



The WIPO GRATK Treaty: partnerships to ensure that patent offices are equipped to support Indigenous Peoples

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Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge – adopted 24 May 2024



First treaty to address the interface between intellectual property, genetic resources, and traditional knowledge

Includes provisions specifically for Indigenous Peoples as well as local communities

First WIPO Treaty to be adopted in a decade

Included participation of Indigenous Peoples as well as local communities since negotiations started in 2001

The WIPO GRATK Treaty is historic



Indigenous Peoples as well as local communities are stewards of nature and genetic diversity



They have traditional knowledge that provide useful leads on the various uses of genetic material



Their genetic resources and traditional knowledge have been used without consent or sharing of benefits

Why did
Indigenous
Peoples and local
communities
participate in
WIPO GRTK
discussions?

Some examples of “biopiracy”



Experience at the DipCon negotiations

1. Opening statements and statements during discussions
2. Observer in “management team”
3. Voluntary fund, caucus room, interpretation
4. Spiritual opening ceremony, participation in special events
5. Inclusion in official delegations



What does the GRATK Treaty Require?



Enhance efficacy, transparency and quality of the patent system and prevent erroneous grants of patents



Disclosure of source or origin of genetic resources and traditional knowledge



Sanctions and remedies



Information systems

What does the GRATK Treaty say about Indigenous Peoples?

Included in disclosure of source or origin on GR and TK

Participation in the Assembly, including the review process

Acknowledges the UN Declaration on the Rights of Indigenous Peoples and commitment to achieving the ends set forth therein

Preamble

Recognizing

Recognizing the potential role of the patent system in contributing to the protection of genetic resources and traditional knowledge associated with genetic resources,

Acknowledging

Acknowledging the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and commitment to achieving the ends set forth therein, and

Affirming

Affirming that best efforts should be made to include Indigenous Peoples and local communities, as applicable, in implementing this Treaty,

Objectives

(a) enhance the efficacy, transparency and quality of the patent system with regard to genetic resources and traditional knowledge associated with genetic resources, and

(b) prevent patents from being granted erroneously for inventions that are not novel or inventive with regard to genetic resources and traditional knowledge associated with genetic resources.

Disclosure Requirement: Genetic Resources

3.1 Where the claimed invention in a patent application is based on genetic resources, each Contracting Party shall require applicants to disclose:

- (a) the country of origin of the genetic resources, or,
- (b) in cases where the information in Article 3.1(a) is not known to the applicant, or where Article 3.1(a) does not apply, the source of the genetic resources.

Note: “**Source of genetic resources**” refers to any source from which the applicant has obtained the genetic resources, such as a research center, gene bank, **Indigenous Peoples** and local communities, the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), or any other *ex situ* collection or depository of genetic resources.

Disclosure Requirement: Associated Traditional Knowledge

3.2 Where the claimed invention in a patent application is based on traditional knowledge associated with genetic resources, each Contracting Party shall require applicants to disclose:

(a) the **Indigenous Peoples** or local community, as applicable, **who provided the traditional knowledge associated with genetic resources**, or,

(b) in cases where the information in Article 3.2(a) is not known to the applicant, or where Article 3.2(a) does not apply, the source of the traditional knowledge associated with genetic resources.

Agreed Statement: It is understood that the term “as applicable” in Article 3.2(a) shall not be interpreted as providing flexibility to the Contracting Parties to not require applicants to disclose the information required in Article 3.2(a). For greater certainty, Article 3.2(a) will be implemented without having any effect on the scope of the disclosure requirement in Article 3.

Sanctions and Remedies

5.1 Each Contracting Party shall put in place appropriate, effective and proportionate legal, administrative, and/or policy measures to address a failure to provide the information required in Article 3 of this Treaty.

5.2 Subject to Article 5.2(*bis*), each Contracting Party shall provide an opportunity to rectify a failure to disclose the information required in Article 3 before implementing sanctions or directing remedies.

