

REVISED QUESTIONNAIRE FOR THE SURVEY ON EXISTING FORMS
OF INTELLECTUAL PROPERTY PROTECTION FOR TRADITIONAL
KNOWLEDGE

QUESTIONNAIRE RÉVISÉ POUR L'ENQUÊTE SUR LES FORMES
EXISTANTES DE PROTECTION DE SAVOIRS TRADITIONNELS PAR
LA PROPRIÉTÉ INTELLECTUELLE

CUESTIONARIO REVISADO SOBRE FORMAS ACTUALES DE
PROTECCIÓN DE LOS CONOCIMIENTOS TRADICIONALES MEDIANTE
PROPIEDAD INTELECTUAL

(WIPO/GRTKF/IC/Q.1).

PART I

REVISEDQUESTIONNAIREFORTHE SURVEYONEXISTINGFORMSOF
INTELLECTUALPROPERTY PROTECTIONFORTRADITIONALKNOWLEDGE
(WIPO/GRTKF/IC/Q.1)

RESPONSES

Argentina
Canada
CostaRica
Cuba
CzechRepublic
Germany
Guatemala
Hungary
Italy
Kenya
Malawi
Mexico
Niger
Peru
Philippines
Portugal
RepublicofKorea
RepublicofMoldova
RussianFederation
Spain
SlovakRepublic
Switzerland
Togo
Ukraine
Uruguay
VietNam

REVISED QUESTIONNAIRE FOR THE SURVEY ON EXISTING FORMS OF
INTELLECTUAL PROPERTY PROTECTION FOR TRADITIONAL KNOWLEDGE
(document WIPO/GRTKF/IC/Q.1)

QUESTIONS

- (a) Is protection for traditional knowledge available under the current standards of your intellectual property law?
- (b) If your answer to question (a) is yes, has your country already provided for protection of elements of traditional knowledge by means of the currently available standards of intellectual property (such as patents, trademarks, certification and collective marks, plant breeders' rights, geographical indications, etc)?
- (c) If your answer to question (a) is yes, could you please explain by means of concrete examples how currently available standards of intellectual property have been used to protect traditional knowledge.
- (d) Which of the following elements or standards of currently existing intellectual property law do you perceive as limitations in the application of intellectual property laws and procedures to the protection of traditional knowledge:
- (i) novelty or originality;
 - (ii) inventive step or non-obviousness;
 - (iii) fixation;
 - (iv) informal nature of TK;¹
 - (v) individual v. collective creation;
 - (vi) term of protection;
 - (vii) other;
 - (viii) no limitations.
- (e) Have you enacted any law or regulation or administrative ruling of general application establishing a system of traditional knowledge intellectual property protection especially adapted to its characteristics (that is, a *suigeneris* system)?

¹ This deficiency, as perceived by France, New Zealand and Viet Nam in their answers to the questionnaire distributed in document WIPO/GRTKF/IC/2/5 (see document WIPO/GRTKF/IC/3/7), relates to the fact that traditional knowledge holders are not generally in possession of scientific information that might permit them to obtain protection under existing systems, such as the patents system. For example, holders of traditional medicinal knowledge know how to prepare extracts and potions in a consistent and repetitive manner, but do not know their chemical formulae nor can they isolate the active molecules.

(f) If your answer to question (e) is yes, could you please describe how your law or regulation or administrative ruling of general application establishing a system of traditional knowledge protection especially adapted to its characteristics (a *sui generis* system)

(i) defines and/or identifies the policy objective of the protection;

(ii) identifies its subject matter (scope of protection);

(iii) identifies the criteria the subject matter must meet as a condition for its protection;

(iv) identifies the owner of the rights;

(v) defines the rights conferred, including exceptions;

(vi) establishes the procedures and formalities, if any, for the acquisition and maintenance of the rights conferred;

(vii) sets forth the enforcement procedures so as to permit effective action against infringement of rights in traditional knowledge;

(viii) defines how the rights are lost and how they expire (including invalidation or revocation of any registration);

(ix) sets forth the interaction between the *sui generis* system and the existing standards of intellectual property, especially the extent to which they overlap or complement each other.

(g) If your answer to question (e) is no, is your country planning to establish a system of traditional knowledge protection especially adapted to its characteristics (a *sui generis* system)? If yes, could you please describe it in accordance with the scheme of elements contained in question (f)?

(h) If your answer to question (e) or (g) is yes, could you please provide the Secretariat with a copy of the corresponding enacted or draft legislation?

ARGENTINA

Response to Question (a) :

No, las normas actuales no contemplan la protección de los conocimientos tradicionales en su forma específica. Esto implica que los conocimientos tradicionales podrán protegerse mediante los diferentes institutos de la propiedad intelectual cuando cumplan con los requisitos exigidos por las respectivas leyes.

Response to Question (b) :

No existen presentaciones en el área de Patentes, Modelos de Utilidad, Modelos y Diseños Industriales. Falta averiguar Marcas. (A título informativo se presentaron personas ante el Instituto Nacional de la Propiedad Industrial para ser informadas al respecto, pero éstas no eran miembros ni representaban ninguna comunidad indígena. Igualmente no se presentaron ninguna solicitud).

Response to Question (c) :

No tenemos en nuestro país un sistema *sui-generis* de protección.

Response to Question (d) :

Novelty or originality; Inventive step or non-obviousness; Informal nature of TK; Individual or collective creation; Term of protection; Other.

Response to Question (e) :

No.

Response to Question (f) :

No corresponde.

Response to Question (g) :

No, nuestro país no contempla en su legislación un sistema de protección especialmente adaptado para los conocimientos tradicionales.

Response to Question (h) :

No corresponde.

[End of response of Argentina]

CANADAResponse to Question (a) :

Yes, in certain circumstances.

