

## GR POLICY OBJECTIVES AND PRINCIPLES – ANALYSIS AND REVISED TEXT

Objective 1 Options	Original Text Analysis	Revised Text
1	<p>Ensure those accessing genetic resources and associated traditional knowledge comply with specific conditions for access, use and benefit-sharing under national law.</p> <p>Option 1 aims at ensuring that those accessing GR and ATK comply with national laws on access, use and benefit sharing without describing the specific conditions.</p>	<p>Ensure [that] those accessing [and/or using] genetic resources [, their derivatives] and associated traditional knowledge [in particular applicants for intellectual property rights] comply with national law and [requirements<sup>1</sup> of the country providing<sup>2</sup> for prior informed consent, mutually agreed terms, fair and equitable] benefit-sharing [and disclosure of origin.]</p>
3&4	<p>Ensure that those accessing and/or using genetic resources, their derivatives and/or associated traditional knowledge in particular applicants for intellectual property rights comply with national law and requirements<sup>3</sup> of the country providing<sup>4</sup> for prior informed consent, mutually agreed terms, fair and equitable benefit-sharing and disclosure of origin.</p> <p>Option 3/4 aims at ensuring that those accessing GR, derivatives and ATK in particular applicants for IP rights comply with national law and requirements (including customary norms) of the providing country (noting this term is in the CBD) on prior informed consent, mutually agreed terms, fair and equitable benefit sharing and disclosure of origin.</p>	<p>Text merged with brackets to take account of different issues, whilst keeping common language and policy concepts.</p>

<sup>1</sup> National law and requirements include customary norms.

<sup>2</sup> Country providing is the country of origin or that has acquired the genetic resources / with traditional knowledge in accordance with the CBD.

<sup>3</sup> National law and requirements include customary norms.

<sup>4</sup> Country providing is the country of origin or that has acquired the genetic resources / with traditional knowledge in accordance with the CBD.

Objective 1 Principles Options	Original Text Options and Policy Analysis	Revised Text
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.	<p><b>Principle 1</b></p> <p>Recognize the wide variety of ownership arrangements pertaining to genetic resources[, their derivatives] and associated traditional knowledge, including the sovereign rights of States, the rights of indigenous peoples and local communities, as well as private property rights</p>
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.	<p>(Text above attempts to capture the key issue reflected in the options 1-3 varied ownership relations. From the perspective of the facilitators option 3 is reflected in recognition of state and indigenous rights reflected in options 1 and 2)</p> <p><b>Principle 2</b></p> <p>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 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.</p>
3	<p><i>Sovereign states have the authority to determine access to genetic resources [in their jurisdiction.]</i></p> <p><i>[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.</i></p>	
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 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.	<p>(stand alone principle)</p>



Objective 2 Options	Original Text Options and Analysis	Revised Text
2 & 6	Prevent intellectual property rights involving the access and utilization of genetic resources, their derivatives and/or associated traditional knowledge from being granted where there is no prior informed consent, mutually agreed terms and/or fair and equitable benefit-sharing, and disclosure of origin.	Prevent [intellectual property rights] [patents] involving the access and utilization of genetic resources, their [derivatives] and associated traditional knowledge from being granted: <ul style="list-style-type: none"> <li>• [in error for inventions that are not novel or inventive]</li> <li>• [where there is no prior informed consent, mutually agreed terms and/or fair and equitable benefit-sharing, and disclosure of origin]</li> <li>• [or that was granted in violation of the inherent rights of the original owners] or [in Bad faith]</li> </ul>
3	Option 2/6 aims at preventing grant of IP rights involving the access and utilization of GR, their derivatives and/or ATK where there has not been prior informed consent, mutually agreed terms, fair and equitable benefit sharing and disclosure of origin.	
4	Prevent patents from being granted in error for inventions that are not novel or inventive in light of genetic resources and associated traditional knowledge [in the prior art]. Option is related to standard patentability requirements	Text essentially specifies the key issues to be assessed when examining a patent in relation to GR and ATK. As these are not currently agreed by all members they are bracketed.
5	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. Option is very general in nature as it does not state the eligibility requirements which could include options above.	Option 4 was deleted as it was to general in nature and did not specify the eligibility conditions. Option 5 was deleted as it is covered under the first dot point in the above text. However, it is accepted that there may be a much broader policy issues inherent in option 5, but is this the appropriate forum.
	Policy Analysis. Option 5 aims to ensure that life and life forms are not patentable.	Option 7 was removed as it considered covered in other objectives and principles.



