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Individual Freedoms in the Contemporary Era

Copyright Protection of the Traditional Knowledge of Indigenous Peoples

World Intellectual Property Organization

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Introduction

Knowledge has been a coveted possession of mankind since ancient times. It has its foundations on each individual group of people that created it and passed it generation after generation, cultivating the future of their community. However, it was not until relatively recently though, after the World War IIs, that the concept of “intellectual knowledge and property” has been highlighted. The social evolutionary pattern has been stigmatized by a process from which societies – usually in developed countries – have moved towards a more technological orientation. As a result, most traditional practices and knowledge have been marginalized in favor of newer practices. Under this climate these conditions, it’s difficult to establish a pattern of protecting traditional knowledge in a time when it’s constantly marginalized and especially when it derives from indigenous societies. This creates a difference between the knowledge vested of indigenous people and the corporate interests in using that knowledge. This leads, unfortunately, in a gap between source materials, producers and the rights of indigenous people that formulated that knowledge. Corporate interests are the ones being awarded in the end for the results of regimes that belong to a specific group of people while the integrity of these people and local communities as a whole is threatened.

International institutions have generally struggled with the regulation of this matter. In detail, the first attempts of protecting the rights of indigenous people were noted in the 80s when the interest of protecting indigenous populations started to increase in the United Nations. The problem was that a great part of traditional materials and knowledge was unlawfully exported from less developed countries into the big markets of the world. As a result, many corporations were making money – and still make –from the cultural heritage of local people.

The “The Indigenous and Tribal Peoples Convention” that took place on 1989 represents the forerunner of what came to be known as rights of indigenous people. The UN Resolution 61/295 though that declared the protection of indigenous people rights consists the step in stone in their protection.

In recent years the discussion concerning the effective protection of TK in light of the tremendous role that TK and IP systems play in the contemporary global economic system, has augmented. As a specialized agency of the UN, the World Intellectual Property Organization (WIPO) seeks the protection of TK. Even though negotiations started in 2011 aiming at the creation of “international legal instruments on TK”, it is evident that further negotiations will continue.

The aim ought to be a well-structured protective system for TK of indigenous people at an international level in order to serve the needs of diverse communities who own that knowledge. The diverse populations in each continent, new threats such as the difficulty in



documentation and the rise of bio-piracy, surely create a new phase of questions and call for immediate action from all states and organizations.

Interest in Knowledge

The history of intellectual property – meaning copyrights, trademarks and patent – has evolved throughout the years while continuing playing its vital role in the economic growth and development of the world. The first record of granting a patent for a person’s work was noted in Sybaris, a Greek state, around 500 BCE. The state granted a one-year patent for “any new refinement in luxury”.

Much has changed though since the 6th century BCE. The introduction of mercantilism opened the window for an economy based on trade. In Medieval Europe, the guilds hold the power to introduce new innovations in the creation of goods. Many advancements at that time were produced by the consolidation of political power and religious agendas of the authorities. Usually, the guilds used their rights to govern intellectual property law in order to establish monopolies that were perceived as a threat to the status quo.

In Elizabethan England, the first real strides towards intellectual property laws, as we know it today, were drawn. In 1623, by an Act of the Parliament, the “Stature of Monopolies” was implanted. It granted the “true and first inventor” a period of 14 years of exclusive control over any invention he created. 100 years later and again by an Act of the Parliament, the “Stature of Anne” granted inventors the possibility of a 14-year renewal based upon the satisfaction of certain conditions.

Despite its early historical link with monopoly and privilege, the scope of this matter continues to expand. The term “intellectual property” was actually fashioned as a generic term during the 19th century, the time of industrialization and development. It was during this period that actual laws were adopted in order to widen the protection of intellectual property. The first step was made in France in 1883. The Paris Convention granted inventors the right to protect their invention regardless of the country in which they were produced.

Just 3 years later, writers and artists were put under the international umbrella of legal protection for the work they produced as a result of the Berne Convention. In addition, The Madrid Agreement, introduced a wider protection for trademarks in 1891. Lastly, in 1893, the Paris and Berne Conventions merged to become the United International Bureau of the Protection of Intellectual Property.

The biggest step was taken during the 90s when the Trade-Related Aspects of Intellectual Property Rights was signed. The TRIPS is a creation of the World Trade Organization which represented the milestone of intellectual property protection in the 20th and 21st century. The rights covered are copyright, trademark, geographical indications, industrial designs i.e. The three distinct aims of the agreement are (1) standards for protection, (2) domestic



enforcement of protection rights and (3) dispute settlement between World Trade Organization members.

Today, international intellectual property law is governed by the World Intellectual Property Organization, which is a specialized agency of the United Nations and has taken an orientation towards the protection of the TK of indigenous people. In 2000, the committee decided to establish an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). At the same time the Permanent Forum for Indigenous People (UNPFII) was established as a high-level advisory body to the Economic and Social Council. In 2007 the United Nations adopted for the first time a Resolution (61/295) on the Rights of Indigenous people signifying that the need of protecting their knowledge has become a matter of utmost importance. Lastly, in 2009 they agreed to develop an international instrument that would give traditional knowledge, genetic resources and cultural expressions effective protection.

Methodological and Theoretical Background

Indigenous people: Inheritors and practitioners of a vast and unique culture that relates mainly but not only with the environment they inhabit. There are more than 370 million indigenous people in 70 countries practicing distinct social, political, cultural and economic characteristics.

Traditional knowledge (TK): It's the knowledge, the skills and the practices developed over the centuries, passed by elders to the next generations within the community and the formation of a unique and distinct cultural identity.

Intellectual Property (IP): Inventions, literary and artistic works, fashion and graphic designs, symbols, names and images, all sum up under the umbrella of intellectual property.

