

Protection of Traditional Knowledge (TK): Intellectual Property (IP) Considerations

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Key issues

- What has this to do with intellectual property (IP)?
- Does IP offer the right incentives to meet the needs of TK holders?
- What do conventional IP systems say about TK?
- Which options are there for recognizing TK as IP and protecting it?

What is IP?- Some key features

- “Intellectual property” –creations and innovations of the **human mind**
- Intellectual property “protection” –provides creators and innovators with possibility to regulate use of their works if they so wish
- IP: **proprietary** (eg., exclusive rights, right to prevent others from using)
- IP rights do not provide perfect control: limitations and exceptions/the public domain

Traditional Knowledge- some features

- No agreed international definition: Traditional knowledge (TK) is knowledge, know-how, skills and practices that are developed, sustained and passed on from **generation to generation** within a community, often forming part of its cultural or spiritual identity.
- TK can be found in a wide **variety of contexts**, including: agricultural, scientific, technical, ecological and medicinal knowledge as well as biodiversity-related knowledge.

TK and IP: What is the relationship?

- Innovations based on TK may benefit from IP protection ([patent](#), [trademark](#), and [geographical indication](#) protection) or be protected as a trade secret or confidential information.
- **HOWEVER:** traditional knowledge **as such** - knowledge that has ancient roots and is often oral – can often not be protected by **conventional intellectual property systems.**
- IP “**protection**” is not necessary equivalent to “**preservation/safeguarding**”

TK and IP: protection options?

- Policy issues concerning TK are broad and diverse, the IP issues break down into two key themes:
 1. **Positive protection:** Preventing unauthorized use, and active exploitation of TK by the originating community itself.
 2. **Defensive protection:** set of strategies to ensure that third parties do not gain illegitimate or unfounded IP rights over TK

Positive protection

- Positive Protection: Means to enable holders, if they so wish, to acquire and assert IP rights in their TK
- This can allow TK holders to prevent unwanted, unauthorized or inappropriate uses by third parties (including culturally offensive or demeaning use) and/or to exploit TK

Defensive Protection

- **Use of registries databases:** A defensive disclosure, by describing information in a printed publication or other publicly accessible medium, helps to establish prior art capable of preventing patents.
- India's Traditional Knowledge Digital Library (TKDL): searchable database of traditional medicine that can be used as evidence of **prior art** by patent examiners when assessing patent applications.

TKDL



AYURVEDA



UNANI



SIDDHA

TKDL SEARCH

Traditional Knowledge Digital Library

Representative Database of 1200 Ayurvedic, Unani and Siddha Formulations [More...](#)

Access to 2.50 Lakh (0.250 million) Medicinal Formulations is available to Patent Offices only under TKDL Access Agreement

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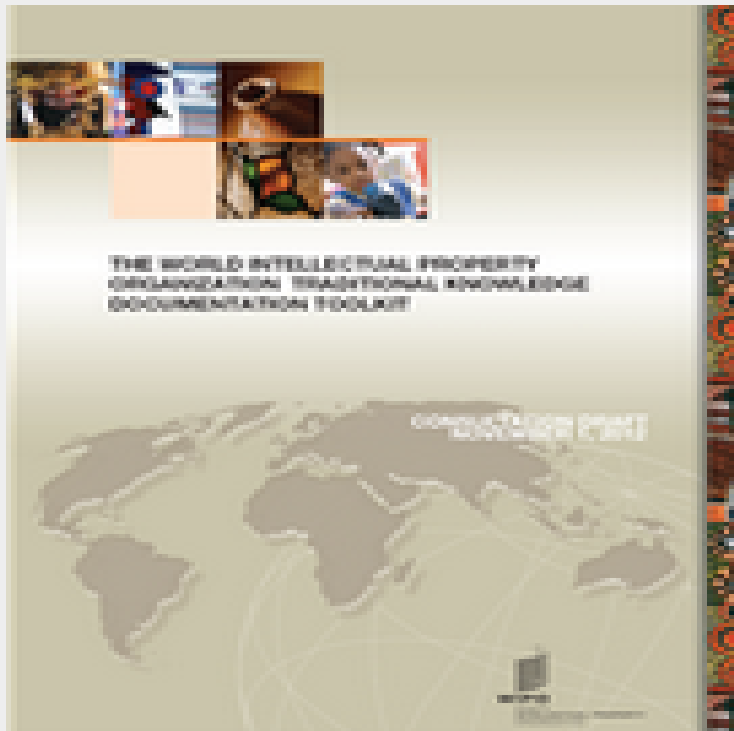


Defensive Protection

- **Prior art:** consists of everything which has been made available to the **public anywhere** through written disclosure (including drawings and other illustrations)
- For example, if TK has been published in a journal before the applicable date of a patent application, it is part of the relevant prior art, and the application cannot validly claim that TK as an invention – the invention would not be considered novel.

Documentation of TK: useful tool

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Documentation Toolkit

Practical guidance on how to undertake a TK documentation exercise

Download

<http://www.wipo.int/tk/en/resources/tkdocumentation.html>

Documentation of TK

- A crucial step in the documentation process is the recording, or '**fixation**', of the TK in a material form or when **TK is transferred from one medium to another**- This when IP comes into plays
- Many initiatives underway
- **Caution: documentation makes traditional knowledge more widely available to the general public, especially if it can be accessed on the Internet**
- Could potentially lead to **misappropriation** and use in ways that were not anticipated or intended by **traditional knowledge holders**.

Documentation of TK

- Documentation can help protect traditional knowledge, i.e., by providing a **confidential or secret record** of TK reserved for the relevant community only.
- Some formal documentation and registries of TK support *sui generis* protection systems
- Importance of ensuring that documentation of TK is anchored in good intellectual property strategy

Documentation of TK

- The inclusion of TK related information in a database **does not in itself create or recognize** any specific right over such **information**
- Expect to the extent that this is specifically set out in national law (including through recognition of Customary Law) or is part of contract

THANK YOU FOR YOUR ATTENTION!