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Traditional Knowledge and Intellectual Property

The current international system for protecting intellectual property was fashioned during the age of enlightenment and industrialization and developed subsequently in line with the perceived needs of technologically advanced societies. However, in recent years, indigenous peoples, local communities, and governments, mainly in developing countries, have demanded equivalent protection for traditional knowledge. WIPO member states take part in negotiations within the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), in order to develop an international legal instrument (or instruments) that would give traditional knowledge, genetic resources and traditional cultural expressions (folklore) effective protection. Such an instrument could range from a recommendation to WIPO members to a formal treaty that would bind countries choosing to ratify it. Representatives of indigenous and local communities are assisted by the WIPO Voluntary Fund to attend the WIPO talks, and their active participation is crucial for a successful outcome. Background Brief No. 2 The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is available at www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief2.pdf.

Traditional knowledge is not so-called because of its antiquity. It is a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity. As such, it is not easily protected by the current intellectual property system, which typically grants protection for a limited period to new inventions and original works by individuals or companies. Its living nature also means that “traditional” knowledge is not easy to define.

Recognizing traditional forms of creativity and innovation as protectable intellectual property may enable indigenous and local communities as well as governments to have a say over their use by others. This may make it possible, for example, to protect traditional remedies, artworks or music against misappropriation, and enable communities to control and benefit collectively from their commercial exploitation.

Although the negotiations underway in WIPO are propelled mainly by developing countries, they are not neatly divided along “North-South” lines. Communities and governments do not necessarily share the same views, and some developed country governments, especially those with indigenous populations, are active.