

Protection of Traditional Knowledge as IPR

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Abstract: *TK is a very broad definition which embraces technical concepts about a local environment, wherein said knowledge derives from the long-standing traditions and practices of certain regional, indigenous, or local communities. These technical concepts, which are intrinsically connected with the spiritual meanings and beliefs of the communities which had developed them, are the way indigenous people have in order to survive in the surrounding environment. The increasing awareness of the importance of this kind of knowledge brought about the necessity of the definition, classification and legal protection of traditional knowledge. As a consequence, after giving a brief overview of the main legal basis developed in the attempt at the protection of traditional knowledge, this paper deals with the problems associated with the codification in registers and databases, and gives some remarks about the Indian, Korean and Chinese traditional knowledge databases. Indigenous cultural knowledge has always been an open treasure box for the unfettered appropriation of items of value to Western civilization. While we assiduously protect rights to valuable knowledge among ourselves, indigenous people have never been accorded similar rights over their cultural knowledge. Existing Western intellectual property laws support, promote, and excuse the wholesale, uninvited appropriation of whatever indigenous item strikes our fancy or promises profit, with no obligation or expectation to allow the originators of the knowledge a say or a share in the proceeds.*

Key words: Legal, Protection, Traditional Knowledge, Intellectual Property

Introduction

Traditional knowledge (TK) is a veritably broad description, which embraces the total of culture of the people living in an indigenous or original community. Said culture is an admixture of the specialized generalities deduced from the long-standing traditions, the practices carried out to survive in a specific original terrain, and the spiritual meanings and beliefs of the communities.¹ In such an environment, the so-called Indigenous Knowledge (IK) can be appertained to as the knowledge that's known only in a specific group of Indigenous people, substantially orally transmitted, concerning the TK that's of public sphere (codified) Between other compliances about the original

terrain, the TK includes the information about inheritable coffers, as long as it deals with the growing and the use of trees and shops for aliment and illness treatments, and the beast types. TK, and in particular IK, embraces also the information about the rainfall cast. For illustration, Moken Indigenous, a littoral group of people of Thailand, saved themselves from riffle in 2004, because they recognized that riffle was coming through the compliances of the particular movements of water. It has to be noted that the term "traditional" doesn't mean that this kind of knowledge is old, but that it's grounded on the traditions, which have been transmitted through generations. therefore, the term "traditional" relates to the way the knowledge has been created, saved and circulated and it isn't connected with the nature of the knowledge itself.

As long as the TK represents the adaption to the girding terrain, changes of the surroundings bear that indigenous people find out new results. In other words, invention is necessary in the TK and, hence, TK is always on development, it isn't a stationary knowledge. In view of the below,

¹ Ghosh, Jayanta and Sinha, Vijoy Kumar, Traditional Knowledge and Traditional Cultural Expression amongst the PVTGs of West Bengal (August 21, 2023). Centre for Regulatory Studies, Governance and Public Policy The West Bengal National University of Juridical Science | Project Report 2021-2022, Available at SSRN: <https://ssrn.com/abstract=4546683> or <http://dx.doi.org/10.2139/ssrn.4546683>

indigenous people prefer to avoid the term “traditional” in the description of their knowledge.² Another important point of TK is that this kind of knowledge is substantially a collaborative knowledge, and, as a consequence, it's a collaborative property of indigenous people. nonetheless, cases of individual property can be set up. The World Intellectual Property Organization (WIPO), which laboriously works in order to find results to cover TK, refers to the TK as the “tradition-grounded erudite, cultural or scientific workshop; inventions; scientific discoveries; ³ design; marks, names and symbols; undisclosed information; and all other tradition-grounded inventions and creations, performing from intellectual exertion in the artificial, scientific, erudite or cultural fields”. Although there's no generally accepted description yet, the below-cited WIPO's description of TK is the most extensively recognized. In India TK is substantially used in cloth designs, making of medicinal medications, myth, and cultivating agrarian products.

Biopiracy is a “political” description given to the geste of some pots, belonging both to the developed countries and to the TK holders countries, which commercially exploit the information got by TK, as the natural material or the specific knowledge about a content, without any compensatory benefit to the stakeholder of similar knowledge. occasionally, the TK has been duplicated as similar, in patents.⁴ Well-known intellectual property-related cases of biopiracy in the “traditional drug” field, are the case of the use of turmeric in crack mending and the use of neem excerpt as a factory germicide.

