

Traditional knowledge and Paris Convention art 10bis protection

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Intellectual property law

- ❑ Creativity should be encouraged and stimulated
- ❑ Imitation, copying and passing off should be discouraged
- ❑ Create a level playing field
- ❑ Different forms of IP-law
 - Patents
 - Trademarks
 - Industrial design
 - Copyright and related rights
 - Can be supplemented by unfair competition law
- ❑ Territoriality
- ❑ Exceptions and limitations

Intellectual property law

- Paris Convention of 1883
 - Revised last in 1967
- TRIPS Agreement 1994
 - WTO single undertaking

- IGC on GRTKF in WIPO from 2001 to 2009
 - Possible renewal of mandate for another two years

Working definition of TK

- “traditional knowledge” is taken to referring in general to the content or substance of knowledge resulting from intellectual activity in a traditional context, and includes the know how, skills, innovations, practices and learning that form part of traditional knowledge systems, and knowledge embodying traditional lifestyles of indigenous and local communities, or contained in codified knowledge systems passed between generations. It is not limited to any specific technical field, and may include agricultural, environmental and medicinal knowledge, and knowledge associated with genetic resources.



Working definition TK

- (i) generated, preserved and transmitted in a traditional and intergenerational context;
- (ii) distinctively associated with a traditional or indigenous community or people which preserves and transmits it between generations; and
- (iii) integral to the cultural identity of an indigenous or traditional community or people which is recognized as holding the knowledge through a form of custodianship, guardianship, collective ownership or cultural responsibility. This relationship may be expressed formally or informally by customary or traditional practices, protocols or laws.

The idea for a new model

- Create a legal instrument in order to protect the respect for and the recognition of TK, involving
 - Prior Informed Consent
 - Benefit sharing
- Modelled on the principle in Article 10*bis* of the Paris Convention
 - "Good business practices"
 - Presupposes a commercial effect in a given country
- This provision has also been the model for various new models of IP-protection
 - *Geographical indications (e.g. wines and spirits)*
 - *Undisclosed test data for pharmaceuticals*
 - *Integrated circuits*

Recommendation regarding protection against misappropriation and unfair use of Traditional Knowledge

WIPO/GRTKF/IC/9/12 at § 38

- 1. The members of the Paris Union for the Protection of Industrial Property and the World Intellectual Property Organization should assure nationals of member countries adequate and effective protection against misappropriation and unfair use of Traditional Knowledge (TK)
- 2. Any use of TK against honest practices in cultural, industrial or commercial matters should be considered as actions in breach of paragraph one.
- 3. TK holders should in particular be provided with effective means to ensure that:
 - the principle of prior informed consent applies to access to TK,
 - benefits arising from certain uses of TK are fair and equitable shared,
 - all acts of such a nature as to create confusion by any means whatever with the origin of the TK are repressed, and
 - all acts of such a nature that would be offensive for the holder of the TK are repressed.”



Elements to be considered

- ❑ Legal certainty
 - Predictability
- ❑ International dimension
 - National treatment
 - Most favoured country
- ❑ Enforcement
 - Collecting societies
- ❑ National implementation
 - Different legal traditions
 - Trust in its own Government and/or Parliament

Elements to be considered

- Legally binding
 - In what sense, in which context

 - Norway has proposed a disclosure obligation in the TRIPS Agreement a new article *29bis*
 - WT/GC/W/566 (General Council)
 - TN/C/W/42 (Trade Negotiations Committee)
 - IP/C/W/473 (Council for TRIPS)
- 14 June 2006