



# The Intellectual Property and Traditional Knowledge Puzzle

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**Text-based negotiations** with the objective of reaching agreement on a text(s) of an **international legal instrument(s)** which will ensure the **effective protection** of genetic resources, traditional knowledge and traditional cultural expressions

# Challenges . . .

Diverse stakeholders, diverse objectives

International coherence:  
fragmentation of  
international norm-setting

Top-down or bottom up: minimal  
successful national experience

Participation: challenges to  
inclusivity

Legislative  
approach:  
interface with  
practical  
mechanisms

# Opportunities. . .

Historical opportunity: first developing country-led IP normative process

Cutting edge: fresh uses for age-old IP values and principles

Narrowing the trust-gap:  
growing confidence in the  
process

International comity: IP and mutual supportiveness

**Traditional knowledge:** draft *sui generis*  
instrument

**Traditional cultural expressions:** draft *sui*  
*generis* instrument

**Genetic resources:** draft  
'objectives and principle'; textual  
proposals on a mandatory  
disclosure requirement; database  
proposals

<http://www.wipo.int/tk/en/igc/index.html>

# Traditional knowledge and traditional cultural expressions

What is “traditional” knowledge?

*Publicly available TK?*

Who should the beneficiaries of protection be?

How should traditional knowledge be protected?

*Exclusive right/right of prior and informed consent?*

## Genetic resources

GRs are not intellectual property

Access and benefit-sharing regulated by the  
CBD, [Nagoya Protocol] and the FAO's  
International Treaty

For intellectual property, two main issues:

'defensive protection' of GRs: prevention of erroneous patents:  
databases proposal (*quality of patent examination issue*)

proposed disclosure requirement:  
(*CBD implementation issue*)

## **Suggested objectives....**

- Acknowledgement and benefit-sharing
- Innovation
- Robust public domain
- Equitable access to benefits of innovation
- Practical implementability



## Models worth looking at

Compensatory liability scheme (Reichman and Lewis, 2005)

FAO's International Treaty on Plant Genetic Resources for Food and Agriculture

Pacific Model Law on Traditional Knowledge and Cultural Expressions

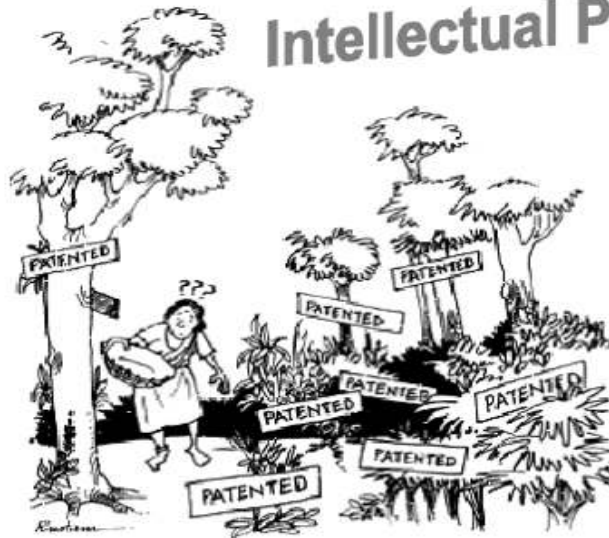
WHO Legal Framework for Sharing of Pathogens, 2011

Waitangi Tribunal Report 2011 (WAI 262 Report)  
(New Zealand)

WIPO IGC has three sessions left before a decision on a Diplomatic Conference will be taken in September 2012

- February 2012: genetic resources
- April 2012: TK
- July 2012: TCEs

# Traditional Knowledge and Intellectual Property



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