Turmeric, an herbaceous imperishable factory of the gusto family which is used as a spice in Indian cuisine, has been utilised for centuries to heal injuries and rashes. Despite this ancient knowledge, in 1995 two aboriginal Indians at the University of Mississippi Medical Centre were granted the US patent no. 5401504 on use of turmeric in crack

mending. After a reappraisal requested by the Council of Scientific and Industrial Research (CSIR) of India and supported by an ancient Sanskrit textbook and a paper published in 1953 in the Journal of the Indian Medical Association, the patent was cancelled in 1997 by USPTO.

In the case of neem, a native tree of India, whose except can be used against hundreds of pests and fungal conditions that attack food crops, the European patent no. EP436257 was granted in 1994, claiming a system for controlling fungi on shops by the aid of hydrophobic uprooted neem oil painting. In 2000, the European Patent Office (EPO) abandoned the patent, after the opposition filed by a group of transnational NGOs and representatives of Indian growers, as it had been demonstrated, through oral evidence, that the fungicidal effect of excerpts of neem seeds had been known and used for centuries in Indian husbandry to cover crops. In the below cited cases, the patents were granted by lack of good attestation and they were cancelled once the material documents arose. therefore, there's a strong need, which is recognized by all parties and in particular by the main patent services of the world, to have the tools in order to make a protective protection of TK, for its preservation and indifferent use. Due to the colourful angles of TK, different forms of intellectual property should be imaged to cover such a kind of knowledge.

Patents and traditional knowledge: conflicts

Novel inventions can be instituted as an improvement of some aspects of the TK, that is used as prior art, e.g.: a method to show an active principle in a plant that can be developed starting from the observation of a particular use in the TK of the plant containing the said active principle.⁵ Such inventions will not be a duplicate of TK, i.e. they will not have a “biopiracy” claim, but they will be derived. In this context, the inventions derived from TK will have a chance to be new inventive.

Roles of the registers and databases in the traditional knowledge scenario

With the entry into force of CBD, with particular reference to article 8(j), the role of registers and

² Smith, L. T. (2016). *Decolonizing Methodologies: Research and Indigenous Peoples*. United Kingdom: Bloomsbury Publishing.

³ Between Imagined Communities and Communities of Practice. (2015). Germany: Göttingen University Press.

⁴ McIntyre, B. D. (2009). *Global Report*. United Kingdom: Island Press.

⁵ Intellectual Property and Traditional Knowledge. (2005). Switzerland: WIPO.

databases has become very important in the protection of traditional knowledge. In fact, registers and databases can play a role in the preservation of TK, as a source of defensive and/or positive protection and they may facilitate the access to the gain-sharing programs relating to the genetic resources, and also if they cannot arrest the TK exploitation in the defensive protection role.⁶

Traditional Knowledge Digital Library

Indian government collaborated a digital database, The Traditional Knowledge Digital Library (TKDL) giving information in Indian languages and formats that are easy to understood by the Examiners involved in the patent searches and examinations in the various patent offices. This database, in fact, can be accessed only by the patent Examiners involved in the patent granting procedures and it has a defensive role to prevent the biopiracy.

Traditional knowledge case study

1. Traditional knowledge, lacks strict definition, generally transmits custodial knowledge passed down from 1 generation to 2 generation.

2 The most commonly discussed example is traditional medicinal knowledge, or expertise on a particular extract or element of a native plant that has healing properties

*.3 Such knowledge often is tied directly to genetic resources ("GR"), which are contained within the flora and fauna native to a particular region.*⁷

4 In many instances, indigenous groups are the custodians of both the genetic resources and the traditional knowledge pertaining to those resources

.5 Debates have raged for decades about the types of proprietary rights that custodians of TK and GR should be able to assert, and how best to balance those rights with global societal interests and IPR frameworks.

6 This introductory Essay outlines some background information necessary to understand

⁶ Traditional Knowledge in Policy and Practice: Approaches to Development and Human Well-being. (2010). Japan: United Nations University Press.

the profoundly different views that characterize these debates, and why the answers to the questions raised in these debates matter on a grand scale.

*The hope is that this theory proves helpful to readers new to the international IPR debates about traditional knowledge. "Conventional" models of intellectual property-a phrase used in this piece to refer to the models of IPR protection that dominate the international landscape mandate largely from a theoretical area.*⁸

In order to contribute to the importance of traditional knowledge information as prior art documentation, I wish to describe a personal experience about a search in the cosmetic field, comparing the results obtained in commercial databases with those coming from a traditional knowledge open-access database.

Article 8(J) of CBD

Suggests for insitu conservation. To respect, preserve and maintain knowledge and innovations and practices of indigenous and local communities relating to conserve and sustainable use of bio diversity.

