

WIPO



WIPO/GRTKF/IC/3/3
ORIGINAL:English
DATE:February28,2002

E

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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

**Third Session
Geneva, June 13 to 21, 2002**

CALL FOR COMMENTS ON STRUCTURE OF PROPOSED DATABASE OF
CONTRACTUAL PRACTICES AND CLAUSES RELATING TO INTELLECTUAL
PROPERTY, ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING

prepared by the Secretariat

I. INTRODUCTION

1. At the first session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the "Committee"), held in Geneva from April 30 to May 3, 2001, the Committee expressed support for Task A.1, that is, the development of "guide contractual practices, guidelines, and model intellectual property clauses for contractual agreements on access to genetic resources and benefit-sharing, taking into account the specific nature and needs of different stakeholders, different genetic resources, and different transfers within different sectors of genetic resource policy."¹

2. At the second session of the Committee, held in Geneva from December 10 to 14, 2001, the Committee considered a document entitled "Operational Principles for Intellectual Property Clauses of Contractual Agreements Concerning Access to Genetic Resources and Benefit-Sharing" (WIPO/GRTKF/IC/2/3).

3. This document provided information on existing intellectual property clauses and contractual practices for access and benefit-sharing, and offered options relating to the development of non-binding guide contractual practices, guidelines and model intellectual property clauses for consideration by the Committee. The information contained in this document was largely based upon existing contractual agreements which had been analyzed or referred to in previous World Intellectual Property Organization ("WIPO") documents. It did not aim to present a representative sample of relevant agreements and practices.

4. In order to obtain a representative sample of relevant agreements and practices, it was therefore proposed that the International Bureau of WIPO undertake a systematic survey of actual contractual agreements, including a questionnaire to be sent to Committee members and other stakeholders, as appropriate. Furthermore, contributors would be invited to provide experiences, examples and case studies of contractual practices and agreements for a compilation of existing intellectual property clauses and agreements. This compilation could serve as a basis for the systematic and balanced development of guide contractual practices, guidelines and model intellectual property clauses which would reflect the operational principles agreed and identified by Committee members.²

5. In addition, the Delegation of Australia presented the Committee with a document entitled "Operational Principles for Intellectual Property Clauses of Contractual Agreements Concerning Access to Genetic Resources and Benefit-Sharing," (WIPO/GRTKF/IC/2/12). This document proposed a "Summary Checklist of Key Contractual Intellectual Property Terms on Access to Genetic Resources and Benefit Sharing" that would provide a searchable format for an electronic database, which would be published on the WIPO website and hyper-linked to the website of the Clearing House Mechanism ("CHM") of the 1992 Convention on Biological Diversity ("CBD").

6. The Committee expressed support for these proposals. It decided that the Secretariat of WIPO should undertake a systematic survey of actual contractual agreements, including a questionnaire to be sent to Committee members and other stakeholders, as appropriate.

¹See document WIPO/GRTKF/IC/1/13, paragraph 128.

²See document WIPO/GRTKF/IC/2/3, paragraphs 131 to 134.

Results of the questionnaire would be compiled into an electronic database and could serve as a resource on guidelines, contractual practices, and model intellectual property clauses for contracts concerning access to genetic resources and benefit-sharing.

7. The Committee agreed that the Secretariat of WIPO should first prepare the structure under which the proposed database could be developed and that this should be submitted to the third session of the Committee for discussion.

8. As requested by the Member States, the Secretariat of WIPO has therefore developed the structure of a proposed database for comment by Committee members. The draft structure of the proposed database is contained in the Annex to this document.

9. Comments received will be incorporated into a final document, entitled, "Possible Format for an Electronic Database of Contract Clauses and Practices Concerning Access to Genetic Resources and Benefit-Sharing" (WIPO/GRTKF/IC/3/4), which will be presented at the third session of the Committee, to be held in Geneva from June 13 to 21, 2002.

10. In accordance with the express desire of the Committee to engage as comprehensive and representative a body of stakeholders as possible in the implementation of Task A.1³, a questionnaire will then be disseminated to a wider range of relevant stakeholders, in particular those with practical experiences of the drafting and negotiation of the intellectual property aspects of contractual agreements concerning access to genetic resources and benefit sharing: for instance, government agencies, indigenous peoples and local communities, commercial organizations, and source country and receiving country research institutions, such as universities and *ex situ* collections.

11. Results of the questionnaire will be compiled and published in a user-friendly database and could serve as a resource on guidelines, contractual practices, and model intellectual property clauses for contracts concerning access to genetic resources and benefit sharing.

II SPECIFIC COMMENT BY COMMITTEE MEMBERS

12. Committee members are specifically asked to:

(a) Consider whether the 'Contract Checklist Page' provides a concise and user-friendly checklist of key intellectual property related information for end-users of the database and to indicate if there is any additional intellectual property related information that may be usefully incorporated into this summary checklist;

(b) Provide details, including full web addresses, of any existing online databases that may usefully aid the development of the proposed database, including information as to why Committee members have found these databases to be particularly effective;

(c) Provide the full contact details of any stakeholders, in particular indigenous peoples and local communities, with practical experiences of the intellectual property aspects of contractual agreements concerning access to genetic resources and benefit-sharing who

³ See the Report of the Committee (WIPO/GRTKF/IC/2/16), in particular, paragraphs 67, 68, 81, 89 and 90.

could be asked to complete the questionnaire from which the information contained in this database will be compiled.

