



Avenues for protecting and preserving TK within IPRs

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Overview

1. Introduction:

Which direction do we desire to take?

a) Maintaining a balance between the protection and preservation of TK and the free exchange of knowledge.

b) Preserving TK while at the same time promoting sustainable economic development (the idea of knowledge-based economy).

2. Efforts geared towards safeguarding TK within the IP system.

3. Feasibility and effectiveness of the efforts: the legal and economic issues at stake.

4. Concluding thoughts on directions: the way forward

1. Which direction do we desire to take?

a) protection and preservation of TK -vs- the free exchange of knowledge

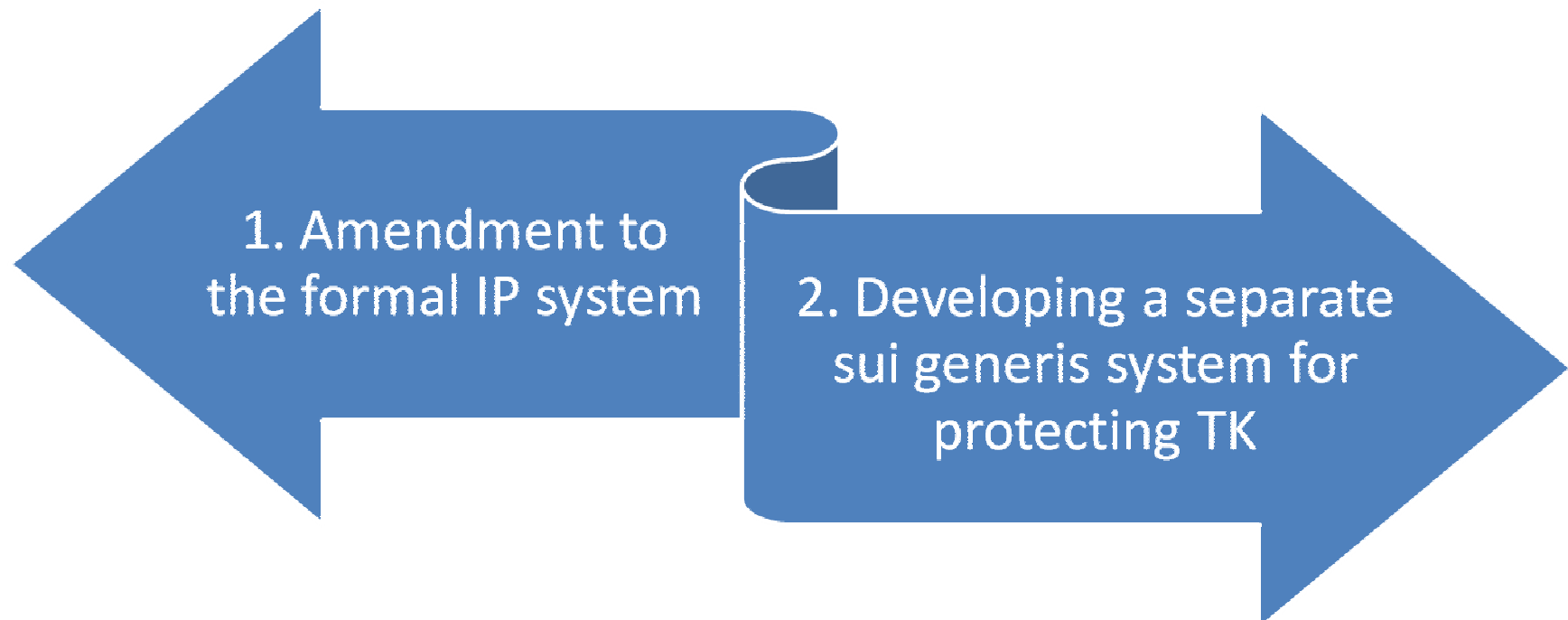
- Individual –vs- collective ownership
- Exclusivity –vs- encouraging cultural exchange & development

