

Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions



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*This online version is a modified
version of what was presented*



- Traditional knowledge (TK) and cultural expressions (TCEs) - what are the issues?
- Options on TK and TCEs - what can you do now? what new options are being discussed?
- Genetic resources – what is the IP issue? what possible solutions are there?
- International developments – how are the negotiations at WIPO going?

1. TK and TCEs - what are the issues?

Conventional IP systems protect innovations and creations, including those that are “tradition-based”

In some cases, there is specific protection for TCEs

However, the “underlying” TK and TCEs are generally regarded as “public domain”

Should communities be able to control and benefit from access to and use of their TK and TCEs?

In other words, should TK and TCEs be treated as a form of “intellectual property”?

Five questions

**How, if at all, to
protect “publicly
available”
traditional
knowledge**

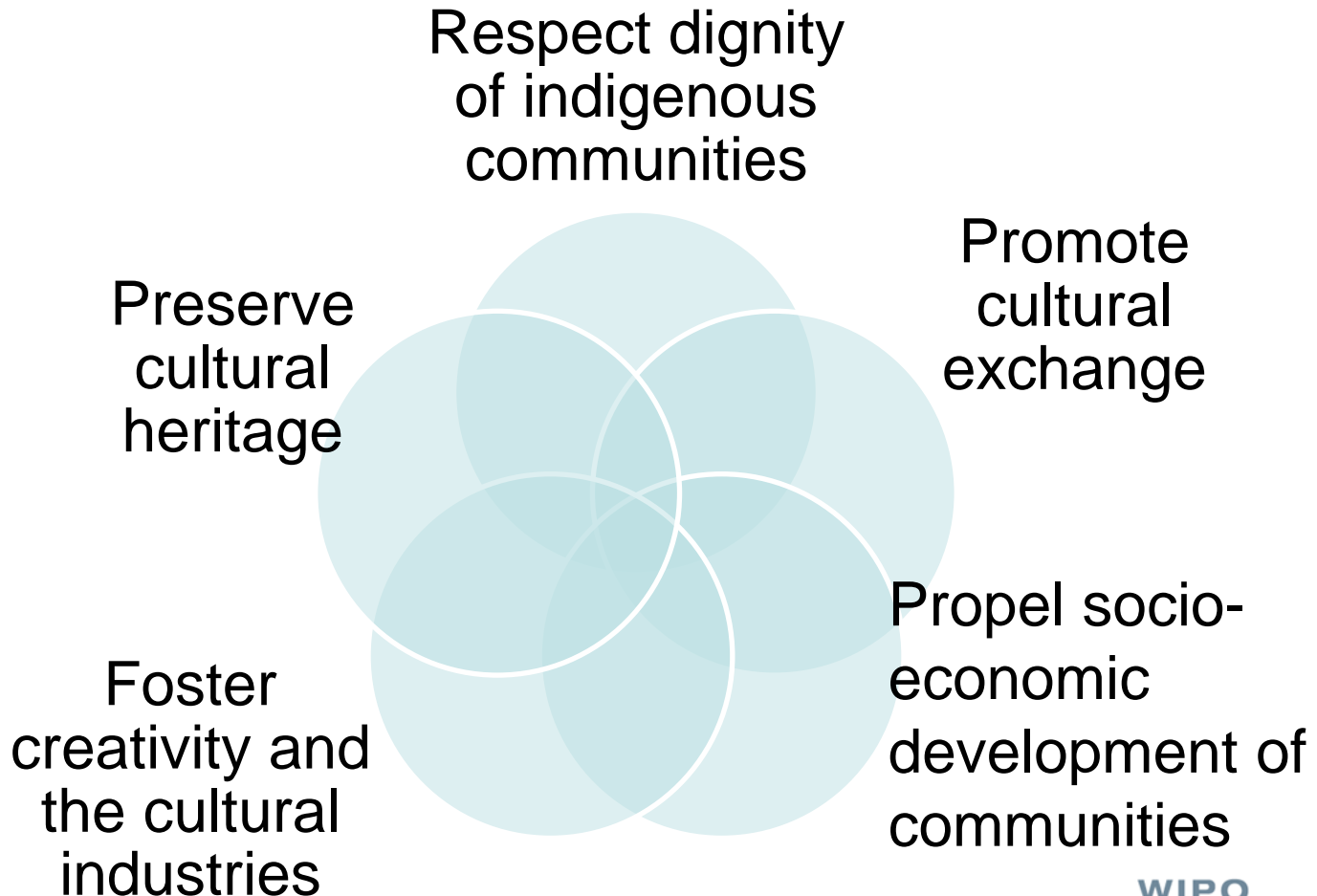
***Culture . . . “is varied, complex
and in constant evolution”***

