PRINCIPLES OF OBJECTIVE 4

#### Principle 1

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

#### Principle 2

Promote cooperation [awareness and information sharing] with relevant international and regional instruments and processes [and 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.]

## OBJECTIVE 5

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 associated traditional knowledge in a manner conducive to social and economic welfare [while]:

- [contributing to the protection of genetic resources, [their derivatives] and associated traditional knowledge.]
- [preventing the adverse effects of the intellectual property system on the indigenous peoples' customs, beliefs and rights with the aim of recognizing and protecting the rights of indigenous peoples to use, develop, create and protect their knowledge and innovation in relation to genetic resources.]

## PRINCIPLES OF OBJECTIVE 5

### Principle 1

#### *Option 1*

Maintain the incentives for innovation provided by the intellectual property system.

#### *Option 2*

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.

### Principle 2

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.]

### Principle 3

Protect creativity and reward investments made in developing a new invention.

#### Principle 4

Promote transparency and dissemination of information [, where not in contrast with public morality and/or ordre public,] by:

- [publishing and disclosing technical information related to new inventions, so as to enrich the total body of technical knowledge accessible to the public.
- [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.]
- [increase legal certainty and trust between users and providers of genetic resources and traditional knowledge through a mandatory disclosure of origin or source.]

[End of Annex and of document]