



Striking a balance between progressive appropriation of TK through IPRs, Cultural Preservation and Access to Knowledge

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overview

1. Introduction

a) What lies at the cross-roads between IP protection, cultural preservation and access to knowledge?

b) Progressive appropriation of Traditional Knowledge (TK) through IPRs and its impact on cultural preservation and access to knowledge



2. Issues that are involved in attempting to strike a balance

a) Can the progressive means of appropriating TK through IPRs adequately protect the interests of the communities that hold TK?

b) Main shortcomings of the formal IP system in preserving TK and fostering access to Knowledge.



3. Means that are currently used in attempting to strike a balance between IP protection, cultural preservation and access to knowledge.

4. Conclusions: are the means capable of striking the balance?

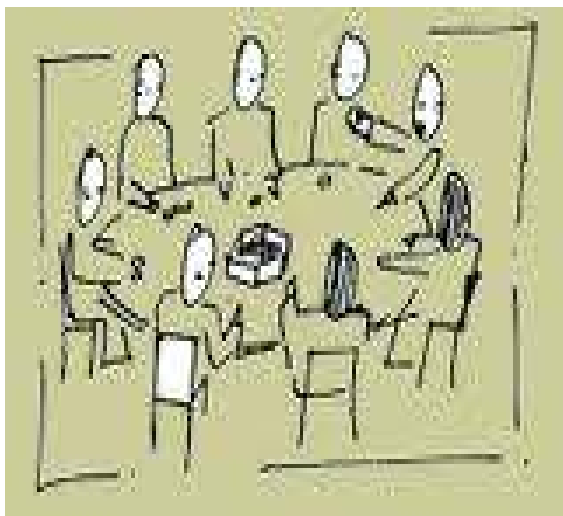
1. a) What lies at the cross-roads?

- The dichotomy between the product that is protected by IPRs and the knowledge from which the product is derived.
- The ‘cross-cultural problem’: ‘the IP needs of TK holders are shaped by their contact with the formal IP systems on the one hand and informal IP regimes that prevail in their societies and communities on the other...’

-See WIPO (2001) *Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-1999)*, p.57.



b) Progressive appropriation of TK) through IPRs and its impact on cultural preservation and access to knowledge



- IP protection does not necessarily guarantee the preservation or safeguarding of TK
 - The inaccessibility of the formal IP system for TK holders:
‘This system is based on document-intensive, codified and governmentally administered structures and procedures.’
- See WIPO (2001), p.57.

2. Issues that are involved in attempting to strike a balance

- a) Main shortcomings of the formal IP system in preserving TK and fostering access to knowledge
- b) Can the progressive means of appropriating Traditional Knowledge (TK) through IPRs adequately protect the interests of the communities that hold TK?



a) Main shortcomings of the formal IP system (See Dutfield G, 2004, pp.100-109)

Copyright	Patents	Trademarks, GIs, plant varieties protection, utility models
<ol style="list-style-type: none"> 1. 'notion of authorship is a problematic concept in many traditional societies'. 2. has time limit, 'whereas folkloric expressions that are important elements of people's cultural identity' would require permanent protection. 3. requires works to be fixed whereas folkloric expressions are not fixed but passed on orally from generation to generation. 4. 'Qualified person' requirement is practically inconvenient to 'collective groups' 	<ol style="list-style-type: none"> 1. the requirement of naming an inventor can be an obstacle for TK applicants. 2. prohibitive costs for acquiring and enforcing rights against infringement 3. Duration and restricted time for protection 	<p>TK holders may find the requisite formalities difficult to comply with</p>

b) Challenges

- i. IP protection does not necessarily guarantee the preservation or safeguarding of TK and access to knowledge.
- ii. IPRs regime is too narrow; communities desire to protect their entire culture not isolated manifestations.
- iii. Communities want some control over the use of knowledge that originates from their culture while formal IP as a rule (except trade secrets) doesn't allow such control



-for ii and iii, see Biber-Klemm S, 'Origin and allocation of Traditional Knowledge and landraces' in Biber-Klemm S & Cottier T (eds) *Rights to plant genetic resources and traditional knowledge: basic issues and perspectives*, Wallingford: CABI, 2005 pp.159ff

Challenges (cont).

iv. Access to knowledge issues:

a) Difficulty in gaining access to knowledge in public domain & enormity of public domain make it complex to find prior art that is relevant to patent applications

-Curci 2007 thesis, p.339

b) Differing interpretations of the scope of the 'public domain' in relation to TK

-See Correa CM 'Access to knowledge: The case of indigenous and traditional knowledge' in Krikorian G & Kapczynski A (eds) *Access to knowledge in the age of intellectual property*, Zone Books, New York, 2010, p.241

3. Means that are currently used in attempting to strike a balance between IP protection, cultural preservation and access to knowledge

- Defensive and positive protection of TK through IPRs
- Elimination of erroneously granted patents
- Establishment of databases to disseminate information related to TK
- Circumscribing exclusive rights for a limited period & imposing exceptions and limitations.
- Contract-based systems

4. Conclusions; are the means capable of striking the balance?



- There is currently no balance
- There are gaps within these means
- How can the gaps be covered and with what means?

Note:

More discussions on these will come under panel 3

Thank you!!

