

[Art 1]

The Protection of Traditional Knowledge: Draft Articles

Facilitators' Work-In-Progress (clean version)

(a) prevent the (mis)appropriation, misuse, and unauthorized use of traditional knowledge;

(b) control ways in which traditional knowledge is used beyond the traditional and customary context;

(c) ensure the fair and equitable sharing of benefits arising from the use of their traditional knowledge, with prior informed consent and involvement and taking customary law into consideration in appropriate cases;

(d) encourage and protect tradition-based creation and innovation, whether or not commercialized;

[2] Aid in the prevention of the grant of (mis)appropriation, property rights over traditional knowledge and (traditional knowledge) associated (with) genetic resources; [3]

[Art 2]

This instrument should aim to prevent the (mis)appropriation of protected traditional knowledge and encourage (tradition-based) creation and innovation;

[Art 3]

The objective of this instrument is to support the appropriate use of traditional knowledge within the intellectual property system in accordance with national law, recognizing the rights of traditional knowledge holders;

[Art 4]

The objectives of this instrument are to:

(a) contribute toward the protection of innovation and to the transfer and dissemination of knowledge, to the mutual advantage of holders and users of protected traditional knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations;

(b) recognize the value of a vibrant public domain, the body of knowledge that is available for all to use and which is essential for creativity and innovation, and the need to protect, preserve and enhance the public domain; and

(c) prevent the anomalous grant of intellectual property rights that are directly based on protected traditional knowledge obtained by unlawful appropriation;

POLICY OBJECTIVES

[Alt 1]

This instrument should aim to:

1. Provide beneficiaries with the means to:
 - (a) prevent the [misappropriation/illegal appropriation, misuse, and unauthorized use], of their traditional knowledge;
 - (b) [control ways in which their traditional knowledge is used beyond the traditional and customary context;]
 - (c) achieve the fair and equitable sharing of benefits arising from the use of their traditional knowledge, with prior informed consent or approval and involvement and taking customary law into consideration as appropriate; and
 - (d) encourage and protect tradition-based creation and innovation, whether or not commercialized.
- [2. Aid in the prevention of the grant of erroneous intellectual property/[patent rights] over [traditional knowledge and [[traditional knowledge] associated [with] genetic resources].]]

[Alt 2]

This instrument should aim to prevent the [misuse]/[unlawful appropriation] of protected traditional knowledge and encourage [tradition-based] creation and innovation.]

[Alt 3]

The objective of this instrument is to support the appropriate use of traditional knowledge within the intellectual property system in accordance with national law, recognizing the rights of traditional knowledge holders.]

[Alt 4]

The objectives of this instrument are to:

- (a) contribute toward the protection of innovation and to the transfer and dissemination of knowledge, to the mutual advantage of holders and users of protected traditional knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations;
- (b) recognize the value of a vibrant public domain, the body of knowledge that is available for all to use and which is essential for creativity and innovation, and the need to protect, preserve and enhance the public domain; and
- (c) prevent the erroneous grant of intellectual property rights that are directly based on protected traditional knowledge obtained by unlawful appropriation.]

ARTICLE 1

SUBJECT MATTER OF THE INSTRUMENT

[Alt 1

This instrument applies to traditional knowledge.]

[Alt 2

The subject matter of this instrument is traditional knowledge, which is knowledge that is created and maintained in a collective context, that is directly linked with the social identity and/or cultural heritage of indigenous [peoples] and local communities [and nations]; that is transmitted between generations or from generation to generation, whether consecutively or not; which subsists in codified, oral, or other forms.]

[Alt 3

This instrument applies to traditional knowledge.

Criteria for Eligibility

In order to be eligible for protection under this instrument, traditional knowledge must be distinctively associated with the cultural heritage of beneficiaries as defined in Article 2, and be created, generated, developed, maintained, and shared collectively, as well as transmitted from generation to generation for a term as has been determined by each Member State, but not less than for 50 years or a period of five generations.]

ARTICLE 2

BENEFICIARIES OF PROTECTION

[Alt 1]

Beneficiaries of this instrument are indigenous [peoples] and local communities who hold protected traditional knowledge.

[Alt 2]

The beneficiaries of this instrument include, where applicable, indigenous [peoples], local communities, and other beneficiaries as may be determined under national law.¹

¹ Para 2.2 from both alternatives has been moved to Article 5 Administration of Rights.

ARTICLE 5

ADMINISTRATION [OF RIGHTS]/[OF INTERESTS]

Alt 1

5.1 [Member States]/[Contracting Parties] [may]/[shall] [establish]/[appoint] a competent authority or authorities, [with the free, prior and informed consent of] [in consultation with] [traditional knowledge [holders]/[owners]], in accordance with their national law [and without prejudice to the right of traditional knowledge [holders]/[owners] to administer their rights/interests according to their customary protocols, understandings, laws and practices].

Optional addition

[Where so requested by the beneficiaries, a competent authority may, to the extent authorized by the beneficiaries and for their direct benefit, assist with the management of the beneficiaries' rights/interests under this [instrument].]

[End of optional addition]

Alt 2

5.1 [Member States]/[Contracting Parties] may establish a competent authority, in accordance with national law, to administer the rights/interests provided for by this [instrument].

Alt 3

5.1 Member States may also designate competent bodies to act as custodians on behalf of beneficiaries, with the [consent]/[direct involvement, and approval] of the beneficiaries, in accordance with national law.

Alt 4

5.1 Member States may also designate, as deemed appropriate, competent bodies to act as custodians on behalf of the beneficiaries in accordance with national law.

[End of alternatives]

5.2 [The [identity] of any authority established under Paragraph 1 [should]/[shall] be communicated to the International Bureau of the World Intellectual Property Organization.]