

## NORWAY

Response to Question 1 : We base our answer on an understanding that “traditional knowledge” does not include innovation that individuals make on the basis of traditional knowledge, e.g. when a person uses elements of traditional folksong to create a new piece of music. We refer to the definition of “traditional knowledge” in paragraph 33 of the document, and also to the purpose of the survey, which we assume is to examine how existing intellectual property rights (IPR) can protect knowledge that is not linked to specific innovations from known individuals.

Traditional knowledge that is not in the public domain, may under certain circumstances be protected under measures on trade secrecy. Section 294 of the Norwegian General Civil Penal code reads as follows:

“Any person shall be liable to fines or imprisonment for a term not exceeding six months who (...)

2. without authorization either himself makes use of a business or operational secret concerning an enterprise in which he is or has in the course of the last two years been employed, or in which he is or has in the course of the last two years been a participant, or discloses such a secret for the purpose of enabling another person to make use of it, or who by misleading or prompting is accessory thereto, or;

3. without authorization makes use of any business or trade secret of an enterprise which he has become acquainted with or gained control over in the capacity of a technical or mercantile consultant to the enterprise or in connection with a commission from it, or without authorization reveals such a secret for the purpose of enabling others to make use of it, or who by misleading or prompting is accessory thereto;

A public prosecution will only be instituted when it is requested by the aggrieved person and is required in the public interest.”

Generally, existing IPR standards in Norway are not applicable to traditional knowledge that is already in the public domain, because this knowledge cannot fulfil the novelty requirement for patents and designs, nor the requirements for copyright protection. For this reason, we are not able to find actual examples where IPR have been used to protect traditional knowledge.

-However, trademarks may indirectly protect traditional knowledge, as explained in the text box on page 11 in the document WIPO/GRTKF/IC/2/5. Traditional communities in Norway are free to register collective trademarks to establish signs under which goods originating from their community, can be sold. A search in the national trademark register did not, however, reveal any actual examples of this type of collective trademarks.

-Similarly, the measures against deceptive marketing in the Marketing Act may to some extent indirectly protect traditional knowledge, by prohibiting their abuse. This act states that in trading activity, it is prohibited to use incorrect or misleading marketing measures that are capable of affecting the supply and demand for goods or services. In addition, the Trademark Act states that trademarks which are capable of being misleading, cannot be registered. These measures primarily aim at protecting the consumers. Indirectly, however, they can lead to the result that only the original holders of certain traditional knowledge can fully utilize this knowledge for economic purposes. For example, it would be illegal to market a herbal medicine product as an original ‘Sami’ product when it is in fact not. The Marketing Act

does not prohibit imitations of products or services derived from traditional knowledge as long as they are marketed as imitations.

- We do not possess information on actual examples where exploitation of traditional knowledge has resulted in legal sanctions under the provisions of the Marketing Act.

Response to Question 2: In Norway, there is no specific (*suigeneris*) law providing for intellectual property protection of traditional knowledge. Consequently, we have no answers to the questions 3 - 25.

Response to Question 26: As stated above, in our answer to Question 1, trademarks are the only IPR protection currently available to give specific protection to traditional knowledge in Norway. While we do not presently have IPR measures that specifically aim at protecting traditional knowledge, we are actively following the processes in WIPO and elsewhere. Depending on their outcome, we will consider introducing such measures in the future.

Response to Question 27: As already stated, the main reason why traditional knowledge cannot be fully protected by IPR systems in Norway today, is that such knowledge does not fulfill the requirements for patent, design or copyright protection. The question of developing new *suigeneris* IPR protection for traditional knowledge, is of interest in a number of areas, e.g. in the area of herbal medicine and agriculture. Norway will actively follow the processes in WIPO and elsewhere.