

Objectives and Principles

Disclaimer

This document details the different options presented by experts, participating in a Intersessional Working Group (IWG), addressing the objectives and principles relating to the relationship between IP and Genetic Resources, and associated Traditional Knowledge.

The options were put forth by experts participating in the plenary of the IWG. The drafting group who produced the text has attempted to best capture the intent of the experts, without prejudice. In addition, the options presented do not reflect any consensus or agreement on the options by the drafting group.

The document is without prejudice to the work of the IGC, who retain full flexibility to accept, amend, add or remove any options, listed herein.

Objective 1

Objective 1 - Option 1

Ensure those accessing genetic resources and associated traditional knowledge comply with specific conditions for access, use and benefit-sharing under national law.

Objective 1 - Option 2

Ensure those accessing / using genetic resources and associated traditional knowledge comply with requirements for prior informed consent and fair and equitable benefit-sharing, including customary laws and procedures of the communities. States and indigenous peoples and local communities 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.

Objective 1 - Option 3

Ensure that applicants for intellectual property rights involving the utilization of genetic resources, their derivatives and/or associated traditional knowledge comply with requirements for prior informed consent, fair and equitable sharing and the provision of information about the country of origin or source of genetic resources, in accordance with national laws and customary norms.

Objective 1 - Option 4

Ensure that those accessing genetic resources, their derivatives and/or associated traditional knowledge comply with requirements of prior informed consent, fair and equitable sharing and the provision of information about the country of origin and/or source of genetic resources, in accordance with national laws and customary norms.

Principles of Objective 1

Principles of Objective 1 - Option 1

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

Principles of Objective 1 - Option 2

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

Principles of Objective 1 – Option 3

Sovereign states have the authority to determine access to genetic resources in their jurisdiction.

Subject to national legislation, persons accessing traditional knowledge associated with genetic resources from the knowledge holder(s) and applying that knowledge in the development of an invention should obtain approval from the knowledge holder(s) and seek their involvement.

Principles of Objective 1 – Option 4

States have the authority to determine access to genetic resources. Persons accessing traditional knowledge associated with genetic resources from the knowledge holder(s) and applying that knowledge in the development of an invention should obtain approval from the knowledge holder(s) and seek their involvement.

Principles of Objective 1 – Option 5

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 or to 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.

Principles of Objective 1 – Option 6

Ensure respect for the principle of self determination of indigenous peoples and local communities, and their rights over or to 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.

Objective 2

Objective 2 - Option 1

Prevent intellectual property rights being granted in error and/or bad faith on genetic resources, their derivatives and associated traditional knowledge.

Objective 2 - Option 2

Prevent intellectual property rights being granted on genetic resources, their derivatives and associated traditional knowledge, if access to such resources and associated traditional knowledge has been obtained illegally.

Objective 2 - Option 3

Prevent patents from being granted in error for inventions that are not novel or inventive in light of genetic resources and associated traditional knowledge.

Objective 2 - Option 4

Prevent intellectual property rights from being granted in error and/or bad faith for intellectual property applications relating to genetic resources, their derivatives and/or associated traditional knowledge that do not satisfy the eligibility conditions.

Objective 2 - Option 5

Ensure that no patents on life and life forms are granted for genetic resources and associated traditional knowledge, because they do not comply with the requirements of novelty and inventive step.

Objective 2 - Option 6

Prevent intellectual property rights being granted where there is no free, prior and informed consent, no arrangements on mutually agreed terms for fair and equitable benefit-sharing, and disclosure requirements have not been met, to increase transparency in access and benefit-sharing.

Objective 2 - Option 7

Increase transparency in access and benefit-sharing.

Principles of Objective 2

Principles of Objective 2 - Option 1

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

The patent system should provide certainty of rights for legitimate users of genetic resources.

Principles of Objective 2 - 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

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.

Principles of Objective 2 - Option 3

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 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.

The remedies listed under (a), (b) and (c) above shall be applied without placing the relevant subject matter in the public domain.

Principles of Objective 2 - Option 4

In recognizing the self determination of indigenous peoples, legal certainty for legitimate users of genetic resources associated with traditional knowledge shall include the obligation to gain free, prior and informed consent and to establish mutually agreed terms addressing fair and equitable sharing of benefits with the affected indigenous peoples and local communities.