Copyright¹: It is the right to copy. This means that the original creator has the exclusive and assignable legal right to reproduce the work for a given amount of time. Any unauthorized reproduction may lead to severe legal persecutions. The protection of all the above is called **copyright protection**. While the unauthorized reproduction of someone's authentic work is called **piracy**.

Patent²: It is an exclusive right granted for the invention of a new product, method or technique. When the inventor is granted patent protection, this practically means that the

¹ World Intellectual Property Organization (WIPO) *IP/ Copyright* <https://www.wipo.int/copyright/en/>

² WIPO *IP/Patents* <https://www.wipo.int/patents/en/>



invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent.

Trademarks³: A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights.

Industrial Designs⁴: An industrial design constitutes the ornamental aspect of an article-object; it may consist of three- or two-dimensional features, such as the shape patterns, lines or color of a creation. The owner of a registered industrial design has the right to prevent third parties from making, selling or importing articles bearing or embodying a copy of this design, when such acts are undertaken for commercial purposes.

Bio-piracy: The unauthorized and uncompensated collection of biological resources (indigenous plants and animals) by individuals or companies who then use or patent them for their own benefit. Illegal bioprospecting or biological theft. Also known as eco-piracy.

The Intellectual Property Protection System and Traditional Knowledge

Intellectual property plays a significant role in today's economic, social and cultural system as it is a driving force towards innovation, economic growth, social and cultural development. None would exaggerate if he claimed that every field of our life is surrounded, governed and protected by intellectual property laws. *Trademarks* indicate the origin of products, so that consumers can be informed. *Designs* specify how products look. *Copyrights* enable artistic creations, such as books, music, paintings, photos, and films. *Patents* protect technical and pharmaceutical inventions that can be life-changing, like new technological equipment, medicines, etc. Therefore, Intellectual property, although a legal concept and mechanism, influences trade, competition, taxes, and other areas.

It is more than clear that in today's economy, the generation and management of knowledge plays a predominant role in wealth creation - particularly when compared with traditional factors of production such as land, labor, and capital. We should however equally valid all sources of knowledge; Traditional knowledge, as one knowledge source, should enjoy equal protection as any other innovative idea.

However, the implementation of standard IP approaches is particularly difficult with regard to traditional knowledge, which "cannot be fully or properly accounted for through the

³ WIPO IP/Trademarks <https://www.wipo.int/trademarks/en/>

⁴ WIPO IP/Industrial designs <https://www.wipo.int/designs/en/>



Western-oriented prism of patents, copyrights, trademarks and other formal IP outputs.”⁵ More specifically, patents reward a corporate entity or individual with a temporary monopoly to use an innovation. Traditional knowledge, on the other hand, is often collaborative, “public” and incremental, relying on a community's insights and know-how often built up over generations.

The need for Traditional Knowledge Protection

It is pivotal to understand that the traditional knowledge of indigenous people is the identity of their local community⁶; each indigenous community has its own distinctive identity, even if they share similarities. If traditional knowledge is lost or misused, who are indigenous people and where do they belong? Therefore, valuing and protecting traditional knowledge is critically important to ensure that future generations of indigenous people can learn to be members of their community, progress, evolve and develop new methods, practices and traditions.

However, Traditional knowledge is under threat; it is disappearing⁷. The reasons behind this phenomenon are strongly related to modern lifestyle. What is more to say, young people - who are ultimately the next generation of indigenous communities - are less interested in tradition and more fascinated by new technologies. When they migrate in urban areas, they maintain no traditional practices like indigenous language, habits, clothing etc. Thus, many elders are not able or sometimes willing to transmit their knowledge to someone within the community who can protect and spread it when they are gone, given the fact that TK is mostly passed through the generations in oral manner.

Lastly, an increasing number of researchers and companies turn up unannounced with a government license in hand to do research and collect genetic resources or other information from local communities without any prior consultation with the indigenous people - who are the holders of the traditional knowledge. There are often few to zero institutional structures in place – and usually where they exist, they are weakened – for researchers to consult with the indigenous communities before conducting their research. Many companies consider that a government license is enough for the research to take place. But this practice clearly violates indigenous people rights and morals. Attempts to exploit TK for industrial or commercial benefit can lead to its misappropriation and can prejudice the interests of its rightful custodians.

⁵J. De Beer, C. Armstrong, C. Oguamanam, T. Schonwetter: 2014 <https://open.uct.ac.za/bitstream/item/9947/Innovation%20%26%20Intellectual%20Property%20%20Collaborative%20Dynamics%20in%20Africa.pdf?sequence=1>

⁶ C. Jewell: 2017 https://www.wipo.int/wipo_magazine/en/2017/01/article_0004.html

⁷ C. Jewell: 2017 https://www.wipo.int/wipo_magazine/en/2017/01/article_0004.html



Additionally, there are concerns that this traditional knowledge is being used and patented by third parties, like companies and international corporations, without the prior informed consent of TK holders and that few of the derived benefits are shared with the communities in which this knowledge originates and exists⁸. Such concerns have pushed TK to the forefront of the international agenda, triggering lively debate about ways to preserve, protect, further develop and sustainably use TK. Documenting and digitizing TK-related information in the form of a TKDL is proving to be an effective means of preserving TK and of preventing its misappropriation by third parties.

Further Challenges

1. Representation

For decades, indigenous people have been marginalized and excluded from decision-making spheres in their countries⁹ and around the globe. Even as citizens of a country, their opportunities to participate in the political life of their home nation, voice their concerns and raise awareness about their problems, is minimal.