Response to Question (b) :

Yes, those elements of traditional knowledge which meet the criteria for protection by Canada's intellectual property laws are eligible for protection. Canada has not made special provision in its various intellectual property laws for specific protection for traditional knowledge.

Response to Question (c) :

The Copyright Act is used by a range of Aboriginal artists, composers and writers to protect their tradition-based creations. Examples include woodcarvings of Pacific coast artists, silver jewelry of Haida artists, songs and sound recordings of Aboriginal artists, and sculptures of Inuit artists.

Trademarks, including certification marks, are often used by Aboriginal people to identify a wide range of traditional goods and services. These range from traditional art and artwork to food products, clothing, tourist services and enterprises run by First Nations. Many Aboriginal businesses and organizations have registered trademarks relating to traditional symbols and names. The number of unregistered trademarks used by Aboriginal businesses and organizations is considerably greater than those that are registered. Some trademarks are registered in order to prevent improper utilization of symbols or names.

For example, Snuneymuxw First Nation of Canada in 1999 used the Trademarks Act to protect ten petroglyph (ancient rock painting images). Because the petroglyph has special religious significance to the members of the First Nation, the unauthorized reproduction and commodification of the images was considered to be contrary to the cultural interests of the community, and the petroglyph images were registered in order to stop the sale of commercial items, such as T-shirts, jewelry and postcards, which bore those images. Members of the Snuneymuxw First Nation subsequently indicated that local merchants and commercial artisans had indeed stopped using the petroglyph images, and that the use of trademark protection, accompanied by an education campaign to make others aware of the significance of the petroglyph to the Snuneymuxw First Nation, had been very successful.

Aboriginal communities also rely upon trade secret protection and on occasion use confidentiality agreements with governments and non-Aboriginal businesses when sharing their traditional knowledge.

A study produced for the Canadian government in 1999 provides an overview of areas of Canadian intellectual property law of most relevance to Aboriginal people. It sets out brief examples of Aboriginal people's use of and their perspectives on copyright, industrial design, trade-marks, patent and trade secret protection. This paper is available at <http://www.aicn-inac.gc.ca/pr/ra/intpro/intpro_e.html>.

Response to Question (d) :

Novelty or originality; Informal nature of TK; Term of protection.

Response to Question (e) :

No.

Response to Question (g) :

Not at this time. Canada is currently reviewing the application of existing intellectual property laws, and is engaging with Canadian Aboriginal groups to identify more fully any concerns they may have with the application of existing laws for the protection of their traditional knowledge. As a result of these exercises, and in particular with the guidance of any recommendations resulting from the work of the WIPO IGC, Canada will determine whether there is a need for new intellectual property measures to protect traditional knowledge.

[End of response of Canada]

COSTARICAResponseto Question(a) :

Es necesario indicar, que en nuestro país, propia mente legislación intelectual indígena, no posee, sino con base a la Ley número 6867, del 25 de abril de 1983 y sus reformas, Ley de Patentes de Invención, Dibujos, Modelos Industriales y Modelos de Utilidad, se hace una cobertura de lo que podría patentarse de conformidad con nuestra legislación, indicando que una invención podrá ser un producto, una máquina, una herramienta, o un procedimiento de fabricación y estará protegida por la patente de invención ; si no se especifica nada relativo propiamente dicha a los conocimientos tradicionales, sino que se ha determinado por analogía, que al ser original, puede catalogarse como invención, siempre y cuando no contradiga la ley. Por otro lado, está vigente la Ley de Derechos de Autor, Derechos Conexos y su Reglamento, la que regula todo lo relativo a los autores de obras.

Responseto Question(b):

Si hay una protección especial en nuestro país, a través de los procedimientos como patentes, marcas, De invención, Ley de Derechos de Autor y Derechos Conexos, etc.

Responseto Question(c):

Ejemplos concretos de utilización, propiamente indígenas, no tenemos, solo inscripción de marcas de ganado, todavía, que es la actividad que con mayor frecuencia se encuentra en las reservas indígenas, ahora bien en cuanto a invención en materia indígena, no hay registro de ello.

Responseto Question(d):

Considero que un elemento de regulación de la actual legislación de propiedad intelectual que ha limitado, en materia indígena, la aplicabilidad de la legislación sobre dicha materia, es precisamente el carácter informal del conocimiento tradicional, todavía, que por sus características sui generis, es difícil patentar dicho conocimiento y de ahí también al poco conocimiento que sobre los derechos de autor y métodos de invención, poseen los indígenas casi en su mayoría.

Responseto Question(e):

No existe dicha legislación, ni normativa sui generis que de manera específica protejan o resguarden los conocimientos tradicionales, de forma que se adapte a las características de los ciudadanos indígenas, sino que como se indicó líneas arriba, es una legislación general, aplicable a todos por igual, sea extranjero o nacional.

Responseto Question(f):

No se responde por su relación con el punto (e) anterior.

Responseto Question(g):

No se conoce de proyecto legislativo o alguno administrativo, que pretenda crear el sistema de protección de dichos conocimientos, ni reformas a las leyes marco, que regulan en nuestro país, lo relativo a la propiedad intelectual.

Responseto Question(h):

No se responde por su conexión con los puntos (e) y (g).

[End of response of Costa Rica]

CUBA

Response to Question (a) :

No.

No obstante se prevee, en el proyecto de Decreto - Ley para la protección de las Invenciones, Dibujos y Modelos Industriales que se encuentra a instancia de Gobierno para su aprobación, que el solicitante acredite en la presentación de la solicitud de registro, el país de origen del material biológico, los conocimientos asociados y los documentos acreditativos del conocimiento previo fundamentado.

Response to Question (d) :

Novelty or originality; Inventive step or non-obviousness; Informal nature of TK; Individual or collective creation; Term of protection.

Response to Question (e) :

No.

Response to Question (g) :

No.

