

## **Intellectual Property and Sustainable Development: Documentation and Registration of Traditional Knowledge and Traditional Cultural Expressions**

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TRADITIONAL KNOWLEDGE FOR THE STABLE DEVELOPMENT OF SOCIETY

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Since ancient times the life of the Kyrgyz has been inseparably linked to pasturelands and the rearing of livestock. The natural pastures and the surrounding forests, rivers, animal and plant life have formed a special ecosystem which has served as a place of dwelling, a basis for feeding, a factor in the formation of their worldview and lifestyle, and also an inexhaustible source of artistic inspiration. They have deeply respected the surrounding nature and have been able to live with it in harmony\*.

The traditional knowledge of the Kyrgyz may conventionally be divided into knowledge relating to:

- food and drinks (means of preparing “chuchuk” (horsemeat sausage), “kymyz” (fermented mare’s milk), “maksym” (grain drink), “jarma” (grain drink), “bozo” (alcoholic drink), and also means of preserving food etc.);
- dwellings and everyday articles (construction of yurts, cradles, etc.);
- material culture (inner and outer decoration of a yurt, manufacture of felt articles, national clothes including items made from “chee”);
- pastoral knowledge (rotation of pastures, remote animal husbandry, care for agricultural animals);
- means of hunting, domestication for this purpose of hunting birds and other animals;
- national games, national sporting and martial arts of the Kyrgyz;
- medicine (means of treatment, manufacture and production of medicines);
- “sanjyra” (tree of life), sacred places, medicinal sources, etc.

Traditional knowledge develops continuously with genetic resources and their use is linked to age-old traditions and the traditional use of nature by the people.

The genetic resources in the natural environment, in the same way as traditional knowledge, are the unique possession of individual regions and the national property of the country. They often go hand in hand and are therefore considered by current legislation in close connection with traditional knowledge.

#### Legal protection of traditional knowledge in the Kyrgyz Republic

In 2007, the Law on the Protection of Traditional Knowledge was adopted in the Kyrgyz Republic.

Preconditions for devising and adopting the Law in question include the following factors;

- growth of interest in traditional knowledge and genetic resources throughout the world including in Kyrgyzstan, and also in innovations based on traditional knowledge and genetic resources, as well as in traditional cultural expressions (folklore);
- the need to protect the traditional knowledge of the Kyrgyz people from unlawful use.
- The purpose of this Law is to:
  - protect traditional knowledge from unlawful use;
  - regulate access to traditional knowledge;
  - achieve honest and objective distribution of benefits from the use of traditional knowledge.
- The main provisions of the Law incorporate the following issues:
  - State regulation in the field of protection of traditional knowledge;
  - subjects of legal relations in the field of traditional knowledge;
  - granting of protection in the field of traditional knowledge;
  - registration of traditional knowledge.

In accordance with the provisions of the Law, the aims of State regulation in the field of traditional knowledge are legal protection and promotion of the preservation and wide use of traditional knowledge in various fields of human activity.

Contrary to legislation on other forms of intellectual property subject matter, apart from natural persons and legal entities, local communities may also be owners of traditional knowledge. On behalf of communities, owners' interests may be represented by public organizations of natural persons and/or legal entities, created by the owners of the traditional knowledge of a particular locality.

The legal protection of traditional knowledge arises on the basis of registration with the authorized body which conducts State policy in the field of traditional knowledge.

In accordance with the Law, the functions of our Office include:

- acceptance of applications for the registration of traditional knowledge;
- implementation of State registration;
- entry of registration data in the State Register;
- formation of a traditional knowledge database;
- publication of information on traditional knowledge;
- development, publication and dissemination of normative-legal acts for the application of the Law.

The registration of traditional knowledge in the Kyrgyz Republic is without limit of time. The protection of folklore does not fall within the scope of the Law in question.

A traditional knowledge database is being created in order to prevent unlawful patenting of subject matter created on the basis of traditional knowledge.

In the case of patenting of intellectual property subject matter, created on the basis of traditional knowledge, in application materials it is compulsory to disclose the origin of the traditional knowledge used as a prototype or analog. In addition, the applicant is obliged to indicate the source through which the traditional knowledge is made known to the public.

An owner of traditional knowledge has the right to receive remuneration from the owner of a patent for an invention, created using the traditional knowledge on the basis of agreement between them. In this regard, the agreement shall necessarily provide for allocations of payments for the use of traditional knowledge to the Local Community Development Fund or the State Fund for the Development of the System of the Use of Traditional Knowledge.

In 2010, our Office issued a certificate for the traditional intellectual game of the Kyrgyz "Toguz korgool".