While a number of international legal and political documents exist¹⁰, cementing their rights, implementation of these mechanisms has proven a thorn in its progress. The electoral system for once appears to favor people with some socio-economic backgrounds. It is evident that indigenous people – which account for about 15% of the extreme poor – cannot be eligible to support a political campaign and thus enter the political arena or even if they can, the government does not allow it. Apart from the economic part of these restrictions, the ethnic, cultural, religious and linguistic background also contributes to their marginalization.

In addition, political parties play a key role in mediating between societal interests and state institutions. Undoubtedly, parties dominate the process of representation. Rules though regulating party formation and functioning can have a major effect on the ability of minority groups to secure adequate positions in national parliaments. These regulations can be observed in regions where major ethno-political issues take place and the government power does not want to hinder its authority (ex. Sub-Saharan Africa).

All these legal restrictions and regulations of course restrict indigenous people's representation on an international level since the international scene is composed by each nation's representative and IP usually are excluded from that process. Even the Permanent Forum for Indigenous People has made baby steps in the protection of their rights.

⁸ See *Countries and Organizations Involved/ Companies* (pp. 12-13)

⁹ Examples include the US, Latin America and South African countries

¹⁰ Ex. United Declaration on the Rights of Indigenous People, American Declaration on the rights of Indigenous People.



2. Lack of funding

Except for the restrictive legal measures that diminish the opportunities of indigenous people in expressing their voices, lack of funding has also contributed to this phenomenon. There is a plethora of communities amongst them that stress the issue of insurmountable difficulties in financing the participation of their representatives.

To address this issue, the WIPO General Assembly decided in 2005 to create the WIPO Voluntary Fund to finance the participation of these people in the discussions. At the beginning, the Fund was largely supported by numerous member states that did not have ethno-political issues. But as the meaning of the word “voluntary” signifies, when and if someone wants to donate, will donate. There is no legal measure or instrument that binds member states to that. Thus, today the Fund is depleted, and contributions are urgently sought.

In October 2019 and after a long time of inactivity, the European Union representative announced that Germany and Finland would donate 15 000 euros each to the Fund. These contributions invigorated the fund and allowed extra participation from indigenous communities. Yet, the question of how effective the Fund is without legally binding member states, remains to be answered.

3. Bio-Piracy

Throughout the years, indigenous people have built their lives around the conservation of biodiversity and the knowledge related to it. Rural communities have developed intimate knowledge of the use of biological resources and ingredients that are vital for their survival especially in hostile environments. It also resembles a form of identity and contributes to social cohesiveness and thereby reduces vulnerability and poverty.

In recent years though, traditional knowledge is sometimes used to promote and develop cosmetic products. Researchers or companies take biological resources without official sanction, largely from less developed countries. Well known examples include a US patent on basmati rice from India and ayahuasca used in indigenous Amazonian healing. Despite the measure implanted in the Convention on Biological Diversity, it's not easy to prevent biopiracy because there aren't many laws that bind countries on the topic.

The major issue that bioprospecting creates is the undermining of national economic interests while extending colonial exploitation in a scientific way and through non-lethal means. As a result, indigenous population loses control of these resources which poses a real threat to their livelihoods.



4. Social Media and TK

The conservation of traditional knowledge in an era of cultural homogenization and globalization represents an issue that should be addressed. The problem that occurs concerns the documentation and passing of this knowledge to future generations. Different factors such as the absence of “neutral” spaces (ex. Libraries) in most regions where indigenous people live, the postcolonial education system that marginalizes traditional knowledge and of course copyright and intellectual property issues create an obstacle.

Thankfully, the technological explosion has brought to the table new ways of conserving and promoting traditional knowledge. In detail, social media such as YouTube, Facebook and Twitter allow individuals and communities to create and share user generated content. Recently a new tendency has been observed. Many young people have started using TikTok as a means to participate actively in promoting and protecting TK. The basic problem that indigenous people face is the lack of representation. Through platforms such as TikTok, they finally have an international voice directly to the public and can express their problems while promoting their culture and raising awareness. In Australia for example, many indigenous people have been using the internet for this purpose since a young age despite the difficulties in terms of accessibility.

Most social media do not require extensive knowledge or training in order to be used. With most countries already having access to the internet and to cell phones, preserving and promoting traditional knowledge has become easier.

Social media can represent a way for the youth to further expand their horizons without depriving them of the indigenous knowledge that is their birthright. We must not forget though that even though social media can work in favor of traditional knowledge, there is always the possibility that they can undermine and erase parts of a culture in light of globalization.

Countries & Organizations Involved

India

Preserving ancient practices and traditions is a challenging task, considering the nature of the current system of intellectual property rights, established for the purposes of modern commerce in the western world. Traditional knowledge is not always compatible with the standards set by the current system and is often misused for profit-making enterprises. There are gaps such as the language or the format of the knowledge which have to be bridged. - Traditional knowledge not only forms an integral part of many local communities’ identity but also plays a critical role in the continuance and development of their existence as traditional communities by providing them with food security, health care, religion, and culture among



others. India is a leading example in overcoming these divergences, with the development of a traditional knowledge database also called Traditional Knowledge Digital Library (TKDL)¹¹. India possesses a wealth of ancient knowledge and has increasingly been under threat of being neglected and misappropriated by third parties. The collaborative project between the Council of Scientific and Industrial Research (CSIR) and the Department of AYUSH was the genesis of the TKDL database created with the intention of disabling intellectual property offices around the world to erroneously grant patents on India's traditional knowledge¹². The high number of wrongly granted patents in western countries such as the United States or Europe highlights the issue that is now being addressed through the TKDL. This database is a tool to assist in bridging the existing gaps, which have permitted patent examiners to justify their already granted patents, by pointing at the fact that the TK couldn't be found in their searches and therefore was not considered when granting the patent. The database has allowed for the patent's to be revoked and the protection of existing traditional knowledge.