[End of response of Cuba]

CZECH REPUBLIC

Response to Question (a) :
No.

Response to Question (d) :
Novelty or originality; Inventive step or non-obviousness; Individual or collective creation;
Term of protection.

Response to Question (e) :
No.

Response to Question (g) :
Not yet.

[End of response of Czech Republic]

GERMANY

Response to Question (a) :
No.

Response to Question (d) :
Novelty or originality; Inventive step or non-obviousness; Individual or collective creation;
Term of protection; No limitations.

Response to Question (e) :
No.

Response to Question (g) :
No.

[End of response of Germany]

GUATEMALA

Response to Question (a) :

Desde el punto de vista de la propiedad intelectual no hay contemplado en forma específica la protección de los conocimientos tradicionales.

Response to Question (b) :

No aplica por cuanto el contenido de la respuesta.

Response to Question (c) :

En la actualidad aún falta la creación de una ley sui generis que en forma especial abarque en un grado de protección el tipo de conocimientos tradicionales.

Response to Question (d) :

Novedad u originalidad; y Actividad inventiva/no evidencia.

Response to Question (e) :

Aún no hay el tipo de ley que a toda forma proteja aspectos de propiedad intelectual aplicados a los conocimientos tradicionales.

Response to Question (f) :

No aplica por cuanto el contenido de la respuesta anterior.

Response to Question (g) :

Con respecto al objetivo del presente cuestionario está la garantía de proveer los mecanismos adecuados para que todo aquel conocimiento que por generaciones ha pertenecido a un grupo, goce del reconocimiento de la nación.

[End of response of Guatemala]

HUNGARY

“We cannot provide any information in addition to that contained in our previous questionnaire.”

ained in our reply to the previous

See WIPO/GRTKF/IC/3/7.

[End of response of Hungary]

ITALYResponse to Question (a) :

According to Italian Intellectual Property Law, protection for Traditional Knowledge is available only for those goods which can be considered expression of "Traditional Knowledge".

Response to Question (b) :

Specific laws protect exclusive rights regarding the commercial use of trade names related to specific goods (not services) which in certain cases could have been made using "Traditional Knowledge". That can be assumed referring to the protection of certificate of origin and geographical indications (i.e. "Prosciutto di Parma"); at the moment this kind of protection for agricultural goods and food stuff is admitted only after the Community Registration of the certificate of origin issued by the European Commission (see Reg. 2081/92/CEE, dated July, the 14th 1992, in GUC En. 208 L dated July 24th 1992).

Response to Question (c) :

No answer because the answer to question (e) is no.

Response to Question (d) :

According to the general principles of Italian Trademarks and Patent Law the obstacles for general regulation of the protection of the "Traditional Knowledge" are the want of novelty, no obviousness, the lack of inventive step, the impossibility to find the specific individual or collective creation time of the invention.

Response to Question (e) :

Apart from the above mentioned Community Reg. which regulates community protection for typical agricultural goods and food stuff, there is no other general national law, but only specific rules providing for specific goods (relating to handicrafts, according to Italian Law protection can be granted only by the Italian Authority in Italy, as well as in those few countries which signed the Lisbon Agreement)

Response to Question (f) :

No answer because the answer to question (e) is no.

Response to Question (g) :

According to my knowledge, there is no bill in Parliament regarding the protection of "Traditional Knowledge".

Response to Question (h) :

No answer.

[End of response of Italy]

KENYA

Response to Question (a):

Yes. Though not comprehensively adequate.

Response to Question (b):

There is a provision for patent, Trade Mark, and Trade Secrets protection.

Response to Question (d):

Novelty or originality; Inventive step or non-obviousness; Fixation; Informal nature of TK; Term of Protection.

Response to Question (e):

No.

Response to Question (g):

Yes.

- (i) *Ex-situ* conservation of wild plant/animal species within the Tropics, that are of known traditional values, and to negate the threat of their extinction;
- (ii) Traditional knowledge of plants and animals of likely commercial value (Medicinal, Agricultural, Environmental Conservation);
- (iii) A *sui-generis* like system of protection that will be unique to traditional knowledge, bearing in mind the problem of inventiveness and novelty;
- (iv) The system should clearly define benefits to the traditional knowledge holder (individual or communal ownership);
- (v) Rights conferred are as stipulated in the Convention on Biological Diversity (CBD), on access to genetic resources;
- (vi) Procedures and formalities will be based on the CBD provisions, and the kind of arrangement existing between the Government of Kenya and the Royal Botanic Gardens, Kew, United Kingdom;
- (vii) It will be on an agreement basis, where both parties should observe the agreement terms;
- (viii) Not yet clearly deliberated;
- (ix) The system should compliment the existing Intellectual Property regimes (patents) with an understanding of the issues arising out of novelty and inventiveness.

[End of response of Kenya]

MALAWI

Response to Question (a) :
No.

Response to Question (d) :
Novelty or originality; Inventive step or non-obviousness; Fixation; Informal nature of TK;
Individual v. collective creation.

Response to Question (e) :
No.

[End of response of Malawi]

MEXICOResponse to Question (a) :

La Protección al Conocimiento Tradicional no es posible bajo la Ley de la Propiedad Industrial, entendiéndose que es posible la protección involucrando todos los aspectos implícitos en el Conocimiento Tradicional. Sin embargo, en algunos casos se han protegido bajo las figuras previstas por la LPI, tales como marcas y denominaciones de origen, algunos aspectos involucrados en un Conocimiento Tradicional.

Response to Question (b) :

Contenido en el inciso precedente.

Response to Question (c) :

Algunos casos que ejemplifican lo anterior, antes señalados, fueron expuestos en la contestación del documento precedente al presente cuestionario WIPO/GRTKF/IC/2/5.