Principles of Objective 2 - Option 5

To ensure the legitimate rights of the owners of genetic resources and associated traditional knowledge, in accordance with the international legal principle of self determination of peoples, indigenous peoples under their free political institutions need to be protected by an international judicial process accepted by indigenous peoples to ensure that the intellectual property system shall provide legal certainty when disputes arise over their genetic resources or associated traditional knowledge.

Principles of Objective 2 - Option 6

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 have not been met.

Principles of Objective 2 - Option 7

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

Objective 3 - Option 1

Ensure patent offices have available the information needed to make proper decisions in granting patents.

Objective 3 - Option 2

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

The information should include measures to ensure that prior informed consent has been obtained through the mandatory disclosure requirements, which can be made through an internationally recognized certificate of compliance described in the Nagoya Protocol.

Objective 3 - Option 3

Ensure at an international level the right of indigenous peoples and local communities to permit or deny the documentation of traditional knowledge and genetic resources and that such documentation shall not be a prerequisite for protection.

Objective 3 - Option 4

Ensure patent offices have available the information needed to make proper decisions in granting patents based on the free prior and informed consent of the provider of the genetic resources and associated traditional knowledge, in accordance with relevant international legal instruments.

Objective 3 - Option 5

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 principles of prior informed consent and benefit-sharing recognized in the relevant international legal instruments.

Objective 3 - Option 6

Ensure that intellectual property offices are regulated by an internationally recognized standard to ensure that indigenous peoples and local communities maintain control over genetic resources and associated traditional knowledge, and have appropriate and available information on genetic resources and associated traditional knowledge and benefit-sharing, based on their free prior and informed consent, and relevant international legal instruments when granting intellectual property rights.

Principles of Objective 3

Principles of Objective 3 - Option 1

Patent offices must consider all relevant prior art when assessing the patentability of an invention.

Patent applicants must indicate the background art which, as far as known to the applicant, can be regarded as useful for the understanding, searching and examination of the invention.

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

Principles of Objective 3 - Option 2

Intellectual property offices should consider all relevant prior art information relating to genetic resources, their derivatives and associated traditional knowledge when assessing the eligibility for grant of intellectual property rights.

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

Principles of Objective 3 - Option 3

Recognizing the unique aspects and inherent limitations of databasing all relevant traditional knowledge, in addition to prior art searches, the status and content of information relied upon in determining the legitimacy of an application for the granting of intellectual property rights in relation to genetic resources and associated traditional knowledge shall be determined in consultation with the indigenous people or local community from which the genetic resource or traditional knowledge is being accessed.

Principles of Objective 3 - Option 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.

Principles of Objective 3 - Option 5

States shall recognize that holders of traditional knowledge may not want their knowledge documented as a requirement for protection. States must recognize the rights of indigenous peoples and local communities to genetic resources and traditional knowledge with a view of guaranteeing legal certainty with regard to databases that are currently managed by states or other third parties. States shall recognize that traditional knowledge holders shall designate the procedure for non-disclosure of their traditional knowledge.

Objective 4

Objective 4 - Option 1

Promote a mutually supportive relationship with relevant international agreements and processes.

Objective 4 - Option 2

Promote a mutually supportive relationship with relevant international and regional agreements, processes, instruments and regimes related to genetic resources, associated traditional knowledge and human rights, in accordance with applicable rules of international law.

Objective 4 - Option 3

Establish a coherent system which links intellectual property of genetic resources, their derivatives and associated traditional knowledge with the existing international agreements and treaties.

Objective 4 - Option 4

Ensure consistency with international legal standards in the promotion and protection of the collective rights of indigenous peoples to their genetic resources and/or associated traditional knowledge by establishing a transparent, independent, accessible mechanism for oversight and dispute resolution, with associated rights to local communities.

Principles of Objective 4

Principles of Objective 4 - Option 1

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

Promote cooperation with relevant international and regional instruments and processes.

Principles of Objective 4 - Option 2

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

Promote cooperation with relevant international and regional instruments and processes.

The work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore should not prejudice the work pursued in other fora.

Principles of Objective 4 - Option 3

Respect the decisions adopted by the United Nations treaty bodies pertaining to cases submitted by indigenous peoples.

Principles of Objective 4 - Option 4

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.

Principles of Objective 4 - Option 5

Affirm indigenous peoples' rights to maintain, control, protect and develop their intellectual property, including their traditional knowledge according to Article 31 of the United Nations Declaration of the Rights of Indigenous Peoples.