Australia

Australia represents one of the regions around the world that is inhabited by major tribal groups, namely the Aboriginal and Torres Strait Islander people. In 2018-2019 the Indigenous knowledge consultations took place¹³. From that, five important themes emerged:

1. The control that IP may have on their knowledge and how it is used,
2. The measures needed to prevent unauthorised usage of this knowledge and the sanctions that may follow,
3. Governmental representation and the need to be recognised as owners of that knowledge,
4. The demand for respect of their protocols and the knowledge they offer.

With a bad history of treating indigenous people, Australia has made baby steps in supporting them. For example, 31% of Indigenous Australian adults reported a high level of distress in 2018-2019 which increased from 27% in 2004-2005. At the same time, a little bit more than 50% of indigenous people complete the basic 12 years of education required by the government to proceed with a bachelor's degree. Poverty, stigmatization by the police and racism in the work also play a grand role as to why Australia still needs to revise laws and focus more on a small but important part of its region.

¹¹ WIPO *About the Traditional Knowledge Digital Library*

https://www.wipo.int/meetings/en/2011/wipo_tkdl_del_11/about_tkdl.html

¹² WIPO Magazine: 2011 https://www.wipo.int/wipo_magazine/en/2011/03/article_0002.html

¹³ Australian Government: 2021 <https://www.ipaustralia.gov.au/understanding-ip/getting-started-ip/indigenous-knowledge>



New Zealand

On the other hand, New Zealand may offer some lessons on how to handle such delicate matters today. In 1840 the Treaty of Waitangi was signed. It recognized the authority of Maori people, declared the protection of their culture and resources and announced equal treatment as British citizens¹⁴. In 1975, the Waitangi tribunal was established with the goal to intermediate between the government and the Maoris. Up to this point it has solved more than 50 claims.

The usage also of the media and education helped to settle the relationships between indigenous people and the government. Under the Race Relations Act of 1971, the Office of the Race Relations Conciliator was formed. Its purpose was to promote positive race relations by releasing educational reports for the public. In addition, the 21st century brought the establishment of Maori television in 2004 and the broadcast of the Maori language by main state broadcast networks.

Other notable examples

In 2015, Brazil passed an important law that aimed at regulating access to components of the genetic heritage, protection of and access to associated traditional knowledge and the fair and equitable sharing of benefits for the conservation and sustainable use of Brazilian biodiversity. It was a very important step for a country with a rich Traditional Knowledge record.

Following the same path, the government of Kenya passed in 2016 the Traditional Knowledge and Cultural Expressions Act, which sets as a goal the promotion and protection of traditional knowledge and traditional cultural expressions against exploitation by third parties.

Indigenous people

In accordance with the United Nations Permanent Forum on Indigenous People, around 370 million people worldwide identify themselves as indigenous. Indigenous communities in Asia, Africa and Latin America utilize their resources (land, water) based on ancient practices. Additionally, in these indigenous communities the term "Rule of Law" refers to old customary provisions, ancient habits and cultural methods performed over generations.

The WIPO and the relevant UN institutions aim at ensuring that these communities have the necessary information to adapt in today's modern world. WIPO's efforts involve - among other things - empowering indigenous people to make informed decisions about their life and the development of their community.

¹⁴ New Zealand Intellectual Property Office <https://www.iponz.govt.nz/about-ip/maori-ip/>



The “raising-awareness” process shall not interrupt their core cultural values. Given the fact that all cultures have positive and negative aspects, the goal of WIPO’s project is to maintain the positive cultural practices and progressively alter the negative ones, especially when they no longer serve a community’s interests. This cultural progressive evolution can only be achieved when the holders of the cultural and traditional knowledge are informed and able to make their own decisions in the long-run.

Industry

In today’s industrialized society, companies are key stakeholders in all actions relevant to intellectual property, copyrights and trade. In previous section of this report, the financial aspect of intellectual property and its strong relation with economy and trade was explained. It should not therefore surprise the reader why private companies play an important role in intellectual property discussions.

Their role is equally important when discussing Traditional Knowledge. Traditional knowledge is not so-called because of its ancient character and antiquity; it is the cultural and social identity of the indigenous communities; a living body of knowledge, culture and beliefs that is developed, sustained, and passed on from generation to generation. As such, it is not easily protected by the current intellectual property system, which is based on western legal and financial structure. Typically, protection is granted for a limited period to inventions and original works by named individuals or companies. However, Traditional Knowledge does not enjoy such protection and can be easily exploited by private sector companies.

In fact, recent decades have seen an increased number of private sector companies exploiting traditional knowledge, usually in profitable ways that do not benefit indigenous communities rather the private sector. In order to accomplish that, private companies invoke the idea of “public domain”. What is more to say, traditional knowledge allegedly cannot enjoy IP protection, because it is public- it “belongs” to the whole indigenous community,

A particular issue is bioprospecting—the search for useful products derived from natural resources, including plants and animals that can be developed further for commercialization. Private companies Here are two notable examples that paved the way for further discussions¹⁵.

- Bitter root (*Quassia amara*) is a small red-flowered tree that can be found in Central and South America and that has been used for centuries by Indigenous groups to combat malaria. Without informing or asking for the permission of the indigenous and local communities of French Guiana that helped French “Institut de Recherche pour le

¹⁵ U. Nwankwo and C. Kenny: 2021 <https://www.cgdev.org/blog/their-knowledge-their-rights-using-traditional-knowledge-and-intellectual-property>



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Développement” (IRD) isolate the ingredient with antimalarial-activity, and without providing them with means to access the potential malaria drug at an affordable price, the IRD patented the ingredient. The IRD after a lot of pressure agreed to share benefits of the patent with the indigenous communities of French Guiana, and ensured that indigenous people could obtain the medicine at an affordable price.

