



Topic 2:

Traditional Knowledge and Intellectual Property: An overview of policy and legal issues



Shavante Indians using Buriti sticks to make a fire (UN Photo/Joseane Daher)



A woman from the Ndebele tribe carries a traditional beer container (UN Photo/P Mugubane)



Timorese in traditional dress take part in a ceremony (UN Photo/Martine Perret)



Traditional dancers perform during the pre-independence march and rally of the Sudan People's Liberation Movement (UN Photo/Paul Banks)

Traditional Knowledge (TK)

- TK refers to the knowledge resulting from intellectual activity in a traditional context, and includes know-how, practices, skills, and innovations.
- TK embodies the traditional lifestyles of indigenous and local communities.
- It is not limited to any specific technical field, and may include agricultural, environmental, and medicinal knowledge, and knowledge associated with genetic resources.

Examples of TK

- Thai traditional healers use plao-noi to treat ulcers
- The San people use hoodia cactus to stave off hunger while out hunting
- Sustainable irrigation is maintained through traditional water systems such as the aflaj in Oman and Yemen, and the qanat in Iran
- Cree and Inuit maintain unique bodies of knowledge of seasonal migration patterns of particular species in the Hudson Bay region
- Indigenous healers in the western Amazon use the Ayahuasca vine to prepare various medicines, imbued with sacred properties.

Traditional Cultural Expressions (TCEs)

- May be considered as the forms in which traditional culture is expressed;
- Form part of the identity and heritage of a traditional or indigenous community;
- Are passed down from generation to generation.
- Are integral to the cultural and social identities of indigenous and local communities, they embody know-how and skills, and they transmit core values and beliefs.

Examples of TCEs

- Rituals
- Songs
- Dances
- Paintings
- Handicraft
- Poems
- Legends
- Designs...

TK: what is the intellectual property issue?

- Innovations and creations based on TK are generally patentable and copyrightable
- But the 'underlying' TK is unprotected, despite the fact that it is valuable and important
- Should underlying TK— which generally 'belongs' to indigenous and local communities - be 'protected' in the intellectual property sense?
... and, if so, what does 'protected' mean?
- Indigenous Peoples, local communities and many States have called for the greater protection, safeguarding, preservation and promotion of TK

What is Protection?

- Treating TK as intellectual property
- Holders have a say over **access and use** of TK by third parties
- Using intellectual property principles and values to prevent misuse and misappropriation:
Building a fence
- Protecting TK through a special system based on the kinds of **rights, measures, principles and trade-offs** that are found in the intellectual property system, adapted to respond to the particular features of TK

Protect? How?

Use of intellectual property tools and principles to prevent unauthorized or inappropriate uses of TK by third parties ... misuse/misappropriation

- Positive protection ... granting of rights that empower communities to promote their TK, control their uses by third parties and benefit from their commercial exploitation.
- Defensive protection ... to stop people outside the community from acquiring intellectual property rights over TK.

Protect? How?

- Legal measures?
 - At a national level?
 - At a regional level?
 - At an international level?
- Practical measures?

Positive protection: Provisional Act No. 2186-16, August 23, 2001, Brazil

- Access to genetic heritage, to TK associated to genetic heritage, and fair and equitable sharing of the benefits arising from the use of genetic heritage and associated TK, among others.
- The State recognizes the right of the indigenous communities and local communities to decide on the use of their TK related to the genetic heritage of the country
- Protection against illicit use and exploitation and other harmful actions
- Rights of the indigenous communities and local communities that create, develop, hold or conserve traditional knowledge associated to genetic heritage:
 - To have acknowledged the origin of the access to the TK
 - To prevent non-authorized third-parties from using and disseminating associated TK
 - To receive benefits from the economic use by third parties, directly or indirectly, of associated TK to which they hold rights

Positive protection: Law No. 20 of June 26, 2000, Panama

Special System for the Collective Intellectual Property Rights of Indigenous Peoples for the Protection and Defense of their Cultural Identity and their Traditional Knowledge

- Collective rights
- Special system to register, promote and market
- Traditional indigenous dresses, musical instruments, music, dances or performances, the oral and written expressions that are part of their traditions and make up their historical, cosmological and cultural expression, traditional artistic and work tools, as well as in the technique for their manufacture, and all other TCEs.
- Registration shall be requested by indigenous national congresses or traditional authorities
- The right to use and market governed by each people's rules for use
- License contracts, including royalties

Traditional Knowledge & Traditional Cultural Expressions Laws

Find laws, treaties and regulations on the protection of traditional knowledge (TK) and traditional cultural expressions (TCEs).

Subject Matter

**** Any ****
Traditional Knowledge
Traditional Cultural Expressions
Genetic Resources

Issue(s)

**** Any ****
Subject Matter of Protection
Beneficiaries or Rightholders
Scope of Protection
Exceptions and Limitations

Country / Organization *

**** Any ****
Afghanistan
Albania
Algeria
Andean Community
Angola
Antigua and Barbuda
ARIPO
Armenia
Azerbaijan

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Related links

[Legal texts relevant to genetic resources](#)

[Treaties on TK and TCEs](#)

[IP laws & treaties \(WIPO Lex\)](#)

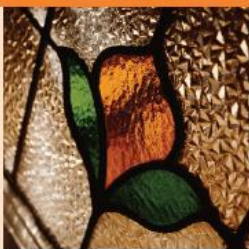
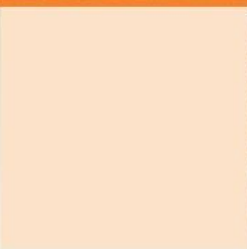
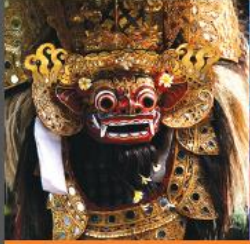
<http://www.wipo.int/tk/en/databases/tklaws/>

Defensive protection: National Commission against Biopiracy of Peru

- Task: Developing actions to identify, prevent and avoid acts of biopiracy with the aim of protecting the interests of the Peruvian State.
- Main functions:
 - provide protection against acts of biopiracy;
 - identify and follow up patent applications made or patents granted abroad that relate to Peruvian biological resources or collective knowledge of the indigenous peoples of Peru;
 - make technical evaluations of the above-mentioned applications and patent grants;
 - issue reports on the cases studied;
 - lodge objections or institute actions for annulment concerning the above-mentioned patent applications **or patent grants;**

Defensive protection: The Traditional Knowledge Digital Library (TKDL)

- Objective: Prevent misappropriation of Indian TK
 - Break language and format barriers
- Input: Ayurvedic, Unani, Siddha and Yoga systems of medicine in local languages
- Output: Multilingual database (English, French, Spanish, German and Japanese)
 - For use of International Patent Offices, in the framework of access and non disclosure agreements: For search and examination only ... can give print outs to patent applicants for citation purposes
 - The content should not be disclosed to third parties



**THE WORLD INTELLECTUAL PROPERTY
ORGANIZATION TRADITIONAL KNOWLEDGE
DOCUMENTATION TOOLKIT**