

Traditional knowledge and traditional
cultural expressions, taking stock of
progress
IGC 40

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It is important to acknowledge the fact that discussions on traditional knowledge and cultural expressions have been discussed for a long time now. Indeed there is need for progress. I will start by highlighting important of the value of the UNDRIP in this negotiation, particularly the right to maintain, control, protect and develop Indigenous Peoples' intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions (art. 31). The instruments discussed here in WIPO are intellectual property law (different from Human Rights Law), however, they cannot conflict with fundamental International Human Rights.

Traditional knowledge and traditional cultural expressions, taking stock of progress

Indeed there is great progress of work that the IGC has undertaken in discussion and this is clear with the different documents prepared for this meeting which already show a lot progress and going through them I also see a lot of important discussions that has been able to the different areas of work move ahead like on data base and Genetic resources associated with traditional knowledge. I also want to thank the Chair of IGC for compiling texts that help the discussions and guiding the IGC to look at the discussions holistically by including the engagement of Indigenous peoples in the discussions and more so by follow ups that have help us get clarifications in most of the areas of discussions.

Traditional knowledge and traditional cultural expressions, taking stock of progress

In the discussions in this IGC 40, it is important that the IGC keeps Traditional Knowledge(TK) and Traditional cultural expressions (TCE) documents interconnected. It is crucial because first, Indigenous Peoples and local communities (IPLCs) do not make thematic distinctness between TK and TCE, as western intellectual property law does.

Traditional knowledge and traditional cultural expressions, taking stock of progress

Indigenous Peoples have a holistic perspective on TK and TCE. Furthermore, in practice, TK protection is linked to TCE protection. For example, an Indigenous Peoples cloth, agricultural tool or handcraft is a TCE, at the same time it is a TK. The TK and TCE instruments should then be able to concur protection.



Traditional knowledge and traditional cultural expressions,
taking stock of progress

Indigenous Peoples have some TK, which could be accessed by benefit sharing. However, there are TK (mostly sacred and secret TK) cannot be accessed, not even with compensation. It is therefore right to give Free Prior and Informed Consent,(FPIC) so that when they say NO or denied access, it should be respected and ensured.

Thus the need for member states to fully work with Indigenous Peoples and Local communities through out the process.

Traditional knowledge and traditional cultural expressions,
taking stock of progress

IGC has made progress in fulfilling its mandate to negotiate instruments to protect TK, TCE, and GRs, particularly on the TK and TCE documents. However, the IGC needs to speed its work, given the urgency for IPLC to protect their TK.

In Africa for example, we have different Indigenous Peoples and local communities who have been having community to community exchange, In September last year we held one such and activity in South Africa hosted by the department of Environmental affairs.

Traditional knowledge and traditional cultural expressions,
taking stock of progress

Participants highlighted the importance of working on both traditional knowledge- and conservation-related issues simultaneously because both have to be protected, preserved and promoted.

It was also discussed that types of intellectual property protection for traditional knowledge are there and that two types of intellectual property protection are possible. Examples were given on such as documenting traditional knowledge carries its own intellectual property risks and opportunities

Traditional knowledge and traditional cultural expressions,
taking stock of progress

These examples on documentations were given since we had in the community to community exchange, local communities from India who had advanced in the work and they gave an example how a defensive protection has the objective to stop anyone outside the community from acquiring intellectual property rights over traditional knowledge. For example, the Indian Traditional Knowledge Digital Library (TKDL) is a defensive instrument, while the South African National Recording system(NRS) uses a combination of a defensive and positive approach.

Traditional knowledge and traditional cultural expressions, taking stock of progress

With many examples given, most Indigenous Peoples in the meeting express their concern on the risks of traditional knowledge documentation. All expressed the importance of understanding the different available options and approaches defensive or positive or a combination of both is important prior to embarking on a process of documenting traditional knowledge.

These discussions showed that the role of intellectual property system plays in promoting innovations, transfers and dissemination of knowledge is very important and there is still need for education and awareness creation for IPLCs.

Traditional knowledge and traditional cultural expressions, taking stock of progress

With my example and perspective on our experience in discussing with the different Indigenous peoples and local communities when we had this exchange and carrying the work ahead to other forums there is need for this work to progress. And as the IGC is discussing its mandate for next year, and IGC's before then, it is important to ensure indigenous participation in decision-making in matters which would affect their rights (UNDRIP, Art. 18) This also means to ensure funding in the VF to allow Indigenous Peoples to be present to make crucial contributions in the discussions.

Recommendations

- UNPFII recommendation 9: Regarding the negotiations taking place at the sessions of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization (WIPO), the Permanent Forum reiterates the urgent need to develop an instrument that responds to the current lack of adequate protection of traditional knowledge and recognizes indigenous peoples as equal stakeholders and the legitimate holders of their knowledge. The Forum calls upon the Intergovernmental Committee to fast-track the negotiations and to use its core budget to fund indigenous peoples' participation in the deliberations

Recommendations

Documentation of traditional knowledge, while helpful for safeguarding and conservation, must therefore be done with the right intellectual property strategy in mind and considerations must be given the views and rights of Indigenous peoples and local communities

There is need for Member States to fully engage with indigenous peoples and local communities while developing the instruments at all levels. Already we know there are regional organizations for example in Africa we have ARIPO having different activities in the region and has member states who need to implement the work at the national levels this work needs to be fully participatory.

Recommendation

There is need for WIPO to continue working with other international bodies . This because in most discussions in development there has certainly developed a need to include traditional knowledge in all discussions and therefore a need to ensure that protection and understanding is widely understood to avoid any misunderstanding or abuse of any terms.

Thank you.