13. It would be appreciated if all comments concerning the structure of the proposed database could be received by the Secretariat of WIPO before Friday, April 26, 2002.

14. Comments may be sent to the Global Intellectual Property Issues Division at grtkf@wipo.int at WIPO, 34, chemin des Colombettes, 1211, Geneva 20 (Switzerland), Fax 41 22 33 88 120.

15. Comments received will be reflected in a further document, entitled, "Possible Format for an Electronic Database of Contract Clauses and Practices Concerning Access to Genetic Resources and Benefit -Sharing" (WIPO/GRTKF/IC/3/4), which will be presented at the third session of the Intergovernmental Committee to be held in Geneva from June 13 to 21, 2002.

[Annex follows]

ANNEX

PROPOSED DATABASE OF CONTRACTUAL PRACTICES AND CLAUSES
RELATING TO INTELLECTUAL PROPERTY,
ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING

I INTRODUCTION

1. The purpose of this database is to provide a concise and user-friendly source of information to all those parties involved in drafting and negotiating contractual agreements on access to genetic resources and benefit-sharing, with particular reference to the intellectual property aspects of such contracts.
2. Committee members of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, together with a wider range of stakeholders with practical experience in contracts for access to genetic resources and benefit-sharing, will be asked to complete a questionnaire of contractual practices and clauses relating to intellectual property, access to genetic resources and benefit-sharing.
3. The replies received to the questionnaire will be compiled and published in this electronic database.

II EXPLANATION OF THE STRUCTURE AND CONTENT OF THE DATABASE

4. The database will consist of the following 'pages':

4.1 Page One: Title Page

This will give a brief explanation of the purpose of the database and of how the information compiled in the database was obtained. It will provide a link to the 'Search' page.

4.2 Page Two: Search Page⁴

This search page will consist of two distinct types of search mechanisms:

- (a) **Text Search.** This will enable end-users to search the database by typing in a specific word or series of words: for instance, 'Patent,' 'Andean Pact,' 'Plant Breeders' Rights,' etc.

Alternatively, end-users may use a more precise keyword search option:

- (b) **Keyword Search.** This will consist of four specific searches with dropdown lists that can be highlighted by end-users. End-users may direct their search by selecting any combination of these four options. The four options will be as follows:

- (i) **Country(ies).** This will enable end-users to highlight a particular country or countries and to search for all those contracts between parties in those countries, or contracts that relate to genetic material and associated traditional knowledge originating from those countries.

⁴See Section III below for an example of how this page may look on the World Wide Web.

(ii) *Contract Parties*. This will enable end -users to search for contracts between particular combinations of parties. The proposed keyword searches are as follows:

- All: This will enable contracts between all types of parties to be searched.
- Government: e.g., Government Ministries, Government Agencies (National, Regional or Local), etc.
- Commerce or Industry: e.g., Pharmaceutical, Food and Agriculture, Horticulture, Cosmetics, etc.
- Research Institutions: e.g., Universities, Gene Banks, Botanic Gardens, Microbial Collections, etc.
- Traditional Knowledge Holders: e.g., Associations of Healers, Indigenous Peoples or Local Communities, Peoples' Organizations, Traditional Farming Communities, etc.
- Other: e.g., Private landowner(s), Conservation Group(s) etc.

(iii) *Contract Purpose*. This will enable end -users to specify whether they wish to search for contracts that relate to commercial or industrial application of the genetic resources and any associated traditional knowledge or to contracts that permit research only. This division has been made since the intellectual property aspects of these types of contracts tend to be distinct. The proposed keyword searches are as follows:

- All: This will enable both types of contract to be searched.
- Commercial or Industrial Application: This search option will lead to so-called 'bio -prospecting' agreements. The intellectual property aspect of these agreements may be quite complex.
- Research Only: This search option may be especially relevant to transfers between research institutions, such as *ex situ* collections.

(iv) *Contract Scope*. This will enable end -users to specify a type of genetic resource. It will also enable end -users to search specifically for all those contracts that address associated traditional knowledge. The proposed keyword searches are as follows:

- All: End -users can search contracts that address all types of genetic resource, together with any associated traditional knowledge.
- Plant genetic resources: End -users can focus specifically on contracts that address plant genetic resources only, such as seeds or pollen.
- Animal genetic resources: End -users can focus specifically on contracts that address animal genetic resources only, such as semen or embryos.

- Microbial genetic resources: End -users can focus specifically on contracts that address microbial genetic resources only, such as fungi or bacteria.
- Traditional knowledge: End -users can focus specifically on contracts that address associated traditional knowledge.