Response to Question (d) :

La Ley de Propiedad Industrial en México, no prevé disposiciones especiales para la protección del conocimiento tradicional, dentro de las figuras existentes actuales de propiedad industrial se encuentran limitaciones para proteger todos los aspectos involucrados en el conocimiento tradicional:

- (i) *Novedad y originalidad*. Muchos conocimientos tradicionales se conocen por generaciones, en las comunidades de poseedores del conocimiento, sin embargo, no debe ser un impedimento para su protección y preservación, por lo que el concepto de novedad entendido como en patentes no es adecuadamente aplicable, ni el de originalidad como se entiende en derechos de autor.
- (ii) *Actividad inventiva*. Este concepto es muy difícilmente aplicable al conocimiento tradicional, mucho conocimiento de este tipo puede ser empírico y no necesariamente responder a una actividad de tipo científico.
- (iii) *Lafijación del conocimiento* es muy difícil, casi siempre es transmisión de tipo oral.
- (iv) *Naturaleza informal de TK*. Aplicable mencionado en el punto (ii).
- (v) *Creación individual o colectiva*. Al respecto es muy difícil establecer la persona sujeta de derecho.
- (vi) *Término de la protección*. Como se ha mencionado, la naturaleza del TK, implica que el término de derecho no puede ser un sentido limitativo, debido a la misma naturaleza del TK, su transmisión de generación en generación y su carácter ancestral.

Response to Question (e) :

No.

Response to Question (f) :

No aplica.

Response to Question (g) :

Al momento todavía no hay una propuesta para tener una legislación de este tipo.

Response to Question (h) :

No aplica.

[End of response of Mexico]

NIGER

Response to Question (a) :

Il n'y a pas de textes relatifs au droit de propriété intellectuelle en vigueur au Niger se rapportant spécifiquement à la protection des savoirs traditionnels, mais il existe une ordonnance qui date de 1993 portant sur le droit d'auteur, les droits voisins et les expressions des folklores. La médecine traditionnelle et la pharmacopée traditionnelle par exemple devraient être protégées par des dispositions types car ils'agit là des parties intégrantes de la culture et des savoirs traditionnels.

Response to Question (d) :

Caractère informel des savoirs traditionnels; œuvre individuelle par opposition à œuvre collective; La gestion des savoirs traditionnels que se partagent plusieurs pays; L'identification du détenteur original.

Response to Question (e) :

Non.

Response to Question (g) :

Pas encore amorcé.

[End of response of Niger]

PERUResponse to Question (a) :

No. Sin embargo, cabe mencionar que el artículo 63 del Decreto Legislativo 823, Ley de Propiedad Industrial (1996), establece lo siguiente:

“Por Decreto Supremo refrendado por el Ministerio de Industria, Turismo, Integración y Negociaciones Comerciales Internacionales, podrá establecerse un régimen especial de protección y, de ser el caso, un registro, de los conocimientos de las comunidades nativas y campesinas.”

Response to Question (d) :

Novelty or originality; informal nature of traditional knowledge; individual vs collective creation; term of protection; other.

Response to Question (e) :

Sí, la Ley N° 27811 (2002), Ley que establece el régimen de protección de los conocimientos colectivos de los pueblos indígenas vinculados a los recursos biológicos, establece un sistema sui generis de protección de conocimientos tradicionales.

Response to Question (f) (i):

Los objetivos son los siguientes:

- (a) Promover el respeto, la protección, la preservación, la aplicación más amplia y el desarrollo de los conocimientos colectivos de los pueblos indígenas;
- (b) Promover la distribución justa y equitativa de los beneficios derivados de la utilización de estos conocimientos colectivos;
- (c) Promover el uso de estos conocimientos en beneficio de los pueblos indígenas y de la humanidad;
- (d) Garantizar que el uso de los conocimientos colectivos se realice con el consentimiento informado por parte de los pueblos indígenas;
- (e) Promover el fortalecimiento y el desarrollo de las capacidades de los pueblos indígenas y de los mecanismos tradicionalmente empleados por ellos para compartir y distribuir beneficios generados colectivamente, en el marco del presente régimen;
- (f) Evitar que se concedan patentes a invenciones obtenidas o desarrolladas a partir de conocimientos colectivos de los pueblos indígenas del Perú, sin que se tomen en cuenta estos conocimientos como antecedentes en el examen de novedad y nivel inventivo de dichas invenciones.

Response to Question (f)(ii) :

Son objeto de protección los conocimientos colectivos de los pueblos indígenas vinculados a los recursos biológicos².

Response to Question (f) (iv):

Los titulares de derechos son los pueblos indígenas poseedores de los conocimientos colectivos en cuestión. Ejercen sus derechos a través de sus organizaciones representativas.

Response to Question (f) (v):

A continuación se transcriben algunas de las disposiciones de la ley antes mencionada que se consideran relevantes a fin de determinar los derechos que concede:

“Artículo 1º. -Reconocimiento de derechos

El Estado Peruano reconoce el derecho y la facultad de los pueblos y comunidades indígenas de decidir sobre sus conocimientos colectivos.”

“Artículo 6º. -Condiciones para el acceso a los conocimientos colectivos

Los interesados en acceder a los conocimientos colectivos con fines de aplicación científica, comercial e industrial deberán solicitar el consentimiento informado previo de las organizaciones representativas de los pueblos indígenas que posean un conocimiento colectivo.

La organización representativa de los pueblos indígenas, cuyo consentimiento informado previo haya sido solicitado, deberá informar que está entrando en una negociación al mayor número posible de pueblos indígenas poseedores del conocimiento y tomar en cuenta sus intereses e inquietudes, en particular a aquellas vinculadas con sus valores espirituales o creencias religiosas. (...)”

“Artículo 7º. -Acceso con fines de aplicación comercial o industrial

En caso de acceso con fines de aplicación comercial o industrial, se deberá suscribir una licencia³ donde se prevean condiciones para una adecuada retribución por dicho acceso y se garantice una distribución equitativa de los beneficios derivados del mismo.”

