

Leaflet No. 12: WIPO and Indigenous Peoples

Key Words and Ideas

Cultural heritage

Intellectual property

World Intellectual Property Organization (WIPO)

***Summary:** Despite international recognition of the right of indigenous peoples to preserve and protect their traditional practices, knowledge and ways of life, the cultural heritage of many indigenous peoples is under threat, and many indigenous peoples are prevented from enjoying their human rights and fundamental freedoms. However, various initiatives have been launched to protect the intellectual property rights of indigenous peoples .*

The cultural and intellectual heritage of indigenous peoples comprises the traditional practices, knowledge and ways of life unique to a particular people. The guardians of an indigenous peoples' cultural and intellectual property are determined by the customs, laws and practices of the community, and can be individuals, a clan or the people, as a whole. The **heritage** of indigenous people includes:

- Ø language, art, music, dance, song and ceremony
- Ø agricultural, technical and ecological knowledge and practices
- Ø spirituality, sacred sites and ancestral human remains
- Ø documentation of the above

In some countries, traditional and sacred sites are exploited or destroyed by the tourist industry. Many of these sites of spiritual and cultural significance are also ecological reserves that have been developed, conserved and managed by indigenous peoples through their traditional knowledge and practices. In other cases, indigenous art and sacred materials are used without the knowledge or permission of the indigenous artist or community. Many cultural artifacts and ancestral human remains that were taken from sites without the permission of indigenous peoples, are held in museums and collecting institutions around the world. Increasingly, indigenous peoples are seeking to have these items returned to them as a sign of respect for their cultural traditions and practices.

Indigenous **intellectual property** includes the information, practices, beliefs and philosophy that are unique to each indigenous culture. Once traditional knowledge is removed from an indigenous community, the community loses control over the way in which that knowledge is used. In most cases, this system of knowledge evolved over many centuries and is unique to the indigenous peoples' customs, traditions, land and resources. Indigenous peoples have the right to protect their intellectual property, including the right to protect that property against its inappropriate use or exploitation.

Similarly, indigenous peoples are seeking to protection their traditional knowledge and practices from commercial exploitation. As science and technology advance while natural resources dwindle, there is increased interest in appropriating indigenous knowledge for scientific and commercial purposes. Some research and pharmaceutical companies are patenting, or claiming ownership of, traditional medicinal plants even though indigenous peoples have used such plants for generations. In many cases, these companies do not recognize the indigenous peoples' traditional ownership of such knowledge and deprive indigenous peoples of their fair share in the economic, medical or social benefits that accrue from the use of their traditional knowledge or practices.

In recent years, indigenous peoples have expressed their concerns about these issues in a number of international declarations, including the Manila Declaration on the World Declaration for Cultural Development (1988), the Kari-Oca Declaration (1992), the Mataatua Declaration (1993), and the Beijing Declaration of Indigenous Women (1995). These concerns were also raised in the Final Statements of the Coordinating Body of the Indigenous Peoples of the Amazon Basin (1994) and

the South Pacific Regional Consultation on Indigenous Peoples' Knowledge and Intellectual Property Rights (1995).

Protection of indigenous peoples' cultural heritage and intellectual property

The right of indigenous peoples to protect and enjoy their cultural heritage is recognized in a number of international instruments, including the Universal Declaration on Human Rights, the International Covenants on Economic, Cultural and Social Rights, and on Civil and Political Rights, the International Labor Organization's Convention No. 169, and the draft UN Declaration on the Rights of Indigenous Peoples. However, the nature of indigenous peoples' intellectual property, which is often inseparable from spiritual, cultural, social and economic aspects of indigenous life, and the notion of collective ownership of such property is not adequately addressed in existing international intellectual property law.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), adopted by the World Trade Organization (WTO) in 1994, establishes minimum standards for the protection of intellectual property and provides minimum protection for indigenous peoples' intellectual property. Under the agreement, WTO's Member States are obliged to provide citizens of another State the same protection they provide to their own nationals. But that means that the protection of indigenous intellectual property depends on governments adopting effective domestic legislation that clearly protects the intellectual property of indigenous peoples within their own territories.

Initiatives to protect indigenous peoples' intellectual property

There have been a number of initiatives in recent years that address the inadequacy of international law in relation to the protection of indigenous peoples' intellectual property. In 1992, the Working Group on Indigenous Populations and the World Intellectual Property Organization (WIPO) held a Technical Conference on Indigenous Peoples. Participants recommended that the United Nations develop more effective measures to protect the intellectual and cultural property rights of indigenous peoples.

The Sub-Commission on Prevention of Discrimination and Protection of Minorities commissioned a *Study on the Protection of the Heritage of Indigenous Peoples*. The study, published in 1993, considered measures to be taken by the international community to strengthen respect for the cultural and intellectual property of indigenous peoples. One of the most promising results of this study was the development, two years later, of draft Principles and Guidelines on the Heritage of Indigenous Peoples. These principles and guidelines set standards for governments to ensure that the heritage of indigenous peoples survives for future generations and continues to enrich the common heritage of humanity.