4.3 Page Three: Search Results Page

End-users will be presented with a list of contract titles that contain all or some of the text or keywords that have been entered on the search page. For instance:

“Research and Development Agreement between [X] Government Agency and [Y] ex situ collection”.

“Licensing Agreement between [X] Pharmaceutical Company, [Y] University and [Z] Association of Healers”.

End-users may click on a particular contract title within this list. They will then be taken directly to the entry for that contract.

4.4 Page Four: Contract Checklist page⁵

The contract checklist page will contain a checklist of key information. The information will be compiled from the questionnaires sent out to Committee members and a wider range of applicable stakeholders.

This checklist has been structured with the intention of providing a concise, user-friendly web page that establishes the basic context of the contract and sets out all intellectual property (“IP”) related clauses. It is not intended to provide a comprehensive analysis of the contract in question.

The proposed checklist is as follows:

- (a) Contract parties.
- (b) Contract purpose: i.e., whether it is a contract for Commercial or Industrial use or for Research only.
- (c) Contract objective.
- (d) Contract scope: i.e., description of genetic resources and any associated traditional knowledge.
- (e) Origin of genetic resource and any associated traditional knowledge: i.e., whether the genetic resources are from an in situ or ex situ source and, if known, the source country or region.

⁵See Section III below for an example of how this page may look on the World Wide Web.

(e) IP-related clauses: i.e., patents; plant breeders' rights; trade secrets; copyright and related rights; *suigeneris* protection of traditional knowledge ; ongoing traditional and customary use: e.g. farmers' rights; IP-related benefit-sharing, whether monetary (royalties, milestone payments, ethnobotanical premiums, trust funds etc.) or non-monetary (IP-related training, technology transfer, exchange of results etc.); assignment; licensing; other (e.g., termination, exclusivity of supply etc.).

(f) Confidentiality: Member States expressed particular concern regarding the issue of confidentiality. Accordingly, any clause(s) addressing confidentiality will be set out there.

(g) Dispute Resolution: i.e., how the parties have agreed to resolve any disputes that might arise under the contract (mediation, conciliation, arbitration, national jurisdiction etc.) identifying, if possible, the agreed dispute resolution body (international, regional, national, or local).

(h) Date contract entered into force.

(i) Contract duration.

(j) Estimated contract value.

(k) Practical advice: i.e., arising out of contract drafting and negotiation together with any lessons learned during the process.

(l) Provider of information: i.e., the contact details of the individual or institution that provided the information to WIPO and, where possible, will include an external link to their e-mail address.

(m) HYPER-LINK to Contract: Where the contract has been provided, there will be a link to the text of the contract itself. This will enable end-user to carry out a more comprehensive analysis of the contract in question, including the overall contractual context of the intellectual property related clauses.

III TEST DATABASE SEARCH PAGE AND TEST CONTRACT CHECKLIST PAGE

5. Hard copies of a Test Database Search Page and a Test Contract Checklist Page are set out below.

6. These Test Database Pages are also available for viewing on the WIPO website:

<http://www.wipo.int/globalissues/ipr/>

<http://www.wipo.int/globalissues/ipr/results.html>

TESTDATABASESEARCHPAGE

This search page will enable you to search for individual contracts on access to genetic resources and benefit sharing, with particular reference to the intellectual property aspects of such contracts.

Text Search

Enter your search term(s) in the field on the right

For instance: 'Patent,' 'Andean Pact,' 'Plant Breeders' Rights.'

Keyword Search

Country

All
Albania...
Zimbabwe

Contract Parties

All
Government
Commerce or Industry
Research Institutions
Traditional Knowledge Holders
Other

Contract Purpose

All
Commercial or Industrial application
Research only

Contract Scope

All
Plant genetic resources
Animal genetic resources
Microbial genetic resources
Associated traditional knowledge

TESTDATABASECONTRACTSCHECKLISTPAGE

ContractTitle:

ContractParties	
ContractPurpose	
ContractObjective	
ContractScope	
OriginofGenetic Resources&any associatedTraditional Knowledge	
IntellectualProperty RelatedClauses:	
<i>Patents</i>	
<i>PlantBreeders'Rights</i>	
<i>TradeSecrets</i>	
<i>CopyrightandRelated Rights</i>	
<i>SuigenerisProtectionof TraditionalKnowledge</i>	
<i>OngoingTraditionaland CustomaryUse:e.g. Farmers'Rights</i>	
<i>MonetaryBenefit - Sharingasrelatesto IntellectualProperty</i>	
<i>Non-monetaryBenefit - Sharingasrelatesto IntellectualProperty</i>	
<i>Assignment</i>	
<i>Licensing</i>	

Other: e.g. termination (insofar as relate to IP); exclusivity of supply; future supply of resources; publication of data etc.	
Confidentiality	
Dispute Resolution	
Date of Entry into Force	
Duration of Contract	
Estimated Contract Value	
Practical Advice	
Provider of Information	

LINK to Contract, if provided

[End of Annex and of document]