Principles of Objective 4 - Option 6

Promotion of awareness raising and information sharing among different relevant and related international and regional agreements, instruments and processes related to genetic resources.

Objective 5

Objective 5 - Option 1

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 intellectual property.

Objective 5 - Option 2

Maintain the role of the intellectual property system in promoting innovation.

Objective 5 - Option 3

Recognize 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, their derivatives and/or associated traditional knowledge.

Objective 5 - Option 4

Recognize the role of the intellectual property system in the protection of traditional knowledge, genetic resources and traditional cultural expressions.

Objective 5 - Option 5

Address the opportunities and challenges that the intellectual property system poses in the transfer and dissemination of technology relevant to genetic resources, their derivatives and associated traditional knowledge.

Objective 5 - Option 6

Recognize and maintain the role of the intellectual property system in promoting innovation, transfer and dissemination of technology, to the mutual advantage of knowledge holders and users of genetic resources, their derivatives and/or associated traditional knowledge, and in a manner conducive to social and economic welfare, while contributing to the protection of traditional knowledge, genetic resources, their derivatives and traditional cultural expressions.

Objective 5 - Option 7

Recognize 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, whilst also recognizing the rights of States and indigenous peoples to their genetic resources, their derivatives and associated traditional knowledge.

Objective 5 - Option 8

Ensure the effective protection of the genetic resources, traditional knowledge and traditional cultural expressions of the indigenous peoples and local communities in the intellectual property system.

Ensure the protection of the rights of indigenous peoples to develop, create and protect their knowledge and innovations in relation to the intellectual property system. Maintain the role of the intellectual property system in promoting innovation within indigenous peoples and local communities in relation to their genetic resources, traditional knowledge and traditional cultural expressions.

Objective 5 - Option 9

In conjunction with indigenous peoples and local communities, to develop *sui generis* protection of traditional knowledge and associated genetic resources of indigenous peoples and local communities consistent with international legal standards.

Objective 5 - Option 10

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.

Objective 5 - Option 11

Promote innovation, certainty and clarity of intellectual property rights by transparency and dissemination of information regarding the source and content of traditional knowledge, where appropriate and with respect to obligations arising from prior informed consent and fair and equitable sharing of benefits.

Principles of Objective 5

Principles of Objective 5 - Option 1

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

Promote certainty and clarity of intellectual property rights.

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

Promote transparency and dissemination of information by publishing and disclosing technical information related to new inventions, so as to enrich the total body of technical knowledge accessible to the public.

Principles of Objective 5 - Option 2

Recognize and maintain the role of the intellectual property system in promoting innovation, noting the relationship with genetic resources and associated traditional knowledge.

Promote certainty and clarity of intellectual property rights, noting the relationship with genetic resources and associated traditional knowledge.

Protect creativity and reward investments.

Promoting transparency and dissemination of information by publishing and disclosing technical information related to new inventions, where appropriate and when publicly available, so as to enrich the total body of knowledge accessible to the public.

Principles of Objective 5 - Option 3

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.

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.

Promoting transparency and dissemination of information by 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.

Principles of Objective 5 - Option 4

Promote innovation through intensive investments in research and development and with the aim of increasing legal certainty and trust between users and providers of genetic resources and traditional knowledge.

Principles of Objective 5 - Option 5

Increase legal certainty and trust between users and providers of genetic resources and traditional knowledge through a mandatory disclosure of origin or source.

Principles of Objective 5 - Option 6

Encourage investors to promote high level technology.

Principles of Objective 5 - Option 7

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.

Principles of Objective 5 - Option 8

Provide transparency, capacity, access, transfer and dissemination of technology to the owners/knowledge holders/beneficiaries of the genetic resources and traditional knowledge.

Principles of Objective 5 - Option 9

Recognize the rights of indigenous peoples and local communities to genetic resources and associated traditional knowledge inappropriately considered to have become part of the public domain, having been obtained without free prior and informed consent and equitable benefit-sharing.

Principles of Objective 5 - Option 10

Consider for the application of the intellectual property rights, the objectives and principles of the WIPO Development Agenda.

Principles of Objective 5 - Option 11

Ensure appropriate funding for conservation of genetic resources and traditional knowledge.

Principles of Objective 5 - Option 12

Promote transparency and dissemination of information where not in contrast with public morality and/or public order.