



International Normative Developments and Complementary Capacity-building Services offered by WIPO: Relevance for the Development of National Policies and Legislation on IP, TK and TCEs

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Intellectual property (IP) and genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions/folklore (TCEs)

Program 4 of WIPO's Program and Budget

Program and Budget 2016/17

PROGRAM 4: TRADITIONAL KNOWLEDGE, TRADITIONAL CULTURAL EXPRESSIONS AND GENETIC RESOURCES

PLANNING CONTEXT

4.1. This Program aims at enabling the more effective use of existing and emerging IP principles, systems and tools for the protection of traditional knowledge (TK) and traditional cultural expressions (TCEs) against misappropriation and misuse, and for addressing the IP issues related to genetic resources (GRs), including those that arise in the course of access to and equitable benefit-sharing in GRs.

4.2. Against this backdrop, Program 4 facilitates meetings of Member States on normative activities on IP, TK, TCEs and GRs. The international negotiations on the text(s) of an international legal instrument(s) that will ensure the effective protection of TK, TCEs and GRs have been taking place within the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC). The General Assembly will be invited to decide upon the renewal of the IGC's mandate and its terms.

4.3. Practical assistance in the form of specialized awareness raising, capacity building, training, and legal, technical assistance will continue to be provided to Member States, regional organizations, indigenous peoples and local communities and other stakeholders. The Program makes available a wide range of practical tools, training courses, publications and other information resources.

4.4. The normative and practical pillars of the Program are inter-related and complementary.

IMPLEMENTATION STRATEGIES

4.5. As a Member State-driven process, progress towards international outcomes is largely dependent on decisions by Member States. The results of the Program should, therefore, include, first, an environment conducive to focused normative activities, as may be decided upon by the General Assembly, which could lead to shared understandings, a convergence of views and, ultimately, decisions by Member States.

4.6. A second result relates to greater awareness among States, indigenous peoples and local



Facilitate

international, regional and national policy and legislative development



Inform

raise awareness, provide information on experiences, identify key issues, explain options and policy choices



Train

provide hands-on practical training and support on selected topics



Facilitate: international, regional and national policy and legislative development

International: ongoing negotiations of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)



Mandate

Participation

Current texts

Challenges

Next steps



Facilitate: international, regional and national policy and legislative development

Regional and national: on request, we help regional organizations and national governments develop strategies, policies and laws



Checklist of Key Questions and Issues

Databases of laws

Brief 3



Inform: raise awareness,
provide information on
experiences, identify key issues,
explain options and policy choices



Briefs

Case-studies

Databases of resources

Guides

Online distance learning course

Repository of national experiences

E-Updates

www.wipo.int/tk

No. 1

Traditional Knowledge and Intellectual Property

The current international system for protecting intellectual property was fashioned during the age of enlightenment and industrialization and developed subsequently in line with the perceived needs of technologically advanced societies. However, in recent years, indigenous peoples, local communities, and governments, mainly in developing countries, have demanded equivalent protection for traditional knowledge. WIPO member states take part in negotiations within the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). In order to develop an international legal instrument (or instruments) that would give traditional knowledge, genetic resources and traditional cultural expressions (TCEs) effective protection. Such an instrument could range from a recommendation to WIPO members to a formal treaty that would bind countries choosing to ratify it. Representatives of indigenous and local communities associated by the WIPO Voluntary Fund to attend the WIPO talks, and their active participation is crucial for a successful outcome. Background Brief No. 1 The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is available at www.wipo.int/ipcr/talks/level2/en/resources/pdf/1_brief.pdf.

Traditional knowledge (and so-called biocultural heritage) is a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, forming part of its cultural or spiritual identity. It is not easily protected by the current intellectual property system, which typically provides protection for a limited period to new ideas and original works by individuals or companies. Its living nature also means that "traditional" knowledge is not easy to define.

Recognizing traditional forms of creativity as novel and as protectable intellectual property enable indigenous and local communities as governments to have a say over their own. This may make it possible, for example, to protect traditional remedies, artefacts or against misappropriation, and enable communities to control and benefit collectively from commercial exploitation.

Although the negotiations underway in WIPO proceeded mainly by developing countries, they are not really divided along "North-South" lines. Communities and governments do not necessarily share the same views, and some developed by governments, especially those with indigenous populations, are active.

No. 2

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Established in 1993, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) is a forum where WIPO member states discuss the intellectual property issues that arise in the context of access to genetic resources and benefit-sharing as well as the protection of traditional knowledge and traditional cultural expressions (in the terms "traditional cultural expressions" and "expressions of folklore" are used interchangeably in WIPO discussions).

The IGC holds formal negotiations with the objective of reaching agreement on one or more international legal instruments that would ensure the effective protection of genetic resources, traditional knowledge and traditional cultural expressions. Such an instrument or instruments could range from a recommendation to WIPO members to a formal treaty that would bind countries choosing to ratify it.

This brief describes the origins and rationale of the IGC, the participation of members and observers including indigenous and local communities, its achievements and the state of ongoing negotiations under its mandate.

Origins and rationale

Work within the intellectual property (IP) community on the protection of traditional cultural expressions (TCEs) goes back to the 1930s. The impetus came from a growing sense in developing countries that folklore embodied creativity and was part of the cultural identity of indigenous and local communities. It was therefore seen as worthy of IP protection, especially since new technologies were making folklore increasingly vulnerable to exploitation and misuse.

The 1967 revision of the Berne Convention for the Protection of Literary and Artistic Works, where protection is based on originality and identifiable authorship, fell short of ensuring adequate protection for TCEs. The member states of WIPO and UNESCO (United Nations Educational, Scientific and Cultural Organization) developed in 1982 a set of Model Provisions for national laws to serve as a source of inspiration for interested countries. In 1986, the WIPO Performance and Phonograms Treaty succeeded in providing for the protection of the rights of performers of expressions of folklore.

