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

Second Session
Geneva, December 10 to 14, 2001

PROPOSAL FOR THE COMPILATION OF CONTRACTUAL TERMS FOR ACCESS TO
GENETIC RESOURCES AND BENEFIT-SHARING

Document submitted by the Delegation of Australia

1. On December 11, 2001, the Delegation of Australia, at the second session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, submitted a document to the World Intellectual Property Organization (WIPO) entitled "Proposal for the Compilation of Contractual Terms for Access to Genetic Resources and Benefit-Sharing."
2. The document is reproduced in the Annex.

[Annex follows]

ANNEX

**World Intellectual Property Organization Intergovernmental Committee on
Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
Second Session - 10 to 14 December 2001**

**Proposal for the Compilation of Contractual Terms for
Access to Genetic Resources and Benefit-Sharing**

1. Australia has identified a practical course of action drawing from the comprehensive work of the Secretariat in preparation for this Session (WIPO/GRTKF/IC/2/3). The Secretariat's work has made clear the serious limitations of the Intergovernmental Committee (IGC) attempting quickly to draft a single model for each of the contractual terms needed. The IGC's focus should be on achieving early practical progress — based on a range of commercial contract terms and real world experience.
2. With the support of Member States, we believe the initial elements of this proposal could be implemented quickly — before the next IGC meeting. Early implementation would provide a useful and practical tool that can be used by all parties considering contractual terms for the use of genetic resources as well as demonstrate the Member States' commitment to continue to progress this issue within the IGC context.
3. We propose a compilation of key features of existing contracts relating to the use of genetic resources that contain intellectual property clauses. The Secretariat has already identified the usefulness of a systemic survey of actual contractual agreements (paragraph 133). This proposal builds on that suggestion. The compiled information could be used by parties negotiating terms for access and benefit sharing of genetic resources by providing a range of possible contractual terms which address these issues and can be tailored to particular contexts.
4. The compilation would be based on a short summary of key elements of contractual arrangements together with access to relevant clauses in actual contracts, information about the framework in which these contracts were used and any comments about the effectiveness of the arrangements. A possible draft summary checklist is set out in pages 3 to 5 of this document. A database of these checklists would allow users to consider which terms from existing samples may be relevant to their own situation. It is targeted as a practical tool for those considering contractual terms. Its purpose is to inform them of a range of options which have been applied by others. This would enable the practitioner to consider what options might be suitable to their national and commercial circumstances, thereby providing a more practical tool than principles or 'one size fits all' standardized clauses.
5. The summary checklist of each contract would be completed by the contributor and would not need to be assessed or vetted by the Secretariat or any other body. Given that the purpose of the proposed database is to survey and consolidate general contractual terms, contributions to the database would be voluntary and the level of information provided would be entirely at the discretion of the contributor — there would be no expectation to

include commercially sensitive or confidential details. This proposal would present opportunities for all IGC participants — Member States, International Intergovernmental Organizations and International Non-Governmental Organizations — to become engaged in the process.

6. It would be desirable that the compilation of contractual terms support ongoing work of the CBD Working Group on Access and Benefit-sharing. In particular we suggest that there be close coordination between the CBD and WIPO secretariats to avoid duplication of effort and to ensure database compatibility. We envisage that the compilation would be linked with the CBD clearing house mechanism in order to facilitate access to this tool by those parties interested in developing countries and indigenous and local communities.
7. Clearly such a compilation would be constantly evolving. Participants would be encouraged to continue to share (to the extent possible) examples of contractual terms that address particular circumstances. Apart from the advantages of an immediate resource, it would provide Member States with a large objective information source from which to assess the need for further developments.

**Summary Checklist of Key Contractual Intellectual Property Terms on
Access to Genetic Resource and Benefit Sharing**

Contract Name		
Elements	Covered	Clause Number(s)/Title(s) & Summary, Comment and Context of relevant clauses
	(✓ or -)	
<i>Parties</i>		
Government		
Intergovernmental		
Research		
Corporations		
Community/Civil Society		
Traditional Knowledge Holders		
<i>Scope</i>		
Patent		
Plant Variety		
Other Informal Innovation		
<i>Materials</i>		
<u>Sectorial Distinctions</u>		
Food and Agriculture		
Pharmaceutical		
Other Industry		
<u>Taxonomic Origin</u>		
Plant		
Animal		
Other (including microbial)		

<i>Access Terms and Conditions</i>		
In/Ex situ		
Rights to claim IPR		
<i>Uses</i>		
<u>Commercial</u>		
Benefit Sharing (of IPR)		
Royalties		
Licenses		
Joint Venture		
Local Production		
Technology Transfer		
Capacity Building/Training		
<u>Research</u>		
Restrictions on Ability to claim IPR		
Publication		
Collaboration		
Reporting		
Commercialization		
<u>Traditional Practices</u> (e.g. continuation)		
<i>Other Special IPR Conditions</i>		
<i>Legal Framework (whether or not referred to in the contract)</i>		
National		

Jurisdictions/Legislation		
International Framework		
Confidential Information		
<i>Other Background</i>		
Usual \$ Value (range)		
No. Agreed (per annum)		
Contact Details		

Notes for Completion of Summary Matrix of Key Contractual Terms

1. The proposed Elements in the Summary Matrix have been drawn from the key elements identified in work by the Secretariat and in other fora. The list contains those terms which relate directly to intellectual property rights. It does not cover other provisions such as some standard legal provisions, taxation, and arrangements and conditions for access.
2. Particular reference is made to:
 - a. WIPO - WIPO/GRTKF/IC/2/3 especially Part V.A
(http://www.wipo.int/eng/meetings/2001/igc/pdf/grtkfic2_3.pdf)
 - b. Conference on Biological Diversity – Report of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (UNEP/CBD/COP/6/6)
(<http://www.biodiv.org/meetings/final-reports.asp?doc=WG&year=2001#>)

These references provide background to the descriptions of the Elements and sub-Elements.
3. A Database can be constructed from the compilation of Contract Summaries. Users could then search the Database using the sub-Elements as keywords.

[End of Annex and of document]