As a result of the time factor, a great deal of native knowledge has already been lost, together with the knowledge of local inhabitants of remote mountainous regions in Kyrgyzstan, and in the near future this factor will have an ever greater influence on the process to provide an inventory of traditional knowledge and traditional cultural expressions. The particular feature of information relating to traditional knowledge in Kyrgyzstan is its dispersed nature across a multitude of sources and its presentation often in the undocumented (oral, visual, etc.) form of oral information handed down from generation to generation. One of the important sources of oral creation is the epos "Manas", in which together with the history of the formation of the Kyrgyz nation and national traditions, researchers find a great deal of traditional knowledge linked to martial art, customs, means of treatment with grasses and other knowledge.

Database

One of the key issues which needs to be settled immediately is the production of an inventory of all the traditional knowledge which exists on the territory of the Kyrgyz Republic and its categorization as “well known” or entry into the database.

There is also a need to create a unified traditional knowledge base, create a special traditional knowledge publication for the inclusion of such information in the list of PCT minimum non-patent literature for protection and enforcement of traditional knowledge from unlawful patenting.

A regular journal should be organized and introduced in the region, for example in the Commonwealth of Independent States (CIS).

In accordance with the Convention on Biological Diversity, access is essential to a database on matters of disclosure in patent applications of the origin and legal status of genetic resources and traditional knowledge which are used in inventions.

In the future, a section will be created in the database on user contracts and joint enjoyment of the benefits from the use of such traditional knowledge or patents and genetic resources.

The base will consist of several parts:*Information systems*

(Legislation, traditional knowledge, traditional cultural expressions, information on national genetic resources, existing patents relating to traditional knowledge and applications concerning related traditional knowledge).

Digital collections (accessible literature connected with information on traditional knowledge and traditional cultural expressions).

*And a search system:*

- which includes a search of key words;
- for patent numbers, applicants, and the names of patents for industrial property containing traditional knowledge;
- for patents concerning industrial property containing traditional knowledge relating to genetic resources;
- on registered traditional knowledge and its commercialization by third parties.

Kyrgyzpatent database

## Traditional knowledge

<i>Information system</i>	<i>Search system</i>
Traditional knowledge legislation	For names of search objects
Applications linked to industrial property subject matter and traditional knowledge	According to application filing date, author, etc.
Applications linked by genetic resources and traditional knowledge	IPC Index, etc.
Commercialization of traditional knowledge	Applications and patents relating to traditional knowledge
Non-patent literature Digital collections	Traditional knowledge and its commercialization by third parties

As part of the development of the legal protection of traditional knowledge, Kyrgyzpatent has conducted a number of seminars and roundtable sessions, and a working group has been set up on traditional knowledge, which includes representatives of scientific research institutes, the National Academy of Sciences of the Kyrgyz Republic, higher education institutions, NGOs, for example such as the “Rural Development Fund” (Christensen Fund) (United States of America) and the Human Development Center “Tree of Life”, etc.

As part of the “National Intellectual Property Development Strategy”, a project known as “Traditional knowledge for the stable development of society” has been devised, in which scientific field investigations are provided for in national regions relating to research into and collection of traditional knowledge, its digitization and further entry into the Office’s database.

Positive experience on this issue exists, since the K.I. Skryabin Kyrgyz Agrarian University, after conducting two-year field expeditions, in 2010 on the basis of traditional knowledge identified, devised and introduced into the academic process an interdisciplinary course entitled “Traditional knowledge of the Kyrgyz in the fields of plant and animal husbandry”. The aim of the course is to allow students to acquire theoretical knowledge and practical skills in relation to the biocultural heritage and traditional knowledge for plant breeding, animal breeding and the national calendar, as well as to enhance the ecological awareness and culture of students.

\*Reference: in the Kyrgyz Republic, there is a rich diversity of biological resources – types and ecosystems. Despite its small territory, the Kyrgyz Republic has a sufficiently high variety of forms – about one per cent of all known forms on 0.13 per cent of the Earth’s surface. In Kyrgyzstan a large diversity of forests is concentrated, which have no equals in terms of concentration in other countries in the region. Nut-bearing, pistachio and almond forests hold a rich genetic resource of the ancestral forms of cultural varieties of walnuts, apples, pears, grapes, cherry plums, almonds and pistachios, which are essential for the breeding of new varieties. As a sovereign State and a subject of international law, Kyrgyzstan acceded to the Convention on Biological Diversity (CBD) by means of the Law of the Kyrgyz Republic in 1996, and the Third National Report on the Preservation of Biodiversity of the Kyrgyz Republic was submitted to the Secretariat of the CBD in 2006, and the Fourth National Report in 2009. The State Agency for Protection of the Environment and Forests, attached to the Government of the Kyrgyz Republic, is the State authority for protection of the environment and biodiversity.

The Kyrgyz Republic has been a member of the World Trade Organization (WTO) since 1998 and a member of the International Union for the Protection of New Varieties of Plants (UPOV) since 2009.

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