Objective 2 Options	Original Text Options and Analysis	Revised Text
7	Increase transparency in access and benefit-sharing. Recommend delete captured in	
Objective 2 Principle s Options	Original Text Policy Analysis	Revised Text
1	<p>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.</p> <p>[The patent system should <u>foresee appropriate measures to provide certainty of rights for legitimate users of genetic resources</u>] It was unclear to the facilitators how this sentence in the principle could be practically implemented.</p>	<p>Principle 1</p> <p>Patent applicants should not receive exclusive rights on inventions that are not new or inventive.</p> <p>Principle 2</p>
2	<p>The intellectual property system should provide certainty of rights for legitimate users and providers of genetic resources, their derivatives and/or associated traditional knowledge.</p> <p>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.</p> <p>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 judicial review/ 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.</p>	<p>Option 1</p> <p>The patent system should provide certainty of rights for legitimate users of genetic resources and [their derivatives] and associated traditional knowledge.</p> <p>Option 2</p> <p>The intellectual property system should provide certainty of rights for legitimate users and providers of genetic resources, their derivatives and/or associated traditional knowledge.</p> <p>The intellectual property system must provide</p>

6	<p>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 and their derivatives and their associated traditional knowledge have not been met <u>ensuring free prior informed consent and fair and equitable benefit sharing for indigenous peoples and local communities.</u></p>	<p>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.</p> <p>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 <u>judicial review/ 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.</u></p>
7	<p>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.</p>	<p><b>Principle 3</b></p> <p>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 and their derivatives and their associated traditional knowledge have not been met <u>ensuring free prior informed consent and fair and equitable benefit sharing for indigenous peoples and local communities.</u></p> <p><b>Principle 4</b></p> <p>Persons applying for intellectual property</p>



		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.
<b>Objective 3 Options</b>	<b>Original Text Analysis</b>	<b>Revised Text</b>
1	<b>Ensure patent offices have available the information needed to make proper decisions in granting patents.</b>	The majority of these principles were maintained as individual principles though further work could be carried out to simplify and reduce. Principle 2 was reflected in two options noting the significant divergent approach.
3	Option 1 aims to ensure patent offices have information needed to make proper decisions in granting patents.  <b>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. Such information shall include confirmation through the mandatory disclosure requirements that prior informed consent has been obtained and access has been granted on mutually agreed terms which can be made through an internationally recognized certificate of compliance.</b>	<b>Ensure that intellectual property [Patent] offices have appropriate information on genetic resources, their [derivatives] and associated traditional knowledge needed to make proper and informed decisions in granting intellectual property rights [patents]. [Such information shall include confirmation through the mandatory disclosure requirements that prior informed consent has been obtained and access has been granted on mutually agreed terms which can be made through an internationally recognized certificate of compliance.]</b>  These options have been merged using brackets to identify different policy positions, in particular mandatory disclosure.
	Option 3 is consistent with option 1 with the exception of the addition of a mandatory disclosure requirement.	