**(The Uganda National Cultural
Policy, 2006, page 7)**

What does “traditional” mean?

**For example, when is a cultural
expression “traditional” and
therefore deserving of special
protection?**

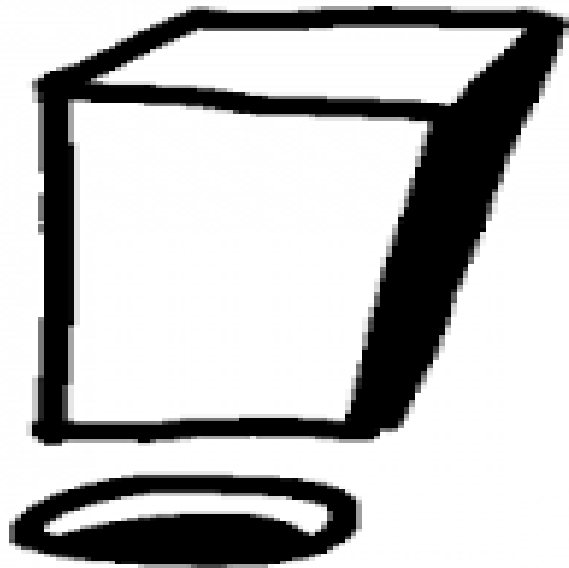
How best to reconcile competing policy objectives?



Transboundary and “shared” TK and TCEs?

**IP protection is not the same as
“preservation”/”safeguarding”**

**What does “intellectual property
protection” mean?**





Protect and Promote Your Culture

A Practical Guide to Intellectual Property for
Indigenous Peoples and Local Communities

2. Options – what can you do now? what new options are being discussed?



- **Legislative vs. practical options**
- **More effective use of existing IP system vs. new *sui generis* IP norms**
- **IP vs. non-IP options**

3. Genetic resources – what is the IP issue? what possible solutions are there?

**Genetic resources as such are
not “intellectual property”**

“Access and benefit-sharing”

- Convention on Biological Diversity, 1992 (and, Bonn Guidelines, 2002)
- International Treaty on Plant Genetic Resources for Food and Agriculture (the Plant Treaty), 2001
- Nagoya Protocol, 2010 (Protocol to the CBD)

■ **Access to and utilization of GRs** depends upon:

- mutually-agreed terms, and
- prior informed consent
- equitable sharing of benefits

- Inventions based on or derived from GRs may be patentable:
 - ‘defensive protection’ of GRs: preventing erroneous patents
 - ensuring and tracking compliance with ABS systems

A mandatory disclosure requirement?

Section 21(8), Industrial Property Act,
2014 of Uganda

(6) Disclosure of the claimed invention shall be considered sufficiently clear and complete if it provides information which is sufficient to allow that invention to be made and used by a person with who has ordinary skill in the art on the filing date, without undue experimentation.

(7) For the purposes of assessing sufficiency of disclosure, the disclosure contained in the description, claims and drawings, as established on the date in which the sufficiency of disclosure was examined, shall be taken into account.

(8) The description shall contain a clear identification of the origin of genetic or biological resources collected in the territory of Uganda and that were directly or indirectly used in the making of the claimed invention as well as of any element of traditional knowledge associated or not with those resources and that was directly or indirectly used in the making of the claimed invention without the prior informed consent of its individual or collective creators.

(9) For the purposes of this section, a person shall be taken as having ordinary skill in the art if that person is a citizen of Uganda who has studied and carries out his or her profession in Uganda, and has acquired an average expertise and experience in the technical field of the claimed invention.

