

EUROPEAN COMMUNITY

Response to Question 1: There are currently no intellectual property standards specifically directed at the protection of traditional knowledge within the European Union. Nevertheless, at least in theory, a number of existing intellectual property standards may potentially be used to this end. This use can take the following forms:

Trademarks

It is possible, under certain conditions, to protect products of traditional communities/groups by collective, guarantee or certification trademarks, either at national level (1) or at Community level (2):

(1) Article 15(2) of Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trademarks (OJ No L40 of 11.2.1989, p. 1) lays down that Member States (of European Union) may provide that signs or indications which may serve, in trade, to designate the geographical origin of the goods may constitute collective, guarantee or certification marks. Such a mark does not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided he uses them in accordance with honest practices in industrial or commercial matters. In particular, such a mark may not be invoked against a third party who is entitled to use a geographical name.

(2) Article 64(2) of Council Regulation (EC) No 40/94 of 20 December 1992 on the Community trademark (OJ No L11 of 14.1.1994, p. 1) lays down similar provisions. Signs or indications which may serve, in trade, to designate the geographical origin of the goods may constitute Community collective marks. The applications for a Community trademark are filed at the Office for Harmonization in the Internal Market, which is located in Alicante (Spain), or at the central Industrial Property Office of a Member.

Geographical indications

Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ No L208 of 24.7.1992, p. 1) introduces a Community protection of designations of origin and of geographical indications for agricultural products and foodstuffs. Only a group or, subject to certain conditions, a natural person shall be entitled to apply for registration.

There registered names are protected against any unlawful use or usurpation of these names. The registration is only justified when a clear link exists between the very specific characteristics of the product and the geographical area concerned. Also when a reputation is proved.

Patents

The preamble of Directive 98/44/EC of the European Parliament and of the Council on the legal protection of biotechnological inventions (OJ No 213 of 30.7.1998, p. 13), and in particular recital 27, lays down that, an invention is based on biological material of plant or animal origin, or if it uses such material, the patent applications should, where appropriate, include information on the geographical origin of such material, if known; this is without prejudice to the processing of patent applications or the validity of rights arising from granted patents.

Recital 27 of Directive 98/44/EC has to be regarded as being an encouragement to mention the geographical origin of biological material in the patent application, along the line indicated by Article 16(5) of the Convention on Biological Diversity. However, to provide such information is not an obligation under Community law. Nor does the failure to provide such information have, as such, any legal consequence for the processing of patent applications, or on the validity of rights arising from granted patents. e

Copyright and related rights

As already indicated on page 12 of this survey, the purpose of copyright and neighboring rights is to provide protection for traditional knowledge (in view of the criteria and constraints of originality, identity of the author, term of protection, etc.). However, protection could, in theory, be sought indirectly for the form in which the traditional knowledge is presented.

If the traditional knowledge was compiled into a database, the *suigeneris* protection provided for in Directive 96/9/EC on the legal protection of databases (OJ No L 77 of 23.3.1996, p. 20) would cover the database itself, but not the actual information stocked within it. If the traditional knowledge is found in a performance protection can be provided for under the related rights of performers (found in Directive 92/100/EEC on the Rental and Lending Right, OJ No L 346 of 27.11.1992, p. 61; in Directive 93/98/EEC on the Term of protection, OJ No L 290 of 24.11.1993, p. 9; and in the new Directive 2001/29/EC covering copyright and related rights in the Information Society, OJ No L 167 of 22.6.2001, p. 10). of

Response to Question 2: There is no specific law providing for IP protection of traditional knowledge at the EU level. However, under Article 20a(2) and (3) of Council Directive 70/457/EEC of 29 September 1970 on the common catalogue of varieties of agricultural plant species (OJ No L 225 of 12.10.1970, p. 1) and Article 39a(2) and (3) of Council Directive 70/458/EEC of 29 September 1970 on the marketing of vegetable seed (OJ No L 225 of 12.10.1970, p. 7), specific conditions shall be established for the growing and marketing of landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion. These conditions may include elements, which should indirectly imply some effects similar to intellectual property protection of traditional knowledge.

Furthermore, as a Party to the UN Convention to Combat Desertification and to the Convention on Biological Diversity (CBD), the European Community is bound by the obligations resulting from these Conventions, in particular as to the protection of "traditional knowledge and practices." As regards the Convention to Combat Desertification, there is neither internal legislation transposing the provisions of the Convention nor any action plan at the Community level. Regarding the CBD, action plans were adopted by the EU Council. With regard to traditional knowledge, the Biodiversity Action Plan for Economic and Development Co-operations should be adopted by the EU Council by November 2001. According to Action 11 of this Action Plan, the European Community will support national capacity-building in developing countries to define intellectual property rights in relation to biodiversity, and develop supportive laws for equitable benefit sharing. These must translate into practical agreements and contracts between suppliers and users. onal

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