Work on the relationship between IP, traditional knowledge (TK) and genetic resources (GRs) is more recent, and stems from concerns regarding the role that IP protection should play in achieving global policy objectives as set out in the Convention on Biodiversity (as amended in the Convention on Biological Diversity, 1992), food security, fair and fair trade, and development.

No. 3

Developing a National Strategy on Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions

This brief summarizes the legal, policy and operational issues that need to be considered in developing a national strategy for the intellectual property protection of traditional knowledge and traditional cultural expressions, also known as folklore.

At present, intellectual property protection of traditional knowledge and traditional cultural expressions, are mainly primarily for national governments. Negotiations are currently underway in the World Intellectual Property Organization (WIPO) to develop an international legal instrument (or instruments) for the effective protection of traditional knowledge and traditional cultural expressions, and to address the intellectual property aspects of the access to and the sharing of benefit arising from the use of genetic resources. These negotiations are taking place in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), established by the WIPO General Assembly in 2000.

Traditional Knowledge and Traditional Cultural Expressions

The meaning of "protection"

This brief is concerned with a very specific understanding of the term "protection", to mean the use of intellectual property (IP) laws, values and principles to prevent unauthorized or inappropriate use, by third parties, of traditional knowledge (TK) and traditional cultural expressions (TCEs). The objective of IP protection is to make sure that the intellectual innovation and creativity embodied in TK or TCEs are not wrongly used.

IP protection can take two forms – positive and defensive protection. Positive protection grants IP rights in the subject matter of TK and TCEs. This may help communities prevent third parties from gaining legitimate access to TK and TCEs, or from using them for commercial gain without equitably sharing the benefits. It may also enable communities to prevent third parties from misappropriating their TK and TCEs. Defensive protection, on the other hand, does not grant IP rights over the subject matter of TK and TCEs but aims to stop such rights from being acquired by third parties. Defensive strategies include the use of documented TK to preclude or oppose patent rights on claimed inventions that make direct use of TK.



Train: provide hands-on practical training and support on selected topics

- Branding of community products
- Intellectual property clauses in access and benefit-sharing agreements
- New disclosure requirements in patent and IP law
- Recognition of TK within the patent system
- Managing intellectual property in arts festivals
- Managing intellectual property issues in documentation projects



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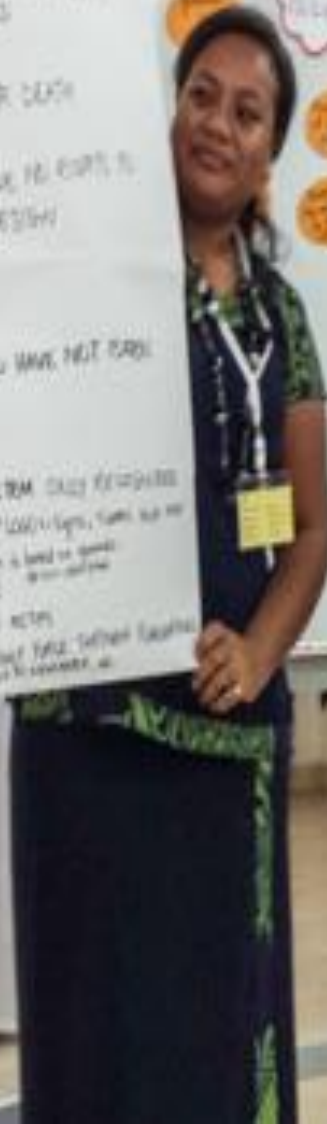
- Practical guide on branding of community products and *pro bono* legal services (2017)
- Practical guide on IP clauses in ABS agreements
- Study on patent disclosure requirements: key questions (2017)
- Patent examination guidelines (2017)
- Practical guide on managing IP in arts festivals
- Toolkit on TK documentation
- Guide for museums and archives

① A lot of confusion and a result to the least
 ② Purely/Originaly tradition - Who owns the copyright.
 ③ There will be
 (1) Origin
 (2) The
 ④ Design
 (1) Words
 (2) Images
 ⑤
 ⑥

COPYRIGHT
 ① EXCLUSIVE RIGHTS WITH COMMUNITY MARKS
 ② RIGHTS AFTER DEATH
 ③ COMMUNITIES HAVE TO GO TO REGISTERED DESIGN
 ④ NOT IN SINGAPORE HAVE NOT BEEN REGISTERED
 ⑤ TRADEMARK TERM ONLY REGISTERED NON-RENEWED 100% legal, but not the TM. Example is based on goods & services
 ⑥ Not BUT -> 50000 NOT. Example TM: Tiffin (Singapore)

Value List
 (List of items in circles)

Intellectual Property
 (Text on a poster)



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Training Program

WIPO provides intensive, hands-on training to indigenous peoples and local communities on how to safeguard their music, performances, art, designs and other [traditional cultural expressions](#) (TCEs).

The aims of the program are to assist communities to create [intellectual property](#) (IP) rights in their cultural heritage (in the form of digital photographs, audiovisual material, sound recordings and databases), exercise control and make informed decisions on access and use by third parties. It also offers the potential for communities to draw income from the commercialization of their cultural assets, if they so wish and in a way that corresponds to their values.

The training has been offered in partnership with [The American Folklife Center](#) (AFC) at the Library of Congress and the [Center for Documentary Studies](#) (CDS) at Duke University. Donations for the program can be made through WIPO's [IP Development Matchmaking](#)



Video: Digitizing Tradit

Questions/comments



Sri Lanka
Traditional
Drum,
photograph by
Steve Evans

Concluding remarks

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