

REVISED QUESTIONNAIRE FOR THE SURVEY ON EXISTING FORMS OF
INTELLECTUAL PROPERTY PROTECTION FOR TRADITIONAL KNOWLEDGE

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

JULY 2002

Background

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, Members expressed support for the activity of compiling, comparing and assessing information on the availability and scope of intellectual property protection for traditional knowledge and identifying any elements of the agreed subject matter which require additional protection. A list of questions was distributed through document WIPO/GRTKF/IC/2/5, which assigned October 15, 2001 as a tentative deadline. Document WIPO/GRTKF/IC/2/9, which was distributed prior to the second session, held in Geneva, on December 10 to 14, 2001 contained a survey of the responses as well as a preliminary analysis and conclusions. Given the relatively small number of responses provided by the initial deadline (23), the Committee, at its third session, decided to extend the deadline to February 28, 2002. Document WIPO/GRTKF/IC/3/7, which was submitted to the third session of the Committee, held from June 13 to 21, 2002 updated and completed the preliminary information and conclusions, reflecting 25 additional responses received.
2. Document WIPO/GRTKF/IC/3/7 contained information on how some Committee Members have resorted to existing intellectual property mechanisms to protect traditional knowledge. The document also described elements of *sui generis* systems of protection which have been adopted or are under consideration for future adoption by a number of Committee Members. Finally, the document briefly discussed certain aspects of current intellectual property law that some Members perceive as deficiencies which impair its use for adequately protecting traditional knowledge. The document also dispelled some of those perceptions, particularly those that are generally connected to the concept of “public domain.”
3. Because document WIPO/GRTKF/IC/3/7 was framed as a survey of practices, it did not invite the Committee to engage in specific tasks. Nonetheless, in presenting the document to the Committee, the Secretariat suggested that one activity that might be useful, and which would require no additional resources, would be to leave the document “open”, so that those Members that had not responded to the questions could still do so. This would help complete the information thus far obtained. Other Members which had provided answers, could nonetheless update the information supplied, including copies of laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by

those Members pertaining to traditional knowledge. The Secretariat also proposed that the questions contained in document WIPO/GRTKF/IC/2/5 be streamlined, so that they reflect only the essential aspects of the three main issues analyzed in document WIPO/GRTKF/IC/3/7 and contained in the two tables of Annex 1 (that is, measures concerning the use of existing mechanisms; measures concerning the consideration and/or adoption of *sui generis* mechanisms; and perceived limitations in the application of existing mechanisms).

4. At the third session, Members approved the Chair's invitation to provide any comments on the questions posed in the survey of existing intellectual property protection of traditional knowledge (WIPO/GRTKF/IC/2/5) by the end of June. The Secretariat would then circulate a streamlined set of questions taking these comments, if any, into account. Based on responses and other input, the Secretariat would prepare an updated version of document WIPO/GRTKF/IC/3/7.¹ By June 30, 2002 the Secretariat had not received any comments on the questions contained in document WIPO/GRTKF/IC/2/5.

5. Annex 1 contains the streamlined questionnaire as proposed by the Chair and approved by Members.

6. Members are invited to provide answers to the annexed questionnaire by September 30, 2002. Those Members who have answered the previous questionnaire, are nonetheless invited to complete and/or update the answers provided.²

List of Questions
on Existing Forms of Intellectual Property Protection for Traditional Knowledge

(a) Is protection for traditional knowledge available under the current standards of your intellectual property law?

(b) If your answer to question (a) is yes, has your country already provided for protection of elements of traditional knowledge by means of the currently available standards of intellectual property (such as patents, trademarks, certification and collective marks, plant breeders' rights, geographical indications, etc)?

(c) If your answer to question (a) is yes, could you please explain by means of concrete examples how currently available standards of intellectual property have been used to protect traditional knowledge.

¹ See WIPO/GRTKF/IC/3/17 Rev., of June 21, 2002 (Report of the third session of the Committee), paragraph 307.

² It should be noted that for the purpose of the future WIPO fact-finding missions on the experience acquired by some Members in the use of existing mechanisms of IP to protect TK, as approved by the Committee (see Report, paragraphs 162 *et seq.*), the Secretariat will select a number of Members among those who have replied affirmatively to question (1) of WIPO/GRTKF/IC/2/5 or question (2) of the Annex to this document.

(d) Which of the following elements or standards of currently existing intellectual property law do you perceive as limitations in the application of intellectual property laws and procedures to the protection of traditional knowledge:

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|--|--------------------------|
| (i) novelty or originality; | <input type="checkbox"/> |
| (ii) inventive step or non-obviousness; | <input type="checkbox"/> |
| (iii) fixation; | <input type="checkbox"/> |
| (iv) informal nature of TK; ³ | <input type="checkbox"/> |
| (v) individual v. collective creation; | <input type="checkbox"/> |
| (vi) term of protection; | <input type="checkbox"/> |
| (vii) other; | <input type="checkbox"/> |
| (viii) no limitations. | <input type="checkbox"/> |

(e) Have you enacted any law or regulation or administrative ruling of general application establishing a system of traditional knowledge intellectual property protection especially adapted to its characteristics (that is, a *sui generis* system)?

(f) If your answer to question (e) is yes, could you please describe how your law or regulation or administrative ruling of general application establishing a system of traditional knowledge protection especially adapted to its characteristics (a *sui generis* system)

- (i) defines and/or identifies the policy objective of the protection;
- (ii) identifies its subject matter (scope of protection);
- (iii) identifies the criteria the subject matter must meet as a condition for its protection;
- (iv) identifies the owner of the rights;
- (v) defines the rights conferred, including exceptions;
- (vi) establishes the procedures and formalities, if any, for the acquisition and maintenance of the rights conferred;
- (vii) sets forth enforcement procedures so as to permit effective action against infringement of rights in traditional knowledge;
- (viii) defines how the rights are lost and how they expire (including invalidation or revocation of any registration);
- (ix) sets forth the interaction between the *sui generis* system and the existing standards of intellectual property, especially the extent to which they overlap or complement each other.

(g) If your answer to question (e) is no, is your country planning to establish a system of traditional knowledge protection especially adapted to its characteristics (a *sui generis*

³ This deficiency, as perceived by France, New Zealand and Viet Nam in their answers to the questionnaire distributed in document WIPO/GRTKF/IC/2/5 (see document WIPO/GRTKF/IC/3/7), relates to the fact that traditional knowledge holders are not generally in possession of scientific information that might permit them to obtain protection under existing systems, such as the patent system. For example, holders of traditional medicinal knowledge know how to prepare extracts and potions in a consistent and repetitive manner, but do not know their chemical formulae nor can they isolate the active molecules.

system)? If yes, could you please describe it in accordance with the scheme of elements contained in question (f)?

(h) If your answer to question (e) or (g) is yes, could you please provide the Secretariat with a copy of the corresponding enacted or draft legislation?

[End of questionnaire]