Objective 3 Principles Options	Original Text Analysis	Revised Text
1	<p>Patent offices must consider all relevant prior art when assessing the patentability of an invention.</p> <p>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.</p> <p>There is a need to recognize that some holders of traditional knowledge may not want their knowledge documented.</p> <p>Three principles issues are inherent in this option; assessing relevant prior art, identification of the prior art in applications (disclosure), and documentation of knowledge.</p>	<p><b>Principle 1</b></p> <p>Intellectual property [Patent] offices should [must] consider all relevant prior art [as far as known to the applicant] relating to genetic resources, their [derivatives] and associated traditional knowledge when assessing the eligibility for grant of intellectual property rights [a patent].</p> <p><b>Principle 2</b></p> <p>[Intellectual property [Patent] applicants should disclose all background information of genetic resources, their derivatives and associated traditional knowledge relevant for determining the eligibility conditions.]</p> <p><b>Principle 3</b></p> <p>There is a need to recognize that some holders of traditional knowledge may not want their knowledge documented.</p> <p>Text identifies the three separate principles reflected in the original options.</p>
2	<p>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.</p> <p>Intellectual property applicants should disclose all background information of genetic resources, their derivatives and associated traditional knowledge relevant for determining the eligibility conditions.</p> <p>This option is similar to 1 in that it deals with prior and disclosure.</p>	



Objective 4 Options	Original Text Analysis	Revised Text
1	<b>Promote a mutually supportive relationship with relevant international agreements and processes.</b>	<b>Establish a coherent and mutually supportive [system] relationship between intellectual property rights involving the utilization of genetic resources, their [derivatives] and/or associated traditional knowledge and existing international and regional agreements and treaties, [including ensure consistency with international legal standards in the promotion and protection of the collective rights of indigenous peoples]</b>
2&3	<b>Establish a coherent system and promote mutually supportive relationship between intellectual property rights involving the utilization of genetic resources, their derivatives and/or associated traditional knowledge and existing international and regional agreements and treaties.</b>	Facilitators have tried to capture all concepts in a single objective utilising brackets to identify different positions.
4	<b>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</b>	
	Option 1/10 aims to prevent adverse effects of the IP system on the customs, beliefs and rights of indigenous peoples with the aim of recognizing and protecting their rights to use, develop, create and protect their knowledge and innovation in relation to GRs.	



Object 4 Principles Options	Original Text Analysis	Revised Text
1	<p>Promote respect for and seek consistency with other international and regional instruments and processes.</p> <p>Promote cooperation with relevant international and regional instruments and processes.</p>	<p>Principle 1</p> <p>Promote respect for and seek consistency with other international and regional instruments and processes.</p>
2	<p>Promote respect for and seek consistency with other international and regional instruments and processes.</p> <p>Promote cooperation with relevant international and regional instruments and processes.</p> <p>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.</p>	<p>Principle 2</p> <p>Promote cooperation [awareness and information sharing] with relevant international and regional instruments and processes [and 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.]</p>
3	<p>Respect the decisions adopted by the United Nations treaty bodies pertaining to cases submitted by indigenous peoples.</p>	<p>Text has attempted to capture the key principles reflected in the options: respect for and consistency, awareness raising and information sharing; and cooperation with International /regional instruments and processes. Option 4 has also been incorporated in principle 2.</p>
4	<p>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.</p>	<p>Second sentence in option 2 has not been included as the facilitators believe that it is not relevant as the IGC will pre-date this text once agreed.</p>
6	<p>Promotion of awareness raising and information sharing among different relevant and related international and regional agreements, instruments and processes related to genetic resources.</p>	



Objective 5 Options	Original Text Analysis	Revised Text
1 & 10	Preventing the adverse effects of the intellectual property system on the indigenous peoples' customs, beliefs and rights with the aim of recognize and protect the rights of indigenous peoples to use, develop, create and protect their knowledge and innovation in relation to genetic resources.	Recognize and maintain the role of the intellectual property system in promoting innovation, transfer and dissemination of technology, to the mutual advantage of holders and users of genetic resources, their [derivatives] and associated traditional knowledge in a manner conducive to social and economic welfare [while]:
2	Maintain the role of the intellectual property system in promoting innovation.	<ul style="list-style-type: none"> <li>• [contributing to the protection of genetic resources, their [derivatives] and associated traditional knowledge.]</li> </ul>
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. Option 4 aims to recognize the role of the IP system in the protection of TK, GR and TCEs.	<ul style="list-style-type: none"> <li>• [preventing the adverse effects of the intellectual property system on the indigenous peoples' customs, beliefs and rights with the aim of recognize and protect the rights of indigenous peoples to use, develop, create and protect their knowledge and innovation in relation to genetic resources.]</li> </ul>
4	Recognize the role of the intellectual property system in the protection of traditional knowledge, genetic resources and traditional cultural expressions.	
6	Recognize and maintain the role of the intellectual property system in promoting innovation, transfer and dissemination of technology, to the mutual advantage of holders and users of genetic resources, their derivatives and/or associated traditional knowledge in a manner conducive to social and economic welfare, while contributing to the protection of genetic resources, their derivatives and/or associated traditional knowledge.	<p>All options focus on recognizing and maintaining the role of the IP system in promoting innovation, transfer and dissemination of technology, to the mutual advantage of holders and users of GR, their derivatives and/or ATK in a manner conducive to social and economic welfare, while contributing to the protection of GR, their derivatives and/or ATK., while</p> <ul style="list-style-type: none"> <li>• Contributing to the protection of GR and ATK</li> <li>• Preventing the adverse effects of the IP system on indigenous peoples</li> </ul>



