
The State of Play in the International Protection of
Traditional Knowledge (TK) and Traditional Cultural
Expressions (TCEs)

Perspectives on the WIPO Intergovernmental Committee

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Inter-Governmental Committee

- WIPO set up Inter-Governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) in Oct 2000
 - Scope: Issues relating to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions
 - No outcome ruled out.
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- WIPO has done surveys, reports and comparative analysis of protection of TK and TCEs at national, regional and international levels
 - Prepared documents setting out draft objectives and principles and also draft substantive provisions for possible treaties
 - 14 meetings of IGC held so far.
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- General Assembly held in Sept 09 extended the mandate of the IGC for the biennium 2010-2011
 - Objective is to arrive at text of international legal instrument(s) to ensure effective protection of GRs, TK and TCEs
 - Laid down Work Plan including organising three inter-sessional working groups and four regular sessions
 - General Assembly 2011 to consider holding Diplomatic Conference for formal treaties.
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TK, TCE and India

- India is rich in traditional knowledge, genetic resources and traditional cultural expressions including folklore
 - It has been concerned about the misappropriation of TK and TCE and bio piracy
 - India has domestic laws for protecting its biodiversity and for preventing misappropriation of the TK
 - Created Traditional Knowledge Digital Library as a defensive mechanism against misappropriation
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International Initiatives

- India has been urging at various international fora for an effective mechanism against misappropriation for long
 - It has been an active participant in the IGC process from the very beginning.
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Why and What

- Bio-diversity, TK and TCEs are rich and diverse sources of creativity and innovation and important economic assets for the communities concerned
 - TK and TCEs were produced not systematically, held collectively within the community and mostly remained undocumented
 - It is also an evolving knowledge.
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Why and What contd

- Existing IP system inadequate for protection of TK and TCEs.
 - Consequently, cultural and manufacturing industries commercially exploited culture based products without permission and without sharing the benefits
 - Misappropriation of TK occurs both in documented and undocumented (oral) TK
 - Need to develop a system that will extend same level of protection to TK as available to modern innovations.
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IGC and Protection of TK, TCE

- WIPO is the appropriate forum to ensure an internationally acceptable and equitable resolution of the TK and TCE concerns
 - The issues are important and complex and need to be examined from the perspective that IPRs are effective policy instruments relevant for wide ranging socio-economic, technological and political concerns
 - Need to ensure a consensual and holistic approach to the issues of protection of GR, TK and TCE and setting up of fresh international standards.
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A New System?

- Any regime for protection of TK should be consistent with and supportive of existing IP systems
 - Need to work for the development of a *sui generis* international system which will ensure
 - Equitable sharing of benefits arising out of the use of TK with the holders of such knowledge
 - Disclosure of sources and geographical origin of biological resources used in an invention, and
 - Prevent the grant of patents for products and processes based on knowledge in the public domain.
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International Instruments of Protection

- Essential to establish a balanced and equitable international protection system
 - Need to create a set of legally binding international instruments for protection of TK and TCEs including folklore
 - Objectives, principles and substantive provisions be looked into as a whole.
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General Framework

- TK and TCE protection should benefit the traditional communities
 - Non-community users have obligations, not rights of access
 - Entitlements to benefits should take into account the customary protocols, understanding and laws and practices.
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General Framework

- Legitimate and non-commercial academic research could be allowed as exceptions to the rights
 - Duration of protection should be unlimited
 - Need appropriate enforcement and dispute resolution mechanisms.
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Texts....

- The WIPO Asia-Pacific Regional Seminar on IPRs, GR, TK and Folklore held in Cochin in November 2002 prepared draft texts for international instruments on TK and TCE and provisions on GR
 - WIPO Secretariat prepared comprehensive basic draft texts for discussion, based on the Cochin Declaration
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What is Needed

- Realisation of the urgency
 - Holistic perception
 - Commitment towards an early positive outcome
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Thank you for your kind attention
