



Intellectual Property and Economic Growth and Development in Africa

Intellectual property and indigenous knowledge systems/traditional knowledge and genetic resources

Wend Wendland, Director, Traditional Knowledge Division,
WIPO

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Intellectual Property and
Genetic Resources,
Traditional Knowledge and Folklore (IGC)

“ . . . text-based negotiations with the objective of reaching agreement on a text of an international legal instrument (or instruments) which will ensure the effective **protection** of GRs, TK and TCEs . . . ”

WIPO General Assembly, September 2013

“ . . . will take stock of and consider the text(s), progress made and decide on convening a diplomatic conference . . . ”

significance

Historical opportunity: first developing country-led normative process in IP

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

International comity: mutual supportiveness of IP towards other policy objectives

challenges

Diverse demandeurs, diverse objectives

Top-down norm-setting, with relatively little experience at the national level

Representation and participation, especially indigenous peoples, small-scale farmers

Interface with other instruments and fora, CBD/Nagoya, FAO, WTO, UNESCO

the African Group

“protection”

1. Recognizing IKS as “**intellectual property**” – i.e., as comprising creations and innovations of the human mind, and

2. Protecting IKS through a special system or mechanisms based on the kinds of **measures, principles and trade-offs** that underlie systems for the protection of intangibles (intellectual property systems) - i.e., a **balanced** system, in support of national policy objectives, that includes a mix of exclusive and non-exclusive property rights and appropriate exceptions and limitations

balance

Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.



The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic development, and to a balance of rights and obligations.

Article 8

Principles

the IGC's TK text

- Scope of protectable subject matter (what)
- Beneficiaries (who)
- Scope of rights (how)
- Exceptions and limitations (how far)

1.1 For the purposes of this instrument, “traditional knowledge” [refers to] includes know-how, skills, innovations, practices, teachings and learnings [developed within a traditional context]/[developed with an indigenous people or local community]/[and that is intergenerational]/[and that is passed on from generation to generation].

1.2 Protection extends to traditional knowledge that is associated with beneficiaries as defined in Article 2, [collectively] generated, shared/transmitted and preserved [and [integral]/[closely linked]] to the cultural identity of beneficiaries as defined in Article 2.

“disclosed” TK and “diffused” TK

- “secret”
- “publicly available”
- “widely known”
- “known outside the beneficiary community”
- “public domain”
- “linked to”/“integral to”/“associated with” [a beneficiary community]
- “unique” or “distinctive” [to a beneficiary community]

genetic resources

“protection”

genetic resources as such are not
“intellectual property”

“access and benefit-sharing”

(ABS)

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

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

Where does intellectual
property come in?

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

* or be subject to other forms of IP rights

three ideas

a proposed mandatory
disclosure requirement

the IGC's text on GRs

. . .on a proposed disclosure requirement . .

- Option 1: mandatory disclosure
 - trigger
 - exclusions
 - contents
 - actions of IP offices
 - relationship with PCT and PLT
 - sanctions and remedies: 3 options

- Option 2: no mandatory disclosure

What's next . . . ?



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wend.wendland@wipo.int

grtkf@wipo.int

Thank you