A number of UN agencies are also addressing the need to protect indigenous cultural heritage and intellectual property. The United Nations Educational, Scientific and Cultural Organization (UNESCO) and WIPO established the Model Treaty on the Protection of Expressions of Folklore against Illicit Exploitation. The Model Treaty recognizes indigenous peoples as the traditional owners of artistic heritage, including folklore, music and dance, created within indigenous territories and passed down through the generations.

In 1994, the United Nations Development Programme (UNDP) published a study on indigenous knowledge and intellectual property rights entitled *Conserving Indigenous Knowledge, Integrating Two Systems of Innovation*. The results of the study, which was conducted by Rural Advancement Foundation International, were disseminated in regional meetings of indigenous organizations to raise awareness of traditional knowledge and to address ways in which indigenous peoples can preserve and protect their cultural heritage and intellectual property.

The Rio Declaration, the plan of action (known as Agenda 21), and the Convention on Biological Diversity, adopted at the 1992 Earth Summit in Rio de Janeiro, Brazil, all emphasize the need for governments and inter-governmental organizations to protect the traditional conservation methods and knowledge of indigenous people. Article 8(j) of the Convention on Biological Diversity creates legal obligations for States party to respect, preserve and maintain the knowledge, innovations and practices of indigenous people related to the conservation and sustainable use of biodiversity. This

Convention also recognizes the right of indigenous peoples to share in the economic and social benefits that accrue from the wider application of their traditional knowledge and practices.

At the second Conference of Parties to the Convention on Biological Diversity, participants committed themselves to studying the relationship between the objectives of the Convention and the TRIPs Agreement. Working with WTO and indigenous peoples, States will examine whether and how existing intellectual property rights help preserve and protect indigenous intellectual property, and whether benefits that arise from the use of traditional practices and knowledge are fairly shared.

UN organizations and how to use them

The World Intellectual Property Organization

The World Intellectual Property Organization (WIPO) is a UN specialized agency that promotes the protection of intellectual property worldwide. WIPO defines intellectual property as literary, artistic and scientific works, inventions in all fields of human endeavour, scientific discoveries, and all other intellectual activity in the industrial, scientific, literary or artistic fields.

WIPO works with its 176 Member States and, when appropriate, with other organizations. The Global Intellectual Property Issues Division, which is responsible for issues related to indigenous peoples, is located at WIPO's headquarters in Geneva, Switzerland.

WIPO is responsible for administering a number of international treaties in the field of intellectual property and disseminates information and advice to organizations with a special interest in protecting intellectual property. WIPO provides technical advice and assistance to developing countries on protecting intellectual property while promoting economic, social and cultural development. Governments also receive assistance from WIPO in improving their national legislation related to intellectual property rights.

WIPO and activities related to indigenous people

WIPO's Global Intellectual Property Issues Division (the Global Issues Division) is responsible for a number of activities directly related to indigenous peoples. The Global Issues Division is primarily a research unit that conducts studies and practical activities to better understand the relationships between intellectual property and access to, and benefit-sharing in, genetic resources; the protection of traditional knowledge; and the protection of "expressions of folklore". In 1998 and 1999, a series of nine fact-finding missions on traditional knowledge, innovations and creativity were undertaken. WIPO fielded the missions as part of its study of current approaches to, and future possibilities for, the protection of intellectual property rights of those who hold traditional knowledge, including indigenous peoples.

In July 2000, a draft report on all the fact-finding missions was published for public comment on the WIPO web site and in paper form. WIPO also published a study on the role of intellectual property rights in the sharing of benefits arising from the use of biological resources and associated traditional knowledge. The study was commissioned jointly with the United Nations Environment Programme (UNEP) and involved three case studies.

The Global Issues Division is working with the Secretariat of the Convention on Biological Diversity, UNEP and other agencies to examine the role of intellectual property in the preservation, conservation and dissemination of global biological diversity.

Based on the results of its fact-finding missions and other exploratory activities, WIPO is engaged in several practical activities:

- § Developing information materials on options under the existing intellectual property system for protecting traditional knowledge
- § Disseminating practical information and holding training workshops on the intellectual property system and the protection of traditional knowledge

- § Developing information, training and standards on intellectual property to document traditional knowledge
- § Studying cases in which the protection of traditional knowledge has been sought under the intellectual property system
- § Conducting feasibility studies on applying customary laws to traditional knowledge
- § Implementing a pilot project on acquiring, managing and enforcing intellectual property rights for traditional knowledge

The most recent development is that the Member States of WIPO have established an Inter-governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore to discuss these subjects. Discussions will focus on three primary themes: access to genetic resources and benefit sharing; the protection of traditional knowledge, whether or not associated with those resources; and the protection of expressions of folklore.

The Inter-governmental Committee will be open to all Member States of WIPO. Relevant inter-governmental organizations and accredited international and regional NGOs will be invited to participate as observers. Other organizations, including indigenous organizations, may also seek accreditation to participate as observers in Committee sessions, but such accreditation is subject to Member State approval. The Committee will report any recommendations for action to the WIPO General Assembly. The Committee will meet for the first time in April-May 2001.

Participating in WIPO activities

As much as possible, WIPO consults with indigenous representatives in designing and planning its activities so indigenous needs and concerns related to intellectual property rights are addressed.

How to contact WIPO

If you would like more information on WIPO's activities related to the protection of indigenous intellectual property rights, or would like to find out how you can participate in WIPO's meetings or activities, you can contact:

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