² *“Artículo 2. -Definiciones*

Para los efectos del presente dispositivo se entenderá por:

a) Pueblos indígenas. Son pueblos originarios que tienen derechos anteriores a la formación del Estado peruano, mantienen una cultura propia, un espacio territorial y se autoreconocen como tales. En éstos se incluye a los pueblos en aislamiento voluntario o no contactados, así como a las comunidades campesinas y nativas.

La denominación "indígenas" comprende y puede emplearse como sinónimo de "originarios", "tradicionales", "étnicos", "ancestrales", "nativos" u otros vocablos.

b) Conocimiento Colectivo: Conocimiento acumulado y transgeneracional desarrollado por los pueblos y comunidades indígenas respecto a las propiedades, usos y características de la diversidad biológica.

El componente intangible contemplado en la Decisión 391 de la Comisión del Acuerdo de Cartagena incluye este tipo de conocimiento colectivo.

(...)

e) Recursos biológicos: Recursos genéticos, organismos o partes de ellos, poblaciones, o cualquier otro tipo del componente biótico de los ecosistemas de valor o utilidad real o potencial para la humanidad.

³ *“Artículo 27º. -Contenido del contrato de licencia.*

“Artículo 38°. - Acceso a los recursos del Fondo para el Desarrollo de los Pueblos y Comunidades Indígenas

Los pueblos indígenas tienen derecho a acceder a los recursos del Fondo para el Desarrollo de los Pueblos Indígenas a través de sus organizaciones representativas y por medio de proyectos de desarrollo, previa evaluación y aprobación del Comité Administrador.”

“Artículo 42°. - Derechos de los pueblos indígenas que poseen conocimientos colectivos
El pueblo indígena que posea un conocimiento colectivo estará protegido contra la revelación, adquisición o uso de tal conocimiento colectivo sin su consentimiento y de manera desleal, en la medida en que este conocimiento colectivo no se encuentre en el dominio público.

Asimismo, estará protegido contra la divulgación sin autorización en caso de que un tercero haya tenido acceso legítimamente al conocimiento colectivo pero con deber de reserva.”

“Artículo 43°. - Acciones por infracción de derechos de los pueblos indígenas

Los pueblos indígenas que poseen conocimientos colectivos pueden interponer acción por infracción contra quien infrinja los derechos que se precisan en el artículo anterior. También procede la acción por infracción cuando exista peligro inminente de que estos derechos puedan ser infringidos.

(...)”

“Artículo 45°. - Acciones reivindicatorias e indemnizatorias

Las organizaciones representativas de los pueblos indígenas que poseen conocimientos colectivos podrán iniciar las acciones reivindicatorias e indemnizatorias que les confiera la legislación vigente contra el tercero que, de manera contraria al establecido en este régimen, hubiere utilizado, directa o indirectamente, dichos conocimientos colectivos.”

Afectos del presente régimen, los contratos deberán contener por lo menos las siguientes cláusulas:

- a) Identificación de las partes.
 - b) Descripción del conocimiento colectivo objeto del contrato.
 - c) El establecimiento de las compensaciones que recibirán los pueblos indígenas a su conocimiento colectivo. Estas compensaciones incluirán un pago inicial monetario u otro equivalente dirigido a su desarrollo sostenible; y un porcentaje no menor del 5% del valor de las ventas brutas, antes de impuestos, resultantes de la comercialización de los productos desarrollados directa e indirectamente a partir de dicho conocimiento colectivo, de ser el caso.
 - d) El suministro de suficiente información relativa a los propósitos, riesgos o implicancias de dicha actividad, incluyendo los usos del conocimiento colectivo y, de ser el caso, el valor del mismo.
 - e) La obligación del licenciario de informar periódicamente, en términos generales, al licenciante acerca de los avances en la investigación, industrialización y comercialización de los productos desarrollados a partir de los conocimientos colectivos objeto de la licencia.
 - f) La obligación del licenciario de contribuir al fortalecimiento de las capacidades de los pueblos indígenas en relación con sus conocimientos colectivos vinculados a los recursos biológicos.
- En caso de que en el contrato se pacte un deber de reserva, el mismo deberá constar expresamente. El Indecopi registrará los contratos que no se ajusten al establecido en este artículo.”

En algunas disposiciones de la ley antes mencionada, se exceptúan los conocimientos colectivos que están en el dominio público. El régimen aplicable a los conocimientos colectivos que están en el dominio público está reseñado en el artículo 13°, cuyotexto es el siguiente:

“Artículo 13°. - Conocimientos colectivos que están en el dominio público

Afectos del presente régimen, se entenderá que un conocimiento colectivo se encuentra en el dominio público cuando hay sido accesible a personas ajenas a los pueblos indígenas, a través de medios de comunicación masiva, tales como publicaciones, o cuando se refiera a propiedades, usos o características de un recurso biológico que sean conocidas masivamente fuera del ámbito de los pueblos y comunidades indígenas.

En los casos en que estos conocimientos hayan entrado en el dominio público en los últimos 20 años, se destinará un porcentaje del valor de las ventas brutas, antes de impuestos, resultantes de la comercialización de los productos desarrollados a partir de estos conocimientos colectivos, al Fondo para el Desarrollo de los Pueblos Indígenas a que se refieren los artículos 37° y siguientes.”

Responseto Question(f) (vi):

No se establecen formalidades para la adquisición y el mantenimiento de los derechos.

No obstante lo expresado en el párrafo anterior, cabe mencionar que se establecen formalidades y procedimientos para el registro de los conocimientos colectivos (que es facultativo) y para el registro de los contratos de licencia (que es obligatorio).

