

Objectives and Principles

Objective 1: [Indigenous Peoples and Local Communities]/[Nations]

- O.1 Ensure those [[patent owners/inventors/users/owners/all intellectual property rights applicants] all users of the intellectual property system] [using] accessing of genetic resources [and their derivatives] and/[or] [any] associated traditional knowledge comply with requirements for prior informed consent and fair and equitable [[any] specific conditions for access, use] and benefit sharing [under national law]/[depending upon national legislation including customary laws and procedures of the communities. States should determine any requirement for prior informed consent and fair and equitable benefit sharing] and the provision of information about the country of origin or source of genetic resources.

Principles:

- P.1.1 Recognise the sovereign rights of States over their genetic resources [, their derivatives] and/[or] associated traditional knowledge and the rights of indigenous peoples and local communities over associated traditional knowledge [have the authority to determine access to genetic resources in their jurisdiction] in accordance with their national legislation.
- P.1.2 The states are sovereign to grant or to grant jointly with their indigenous peoples and local communities access to genetic resources and their derivatives in their respective jurisdictions.
- P.1.3 Ensure the respect for the principle of self determination of indigenous peoples and local communities and their rights over or to genetic resources.
- P.1.4 [[Subject to national legislation] and subject to the customary laws and protocols and procedures of indigenous and local communities, persons accessing traditional knowledge associated with genetic resources from the knowledge holder and applying that knowledge in the development of an invention should obtain the prior approval and prior, free and informed consent from the [knowledge holder] legal representative or representatives of knowledge holders and seek their [involvement] full and effective participation] and reach an agreement on benefit sharing.
- P.1.5 [Peoples partially or entirely under occupation have the right to enjoy their genetic resources [, derivatives] and associated traditional knowledge noting the United Nations' Declaration on the Rights of Indigenous Peoples.]

- P.1.6 [Persons using genetic resources in their inventions have a duty of good faith and candor to disclose in their patent application all background information [relating to] that is material to the patentability of the invention, [including] , which [may] include the country of origin or source of genetic resources.]

Objective 2

- O.2.1 Prevent [patents] intellectual property rights being granted [in error [and/or bad faith] [for inventions that are not novel or inventive or industrially applicable or not distinctive nor stable in light of]]/on genetic resources and/or associated or not **or embodied** traditional knowledge [and its derivatives] if such rights have been obtained illegally.
- O.2.2 [Prevent [patents] intellectual property rights being granted where there is no prior **free** informed consent, no fair and equitable benefit sharing, and [disclosure] requirements on the genetic resources have not been met.]
- O.2.3 [Ensure that no patents on life and life forms are granted for genetic resources and associated traditional knowledge.]
- O.2.4 Increase transparency in access and benefit sharing.

Principles

- P.2.1 [[Patent] intellectual property rights [applicants] owners should [not receive a monopoly] not be granted exclusive rights on inventions that are not new or inventive.]
- P.2.2 The [patent] intellectual property system [should] shall provide [certainty] high degree of validity of rights for [legitimate users] **indigenous peoples and local communities** and providers of genetic resources and/or associated traditional knowledge and ensure the legitimate rights for the owners of the genetic resources and associated traditional knowledge **after receiving the free, prior and informed consent from the free political institutions of the indigenous peoples and local communities** [in the case of their exploitation].
- P.2.3 [The patent system must provide for a mandatory disclosure requirement ensuring that the intellectual property Offices becomes a key check point for disclosure and monitoring the utilization of genetic resources and/or associated traditional knowledge and its derivatives in **accordance with an international treaty pertaining to a legal standard recognizing the right to self determination of indigenous peoples** [(in line with Article 17 of the CBD Nagoya Protocol)].]
- P.2.4 [[Administration and/or judicial authorities shall have the right to prevent (a) the further processing of an application or (b) the granting of a [patent] intellectual property rights as well as (c) to revoke, [subject to Article 32 of the TRIPS Agreement] international judicial process accepted by indigenous peoples and local communities, or render unenforceable a [patent] intellectual property rights when the applicant has either failed to comply with these objectives and principles or provided false or fraudulent information.] [The remedies listed under (a), (b) and (c) above shall be applied without placing the relevant subject matter in the public domain.]]
- P.2.5 **The system should allow for prior informed consent of indigenous peoples and local communities to access traditional**

knowledge and genetic resources as well as their fair and equitable participation in the sharing of benefits.

Objective 3

- O.3.1 Ensure [patent] [IP] offices have available the information [to ensure that [patent] intellectual property offices **are regulated by an internationally recognized standard to ensure that indigenous peoples and local communities maintain control** and to have **appropriate and** available information on genetic resources [, their derivatives] and traditional knowledge associated with genetic resources [or their derivatives]], needed to make proper and informed decisions on [patent] granting of intellectual property rights.
- O.3.2 [The information should include measures to ensure that prior informed consent has been obtained through a mandatory disclosure requirement **and by an internationally agreed upon standard that indigenous peoples and local communities develop the**] [an] **internationally recognised certificate of compliance.**]
- O.3.3 [Ensure that national intellectual property offices do not grant patents on inventions based upon traditional knowledge and genetic resources] [which lack novelty or inventive step] [and where there is no compliance with the principle of prior informed consent and benefit sharing recognized in the relevant international legal instruments].
- O.3.4 **[Recognizing at an international level the competence of indigenous peoples as regards their collective traditional knowledge and to admit or deny their categorization.]**
- O.3.5 The intellectual property offices could maintain databases or registration system of genetic resources and or traditional knowledge associated or not which would be regulated by national legislation.