5.2(*bis*) A Contracting Party may exclude from the opportunity to rectify under Article 5.2 cases where there has been fraudulent conduct or intent as prescribed by national law.

Information Systems

6.1 Contracting Parties **may** establish information systems (such as databases) of genetic resources and traditional knowledge associated with genetic resources, in consultation, where applicable, with Indigenous Peoples and local communities, and other stakeholders, taking into account their national circumstances.

6.2 Contracting Parties should, with **appropriate safeguards developed in consultation, where applicable, with Indigenous Peoples and local communities, and other stakeholders**, make such information systems accessible to Offices for the purposes of search and examination of patent applications. Such access to the information systems may be subject to authorization, where applicable, by the Contracting Parties establishing the information systems.

Review

The Contracting Parties commit to a review of the scope and contents of this Treaty, addressing issues such as the possible extension of the disclosure requirement in Article 3 to other areas of intellectual property and to derivatives and addressing other issues arising from new and emerging technologies that are relevant for the application of this Treaty, four years after the entry into force of this Treaty.

The Assembly

10.1 The Contracting Parties shall have an Assembly:

(a) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) The Assembly shall encourage the effective participation of representatives from Indigenous Peoples and local communities as accredited observers. The Assembly will invite Contracting Parties to consider financial arrangements for participation of Indigenous Peoples and local communities.

Entry into Force

This Treaty shall enter into force three months after 15 eligible parties referred to in Article 12 have deposited their instruments of ratification or accession.

As of March 5, 2025:

41 Signatories: Algeria, Australia, Bosnia and Herzegovina, Brazil, Burkina Faso, Cabo Verde, Central African Republic, Chile, Colombia, Congo, Côte d'Ivoire, Democratic People's Republic of Korea, Dominican Republic, Eswatini, Gambia, Ghana, Indonesia, Lesotho, Madagascar, Malawi, Marshall Islands, Morocco, Namibia, Nicaragua, Niger, Nigeria, Niue, Paraguay, Peru, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, South Africa, Switzerland, Togo, Uganda, United Republic of Tanzania, Uruguay, Vanuatu, Zambia, Zimbabwe

Ratification: Malawi

How do we make sure patent offices are equipped to support Indigenous Peoples?



Recall:



3.4 Contracting Parties shall provide guidance to patent applicants on how to meet the disclosure requirement...



3.5 Contracting Parties shall not place an obligation on Offices to verify the authenticity of the disclosure.



However, partnerships can be established to ensure that disclosure is done properly

Example from the Philippines

Joint IPOPHL-NCIP Administrative Order

**“Rules and Regulations on Intellectual
Property Rights Application and Registration
Protecting the Indigenous Knowledge
Systems and Practices of the Indigenous
Peoples and Indigenous Cultural
Communities”**



REPUBLIC OF THE PHILIPPINES
INTELLECTUAL PROPERTY OFFICE
OF THE PHILIPPINES

Objectives of the Joint AO

Harmonized rules to protect intellectual
creations of Indigenous Peoples



Provide institutional arrangements
between IPOPHL and NCIP



Prevent misappropriation of IKSP

Salient Features of the IPOPHL-NCIP Joint Administrative Order

- IPRs applicants required to disclose IKSP used (mandatory disclosure)
- If registration not required – disclosure in all communication of subject matter to the public
- IPOPHL may, *motu proprio* or upon request, refer applications to NCIP for verification of ownership and compliance with free, prior and informed consent (FPIC) requirements

Salient Features of the IPOPHL- NCIP Joint Administrative Order

Registration only upon compliance with disclosure and evidence of FPIC and benefit-sharing

IPOPHL reserves judgment to determine registration, existence of misappropriation

Collective management by IPs of artistic/literary work

What needs to happen next?

Campaign for early entry into force, ensuring participation of Indigenous Peoples

Technical assistance for Indigenous Peoples to monitor disclosure & trigger sanctions and remedies

Indigenous Peoples as well as local community competent authorities

Support for creation of Indigenous Peoples' information systems