Responseto Question(f) (vii):

El artículo 43° de la ley antes mencionada señala que los pueblos indígenas que poseen conocimientos colectivos pueden interponer acción por infracción contra quien infrinja los derechos que se precisan en el artículo precedente⁴. Este artículo precisa que también procede la acción por infracción cuando exista peligro inminente de que estos derechos puedan ser infringidos, y que las acciones por infracción podrán iniciarse de oficio por decisión del Indecopi.

Esta ley establece los procedimientos y formalidades a cumplirse en el marco de las acciones por infracción. Cabe destacar que es posible imponer medidas cautelares destinadas a asegurar el cumplimiento de la decisión definitiva, tales como la cesación de los actos materia de la acción, y el decomiso, el depósito o la inmovilización de los productos desarrollados a partir del conocimiento colectivo materia de la acción.

Responseto Question(f) (viii):

Los derechos de los pueblos indígenas sobre sus conocimientos colectivos no se extinguen ni agotan.

Un registro de conocimiento colectivo o de licencia de uso puede ser cancelado. Sin embargo, se debe tomar en cuenta que los registros de conocimientos colectivos no son constitutivos de derechos.

⁴ Ver artículo 42° en la respuesta a la pregunta (v).

Response to Question (f) (ix):

Este régimen de protección es independiente de los regímenes de protección clásicos de propiedad industrial.

La segunda disposición complementaria ⁵ establece un vínculo entre este régimen de protección y el de las patentes de invención.

Response to Question (h) :

Se adjunta copia de la Ley N° 27811.

[End of response of Peru]

⁵ SEGUNDA.- Presentación del contrato de licencia como requisito para obtener una patente de invención. En caso de que se solicite una patente de invención relacionada con productos o procesos obtenidos o desarrollados a partir de un conocimiento colectivo, el solicitante estará obligado a presentar una copia del contrato de licencia, como requisito previo para la concesión del respectivo derecho, a menos de que se trate de un conocimiento colectivo que se encuentra en el dominio público. El incumplimiento de esta obligación será causal de denegación o, en su caso, de nulidad de la patente en cuestión.

THE PHILIPPINES

Response to Questions (a), (b) and (c) :

No. There is no specific provision in the Intellectual Property Code of the Philippines (IPC Code) regarding traditional knowledge and neither is there an actual example in which the IPC Code has been used to protect traditional knowledge.

Response to Question (d) :

Novelty or originality; inventive step or non-obviousness; fixation; informal nature of traditional knowledge; individual or collective creation; term of protection.

Response to Question (e) :

No.

Response to Question (g) :

Yes. Senate Bill No. 101 entitled "An Act Providing for the Establishment of a System of Community Intellectual Rights Protection" is pending before the Philippine Senate. The Bill is in its very raw state and is still at the Committee level.

- (i) The Bill is rooted on the policy of the State recognizing the original rights of indigenous peoples and local communities over plant and genetic resources, traditional medicines, agricultural methods and local technologies they have discovered and developed.
- (ii) The subject matters include, parent strains, genetic materials, seeds and reproductive materials, agricultural practices and devices, medicinal products and processes, cultural products from cultural communities.
- (iii) Basically, to be entitled to protection, the subject matter must originate from indigenous and local communities and from all other sectors, especially those who do not have a written tradition or culture, without the usual access to journals of scientific, business and academic communities.
- (iv) A community shall become the general owners of any form of product of traditional knowledge, once it is entered in any of the registers created under the proposed legislation. A community, as defined in the Bill, is any group of people living in a geographically defined area with common history and definitive patterns of relationship.
- (v) As general owners, the community is entitled to collect justifiable percentage from all profits derived from the commercial use of their knowledge, for a period of ten (10) years starting from the date of registration.
- (vi) The procedures and formalities for the acquisition and maintenance of the rights conferred shall be provided by the implementing rules and regulations to be promulgated by the implementing agency.
- (vii) The lead agency to enforce the proposed legislation is the National Commission on Plant Genetic Resources to be created under the Bill. For cultural products and heritage, the National Museum shall keep and maintain the register. As far as indigenous inventions, designs and

utility models are concerned, the Intellectual Property Office is tasked to maintain the respective register.

(viii) The protection accorded to communities under the Bill is separate and distinct from the patents granted under the Intellectual Property Code of the Philippines. However, the IPO is given the function to handle the registration insofar as indigenous inventions, designs and utility models are concerned considering their irrelevance and the technical expertise the Office has in these matters.

Response to Question (h)

There is no law or regulation or administrative ruling of general application establishing a system of traditional knowledge intellectual property protection especially adapted to its characteristics (that is, a *suigeneris* system).

However, the Philippines has enacted the Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371) which recognized the community intellectual rights of indigenous peoples and communities including their right to indigenous knowledge systems and practices. But the National Commission on Indigenous Peoples (NCIP), which is mandated to implement the provisions of RA No. 8371 is a relatively new office, and is still developing and formulating the specific parameters and mechanisms to effectively provide general and adequate protection to indigenous peoples and communities.

Please see Republic Act No. 8371 and Senate Bill No. 101.

[End of response of the Philippines]

PORTUGALResponse to Question (a) :

Yes.

Response to Question (b) :

Yes.

Response to Question (c) :

The Industrial Property Code (CPI), approved by Decree-Law n.º 16/95 of January 24, 1995, plays an important role in the absence of any specific legislation about traditional knowledge, preventing various forms of intellectual property in general, as individual, collective, certification marks, appellations of origin and geographical indication.

It should therefore be pointed out, in the case of trademarks, that is forbidden the register of signs that consist exclusively of the shape resulting from the nature of the product itself, the shape of the product necessary for obtaining a technical result or the shape that gives the product its own substantial value and signs or indications that may be used commercially to designate the kind, quality, quantity, purpose, value, geographical origin, the time of production of the product or of rendering of the service (CPI article 166). Consequently it is a form of indirect protection of the subject matter which for the most part seeks to avoid or prevent the registration of marks, or other distinctive signs, that relate to the designation of the traditional knowledge concerned.

