

PROTECTION OF INDIGENOUS KNOWLEDGE IN THE INTELLECTUAL PROPERTY SYSTEM

CONSULTATION PAPER

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QUESTIONS & ANSWERS

1. ARE THERE ANY OTHER ISSUES ASSOCIATED WITH THE PROTECTION AND MANAGEMENT OF INDIGENOUS KNOWLEDGE NOT ADDRESSED ABOVE THAT YOU WOULD LIKE IP AUSTRALIA TO CONSIDER?

The Geneva Act of the Lisbon Agreement is the most innovative tool to be ratified with which traditional knowledge can be protected through the convergence of sui generis and common law GI protection at global scale. EU [roadmap](#) is planning for supporting the ratification of the Geneva Act 2015.

Based on the EU GI protection approach together with the Geneva Act, the European Union financed this [e-learning](#) for India, whose author is the person writing this document.

Moreover, the EU has a system in place for protecting agricultural products within its borders.

2. WHAT DO YOU CONSIDER TO BE THE GREATEST CHALLENGES FOR INDIGENOUS PEOPLE IN ENSURING THAT TRADITIONAL KNOWLEDGE IS NOT MISAPPROPRIATED OR MISUSED?

Misappropriation can take a number of ways. Through the registration of geographical indications, depending on which system, sui generis or common law, sustainable socio-economic returns can be more or less maximised. On the one hand registration must integrate public-private partnerships because if traditional knowledge is to become an economic asset, GI communities with traditional knowledge environmental and livelihood concerns will not be contemplated. On the other hand, while Australia does not have a GI sui generis system in place, through the ratification of the Geneva Act, this convergence would be possible. This means protecting TM products at national level whilst benefiting from the GI sui generis socio-economic benefits from protection abroad. Certification systems other than GI sui generis registration are of private nature and traditional knowledge is best protected with

public support, specially through global partnerships with expert actors in this type of protection, e.g. the EU.

3. WHAT ARE YOUR VIEWS ON THE PROPOSALS CONSIDERED ABOVE FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE?

International efforts to protect indigenous traditional knowledge exists. In practical terms this is not a reality. The best available bridge between norms and actions is the GI sui generis protection system which can integrate states without this legal system through the Geneva Act 2015.

4. ARE THERE OTHER WAYS IN WHICH COLLABORATION BETWEEN INDIGENOUS COMMUNITIES AND RESEARCHERS COULD BE ENCOURAGED AND SUPPORTED IN ORDER TO CREATE ECONOMIC OPPORTUNITIES?

Presently and under request, the author of this document is developing an M&E system for GI sustainability assessment to be linked with the UN SDGs. This document portrays the advantages of the GI sui generis system to protect traditional knowledge as a sustainable business model which can accelerate development in developing states or marginal and indigenous communities anywhere. There is a wide number of research actions that can take place. For example how the enhancement of GI collective dimensions through adequate organisation structures can avoid rural emigration into urban areas and consequentially decrease emigration to developed states. The case of Colombia in relation to immigration in Spain is being correlated with Café de Colombia GI.

5. ARE THERE OTHER OPTIONS THAT IP AUSTRALIA SHOULD CONSIDER TO PROTECT TRADITIONAL KNOWLEDGE?

Yes, supporting the Geneva Act of the Lisbon Agreement by becoming a signatory, together with trade and partnership agreements with developing states, and also other states rich in traditional knowledge who would be delighted to join forces in this initiative. E.g., EU, Japan, China, India, Korea, UK, etc.

6. WHAT DO YOU CONSIDER TO BE THE GREATEST CHALLENGES FOR INDIGENOUS PEOPLE IN ENSURING THAT TRADITIONAL CULTURAL EXPRESSIONS ARE PROTECTED FROM INAPPROPRIATE COMMERCIAL USE?

Reflecting TCE in tangible products so that this intellectual property can be protected at global scale. If TCE are not tangible assets, its protection is more difficult. As it stands today with tangible products, protection is already difficult.

7. WHAT ARE YOUR VIEWS ON THE PROPOSALS CONSIDERED ABOVE FOR THE PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS IN THE TRADE MARKS AND DESIGNS SYSTEMS?