- For centuries, the San people of Southern Africa used the *hoodia plant* as an appetite suppressant, particularly during hunting expeditions where little food was available for many days. In 1963, the Council for Scientific and Industrial Research (CSIR) decided to grant patent-protection to the plant’s appetite-suppressing element, without initially negotiating any agreement with the San people. After San people challenged the lack of compensation for their traditional knowledge, the CSIR and the indigenous community signed a memorandum of understanding in 2002 which called for payments to be provided to the San on an ongoing basis.

In the aftermath of those events, the World Business Council for Sustainable Development (WBCSD) launched a project to engage transnational pharmaceutical companies in a dialogue over the proper role and limits of intellectual property rights (IPRs) in the development of medical biotechnology¹⁶. During that project three areas of interest that raise broad public concerns were dealt with: Access to Human Genetic Resources, Protection of Traditional Knowledge, and Access to Essential Medicines. The focus of the project was measures companies can take so as to minimize contested IPR issues, given the economic criteria under which they operate. The initiative set important criteria and guidelines that ought to be taken into account by companies.

Organizations

United Nations

Under the auspices of the United Nations important steps have been taken so as to safeguard indigenous peoples’ rights. The United Nations Declaration on the Rights of Indigenous Peoples¹⁷ addresses, among other things, inherent rights to “spiritual traditions, histories and philosophies...their lands, territories and resources”, making, thus, an important mention to

¹⁶ W. van den Daele, R. Döbert, A. Seiler 2013

https://www.researchgate.net/publication/254461036_Protection_of_Traditional_Knowledge_Deliberations_from_a_Transnational_Stakeholder_Dialogue_Between_Pharmaceutical_Companies_and_Civil_Society_Organizations

¹⁷ United Nations, *United Nations Declaration on the Rights of Indigenous Peoples* 13 September 2007

<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>



traditional knowledge. The Convention on Biological Diversity¹⁸ and its Nagoya Protocol¹⁹ defend the right of Indigenous societies to hold their knowledge, to control access to it and to benefit from its use. More specifically, Article 8 (j) of the Convention on Biological Diversity refers to “the knowledge, practices and innovations of local and indigenous societies reflecting ancient lifestyles that are related to the protection and constant usage of biological diversity”, while the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization refers to “traditional knowledge connected with genetic sources”.

World Intellectual Property Organization

The World Intellectual Property Organization²⁰ is an international organization functioning under the umbrella of UN specialized agencies. It was created in 1967 with the aim of protecting and promoting intellectual property across the World. In order to realize this goal, cooperation among States as well as collaborating with other international organizations is imperative.

In 2000, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was established. The Committee has developed several versions of definitions of traditional knowledge, has defined criteria for its protection and also proposed the introduction of certain sanctions and remedies to combat the misappropriation and misuse of traditional knowledge²¹.

The Committee since its establishment has been carrying out extensive work and making considerable efforts to develop an internationally acceptable document that can ensure effective protection of traditional knowledge in the long-term. However, in the process of negotiations among states regarding the protection of TK, certain difficulties arose²².

Firstly, there is a lack of consensus and clarity about the nature of the document being drafted. Most developing countries want the codification of a legally binding agreement, while member states like the US, EU and Russia aim for a flexible international document that is not binding²³. Secondly, the question of the number of documents being developed still remains unresolved; it is not clear to the international community whether one document combining the protection of genetic resources, traditional knowledge, and traditional cultural expressions, or three separate independent documents would be more effective²⁴. Lastly, there is disagreement as to whether protection should be provided within the intellectual

¹⁸ United Nations, *Convention on Biological Diversity*, 1992 <https://www.cbd.int/doc/legal/cbd-en.pdf>

¹⁹ United Nations *Nagoya Protocol* 2011 <https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>

²⁰ <https://www.wipo.int/portal/en/index.html>

²¹ WIPO (2019)

²² Asiiia Sharifullova: 2020 <https://www.sciedupress.com/journal/index.php/ijhe/article/view/19323>

²³ Asiiia Sharifullova: 2020

²⁴ Asiiia Sharifullova: 2020



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property system or under a human rights approach²⁵. If the choice is made in favor of intellectual property, then the question arises about the application of existing intellectual property rights or the development of a system sui genes²⁶.

World Trade Organization

The World Trade Organization has made pioneering steps towards the protection of TK. Within WTO's framework the most important legal instrument is the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights Agreement²⁷.

The TRIPS Agreement requirement to extend patenting to certain forms of "biological invention" has caused major criticism from many developing countries²⁸. What is more to say, the TRIPS Agreement, sadly, facilitates the granting of patents (to third parties, ex. Industries) for products based on genetic resources and associated with traditional knowledge, and has no sufficient provisions to preserve these resources from misappropriation and theft²⁹.

In April 2011, the overwhelming majority of WTO Members required the TRIPS Agreement to be amended so as to include a new article on the disclosure of the origin of genetic resources and / or associated traditional knowledge. However, no changes have been made so far, and discussions are still on-going.

