

Chapter 23

An Interface Between Traditional Knowledge and Intellectual Property Rights (IPR): An Indian Perspective

Nisha Dhanaraj

Amity Law School Delhi, India

Mamta Sharma

Gautam Buddha University, India

ABSTRACT

Traditional knowledge and Intellectual Property Rights (IPR), both are supplementary and complementary to each other. The aim of traditional knowledge is to promote community interest and protect indigenous rights against bio-piracy and bio-prospecting. On the other hand, IPR guarantees monopoly of a product or service to an organization and empowers it to profit from it. This article studies the present Indian IPR system to understand whether it is capable to handle traditional knowledge or should it be amended to incorporate a separate law to protect traditional knowledge. Besides, a large-scale commercialization and unauthorized use of traditional knowledge has been observed, which gives rise to the need to screen and protect it. This article also takes into consideration the Bonn guidelines and Indian Biodiversity Act 2002 and the issues related to traditional knowledge, and finds that the current issues cannot be resolved by the existing IPR regime.

DOI: 10.4018/978-1-7998-0423-9.ch023

INTRODUCTION

There is a growing need to protect traditional knowledge (TK) and fortify it against issues such as bio-piracy, bio-prospecting and rights of indigenous people. Traditional knowledge needs to be protected for sustainable development and for maintaining intellectual property rights (IPR). As of now, traditional knowledge does not have an internationally accepted definition. World Intellectual Property Organization (WIPO) refers to it as “tradition-based literary, artistic, or scientific works, performances, inventions, scientific discoveries, designs, marks, names, and symbols, undisclosed information and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields.” “Tradition-based” refers to “knowledge systems, creations, innovations and cultural expressions, which have generally been transmitted from generation to generation and are generally regarded as pertaining to a particular people or its territory which are constantly evolving in response to a changing environment” (Inter-governmental Committee (IGC), 2002).

“Indigenous people” refers to a community that has a distinct identity or a tribe or nation that still preserves, conserves and protects its ancestral past. These people are essentially seen as a group which exists under relatively disadvantageous conditions due to bio-piracy and bio-prospecting. Bio-piracy refers to the misappropriation and commercialization of genetic resources and traditional knowledge of rural and indigenous people. It involves making profit from freely available natural products (plants, seeds, leaves etc.), or by copying techniques used daily for generations by local people or communities. It has generally been observed that pharmaceutical companies, cosmetic and agro-food firms fall under the categories of bio-pirates. These companies set up their own potent precincts on bio-diversity in order to create innovative products and then guarantee their monopoly through the IPR system. Once the procedure is fulfilled and protection is granted, the heritage or knowledge is acquired by a third person. So a grant of an IPR under such circumstances is essentially a violation of the rights of the indigenous people (Jha, 2009). Emerging economies such as India, South Africa, China, Indonesia and Philippines have a rich bio-diversity heritage, which they can exploit to attain a higher level of sustainable development.

Bio-piracy is a serious threat to our ecosystem. Therefore, protecting traditional rights of the indigenous people is extremely vital to ensure that they get justice. It is only when their TK is protected they would be able to preserve their heritage and use their skills to propagate growth of vital areas such as food security and the development of agriculture and medical treatment (Dutfield, 2003).

RESEARCH METHODOLOGY

The methodology adopted for this paper is a combination of descriptive research and doctrinal research. The descriptive research was taken as a tool to access the present situation of traditional knowledge existing in India. Doctrinal research is adopted to achieve the objectives of the research, i.e., to access the relationship between IPR and TK, to provide an overview of the debate on the protection of traditional knowledge at the international level; to study traditional knowledge in terms of property rights and sovereignty rights; to identify ways by which TK can be effectively protected both nationally and internationally; and to discover the relationship between traditional knowledge and Intellectual property laws in India. The study is primarily based on international conventions, treaties, national laws, policy papers and national instruments. Relevant decisions of national, regional and international courts have

8 more pages are available in the full version of this document, which may be purchased using the "Add to Cart" button on the publisher's webpage:

www.igi-global.com/chapter/an-interface-between-traditional-knowledge-and-intellectual-property-rights-ipr/239772

Related Content

Social Equity in Local Public Administration: Fairness, Justice, and Equity, Tools for Social Change

Kalsoom Sumraand Muhammad Shakeel Ahmad (2017). *International Journal of Civic Engagement and Social Change* (pp. 1-15).

www.irma-international.org/article/social-equity-local-public-administration/201020

Modeling a Culturally Responsive Mindset: Strategies That Connect and Empower

Yolanda L. Dunstonand Patience N. Jones (2021). *Designing Culturally Competent Programming for PK-20 Classrooms* (pp. 158-179).

www.irma-international.org/chapter/modeling-a-culturally-responsive-mindset/263996

Social Identity Theory in Sports Fandom Research

Nicholas Hirshon (2020). *Multidisciplinary Perspectives on Media Fandom* (pp. 172-191).

www.irma-international.org/chapter/social-identity-theory-in-sports-fandom-research/253721

Energy Production in Smart Cities by Utilization of Kinetic Energy of Vehicles Over Speed Breaker

Mesfin Fanuel Kebede, Baseem Khan, N Singhand Pawan Singh (2018). *International Journal of Civic Engagement and Social Change* (pp. 1-35).

www.irma-international.org/article/energy-production-in-smart-cities-by-utilization-of-kinetic-energy-of-vehicles-over-speed-breaker/213242

Social Class and Consumer Behaviour in Sub-Saharan Africa: Implications for Cross Cultural Marketing

Ayodele Oniku (2020). *African Studies: Breakthroughs in Research and Practice* (pp. 147-168).

www.irma-international.org/chapter/social-class-and-consumer-behaviour-in-sub-saharan-africa/253142