Objective 5 Principles Options	Original Text Analysis	Revised Text
1	<p>Maintain the incentives for innovation provided by the intellectual property system.</p> <p>Promote certainty and clarity of intellectual property rights.</p> <p>Protect creativity and reward investments made in developing a new invention.</p> <p>Promote transparency and dissemination of information by publishing and disclosing technical information related to new inventions, <u>where appropriate and where publicly available</u> so as to enrich the total body of technical knowledge accessible to the public.</p>	<p>Principle 1</p> <p>Option 1</p> <p>Maintain the incentives for innovation provided by the intellectual property system.</p> <p>Option 2</p>
2	<p>Recognize and maintain the role of the intellectual property system in promoting innovation, noting the relationship with genetic resources and associated traditional knowledge.</p> <p>Promote certainty and clarity of intellectual property rights, noting the relationship with genetic resources and associated traditional knowledge.</p> <p>Protect creativity and reward investments.</p> <p>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.</p>	<p>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.</p>
3	<p>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.</p> <p>Promote certainty and clarity of intellectual property rights, noting the relationship with genetic resources, their derivatives and/or associated</p>	<p>Principle 2</p> <p>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</p>



	<p>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.</p> <p>Protect creativity, reward investments and ensure prior informed consent and fair and equitable benefit-sharing with the knowledge holders.</p> <p>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.</p>	<p>derivatives and/or associated traditional knowledge and traditional cultural expressions and certainty and clarity for prior informed consent and fair and equitable benefit-sharing.</p> <p>Protect creativity, reward investments and ensure prior informed consent and fair and equitable benefit-sharing with the knowledge holders.]</p> <p>Principle 3</p> <p>Protect creativity and reward investments made in developing a new invention.</p> <p>Principle 4</p> <p>Promote transparency and dissemination of information [where not in contrast with public morality and/or public order,] by:</p> <ul style="list-style-type: none"> <li>• [publishing and disclosing technical information related to new inventions, so as to enrich the total body of technical knowledge accessible to the public.</li> <li>• [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.]</li> <li>• [increase legal certainty and trust</li> </ul>
5	<p>Increase legal certainty and trust between users and providers of genetic resources and traditional knowledge through a mandatory disclosure of origin or source.</p>	
12	<p>Promote transparency and dissemination of information where not in contrast with public morality and/or public order.</p> <p><u>Promoting transparency and dissemination of information by disclosing the country of origin and publishing and disclosing technical information related to new inventions where appropriate and where publically available and where not in contrast with public morality and <i>ordre public</i>, so as to enrich the total body of technical knowledge accessible to the public</u></p>	



		<p>between users and providers of genetic resources and traditional knowledge through a mandatory disclosure of origin or source.]</p> <p>Principle one relating to respecting and maintaining the role of IP in innovation includes 2 options to reflect the divergent language.</p> <p>The remain principles are reflected separately as specific principles; promote certainty, protect creativity and reward investment and promote transparency and dissemination of information.</p> <p>Principle 4 captures options 5 and 12.</p>
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