

Intellectual Property and Traditional Knowledge

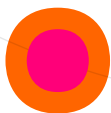


Traditional knowledge, traditional cultural expressions and intellectual property

Traditional knowledge is generally understood to mean the know-how, skills, innovations and practices developed by indigenous peoples and local communities, while traditional cultural expressions are generally understood as the tangible and intangible forms in which traditional knowledge and cultures are expressed.

For example, the knowledge that indigenous peoples and local communities have developed regarding the use of plants for medicinal purposes is traditional knowledge, while traditional dances, songs and designs are traditional cultural expressions. Traditional handicrafts may embody both traditional knowledge (the method of making) and traditional cultural expressions (their external appearance).

Intellectual property protects creations of the human mind, including trade secrets, literary and artistic works, inventions, designs and symbols, and names and images used in commerce.



In most countries, intellectual property is protected by specific intellectual property laws, for example by national laws on patents, copyright, designs and trademarks. Such laws generally allow owners of intellectual property rights to prevent other people from copying or using their intellectual property without permission.

See the short animation film, “Navigating Traditional Knowledge and Intellectual Property - The Adventures of the Yakuanoi” that tells the story of the Yakuanoi people – a fictitious indigenous community – as they work towards protecting their TK assets.



The intellectual property system was not designed for traditional knowledge and traditional cultural expressions

There is something of a “mismatch” between for traditional knowledge and traditional cultural expressions on the one hand and the intellectual property system on the other. Although traditional knowledge and traditional cultural expressions existed long before the intellectual property system was developed, they were not considered, for the most part, as protectable subject matter, because they do not fulfill certain criteria of protection, such as for example the requirements of originality, fixation and identifiable author for copyright protection, and the requirement of novelty and inventive step for patent protection.

Although there are a number of gaps in the way intellectual property can protect traditional knowledge and traditional cultural expressions, existing intellectual property laws can be useful to protect and promote contemporary creations and innovations of indigenous peoples and local communities.

The World Intellectual Property Organization (WIPO) facilitates a normative process, which aims to develop an international legal instrument or instruments that would specifically address the protection of traditional knowledge, traditional cultural expressions and genetic resources. These negotiations take place within the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC).

See the short document on the IGC for more information on the committee and on how to participate.

Intellectual property law can help you to protect and promote your culture

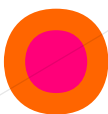
An Aboriginal community in Australia has gone into partnership with a university to develop painkilling drugs based on herbal treatments known to the community for many years. They have protected the new drugs through a patent.

Traditional farmers in Peru grow a particular type of potato, which is famous for its quality and taste. They have started using a trademark to help promote their potatoes, helping them secure higher prices.

Copyright law in Ghana has been reformed to stop companies copying the distinctive fabric designs developed by certain ethnic groups.

These are just three examples of the ways in which indigenous peoples and local communities can benefit from the intellectual property system. This is not to suggest that intellectual property law meets all the needs of indigenous peoples and local communities.

But, if strategically used, the intellectual property system can be crucial. By using the intellectual property system, you may be able to prevent other people, companies or organizations from exploiting your traditional knowledge and culture without your permission (also known as misappropriation). And you may also be able to maximize the economic value of products and services that you develop based on your traditional culture. For instance, intellectual property plays a key role in helping small and medium-sized enterprises (SMEs) build stronger, more competitive businesses. An appropriate intellectual property strategy is also important when businesses go online.



For more information on how indigenous and local community entrepreneurs can benefit from the intellectual property system, including online, see the intellectual property tips for indigenous SMEs and entrepreneurs, and the tips on how to protect and promote indigenous goods and services online.

By understanding the basics of intellectual property, you are better placed to:

- protect your traditional knowledge and traditional cultural expressions;
- promote products and services based on your traditional knowledge and traditional cultural expressions – if you wish to do so;
- stop others from using the intellectual property system to claim ownership of creations or inventions that are based on or have been developed using traditional knowledge or traditional cultural expressions without complying with the relevant legal requirements; and
- reduce the risk of free-riding by others on the successful use of traditional knowledge and traditional cultural expressions in marketable products in national and international markets.



World Intellectual Property Organization
34, chemin des Colombettes
P.O. Box 18
CH-1211 Geneva 20
Switzerland

Tel: +41 22 338 91 11
Fax: +41 22 733 54 28

To contact WIPO's External Offices
visit www.wipo.int/about-wipo/en/offices

© WIPO, 2022



Attribution 4.0 International (CC BY 4.0)

The CC license does not apply to non-
WIPO content in this publication.

Cover: unsplash.com / © Kimzy Nanney,
© Kristen Colada Adams, © Katrin Hauf;
Getty Images / © Harshith K Aananth,
© Frans Lemmens