

NORWAY

Traditional Knowledge

Issues

1. Definition of traditional knowledge that should be protected.

Traditional Knowledge is knowledge that is generated, preserved and transmitted in a traditional and intergenerational context, which is distinctively associated with a community which preserves and transmits it between generations and is an integral to the cultural identity of the community which is recognized as holding the knowledge.

The ordinary meaning of the terms in light of the object and purpose, and discussions in the IGC, as well as the documents provided for the sessions of the IGC provide an extensive basis for the understanding of what knowledge that should be protected. A firm definition cannot be established and would jeopardize the need for national flexibility.

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

The beneficiaries should be the the community that has generated, preserved and transmitted the traditional knowledge and which still continues to do so, and in which the knowledge is transmitted in a traditional and inter generational context. Local customs may provide guidance when identifying the appropriate beneficiaries and who is entitled to represent the collective group, e.g. an organization for the beneficiaries or similar.

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

In Norway's opinion the main objectives of protection in regard of traditional knowledge are:

- to prevent misappropriation
- to preclude the granting of unauthorized IP rights

Furthermore, protection should seek to:

- ensure prior informed consent and exchanges based on mutually agreed terms
- promote equitable benefit-sharing
- promote conservation and sustainable use

By providing protection one also secures recognition and respect of the intrinsic value of traditional knowledge.

The rationale behind Norway's view is further elaborated in document WIPO/GRTKF/IC/9/12 paragraphs 21 – 24.

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

Adequate and effective protection should be given against misappropriation and unfair use such as use against honest practices in cultural, industrial or commercial matters.

Beneficiaries should in particular be provided with effective means to ensure:

- that the principle of prior informed consent applies to access to traditional knowledge,
- benefits arising from certain uses are fairly and equitably shared,
- all acts of such a nature as to create confusion by any means whatsoever with the origin are repressed, and
- all acts of such a nature that would be offensive for the holder are repressed.

In document WIPO/GRTKF/IC/9/12 paragraph 38 Norway proposed a draft recommendation to this effect.¹

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

Taking inspiration from traditional intellectual property rights law, limitations on the protection of traditional knowledge should be examined. In particular the possibility for non-commercial and respectful use, including use in education and research, should be considered. Further limitations in the public interest might also be appropriate.

6. For how long should protection be accorded?

Protection should be provided for as long as the criteria for protection are fulfilled, and thus not necessarily be limited in time.

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

Existing IPRs (as i.e. regulated in treaties under the auspices of WIPO) already provides varying degrees of protection, depending on the circumstances. The conditions for patentability will for instance prevent that someone is granted a patent on an invention that

¹ "Recommendation regarding protection against misappropriation and unfair use of Traditional Knowledge

1. The members of the Paris Union for the Protection of Industrial Property and the World Intellectual Property Organization should assure nationals of member countries adequate and effective protection against misappropriation and unfair use of Traditional Knowledge (TK)

2. Any use of TK against honest practices in cultural, industrial or commercial matters should be considered as actions in breach of paragraph one.

3. TK holders should in particular be provided with effective means to ensure that:

- (i) the principle of prior informed consent applies to access to TK,
- (ii) benefits arising from certain uses of TK are fair and equitable shared,
- (iii) all acts of such a nature as to create confusion by any means whatever with the origin of the TK are repressed, and
- (iv) all acts of such a nature that would be offensive for the holder of the TK are repressed."

does not involve the necessary inventive step compared to existing publicly known traditional knowledge.

However, the specific characteristics and needs in relation to the protection of traditional knowledge are not necessarily appropriately addressed in the traditional IPR systems. Furthermore, the protection accorded is fragmented and varies between different jurisdictions and does not recognize the value of traditional knowledge as such.

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

Appropriate and effective sanctions should be provided for in national law depending upon the infringement in question. Part III of the Trips Agreement provides guidance in this respect.

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

The core elements should be dealt with internationally, thus providing a minimum standard of protection. However, the need for flexibility should also be recognized. One system of protection does not necessarily fit all and different concerns locally or related to the specific subject matter should also be taken into account.

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

With regard to the custodian's economic and moral rights, as provided for in accordance with the proposed recommendation set out in document WIPO/GRTKF/IC/9/12 paragraph 38 national treatment and MFN should be granted, with the possibility for reciprocity provisions.