



# INTELLECTUAL PROPERTY AND TRADITIONAL KNOWLEDGE, GENETIC RESOURCES AND TRADITIONAL CULTURAL EXPRESSIONS: AN OVERVIEW OF POLICY AND LEGAL ISSUES FROM AN INTELLECTUAL PROPERTY PERSPECTIVE

By Naana E.K Halm,  
Intellectual Property Expert & Legal Researcher,  
LL.B; LL.M IP; PhD candidate

# WHAT IS INTELLECTUAL PROPERTY?

- Historically, property has been related to tangible goods, such as land, chattel, cars, commodities, etc.
- Easily traded and have known worth according to the market value;
- Intellectual property (IP) relates to the creations of the mind – thus – intangible! We cannot touch them, per se;
- Placing worth on them is rather difficult because at times no known market for them, e.g. how do you value an intangible? Who decides what it is worth?



# WHAT IS INTELLECTUAL PROPERTY? CON'T

- Two categories of intellectual property rights based on the need for registration:
  - Industrial property (patents; trademarks; designs, etc.);
  - Copyrights
- Due to the various types of creations there can be, there are equally different types of IP;
- Have different terms of protection and registration requirements.



# WHAT IS TRADITIONAL KNOWLEDGE, GENETIC RESOURCES AND TRADITIONAL CULTURAL EXPRESSIONS?

- WIPO:
  - *“TK is knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity”;*
- Therefore, TK encompasses all aspects of knowledge within a community, such as, traditional medicine, traditional cultural expressions and traditional ecological knowledge;
- Can be found in a wide variety of contexts including: agriculture, scientific, technical, ecological and medicinal knowledge as well as biodiversity-related knowledge;
- All are intertwined to create a wholistic knowledge system.





## WHAT IS TRADITIONAL KNOWLEDGE, GENETIC RESOURCES AND TRADITIONAL CULTURAL EXPRESSIONS?

- Genetic resources refer to *“genetic material of actual or potential value. Genetic material is any material of plant, animal, microbial or other origin containing functional units of heredity”*;
- The raw materials on which the world relies to improve the productivity and quality of crops, livestock, forestry and fisheries, as well as to maintain healthy populations of wild species;
- The conservation and sustainable use of genetic resources for food and agriculture is therefore at the core of food security and nutrition;



## WHAT IS TRADITIONAL KNOWLEDGE, GENETIC RESOURCES AND TRADITIONAL CULTURAL EXPRESSIONS?

- *Through traditional ecological knowledge, this is a viable option, given that communities have known how to respect, conserve and sustain the earth for centuries;*
- The future of meeting basic human food and nutritional needs, depends primarily on the adequate conservation and sustainable use of genetic resources across the world.







## WHAT IS TRADITIONAL KNOWLEDGE, GENETIC RESOURCES AND TRADITIONAL CULTURAL EXPRESSIONS?

- Traditional cultural expressions are the section of traditional knowledge that generally fall under the literary, artistic and musical productions, often broadly and collectively referred to as intangible cultural heritage;
- They include music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions;
- A community's culture or tradition is what sets it apart from other cultures – gives it its unique identity and heritage.



## WHY PROTECT TK?

- Why not continue protecting it the way our forefathers did thousands of years ago through their own protection mechanisms?
- GLOBALISATION!
- Diffusion of the knowledge; can't be contained in the communities anymore;
- Equity;
- Prevention of bio-piracy;
- Fair and equitable distribution of benefits;
- Conservation and sustainable use;
- Recognition of spiritual, cultural social and economic value of TK.



## POLICIES AND LAWS

- IP protects creations of the mind, i.e. intellectual and intangible activities transmitted through tangible forms;
- **IP boosts socio-economic development;**
- Existing policies and laws;
  - Are they relevant to meet current societal needs?
  - Is there proper dialogue between the policy-makers and the policy-takers?
  - What changes need to be made?
- TK communities – are they being heard?
  - Any laws or policies being made are to their benefit so they must be heard.