These IP layers of protection are not at odds with GI protection, nevertheless the protection provided through these IPRs are insufficient to empower indigenous communities to act as guardians of their

identity and cultural heritage. Also, designs require an innovative character and TK is the opposite. Certification marks such as ecology and organic do represent an added value for GIs, but the labelling system is quite complex for consumers to understand well the implications of each type of protection. It is very important for states interested in protecting traditional knowledge effectively to align for the build-up of homogeneous explicit tools for the cause. Traditional knowledge beyond borders is a global concern and not only the responsibility of states in isolation with one another. Supporting an international move towards protecting TK, especially in developing states with weak governance capacity is a must to protect biodiversity and natural resources worldwide.

8. ARE YOU AWARE OF ANY EXISTING DATABASES OR COLLECTIONS OF TRADITIONAL CULTURAL EXPRESSIONS THAT COULD BE USED OR BUILT UPON TO IMPLEMENT THE DATABASE OPTION (PROPOSAL 9) OUTLINED ABOVE?

Yes, presently OriGin, NGO to support the protection of GIs has developed a [database](#) of 8.000 registered GIs at global scale. It is perceived that there are around 45.000 GIs worldwide and most are not protected.

9. ARE THERE ANY OTHER OPTIONS THAT YOU THINK IP AUSTRALIA SHOULD CONSIDER TO ADDRESS THE ISSUE OF INAPPROPRIATE USE OF TRADITIONAL CULTURAL EXPRESSIONS IN TRADE MARKS AND DESIGNS?

To wrap up, the options available are the following:

1. Certification marks
2. Collective trade marks
3. Trade marks (differentiation)
4. Designs, for packaging of GI products only and must be innovative.
5. Copyrights for GI promotion assets and instruments.

For more information please visit the e-learning Module 6 on GI interaction with other IPRs.

10. WHAT ROLE DO YOU THINK AN INDIGENOUS ADVISORY PANEL (OR SIMILAR BODY) COULD PLAY IN ADVISING OR ASSISTING IP AUSTRALIA ON THE PROTECTION OF INDIGENOUS KNOWLEDGE?

Through GI sui generis legislation, Regulatory Councils are an indisputable organisation structure which through the drafting of an agreed code of practice, internal mechanisms to protect GIs against free-riding and misappropriations are quite successful, particularly if there is an IP legal back up to allow the empowerment of these communities.

11. ARE THERE ANY SPECIFIC ISSUES YOU WOULD WANT IP AUSTRALIA TO CONSIDER, WERE IT TO SET UP AN INDIGENOUS ADVISORY PANEL (OR SIMILAR BODY)?

More than an Indigenous Advisory Panel, public support to set up Regulatory Councils according to tangible expressions of traditional knowledge would go hand in hand with existing efforts to protect traditional knowledge at global scale. Certainly, aboriginals in Australia would benefit from Australia's international efforts to protect any traditional knowledge. For example, Didjeridú instrument could one day be sold worldwide ensuring economic returns for autochthonous producers so that they may re-invest in their social-well-being, environmental protection of their land, improving living standards of aborigines, and the cultural and identity expressions through the export of their handicraft. This would presuppose independent capacity to defend their rights in Australia and beyond, against any intrusive approaches to undermine their importance as world heritage. Consumers on the other hand would be willing to pay premium prices in exchange of knowing it is Australia's indigenous indication of source, name it GI, or origin trade mark.

12. ARE THERE ANY ISSUES YOU THINK SHOULD PARTICULARLY BE INCLUDED IN ANY EDUCATION AND AWARENESS CAMPAIGN?

The e-learning provided is an example of how IP protection awareness is intended to be provided to producers and those who may support their empowerment. Should you find any means with which indigenous communities themselves may use to protect their traditional knowledge, the best approach is to teach them how to use it. Unless there is a business model, interest from civil society will require more amounts of public funding and on an ongoing basis.

13. DO YOU HAVE ANY SUGGESTIONS FOR HOW AN EDUCATION AND AWARENESS CAMPAIGN SHOULD BE CONDUCTED AND WHETHER ANY PARTICULAR COMMUNITY OR INDUSTRY SECTORS SHOULD BE TARGETED?

Priority should be given to agricultural products because the present traditional knowledge protection system through GIs is not well established for handicrafts. Nevertheless, the OriGin database provided can give you an oversight of the type of products that are being protected in different countries and with differing IP protection systems. Videos, e-learning, train the trainer approach for capacity building and many more ideas are in the e-learning provided.