Principles:

- P.3.1 [Patent] intellectual property offices must have regard to [all relevant **pre-existing knowledge and/or** prior art relating to genetic resources and/or traditional knowledge associated with genetic resources when assessing the [patentability of an invention] **for granting of intellectual property rights**] all pertinent information available [in order to ensure that collective and intellectual property rights for such resources remain in the hands of their legitimate and traditional owners.]
- P.3.2 [Patent] intellectual property [applicants] applications must [indicate] **disclose the background art of genetic resources and/or traditional knowledge associated with genetic resources relevant for** [which, as far as known to the applicant, can be regarded as useful for the understanding], searching and examination of the invention **or contact an agent or representative or a national intellectual property office who would refer it to the regional office to ensure the invention is patentable.**
- P.3.3 [There is a need to recognise that some holders of traditional knowledge may not want their knowledge documented **and the need to recognize the rights of indigenous peoples and local communities to genetic resources and traditional knowledge with a view guaranteeing legal certainty with regards to databases managed by states or other third parties that contain traditional knowledge and associated genetic resources.**] The rights of the representatives of

traditional knowledge holders to designate the procedure for non-disclosure of their traditional knowledge shall be recognized.

- P.3.4 The national authority is responsible for documenting and digitizing traditional knowledge-related information. This responsibility shall be fully supported financially and through capacity building.
- P.3.5 The rights of some traditional knowledge holders not to have their knowledge documented must be recognized and that documentation should not be a requirement for protection.
- P.3.6. Persons seeking to access traditional knowledge associated with genetic resources in the establishment of an invention must obtain the prior informed consent for its use and base its use upon mutually agreed terms with the traditional knowledge holder.
- P. 3.7. The status of prior art would be determined by the indigenous peoples and local communities from whom the traditional knowledge is being accessed.

Objective 4

- O.4.1 Mutually supportive relationship with relevant international [and regional] agreements, instruments [and processes] regimes in accordance with applicable rules of international law.
- O.4.2 [Establish a coherent system which links intellectual property of genetic resources and traditional knowledge associated with genetic resources with the existing international agreements, treaties [the processes] and the national law of IP.]
- O.4.3 Ensure consistency with international legal standards in the promotion and protection of the collective rights of indigenous peoples [and local communities] by establishing a transparent, independent, accessible mechanism for oversight and dispute resolution.

Principles:

- P.4.1 Respect the rights and obligations derived from existing international [and regional] agreements and processes / for and consistency with other international [and regional] instruments [and processes], and in particular the CBD and the Nagoya Protocol.
- P.4.2 The work of the IGC should not prejudice the work pursued in other fora.
- P.4.3 Promotion of cooperation with relevant international and regional instruments [and processes].
- P.4.4 [Affirm indigenous peoples' rights to maintain, control, protect and develop their IP, including their traditional knowledge according to Art. 31 UNDRIP.]
- P.4.5 Promotion of awareness raising and information sharing among different relevant and related international and regional agreements, instruments and processes related to genetic resources.
- P.4.6 Respect the decision adopted by treaty bodies of human rights of the UN relating to cases submitted by indigenous peoples.

Objective 5

- O.5.1 [Maintain] Recognise 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 and associated traditional knowledge [while also contributing to the protection of traditional knowledge, genetic resources and traditional cultural expressions].
- O.5.2 Recognize and protect the rights of indigenous peoples to develop, create and protect their knowledge and innovations in relation to genetic resources in situ and external to the intellectual property system.
- O.5.3. [Review the impact of the current intellectual property system that was developed without the recognition and protection of the rights of indigenous peoples with the aim of addressing the rights of indigenous peoples to their IP.]

Principles:

- P.5.1 [[Maintain] Recognise and maintain the role of the intellectual property system in promoting innovation, noting the relationship with genetic resources and associated traditional knowledge [and in the protection of traditional knowledge, genetic resources and traditional cultural expressions and fair and equitable sharing of benefits arising from their use].
- P.5.2 Promote certainty and clarity of intellectual property rights, noting the relationship with genetic resources and associated traditional knowledge [and obligations with respect to the protection of traditional knowledge, genetic resources and traditional cultural expressions and certainty and clarity for prior informed consent and fair and equitable benefit sharing].
- P.5.3 Protect creativity [and], reward investments [and ensure prior informed consent and fair and equitable benefit sharing] [made in developing a new invention].
- P.5.4 [Promoting transparency and dissemination of information [on industrial property rights] [referring to the disclosure of the source and the country of origin of genetic resources and a traditional knowledge, the prior informed consent and the proof of the fair and equitable distribution of benefits] [[by disclosing country of origin and]/or source publishing and disclosing technical information related to new inventions, where appropriate and where publicly available [and where not in contrast with public morality and/or public order,] so as to enrich the total body of technical knowledge accessible to the public].]
- P.5.5 [Public knowledge must not be permanently monopolized.]
- P.5.6 Promote innovation through intensive investments in research and development [and by increasing legal certainty and trust between users and providers of genetic resources and associated traditional knowledge through a mandatory disclosure of origin or source in intellectual property applications].
- P.5.7 Encourage investors to create high level technology.

- P.5.8 Increase the quantity of technological knowledge by publicizing with the consent of the owners/knowledge holders/beneficiaries any new inventions inspired by genetic resources and associated traditional knowledge.
- P.5.9 Provide transparency, capacity, access, transfer and dissemination of technology to the owners/knowledge holders/beneficiaries of the genetic resources and traditional knowledge.
- **P.5.10 Recognize the rights of indigenous peoples and local communities to genetic resources and associated traditional knowledge inappropriately considered to be part of the public domain.**
- P.5.11 Consider for the application of the intellectual property rights, the objectives and principles of the WIPO Development Agenda.
- P.5.12. Ensure appropriate funding for conservation of genetic resources and traditional knowledge.