

Documentation of TK and TCEs: the IP Dimension

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Nature of TK-TCEs

- Characterized by traditional values, traditional ways of thinking, traditional forms and fixed styles, and being maintained in the traditional context
- Actively used by the source community as a living culture
- Strongly influenced by the environment where the source community depends their life on
- Maintained, used, developed and transmitted from generation to generation inside and outside the source community
- Serve for the sense of social and cultural identity of the source community

GRTKF Protection Problems

- spiritual values versus economic values
- reproductive characters versus original, novel and new characters
- strong link with geographical origin and source community versus free flow of products
- oral tradition versus written tradition
- communal ownership versus individual ownership
- unlimited time of custodianship versus limited time of possession

Types of TK-TCEs Possible Protections

- **Defensive Protection**

 - Establishing databases for TK & TCEs for the purpose of re-declaration and IP examination

- **Case by Case Protection**

 - Enhancing living cultures, implementing Prior Informed Consent and Benefit Sharing provisions in contracts

- **Negative Protection**

 - Using the existing IP legal systems (conventional IP)

- **Positive Protection**

 - Creating *sui generis* laws

- **Systemic Protection**

 - In-country structural arrangement

Documentation :

Promising but not Straight-forward

- Increased attention for documentation of TK and TCEs
- Underlying factors
 - Growing recognition of their cultural/economic value
 - New information technologies
- Documentation is a tool, not an end in itself
 - Documentation needs a policy and legal framework in order to be properly conducted in line with its considered objectives
 - Precise assessment of costs/risks/potential benefits
 - Identification of the IP issues/concerns that may arise

Definition and Objectives

- What is documentation?

 - Note 1 : this is a complex step-by-step process

 - Note 2 : documentation vs disclosure

 - Note 3 : documentation vs registration

- Documented, in the form of database

 - (open, half-restricted, restricted)

- Non-Documented

 - » self-identification by custodians

 - » silent Prior Informed Consent for TCEs

Definition and Objectives

- Five possible objectives
 - Safeguarding and preservation
 - Protection of secret, sacred and closely held TK and TCEs
 - Research and Development
 - Defensive protection of TK
 - Positive protection of TK and TCEs

IP Issues and Risks related to Documentation

- Unwanted disclosure
- Can facilitate misuse of TK and TCEs
- The IP rights belong to those who document TK and TCEs (who are the Copyright holders)
- Limited scope and term of protection under conventional Copyrights Law

Options on How to Manage IP Issues

A cocktail of legal options and technical tools is available

to manage IP issues, including by ensuring implementation of the Prior Informed Consent (PIC) and fair benefit-sharing at the stages of the documentation process

WIPO Resources

(<http://www.wipo.int/tk/en/resources/publications.html>)

* *the WIPO Traditional Knowledge Documentation Toolkit*

* *Intellectual Property and the Safeguarding of Traditional Cultures. Legal Issues and Practical Options for Museums, Libraries and Archives*

* *Brief Nr. 9*

Options on How to Manage IP Issues

- Digital Rights Management
- Licences/contracts for the access to, and use of content
- Use existing protocols and guidelines as models
(http://www.wipo.int/tk/en/databases/creative_heritage/)
- Communities-led initiatives
- Use of documentation/registration within the framework of a legal *sui generis* protection regime

Conclusion

- Documentation is not an end in itself, but may serve different purposes, including IP protection.
- Documentation of TK and TCEs may become counter-productive in terms of protection, if the IP relevant issues are not properly addressed
- Well-being of the peoples mostly concerned by documentation should be the guiding principle of any course of action from an IP perspective