

ONLINE SURVEY ON INFORMATION SYSTEMS, REGISTERS AND DATABASES

prepared by

the Secretariat of the

World Intellectual Property Organization

1. Is there any formal domestic or customary legal system in your country requiring, or at least relating to, the establishment and/or maintenance of an information system on GRs, TK and/or TCEs, such as:

- conventional intellectual property (IP) law?
- a specific law for the protection of TK and/or TCEs?
- access and benefit-sharing legislation or legislation dealing with biodiversity, the environment, intangible cultural heritage, publicly-funded research, food and agriculture?
- customary laws and practices?
- the law of confidentiality/trade secrets/undisclosed information?

If so, please provide details, such as the title of the law(s) and the relevant provisions.

Guatemala has the following conventional laws regarding intellectual property (IP):

- Constitution of Guatemala
- Industrial Property Act (Congressional Decree No. 57/2000) as amended
- Copyright and Related Rights Act (Congressional Decree No. 33/98) as amended

Guatemala has specific laws on the protection of TK and TCEs:

- Art, folklore and traditional crafts are protected under Article 62 of the Constitution. Moreover, reference is made therein, in Chapter II, Section Three, to the protection of Indigenous Communities.
- National Cultural Heritage Protection Act (Congressional Decree No. 81/98).

Matters of confidentiality/trade secrets/undisclosed information are regulated by the Industrial Property Act.

2. Is your country party to any international or regional legal instrument (such as a convention, treaty or declaration) that requires the establishment of or participation in information systems for the protection, promotion and/or safeguarding of GRs, TK and/or TCEs? If so, please indicate which international or regional legal instrument.

Guatemala has ratified several international conventions on the protection of TK and/or TCEs:

- Convention for the Safeguarding of the Intangible Cultural Heritage (Congressional Decree No. 25/2006)
- Convention on Biological Diversity (Congressional Decree No. 5/95)
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions
- International Treaty on Plant Genetic Resources for Food and Agriculture (Congressional Decree No. 86/2005)
- Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (Congressional Decree No. 9/96)
- Central American Agreement on Access to Genetic and Biochemical Resources and Related Traditional Knowledge

3. Does any information system(s) of GRs, TK and/or TCEs exist in your country (whether IP-related or not)? If so, please provide a description of such information system(s).

Various national institutions in Guatemala maintain collections of information on GRs, TK and TCEs:

- Folklore Studies Center, University of San Carlos of Guatemala (CEFOL)
- Conservation Studies Center, University of San Carlos of Guatemala (CECON)
- National Council for Protected Areas (CONAP)
- Cultural Decentralization Support Center (ADESCA)

National museums that also have such collections include:

- National Museum of Natural History
- Carlos Mérida National Museum of Modern Art
- Ixchel Museum of Indigenous Costumes

The following questions relate specifically to information systems that have an IP-related purpose or function.

4. Which IP-related objectives are sought to be achieved through this information system(s)?

The information systems of the various institutions do not have any IP-related objectives.

5. What types of information are included in such an information system, including potentially categories of information such as sacred TK/TCEs and/or secret TK/TCEs?

The information contained in those systems relates to the work and purposes of the institutions concerned and bears no relation to IP.

6. What are the roles of various stakeholders in the establishment of the information system(s):

- who characterizes and documents GRs?
- who writes down, films, records, translates and compiles TK and/or TCEs?
- who administers the information system/database/register(s)
- who can add new entries/registrations?
- what role do Indigenous Peoples, as well as local communities as appropriate, play?

The institutions themselves are in charge of collecting, cataloging, managing and shaping their databases as suits their needs.

7. Which are the principles and modalities regulating access to relevant information:

- who retains control of the information system?
- who is authorized to access the content?
- are there tiered levels of access to different categories of content?

Each institution runs its own subject-related information systems and is responsible for gathering and making available their content. Generally, the information is public and any interested party may request access to it.

8. What are the involvement and rights of Indigenous Peoples, as well as local communities, in the process of the establishment, functioning and management of the information system(s)?

N/A

9. What is the legal effect of inclusion of GRs, TK and/or TCEs, as the case may be, into the information system? For example, does inclusion establish IP rights?

The issue is regulated by a variety of legal instruments that set forth the obligation to respect rights arising from the inclusion of GRs, TK and TCEs in terms of access and recognition. Those specific regulations governing the use of and respect for IP are binding.

10. How are disputes resolved (for example, competing claims by more than one community to a certain body of GRs, TK or TCEs)? How are transboundary GRs, TK and/or TCEs dealt with?

N/A

11. Are there interoperability standards between the existing information systems in your country and other information systems or services? Do these interoperability standards concern: (i) data formats (e.g., XML, data fields, etc.); (ii) content data (e.g., characterization, function, technical use of GRs, TK or TCEs); (iii) rights metadata (e.g., right holder, subject matter, date of documentation, etc.); or (iv) structures of the information systems and services (e.g., APIs, etc.)? If so, please provide a description of these standards.

12. Do you have any other views or experiences relating to the establishment, functioning and management of information systems?

N/A

13. Do you have any suggestions for future work under the auspices of the WIPO IGC and/or by the WIPO Secretariat on these issues?

There is a pressing need for mechanisms to encourage WIPO Member States to involve the people directly concerned with the needs of local communities and indigenous peoples. In other words, those communities themselves, properly organized, should be given the chance to participate directly in discussions and present their own proposals. Programs should also be established to gather and manage information on such issues. In the view of Guatemala, an extremely diverse country that is rich in traditional knowledge and cultural expressions, it is essential that legal instruments be put in place to ensure that the resources derived from those riches are properly protected and equitably distributed.