Food and Agriculture Organization

The Food and Agriculture Organization of the United Nations (FAO) is a specialized agency of the United Nations, fighting against hunger and striving towards improving nutrition and food security in the world.³⁰ Whilst the FAO itself does not play a direct role in the protection of traditional knowledge, one of its projects called: "Conservation and Adaptive Management of Globally Important Agricultural Heritage Systems" is essential for the preservation of traditional knowledge and agricultural practices. This project is at the forefront of the connecting land-use systems and landscapes with the demands by local communities whilst at the same time taking the environment into consideration through the "Globally Important Agricultural Heritage Systems (GIAHS)³¹

²⁵ Asiiia Sharifullova Gazizova: 2020

²⁶ See *Addressing the challenge/ b. Possible Solutions/ 2. Traditional Knowledge Protection System (pp. 20-22)*

²⁷ WTO, *TRIPS — Trade-Related Aspects of Intellectual Property Rights Agreement*
https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

²⁸ Asiiia Sharifullova Gazizova: 2020

²⁹ Asiiia Sharifullova Gazizova: 2020

³⁰ <https://www.britannica.com/topic/Food-and-Agriculture-Organization>

³¹ Asiiia Sharifullova Gazizova: 2020



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United Nations Educational Scientific and Cultural Organization

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) is a specialized agency of the United Nations aimed at promoting at “promoting world peace and security through international cooperation in education, the sciences, and culture”³². Although, the agency does not have a specific mandate on protecting traditional knowledge, through one of its core missions of safeguarding intangible cultural heritage, the UNESCO still plays a contributing role by setting norms and standards. Specifically, the UNESCO adopted in 2005 the Convention on the protection and promotion of the diversity of cultural expressions³³. This convention represents one of the first legal acts in which the term “traditional knowledge” linking the idea of traditional knowledge as a source of intangible and tangible heritage.

World Health Organization

Issues related to the protection of traditional knowledge are raised by this organization in the context of traditional medicine. Traditional medicine is a medicine opposite to allopathic, conventional medicine practiced in western societies. Ultimately, WHO's attention is naturally focused on traditional medical knowledge, and not on the entire body of traditional knowledge, due to the scope of the organization.

Addressing the Challenge

Past actions on the matter

Developing effective and innovative solutions for specific issues requires first identifying and reflecting on already existing and previous attempts to solve the problem.

One of the most significant steps in addressing and acknowledging indigenous people's issues, generally speaking, was made in 2000 with the establishment of the UN ECOSOC advisory body the “United Nations Permanent Forum on Indigenous Issues”³⁴. This forum allowed for open discussions on all matters concerning indigenous people. That same year, within WIPO's mandate of protecting intellectual property vis-à-vis to indigenous people's cultural heritage, the WIPO “Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore” (IGC)³⁵ was created. This committee operates as an

³² UNESCO, *UNESCO in brief - Mission and Mandate*

<https://en.unesco.org/about-us/introducing-unesco>

³³ UNESCO, *The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions*

<https://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005-web2.pdf>

³⁴ UN, *Permanent Forum on Indigenous Issues*

<https://www.un.org/development/desa/indigenouspeoples/about-us/permanent-forum-on-indigenous-issues.html>

³⁵ WIPO, *Intergovernmental Committee (IGC)*



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official forum to discuss and negotiate between member states around three main themes: traditional knowledge (TK); Intellectual property (IP) and genetic resources (GRs).

Skills and practices, knowledge, know-how and innovations, which inherently define all traditional communities, do not easily fit in with the patentable contents of the current intellectual property system. The current format of copy rights and cultural protection is reminiscent of historical developments which have favored western cultures who saw the value in certain traditional practices and materials whilst ignoring indigenous people's interests. Combined with a lack of recognition and lack of an internationally accepted definition of TK there is growing demand and need to better protect TK.

In turn this has prompted WIPO, in 2009, to commit themselves to work towards developing an adequate international legal instrument in order to ensure effective protection. These are developments working towards holding countries accountable for inadequate recognition and misappropriation of TK through declarations, action plans and ideally formal binding treaties for countries choosing to ratify.

Possible Solutions

Representation and Funding

When discussing solutions to protect traditional knowledge of indigenous people, one of the most relevant issues to be tackled is how to effectively involve indigenous people in the process. Indigenous people are at the heart of this issue and should play an active role in the negotiations and deliberations. The WIPO Voluntary fund exists specifically to facilitate the participation of indigenous people in the deliberations of the ICG forum. However, the extent of the support the fund can provide relies solely on donations and highlights one of the most critical concerns of progress which is the lack of monetary funds. The process needs to be adjusted accordingly to the needs and demands linked to the level of involvement indigenous people would like to have. Cooperation on a domestic - between governments and indigenous communities - and on an international - among governments, organizations and companies - level is a key solution. What is more to say, governments should respect and protect all rights granted to indigenous people by establishing or adjusting the existing representation system, creating new regulations governing the TK copyright and patent system and facilitating negotiations between indigenous communities, companies and researchers.

Traditional Knowledge protection system

The copyright protection of traditional knowledge of indigenous peoples is necessary to preserve the existence of indigenous peoples. As stated before the traditional knowledge of

<https://www.wipo.int/tk/en/jgc/>



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indigenous peoples will help with the broader issues of society such as climate change and food security. However, the marginalization of Indigenous peoples had as a result limited action to protect their traditional knowledge. On top of that there is no international legal instrument (treaty or convention) that governs the issue of the TP copyright protection system.

In general, the ways to protect the traditional knowledge of indigenous peoples have been proven difficult. Since intellectual property knows various categories, deciding under which traditional knowledge should be categorized is not determined. Furthermore, given the fact that Intellectual property laws do not grant permanent protection, the problem arises that traditional knowledge won't have continuous protection as new generations of Indigenous peoples come about.

There are two methods through which traditional knowledge can be protected. The first is positive protection, which means the enactment of laws, rules and regulations, royalties, access and benefit sharing provisions etcetera. The second is a defensive mechanism. According to this mechanism steps must be taken so as to prevent the acquisition of intellectual property rights over traditional knowledge.