A more accentuated form of protection of the traditional knowledge may be found in collective marks - signs or indications used commercially to designate the geographical origin of products or services (CPI article 172 - 2) - association marks - is a specific sign belonging to an association of natural or legal persons whose members use or have the intention of using the sign for products or services (CPI article 173) - certification marks - is a specific sign belonging to a corporate body that controls the products or services and establishes the regulations that they must comply with, such sign to be used in respect of products or services which are subject to the aforementioned control for which the regulations were established (CPI article 174).

In Portugal, for example, Arraiolos carpets, North Alentejo handicraft, striped cheese and Minho handkerchief of the fiancées are registered as association marks and shoes from Portugal, Caldas da Rainha embroidery, Açores Pineapple, cheese of Évora, Açores handicraft.

However, traditional knowledge has an even more direct form of protection in the institution of appellations of origin - shall be considered to be the name of a region, as a specific locality or in exceptional cases a country used to designate or identify the following types of products: products originating from the region, specific locality or country in question; b) products the quality or characteristics of which are essentially or exclusively due to the geographical environment, including natural and human factors, and the production, transformation and creation of which are carried out in the demarcated geographical area. Appellations of origin may also include certain traditional designations, whether geographical or not, indicating a product which comes from a region or specific locality (CPI article 249) - and the geographical indication - shall be considered to be the name of a region, as a specific locality or in exceptional cases a country used to designate or identify the following types of products: a) products originating from the region, specific locality or country in question; b) products the reputation, specific quality or other characteristics of which may be attributed to such geographical region

and/or the production, transformation and creation of which are carried out in the demarcated geographical area (CPI article 249).

Portugal have a variety of rights of this kind protected such as wines of Porto, Madeira, Redondo, Dão; the cheeses of Serpa, Azeitão, S. Jorge, Serrada Estrela, Nisa; the Madeira embroidery; the honey of Alentejo, Açores.

Those rights, when registered, shall constitute the common property of the residents and may be used indiscriminately by persons who, in the respective area, work any field of characteristic production.

Response to Question (d) :

Yes.

Response to Question (e) :

No.

Response to Question (g) :

No.

[End of response of Portugal]

REPUBLIC OF KOREA

Response to Question (a):

Yes.

Response to Question (b):

Yes.

Response to Question (c):

Geographical Indications: According to the Agricultural Products Quality Management Law and the Fisheries Products Quality Management Law which relate to agriculture and fisheries products and their processed products, if one applied for the registration of a geographical indication, the National Agriculture Products Quality Management Service and the Geographical Registration Council examine the application to see if it meets registration requirements, particularly whether the reputation of the subject matter originates from the geographic features of the region and whether the matter is produced and manufactured in the region.

Patents: Traditional Knowledge in the public domain is considered as prior art. According to the Korean Patent Law, if an applied invention derived from Traditional Knowledge does not meet the requirements of novelty and/or inventive step, the registration of the application is rejected.

Response to Question (e):

No.

Response to Question (g):

No.

[End of response of the
Republic of Korea]

REPUBLIC OF MOLDOVA

Response to Question (a) :
Yes, in general terms.

Response to Question (b) :
Our country provided for protection of elements of traditional knowledge particularly by means of collective trademarks or geographical indications and in some cases by means of patents.

Response to Question (d) :
Novelty or originality; Inventive step or non-obviousness; Fixation; Informal nature of TK; Individual or collective creation; Term of protection; Other (for example, requirement for disclosure).

Response to Question (e) :
No.

Response to Question (g) :
At present, there are no plans to establish a system of traditional knowledge protection, because we intend to extend the possibility of traditional knowledge protection by including in the current IP legislation of some amendments in this connection.

[End of response of the
Republic of Moldova]

ROMANIA

Response to Question (a) :
Yes.

Response to Question (b) :
Yes in the field of patents. "According to Article 8 paragraph 2 of the Law 64/1991 on patents amended and completed by Law 203/2002 the state of art includes all knowledge that has been made available to the public by written or oral description, by use or any other means up to the date on which the patent application was registered or up to the date of recognized priority".

Response to Question (c) :
The provision Article 8 paragraph 2 of Law 64/1991 amended and completed by Law 203/2002 entered into force on August 22, 2002 so we cannot give concrete examples as requested.

Response to Question (d) :
Fixation; Informal nature of TK.

Response to Question (e) :
No.

Response to Question (g) :
No. For the moment, we are analyzing the opportunity to create a database in the field.

[End of response of Romania]

RUSSIAN FEDERATION

Response to Question (a) :

Certain elements of traditional knowledge –yes.

Response to Question (b) :

Yes.

Response to Question (c) :

In addition to the examples cited in document WIPO/GRTKF/IC/2/5, we propose the following examples of the protection of traditional knowledge under the existing system of intellectual property protection.

The patents granted to national industrial enterprises :

1. “Majolica paste” –patent no. 2153479, applicant –“Gzhel” association.
2. “Porcelain glaze” patent no. 2148570, applicant –“Gzhel” association.
3. “Method for artistic -decorative articles made of wood (variants)” –patent no. 2156783, applicant –“Khokhloma Painting” association.

Patents granted for medicines:

1. “Medicinal –cosmetic cream” (based on medicinal plants) –patent no. 2049459, applicant –M.M. Gafarov et al.
2. “Immunomodulation means” (using grapevines, whey, etc.) –patent no. 2034542.
3. “Diabetic mix” (based on medicinal plants) –patent no. 2137491, applicant –A.I. Sukhanov.

Examples of protection of works of national creation by means of patents for industrial designs.

Many art products are made and considered to be industrial designs protected by the patent law of the Russian Federation.

