

Non-paper
Guardrail Principles
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The Diplomatic Conference needs to conclude an International Legal Instrument on disclosure of Genetic Resources (GRs) and associated Traditional Knowledge (aTK).
Agreement will take our heads and our hearts.

Main Committee I will need to finalise, as a priority, the core mechanisms of the disclosure requirement for patents established by Articles 3-6 and ensure the requirement works in practice. Agreement will lie in finding the right balance to achieve the shared transparency objectives of the instrument, respect and recognition of Indigenous Knowledge and the efficiency and quality of patent systems. The Basic Proposal is close to achieving this balance. This is not the time to open the text to endless changes, but instead to focus on reaching our destination together.

A great deal of hard work and compromise has gone into the IGC negotiations over the last 24 years to reach this point with the current draft text before us. Disclosure will help modernise the patent system to allow for inclusivity and diversity. Increased collaboration between Indigenous People and industry would, in fact, unlock new innovations. An international standard will provide a practical outcome that provides certainty for innovators, patent applicants and patent offices in fulfilling national requirements across different markets.

For the Conference to succeed, we will need to find the **courage and creativity** to move past national positions and find practical solutions for the substantive articles. The instrument will need to respect the interests of all stakeholders, which can only be achieved by a spirit of compromise and **consensus**.

This document identifies 5 key 'guardrails' to focus the work of Main Committee I and ensure we spend our time together wisely. Guardrails are something we have in Australia (like in many other countries) that line the sides of a highway to keep drivers on track. I intend for these principles to operate in the same way, to help us navigate the terrain during our high-speed travel to finalise the substantive articles. These are my views and are without prejudice to the position of any member state.

1. The Basic Proposal establishes a disclosure requirement for patents only.

- The Basic Proposal is tailored to the unique requirements of patent rights and was agreed to be the basis of our deliberations.
- This recognises that:
 - The primary commercial use of GRs within the IP system is within the patent system.
 - There is a growing number of national disclosure regimes in Member States, with 33 national regimes and 2 regional standards.
 - Disclosure, supplemented by voluntary information systems, improves quality and transparency in the patent system.

2. Broader protection of TK and TCEs is the ongoing work of the IGC.

- The transparency created by disclosure is an important step forward in recognition of the role of Indigenous innovation in the patent system.
- It supports the commitment contained in Art 31 *United Nations Declaration on the Rights of Indigenous People (UNDRIP)*.
- Disclosure does not provide positive protection or create new rights for TK.

3. Existing international law is not re-interpreted by the Basic Proposal.

- WIPO has an important role to play in the development of a balanced and effective international IP system that enables innovation and creativity for the benefit of all.
- WIPO fits within a broader UN system and an existing framework of international law related to the environment and Indigenous rights established by the *Convention on Biodiversity, the Nagoya Protocol on Access and Benefit Sharing, UNDRIP, UN Sustainable Development Goals*.
- Development considerations are an important part of WIPO's normative work under the Development Agenda.

4. Policy flexibility is needed for national implementation.

- Member States have a wide variety of national circumstances and legislation surrounding GRs and aTK including:
 - relationships with Indigenous Peoples
 - national ABS regimes
 - national disclosure requirements.
- Each Member State's national laws and circumstances cannot be reflected in this international instrument. Policy space and flexibility are needed.
- Sharing examples of how national regimes work in practice will help in finding the appropriate space.

5. Emerging issues may be addressed in the Review.

- Some issues are still emerging and are not yet mature enough to cement in international law as they relate to:
 - negotiations or discussions in other international forums
 - new or emerging technology.

Information resources

Notes on the Chair's Text (now the Basic Proposal) (GRATK/DC/INF/4)

https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_inf_4.pdf

Key Questions on Patent Disclosure Requirements for Genetic Resources and Traditional Knowledge <https://www.wipo.int/publications/en/details.jsp?id=4498>

Disclosure Requirements Table related to Genetic Resources and/or Traditional Knowledge https://www.wipo.int/export/sites/www/tk/en/docs/genetic_resources_disclosure.pdf

WIPO Website on Regional, National, Local and Community Experiences

https://www.wipo.int/tk/en/resources/tk_experiences.html

A Guide to IP Issues in Access and Benefit-sharing Agreements
<https://www.wipo.int/publications/en/details.jsp?id=4329>