The final option - that has been supported by indigenous communities- is to consider TK Sui Generis. It is Latin for 'of its own kind'. A Sui generis law system would provide for TK a separate protection system, meaning it would consider it a special category of international property law. At this point it should be further highlighted that there is an international debate over the term "Indigenous" in view of Sui Generis regulations; which communities shall be defined as indigenous and under which criteria? Undoubtedly, the umbrella term "Indigenous people" includes a variety of communities spread across the world each with their own specific issues requiring their own tailored solutions ultimately highlighting the necessity of their input. For this specific reason, the "simple" definition shall be used: indigenous peoples are self-identifiable as a people, wholly or partially self-governed, and live within a larger nation.

Beyond these measures, Indigenous and local communities to whom traditional knowledge belongs should be the primary custodians of this knowledge; it should be the choice of each indigenous community to use and benefit from the resulting IP protection or even refuse to use the traditional knowledge in particular innovations or publications. That is why legal support should be provided to the communities, so as to make and enforce those decisions.

Another important factor that needs to be addressed is the lack of an international agreement. As mentioned before, WIPO member-states are currently deliberating over the composition of an international agreement. The UN should further facilitate these efforts and promote the participation of indigenous people representatives in negotiations.



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Indigenous people should have a key role not only during negotiations; the system that will be adopted must be based on their needs, tradition and cultural differences. First and foremost, indigenous people - as the holders of TK - should be able to define and choose the aspects of their traditional knowledge that are for public consumption and those that are private and confidential. The international community should further ensure that indigenous communities shall benefit directly from value-added concepts derived from traditional knowledge, like the commercial use of it. That's why protocols for acquisition of traditional knowledge should be defined by the indigenous community and agreed to by all relevant parties. Lastly, a mechanism should be adopted so as to protect indigenous communities that are extremely vulnerable to unfair exploitation because of lack of experience with western, monetary-based systems of resource sharing.

Misusage and disappearance danger

As analyzed before, Traditional Knowledge is threatened to disappear, while less people become holders of it. Documenting and digitizing TK-related information in the form of a TK Digital Library is proving to be an effective means of preserving TK and of preventing its misappropriation by third parties. The creation of such a database or repository should be facilitated by governments - on a domestic level - and by the WIPO - on an international level. Making this information publicly available on a global scale creates a level of transparency around traditional knowledge that can serve to minimize the risk of exploitation.

Social Media and TK

Though a big progress has been observed concerning technological progress in western countries, there is always a need to further push the funding of internet extensions in remote areas. The Internet can be used as a tool to promote the idea of TK Copyright Protection system as it is rather unknown to the public. Simultaneously, Internet access can be proven a great tool when it comes to documenting and evolving TK with modern practices and ideas. Local communities can encourage the creation of kiosks and libraries where people can access this kind of databases and limit the individual costs.

Bio-Piracy

In view of the nature of this new phenomenon, the revision of Intellectual Property Laws covering biological resources and knowledge is deemed necessary. Each country can also protect its people. Individually, nations have to take damage-limiting measures such as the exclusion of plants and animals from patentability. On an intergovernmental level, the establishment of national agreements that bind each state for the collection and usage of biological resources associated with them, should be a priority.



Bibliography

- “Agreement on Trade-Related Aspects of Intellectual Property Rights” *World Trade Organization*. April 15, 1994 https://www.wto.org/english/tratop_e/trips_e/trips_e.htm
- Asmi, R. E. (2017). *Indigenous Representation in the Media and the Importance of Personal Narrative* (Thesis). University of Montana.
<https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1186&context=utpp>
- Australian Government. (2021, June 2). “Indigenous Knowledge”. *IP Australia*.
<https://www.ipaustralia.gov.au/understanding-ip/getting-started-ip/indigenous-knowledge>
- Australian Heritage Commission. (2002). “A guide to respecting Indigenous heritage places and values”. *National Capital Printing*
https://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/ask_fIRST.pdf
- Carlson, B., & Frazer, R. (2020). “They Got Filters”: Indigenous Social Media, the Settler Gaze, and a Politics of Hope. *Social Media + Society*, 6(2), 205630512092526.
<https://doi.org/10.1177/2056305120925261>
- “Convention Establishing the World Intellectual Property Organization”, Stockholm, 28 September 1979, *WIPO treaties*, available from
http://www.wipo.int/treaties/en/convention/trtdocs_wo029.html
- “Declaration on Biological Diversity”. *United Nations Treaty Series*, June 5, 1992
<https://www.cbd.int/doc/legal/cbd-en.pdf>
- Dagne Tesh, “Protecting Traditional Knowledge in International Intellectual Property Law: Imperatives for Protection and Choice Modalities” *The Joint Marshal Review of Intellectual Property Law* (2014)
<https://repository.law.uic.edu/cgi/viewcontent.cgi?article=1343&context=ripl>
- Food and Agriculture Organization | United Nations organization. (n.d.). Encyclopedia Britannica. Retrieved September 16, 2021, from <https://www.britannica.com/topic/Food-and-Agriculture-Organization>
- Gazizova, A. S. “Protection of Traditional Knowledge: The Work and the Role of International Organisations and Conferences”. *International Journal of Higher Education*, 9(8), 95. (2020) <https://doi.org/10.5430/ijhe.v9n8p95>
- “Intellectual Property Rights History: Everything to Know”. *Upcounsel*. Accessed September 3, 2021 <https://www.upcounsel.com/intellectual-property-rights-history>