Applications are filed by the closed stock company “Gzhel” from the Moscow region. Gzhel’ is an ancient mining region known as a major mining area from the 18th century onwards. Patents for industrial designs are granted for such mining items as the “Plate” –patent No. 48143, “Kvasnik” (a container for kvass) –patent No. 48142, and a “Tea Service” –patent No. 48144.

Decorative articles made of wood with Khokhloma painting are protected, including golden painted wooden plates and dishes, toys, matrioshka dolls and domestic utensils. In the 1970s, industrial design certificates were issued for such painted articles as an “assemblable matrioshka” toy –Certificate No. 11052, a “matrioshka” musical toy –Certificate No. 11170, a “Khorovod” toy –Certificate No. 11358, and a “needle case” –Certificate No. 11528.

Protection of items of national creation using geographical appellations.

According to Article 35(1) of Law No. 3520 -1 of the Russian Federation on Trade Marks and Service Marks for Appellations of Origin, of September 23, 1992, the State Register of the Russian Federation on Appellations of Origin is kept. The entry of an appellation of origin in the Register serves as a basis for granting to the applicant a certificate for the right to use this item, which is issued for ten years and may be extended for additional ten -year periods.

A number of ancient industries are registered, the articles for which are connected with designations claiming to protect appellations of origin: Velikiy -Ustyugniello, Gorodets painting, Rostov enamel, Kargopol clay toy, Filimonov toy (to date, Rospatent has received more than 150 applications).

Response to Question (d) :

Novelty or originality; Inventive step or non-obviousness; Fixation; Informal nature of TK; Term of Protection.

Response to Question (e) :

No.

Response to Question (g) :

The question of the expediency of creating a *suigeneris* system for protecting traditional knowledge and its specific features (aim, criteria, holders and soon) is being studied.

[End of response of the
Russian Federation]

SPAIN

Response to Question(a) :
No.

Response to Question(d) :
Novelty or originality; Inventive step or non-obviousness; Informal nature of TK.

Response to Question(e) :
No.

[End of response of Spain]

SLOVAK REPUBLIC

Response to Question (e) :
No.

Response to Question (g) :
No.

[End of response of Slovak Republic]

SWITZERLAND

Response to Question (a):

All forms of intellectual property rights available under Swiss law are basically also available for the protection of traditional knowledge, as long as the applicable criteria of protection are met.

Response to Question (b) :

We are unable to provide information on actual examples where existing intellectual property standards have been used in Switzerland to protect traditional knowledge.

Response to Question (c) :

See answer to question (b) above.

Response to Question (d) :

Novelty or originality; Inventive step or non-obviousness; Informal nature of TK; Other.

Response to Question (e) :

In Switzerland, there is no specific (*suigeneris*) system providing for intellectual property protection of traditional knowledge.

Response to Question (f) :

See answer to question (e) above.

Response to Question (g) :

There are currently no plans in Switzerland to establish a system of traditional knowledge protection especially adapted to its characteristics.

Response to Question (h) :

See answer to questions (e) and (g) above.

[End of response of Switzerland]

TOGO

Response to Question (a) :
Non.

Response to Question (e) :
Non.

Response to Question (f) :
Non.

Response to Question (g) :
Oui: Objectif de la protection; Portée de la protection; Critères du choix des bénéficiaires de la protection; Les titulaires des droits; Les différents droits protégés; Les exceptions; Les procédures et sanctions.

La loi sur la protection des savoirs traditionnels prendra en compte tous les éléments prévus à la question (f).

[End of response of Togo]

UKRAINE

Response to Question (a) :
No.

Response to Question (d) :
Formal requirements for the identification of objects and subjects of traditional knowledge, limited term of protection and impossibility to apply these criteria to traditional knowledge.

Response to Question (e) :
No.

Response to Question (g) :
This issue is to be carefully examined taking into consideration both the internal needs of the country and international experience. Ukraine is examining whether it is appropriate to establish such a system.

[End of response of Ukraine]

URUGUAY

Response to Question (a) :
No existe legislación específica al respecto.

Response to Question (b) :
En la medida que algún derecho de conocimiento cumpla con los requisitos de protección previstos en la legislación sobre derecho de autor, marcas y signos distintivos, o patentes de invención, modelos de utilidad y diseños industriales, podrían obtener la protección corriente prevista en ellas.

Response to Question (c) :
Al presente no se dispone de información sobre experiencias concretas al respecto.

Response to Question (d) :
Novedad u originalidad; actividad inventiva/ no evidencia; fijación; carácter informal del conocimiento tradicional; creación individual en oposición a creación colectiva; duración de la protección.

Response to Question (e) :
No.

Response to Question (g) :
No actualmente.

[End of response of Uruguay]

VIETNAM

Response to Question (a) :

Yes, subject to protection requirements.

Response to Question (b) :

Yes, patents and trademarks have been granted for traditional medicines, new plant varieties, geographical indications.

Response to Question (c) :

Traditional knowledge can only be protected by means of a patent if it satisfies all protection requirements. For example:

Patent No. VN1017 – traditional preparation of medicinal plants used for assistance in stopping drug-addiction was patented as it met all requirements for a patent to be protected of novelty, involving an inventive step and industrial applicability.

Trademark No. 30848 – traditional balm of medicinal plants registered as Truong Son Balsam was granted with trademark certificate as it was distinctive with others.

Appellation of Origin No. 01 – Phu Quoc fish soy sauce has been protected as it is geographical name of an island where the fish sauce is produced and has peculiar characteristics or qualities attributed to geographical factors of the island.

Response to Question (d) :

Novelty or originality; Inventive step or non-obviousness; Informal nature of TK; Individual or collective creation.

Response to Question (e) :

No, we have not.

Response to Question (g) :

Not yet.

[End of response of Viet Nam]

[End of Annex]