

Resolution
Question Q232

The relevance of traditional knowledge to intellectual property law

AIPPI

Noting that:

- 1) The Convention on Biological Diversity accepts the sovereignty of states over their genetic resources and traditional knowledge (**TK**) connected with it, and puts forward the concept of prior informed consent and access and benefit sharing when utilising such resources.
- 2) The WIPO Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge and Folklore (**IGC**) has been negotiating for a legal instrument(s) on the protection of genetic resources, TK and folklore (also referred to as traditional cultural expressions (**TCEs**)).
- 3) Through its Special Committee Q166, AIPPI monitors, studies and advises on the development of intellectual property (**IP**) and genetic resources, TK and folklore.
- 4) In 2006 in Gothenburg, AIPPI has adopted the resolution of Special Committee Q166 that:
 - a) TK in the public domain should be treated as other information in the public domain for the assessment of patentability of inventions;
 - b) the patent system is not suitable to control whether the requirements of the Convention on Biological Diversity are met, in particular since research results and product in commerce and trade need not be covered by patents;
 - c) if national laws require a declaration of the source of genetic material and TK in patent applications, such laws should:
 - only require that the patent applicant, to the best of his knowledge, identifies the source from which the inventor obtained the genetic material with information based on TK;

- entitle the applicant to rectify any failure to indicate the source or add any later information obtained on the origin of the genetic material;
- d) ways and means other than patent applications should be developed to deal with prior informed consent and access and benefit sharing concerning genetic resources and TK connected with it.
- 5) This Resolution focuses on TK and treats TCEs as encompassed within TK.
- 6) This Resolution does not address policy issues beyond the domain of IP.
- 7) This Resolution addresses core elements of IP law only, ie patents, trade marks and other distinctive signs, geographical indications, copyright, designs and confidential information/trade secrets (**Core IP Laws**).

Considering that:

- 1) A majority of the reporting Groups reported that there is no definition of TK in their national laws.
- 2) A majority of the reporting Groups reported that their national laws provide for some protection for TK, often indirectly by reference to existing Core IP Laws or without express reference to TK.
- 3) A majority of the reporting Groups consider a harmonized definition of TK is desirable.
- 4) A majority of the reporting Groups favour an harmonized approach to protection of TK.
- 5) A majority of the the reporting Groups consider defensive protection of TK in concept is desirable, but there is no majority in favor of positive protection.
- 6) The IGC has agreed to a year-long plan to continue intensive negotiations towards concluding the text(s) of an international legal instrument(s) which will ensure effective protection of genetic resources, TK and TCEs including taking a decision at the October 2013 WIPO General Assembly whether to schedule a diplomatic conference to finalise the instrument(s).

Resolves that:

- 1) Adoption of a harmonized definition of TK is desirable.
- 2) A harmonized definition of TK should incorporate the concepts of “knowledge”, “traditional” and “community”, which concepts may include:

- a) In relation to “knowledge”: information, practices, customs, cultural expressions, skills, methods, know-how, teachings, learnings and processes which can:
 - i) be tangible or intangible; and
 - ii) encompass traditional lifestyles/medicine, and knowledge relating to the use of natural/human/genetic resources;
 - b) In relation to “traditional”: the establishment, preservation and transmission of that knowledge through succeeding generations, taking account of the fact that knowledge may be dynamic and evolving;
 - c) In relation to “community”: associated with a generally recognized community, including indigenous peoples or local communities or traditional societies.
- 3) A harmonized definition of TK should take into account the work of the IGC relating to TK.
 - 4) A harmonised definition of TK should be compatible with definitions of IP, genetic resources and TCEs.
 - 5) Harmonized treatment of TK is to be encouraged.
 - 6) International and national laws covering TK, should include provisions promoting a comprehensive regime for TK that provides legal certainty for all stakeholders in relation to TK, and that is aligned with the principles of existing IP systems. Such laws may provide for *sui generis* treatment of TK.
 - 7) Although steps should be taken to implement an international recordal system for TK to avoid cross boundary issues and to lower the risk of third parties obtaining or exercising illegitimate IP rights over TK, recognition of TK should not depend on recordal; however a certificate of recordal should serve as *prima facie* evidence of the existence of the TK.
 - 8) Any national recordal systems should be coordinated with and support the international recordal system.
 - 9) Countries should not be precluded from establishing national or regional dispute resolution systems to resolve disputes involving TK.
 - 10) The appropriate treatment of any one kind of TK should not necessarily be determined by the treatment of other kinds of TK.
 - 11) Defensive protection of TK is to be encouraged but the specificities of this will require further study.