

**INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL
PROPERTY AND GENETIC RESOURCES TRADITIONAL
KNOWLEDGE AND FOLKLORE**

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**WIPO INDIGENOUS PANEL ON FREE, PRIOR AND INFORMED CONSENT:
EXPERIENCES IN THE FIELDS OF GENETIC RESOURCES, TRADITIONAL
KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS: EXPERIENCES
FROM THE UNITED STATES OF AMERICA**

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Operationalizing Free, Prior and Informed Consent in an Intellectual Property Regime Context

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FPIC: An Emerging International Standard for Indigenous Peoples

- **ILO 169** Convention on Indigenous and Tribal Peoples in Independent Countries refers to FPIC in context of IPs development, land and resources.
- **Rotterdam Convention** refers to FPIC procedures for hazardous chemicals and pesticides.
- **UN Committee on the Elimination of Racial Discrimination (CERD)** has made recommendations calling on States to ensure “no decisions directly related to their rights and interests are taken without their informed consent.” (GRXXIII 51, 1997).

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- The **Convention on Biological Diversity** 1992 in its article 8(J) calls on contracting States, “to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities and promote their wider application with *the approval and involvement of the holders* of such knowledge, innovation and practices”.
- **Biosafety Protocol**

Indigenous Peoples and the Right of FPIC

- FPIC is an absolute right closely associated with Indigenous Peoples’ right to self-determination.

Defining FPIC

- **Freely** given without any coercion, manipulation or intimidation or any fear of repercussions.
- **Prior** to any action taking place, including planning, implementation, evaluation, and closure.
- **Informed** about the nature, scope, purpose, duration, benefits, impacts, risks, and personnel; accurate and with complete transparency in language the community understands.
- **Consent** by the representative body of the Peoples involved, and includes the right to say no. In no case should consent be presumed or implied; new consent must be sought for uses other than that for which the original consent was granted.
- FPIC is a process of engagement, not an event.

Exercising FPIC for Indigenous Peoples

- the right to free prior informed consent concerning any access, use, or disposition of our knowledge and resources.
- the right to deny access to our knowledge and resources.
- the right to manage our knowledge and resources based on our own customary or codified laws.
- FPIC includes the right of enforcement.

UNDRIP - Article 31

1. Indigenous peoples have the right to **maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions**, as well as the manifestations of their sciences, technologies and cultures, **including human and genetic resources**, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with Indigenous Peoples, **States shall take effective measures to recognize and protect the exercise of these rights.**

FPIC in the WIPO IGC

- The WIPO IGC can develop specific procedures that protect and implement the right of Indigenous peoples to FPIC
 - First, use the term “Indigenous Peoples” in WIPO texts
 - Prevent the wrongful extension of IP over misappropriated knowledge or resources
 - Prevent the wrongful alienation of TK or GR through use of the Public Domain
 - Insure consistency and compliance by States
 - Protect Indigenous peoples rights over their TK or GR, and recognize these rights outside of a commercial context
 - Recognize the perpetual right of Indigenous peoples to their own knowledge and cultural heritage

Indigenous Peoples Own Processes and Procedures

- Exercise their right of self-determination and FPIC.
- Establish laws, protocols, and procedures that regulate and govern the implementation of FPIC.

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