

IFPMA's submission with reply to the WIPO Secretariat's questions on Traditional Knowledge:

The questions asked by the WIPO Secretariat address key issues regarding traditional knowledge. We agree that these issues need to be considered in depth in the discussions at WIPO. As today there is no internationally agreed definition on "traditional knowledge". We believe that an agreed definition of what constitutes "traditional knowledge" and how it is distinguished from other knowledge is essential before remaining questions and issues can be discussed. Therefore, we consider it to be premature to take any decision to establish an international sui generis system of protection for traditional knowledge. Such a decision should not be made before having agreed on the definition on what it is that is to be protected by such a sui generis system.

Against this background, we also consider it to be premature to offer answers to the questions before a definition has been agreed. Nevertheless, we would like to address in this context one fundamental issue. We strongly believe that public domain knowledge should continue to be freely usable, even if such knowledge would be called by certain stakeholders "traditional knowledge". However, in case some TK is still confidential it should be protectable as a trade secret and if otherwise possible by other forms of existing IP.

In contrast, TK which is in the public domain should not be patentable. In this context, please note that the IFPMA supports the recording of traditional knowledge associated with indigenous genetic resources in databases and the use of the resulting information in prior art searches for the examination of patent applications. This would help avoiding granting of patents for such TK and therefore facilitate the defensive protection of TK and could be further improved by establishment of an international internet portal for TK which would electronically link local and national databanks on TK. In addition to the availability of TK from publicly accessible databanks, further harmonization of substantial issues of patent law, as under discussion at the Standing Committee of Patents (SCP) at WIPO with respect to a "Substantive Patent Law Treaty" (SPLT), should further improve the defensive protection of TK, namely by changing the legal status of oral disclosure, prior use or anything which is not in written form to be novelty destroying everywhere in the world ("Absolute Novelty Concept").