

GRTK_list of issues on Traditional Knowledge- response of Latvia

NOTE: As we see these questions the answers to them can not be equipollent. They depend on which stand you take - either you believe that TK must be protected or on the contrary - they are common heritage of the mankind. To us (Latvia) protection of TK is not a priority however we answer as if the protection of TK had been already decided and these questions are asked to shape the protection mechanism.

1. Definition of TK that should be protected:

We believe that definition of TK should not be formulated in so called „holistic approach” (including spiritual, religious and similar aspects) instead it should be formulated as technical knowledge linked with resources (not only genetic but also other natural resources) it exploits. The definition given in Article 3 of the WIPO document “Revised provisions for the Protection of Traditional Knowledge” could be a basis for the final definition.

2. Who should benefit from any such protection or who hold the rights to protectable traditional knowledge?

We believe that it is difficult to define right holders by one common definition that fits all. We do not believe that this could be done internationally. We believe that firstly this should be defined nationally in case by case manner.

3. What objective is sought to be achieved through according intellectual property protection (economic rights, moral rights)?

As we understand the protection through intellectual property rights mainly is sought for economic reasons in a form of some kind of remuneration. Obligation to accord moral rights in a form of acknowledgment of the origin of TK could be auxiliary.

4. What forms of behaviour in relation to the protectable traditional knowledge should be considered unacceptable/illegal?

Misappropriation and conversion into commercially successful goods without sharing benefits in cases where the law provides for asking such permission.

5. Should there be any exceptions or limitations to rights attaching to protectable traditional knowledge?

The rights should not have retroactive effect. At present we can not name other reasons.

6. For how long should protection be accorded?

Hard to answer. One option could be - until profit is made, as some percentage of that profit.

7. To what extent do existing IPRs already afford protection? What gaps need to be filled?

In our opinion at present in some cases IPRs can be obtained in the form of patents or trade marks or designs but only to those who are familiar with

procedures of acquiring these rights and have finances to do that. As we understand most of TK holders do not belong to this group.

Gaps to be filled are an affordable protection and enforcement mechanisms mainly internationally either through sui generis system or by some specific provisions in existing IP laws and out of court dispute resolution system.

Something like the dispute resolution mechanism established for disputes between domain names and trade marks.

8. What sanctions or penalties should apply to behavior or acts considered to unacceptable/illegal?

Sanctions could include invalidation of rights obtained, may be some other pecuniary penalties.

9. Which issues should be dealt with internationally and which nationally, or what division should be made between international regulation and national regulation?

Nationally - definition of TK holders, cataloging TK, mechanisms of access to TK;

internationally - acknowledgement of TK rights, facilitation of contesting improperly acquired rights, simple dispute resolution mechanism.

10. How should foreign rights holders/beneficiaries be treated?

Legally acquired rights should be recognized, illegally - invalidated.