Key Questions on Patent Disclosure Requirements for Genetic Resources and Traditional Knowledge



4. International developments – how are the negotiations at WIPO going?

**WIPO Intergovernmental
Committee on Intellectual Property
and Genetic Resources, Traditional
Knowledge and Folklore**



Mandate, Participation

Current status, Next steps

Significance

- For indigenous peoples, local communities and other beneficiaries:

New collective rights to prevent unauthorized use and/or share in benefits, internationally – economic, social and cultural benefits

- For international IP law-making:

A profound re-imagining of the IP system

First developing country-led normative process of this breadth and complexity

Challenges

- Little experience at national/regional level
- Diverse demandeurs, diverse objectives
- Interface with other instruments and processes

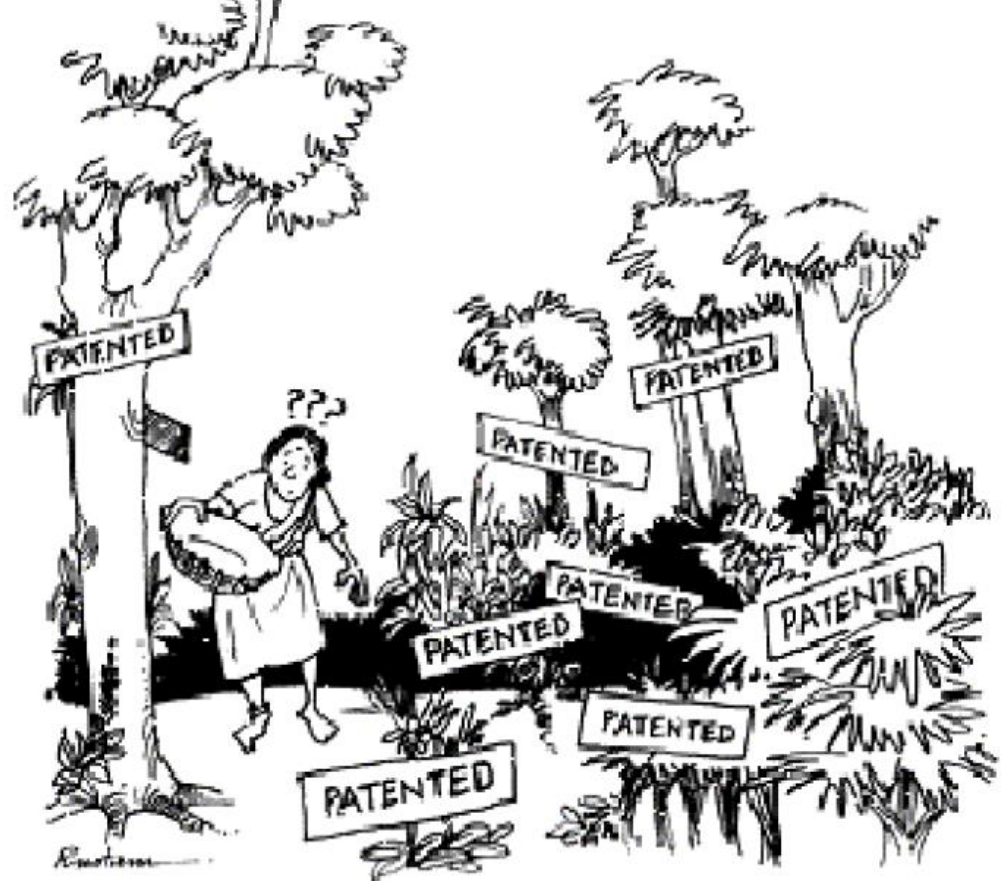
The African Group

**Identify
realistic, win-
win outcomes**

Define objectives

Clarify gaps

**Demonstrate the
harm, based on
actual experiences
and facts**



Source: AAAS TEK-PAD

Questions and comments?

Follow developments: sign up for **WIPO's TK Updates and Newsletters** by emailing us at grtkf@wipo.int

Access all resources through our **website:**

www.wipo.int/tk/en

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