1st International Model United Nations Conference Leirion

- Jewell Catherine. "Protecting traditional knowledge: a grassroots perspective". *WIPO Magazine*, February 2017. Accessed September 5, 2021 https://www.wipo.int/wipo_magazine/en/2017/01/article_0004.html
- "Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization to the Convention on Biological Diversity". *United Nations Treaty Series*. 29 October 2010, <https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>
- Nwankwo Ugonma and Kenny Charles. "Their Knowledge, Their Rights: Using Traditional Knowledge and Intellectual Property to Protect Communities". *Center for Global Development*, March 1, 2021. Retrieved September 1, 2021 <https://www.cgdev.org/blog/their-knowledge-their-rights-using-traditional-knowledge-and-intellectual-property>
- Ogwezzy C. Michael. "Protection of Indigenous or Traditional Knowledge under Intellectual Property Laws: An Examination of Efficacy of Copyright Law, Trade secret and Sui Generis Rights" *ICLR*, 2012, Vol. 12, No. 1. pp. 7–37. <https://sciendo.com/abstract/journals/iclr/12/1/article-p7.xml>
- O'Sullivan, D. (2017, October 16). "Why the Indigenous in New Zealand have fared better than those in Canada". *The Conversation*. <https://theconversation.com/why-the-indigenous-in-new-zealand-have-fared-better-than-those-in-canada-84980>
- Ouma Marisella, "Why and how to protect Traditional Knowledge at the International Level" Keynote Address at Seminar on Intellectual Property and Traditional Knowledge, Geneva, Switzerland, November 25, 2016. *WIPO* https://www.wipo.int/edocs/mdocs/tk/en/wipo_ip_tk_ge_2_16/wipo_ip_tk_ge_2_1_6_presentation_11ouma.pdf
- "Report on indigenous political representation: Introduction and summary." *Global Americans*. October 6, 2017 <https://theglobalamericans.org/2017/10/report-indigenous-political-representation-introduction-summary/>
- Rice, E. S., Haynes, E., Royce, P., & Thompson, S. C. (2016a). "Social media and digital technology use among Indigenous young people in Australia: a literature review." *International Journal for Equity in Health*, 15(1). <https://doi.org/10.1186/s12939-016-0366-0>
- Schuler Lindsay, "Modern age protection: Protecting Indigenous Knowledge through Intellectual Property Law". *Michigan State International Law Review* [Vol.21:3]. Accessed September 2, 2021 <https://core.ac.uk/download/pdf/228477982.pdf>
- Srividhya Ragavan, "Protection of Traditional Knowledge," *Minnesota Intellectual Property Review* 2, no. 2 (2001): 1-60



1st International Model United Nations Conference Leirion

Tierney, J. (2015). "Funding Indigenous Peoples: Strategies for Support". *Foundation Center*.
https://grantcraft.org/wp-content/uploads/sites/2/2018/12/Indigenous_People_web.pdf

"United Nations Declaration on the Rights of Indigenous Peoples' (A/RES/61/295)". *United Nations Treaty Series*. September 13, 2007.
<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

United Nations. "Permanent Forum on Indigenous Issues" Accessed September 2, 2021
<https://www.un.org/development/desa/indigenouspeoples/about-us/permanent-forum-on-indigenous-issues.html>

United Nations. "Permanent Forum for Indigenous Peoples." Accessed September 9, 2021.
<https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html>

United Nations Educational, Scientific and Cultural Organization. (2021, July 12). *UNESCO in brief - Mission and Mandate*. UNESCO. <https://en.unesco.org/about-us/introducing-unesco>

UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, 20 October 2005, 33 C/23
https://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005_web2.pdf

United Nations. "What Are Un Specialized Agencies, and How Many Are There?". Accessed September 9, 2021. <https://ask.un.org/faq/140935>.

Van den Daele Wolfgang, Döbert Rainer and Seiler Achim. "Protection of traditional knowledge: deliberations from transnational stakeholder dialogue between pharmaceutical companies and civil society organizations". *Social Science Research Center Berlin (WZB), ECONSTOR: The Open Access Publication Server of the ZBW – Leibniz Information Centre for Economics*.
(2003) https://www.researchgate.net/publication/254461036_Protection_of_Traditional_Knowledge_Deliberations_from_a_Transnational_Stakeholder_Dialogue_Between_Pharmaceutical_Companies_and_Civil_Society_Organizations

World Bank. (n.d.). "Indigenous Peoples". *World Bank*. Retrieved September 9, 2021, from <https://www.worldbank.org/en/topic/indigenouspeoples#2>

WIPO (n.d-b.). "Background Brief on Traditional Knowledge", *World Intellectual Property Organization*. Accessed September, 4, 2021
https://www.wipo.int/export/sites/www/pressroom/en/briefs/pdf/brief_tk.pdf

WIPO. (n.d.). "New Contributions to the WIPO Voluntary Fund". *World Intellectual Property Organization*. Retrieved September 9, 2021, from https://www.wipo.int/tk/en/news/igc/2019/news_0011.html



1st International Model United Nations Conference Leirion

- WIPO. “The Protection of Traditional Cultural Expressions: Draft Articles”. WIPO/GRTKF/IC/40/5. Document of the Secretariat for the 40th Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Geneva, June 17 to 21, 2019. Date: April 9. WIPO. (2019).
- WIPO. “The Protection of Traditional Knowledge: Draft Articles” . WIPO/GRTKF/IC/40/4. Document of the Secretariat for the 40th Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Geneva, June 17 to 21, 2019. Date: April 9.
- WIPO. “The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore”. *World Intellectual Property Organization* 2016. https://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_2.pdf
- WIPO. (n.d.). “Traditional Knowledge:.. *World Intellectual Property Organization*. Retrieved September 9, 2021, from <https://www.wipo.int/tk/en/tk/>
- WIPO. (n.d.-b). “Traditional Knowledge and Intellectual Property – Background Brief”. *World Intellectual Property Organization*. Retrieved September 9, 2021, from https://www.wipo.int/pressroom/en/briefs/tk_ip.html