Encourages for equitable sharing of benefits.

Suggests for effective mechanism of WIPO, Traditional knowledge and folklore Effective participation of indigenous communities and localities.

It will examine the mechanism to protect the traditional knowledge and its origin. It acts as a necessary element to apply for an intellectual property right.⁹

Insists parties and government, local representatives and indigenous communities to

⁷ Documenting Traditional Knowledge - a Toolkit. (2017). Switzerland: World Intellectual Property Organization.

⁸ The Economics of Intellectual Property: Suggestions for Further Research in Developing Countries and Countries with Economies in Transition. (2009). Switzerland: World Intellectual Property Organization.

⁹ Gupta, A. K. (2004). WIPO-UNEP Study on the Role of Intellectual Property Rights in the Sharing of Benefits Arising from the Use of Biological Resources and Associated Traditional Knowledge. Switzerland: World Intellectual Property Organization.

develop and implement strategies to protect traditional knowledge, innovations and practices.

Sui-generis system is used by indigenous peoples for contractual agreements, registration of traditional knowledge and codes of practise. It insists for study of exiting systems for treating innovations at local level, and to identify how sui generis system relate to present national and international systems of IPR. So, the purpose is to see both system complement each other.

Indigenous peoples Rights vs IPR

Indigenous peoples view ---IPR is responsible for destruction of biodiversity, communal rights, innovations and tradition, Grabbing of indigenous traditional knowledge.¹⁰

Denial of access to indigenous medical knowledge

With the arrival of concept of life property, it discarded genetic resources flow

More bioethical implication's on the patenting of life.

TRIPS and CBD are "the probable vehicles for action"

Indigenous IPRs cannot be taken away such as

Right to exercise their culture¹¹

Right to self determination

Territorial and land rights

Conclusion

This article is to provide the readers with an overview about the meaning of traditional knowledge and its implication in the social, economic and legal fields. In fact, many questions

¹⁰ Wright, E. (2020). Protecting Traditional Knowledge: Lessons from Global Case Studies. United Kingdom: Edward Elgar Publishing.

¹¹ Posey, D. A., Dutfield, G. (1996). Beyond intellectual property: toward traditional resource rights for indigenous peoples and local communities. Ottawa: International Development Research Centre.

arise while defining a legal protection for the traditional knowledge, to prevent its non-authorized copy, i.e. the so-called biopiracy patenting and in order to ensure the sharing of the benefits of the TK commercial exploitation between the developed countries and indigenous communities.¹²

There should be specific revision of the TRIPs Agreement in order to protect both indigenous peoples' traditional knowledge and their biodiversity. WIPO consists of advance clear proposals towards the protection of biodiversity and TK, and the WTO should look into trade rules to stop the erosion of both. Biodiversity and TK have become necessary components for sustainability, and they offer new opportunities for sustainable development and its challenges. For a superior quality of humanity's life needs the indigenous knowledge, but it should be clearly recognized in the economic, environmental and social regimes. There is a need to preserve their TK and skills are generally rural. They live in close contact with the natural habitats(their culture). In this regard, they are currently wants new, creative and sustainable financing mechanisms which encourage the creation of traditional knowledge businesses that are self-sufficient, operated by the communities themselves, and which are economically profitable. TRIPs and other dispositions must support indigenous peoples' traditional knowledge within a new regime. For this, trade, environment and social regimes must be reinforced to achieve more sustainability, specifically to achieve the proper acknowledgement of TK as the basis for local maintenance in indigenous territories. In order to advance in a new discussion on biodiversity, traditional knowledge and IPRs, a new legal framework must recognize collective indigenous peoples' rights and their inalienable right to their traditional knowledge systems related to biodiversity. The problem is that the indigenous peoples' legal rights and interests have been in the hands of others. These other people have not rightly protected the rights they held in trust.

This needs working on two parallel fronts: 1.first supporting the existing alternative legal options for indigenous peoples' intellectual property rights; and second is the making of a legal regime for

¹² Intellectual Property and Traditional Knowledge. (2005). Switzerland: WIPO.

indigenous peoples, whose name will be the Intellectual Collective Indigenous Peoples Property Rights System (ICIPRIS). The first front works for adjusting to the current neoliberal world-order, (i.e., globalization), whereas the second front intends to establish a new paradigm whereby indigenous collective rights become important for the well-being of nations. From this, national constitutions must fully recognize indigenous peoples, and from there, the international intellectual private property rights system is sure to become a new way to deal with the economic market.

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