b) Preserving TK –vs- promoting sustainable economic development

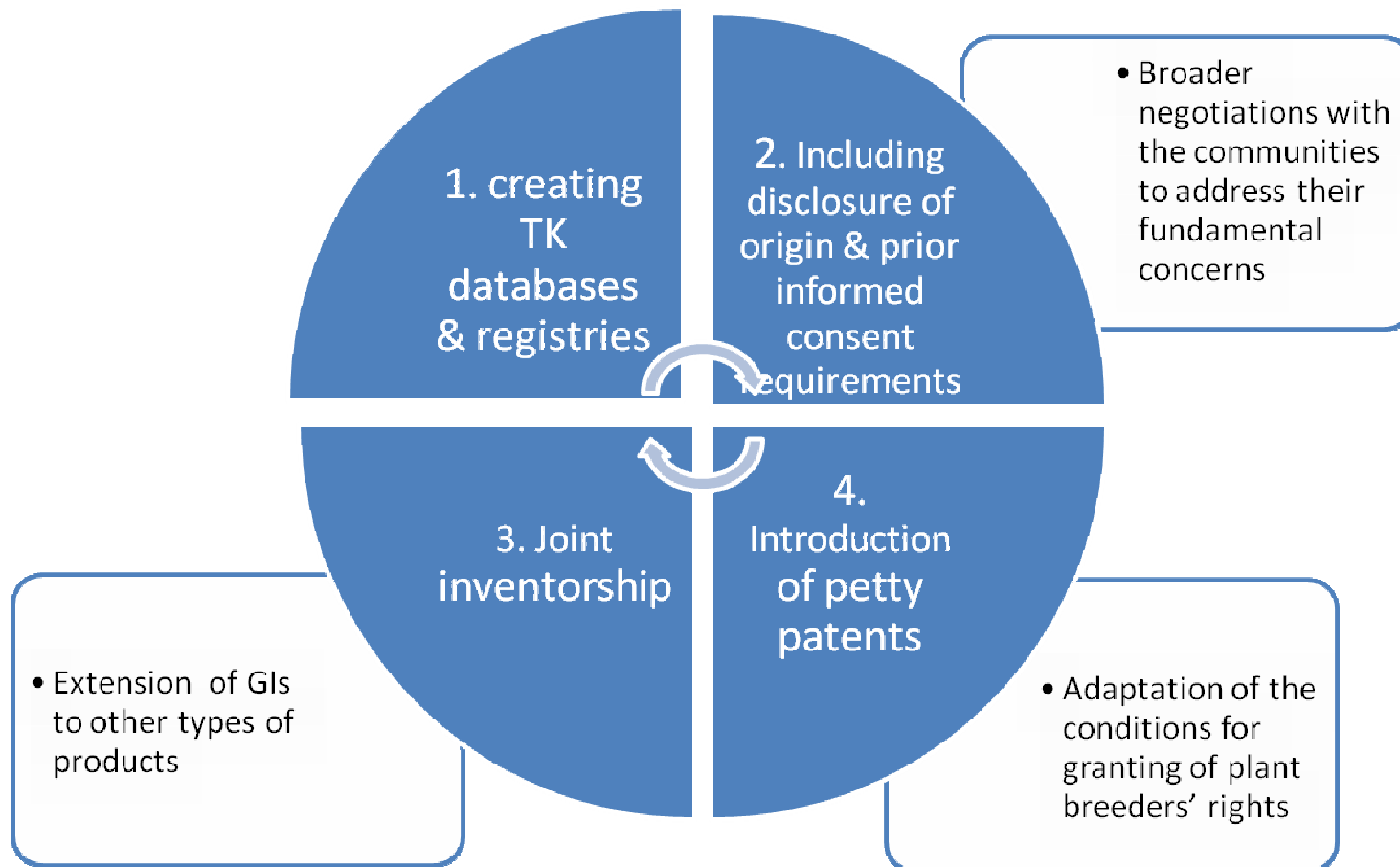
- IPRs (except copyright) focus on economic value
- TK has both economic and moral value



2. Efforts geared towards safeguarding TK



Efforts within the formal IP system



3. a) The legal and economic issues at stake

i) The formal IP system considers some TK to be in 'public domain'

ii) Acceptability of the IPRs system for TK?

Does ‘public availability’ mean ‘public domain’?

‘information is not in the public domain by its public good nature or even by its governmental origin but as the result of a network of formal and informal social agreements, explicit or implicit but entrenched in common law and in the culture of a society.’

- See Clemente Forero-Pineda, “Scientific Research, Information Flows, and the Impact of Data-base Protection on Developing Countries,” in Esanu JM and Uhilr PF (eds) *Open Access and the Public Domain in Digital Data and Information for Science: Proceedings of an International Symposium* (Washington, D.C.: The National Academies Press, 2004), p.38

What is the scope of 'public domain'?

the 'differing interpretations of the scope of the public domain in relation to traditional knowledge have been **one of the hurdles confronting the still-ongoing debates about protection of and compensation for traditional knowledge.**'

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

Concerns over the issue of ‘public domain’?

‘at the heart of the problem is that traditional knowledge has been considered as a matter in the public domain,... **accessible and exploitable by the public at large**, and... by any company interested in the information’

-Cottier T & Panizzon M, ‘A new generation of IPR for the Protection of Traditional knowledge in PGR for food, agricultural and pharmaceutical uses’ in Biber-Klemm S & Cottier T (eds) *Rights to plant genetic resources and traditional knowledge- basic issues and perspectives*, Wallingford: CABI, 2005 at p.205

Acceptability of the IPRs system for TK

IPRs 'don't appear to provide many opportunities of which traditional peoples and communities can avail themselves' i.e., framing the issue of TK protection in the discourse of western IPRs don't go very far unless it's embedded in much broad-based negotiations between traditional peoples and communities, national governments, businesses and scientists in which the most fundamental concerns of these people and communities, such as self-determination (for indigenous people), territorial rights and human rights are openly and comprehensively addressed.'

- Dutfield G, *Intellectual property, biogenetic resources and traditional knowledge*, London: Earthscan Publications, 2004 at p.109.

3. b) effectiveness of the efforts

A good attempt but we need:

- Sensitivity to the cultures of TK holders
- Awareness of the cultural and legal assumptions underlying the formal IP system
- Consideration of TK holders' customary laws

Down the road?



4. Concluding thoughts

The way forward:

- Suitably categorize the TK holders' needs & interests to identify suitable responses
- Strategic approach to protection of the product -vs- preservation of TK in view of the divided approach to what falls within 'public domain'
- Identify gaps that are left by the formal IP system in attempting to protect and preserve TK in order to devise suitable means of dealing with these gaps

Thank you!!

