



## **LEGAL PROBLEMS OF INTERNATIONAL INTELLECTUAL PROPERTY**

Shokhrukhbek Tillaboev,

Lecturer at the Department of International Law and Human Rights, Tashkent State University of Law

### **Abstract**

This article examines the problem of protecting traditional knowledge within the framework of the intellectual property system. It analyzes the international experience and the recommendations of the World Intellectual Property Organization (WIPO) on this issue. The paper explores different approaches to the protection of traditional knowledge, discusses the advantages and disadvantages of existing mechanisms, and proposes possible ways to improve the international system for the protection of traditional knowledge.

**Keywords:** Traditional knowledge, intellectual property, WIPO, UNESCO.

### **Introduction**

**Traditional knowledge (TK)** represents a unique cultural heritage transmitted from generation to generation within specific communities or groups. It encompasses practical skills, innovations, methods, and knowledge related to various aspects of life, such as agriculture, medicine, art, and crafts (WIPO, 2020). In the context of globalization and the commercialization of knowledge, the issue of TK protection is becoming increasingly relevant.

However, the protection of TK within the existing intellectual property (IP) system faces a number of challenges. Traditional IP mechanisms, such as patents and copyright, often prove unsuitable for safeguarding TK due to its collective nature, lack of fixed form, and the long-term character of its development (Oguamanam, 2019). This creates the risk of misappropriation and commercial exploitation of TK without proper recognition or compensation for its original holders.

The **World Intellectual Property Organization (WIPO)** plays a crucial role in the development and implementation of international standards for the protection of traditional knowledge (TK) and traditional cultural expressions (TCEs). In the



context of globalization and active information exchange, the protection of TK has become an increasingly important task. WIPO is actively engaged in developing mechanisms aimed at ensuring legal protection and promoting traditional knowledge at the international level. In this regard, WIPO elaborates and advances international legal norms and standards designed to safeguard TK.

**WIPO has initiated the development of an agreement on intellectual property rights concerning traditional knowledge (TK) and traditional cultural expressions (TCEs).** Negotiations are being conducted within the framework of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

The Committee has elaborated standards and recommendations that, although not formally reflected in existing international patent law, hold significant importance for protective measures:

- The Committee has endorsed standards for documenting traditional knowledge, emphasizing the necessity of recording and ensuring conditions of access and use of such documented TK;
- It has also developed recommendations on patent examination in relation to TK, the implementation of which would substantially reduce the likelihood of granting wrongful patents over traditional knowledge.

Since the mid-twentieth century, the international community has gradually recognized the necessity of sustainable development and acknowledged the vital role of traditional knowledge (TK) held by indigenous peoples and local communities (IPLCs) in achieving this overarching political goal. Early policy discussions initiated within the UN Economic and Social Council, UNESCO, and the International Union for Conservation of Nature laid the groundwork for global recognition of these issues. This recognition was further reinforced following the 1972 United Nations Conference on the Human Environment in Stockholm and gained broader policy prominence with the 1987 report of the World Commission on Environment and Development (WCED), entitled *Our Common Future*.

At its 12th session, held in Geneva on 25–29 February 2008, the WIPO IGC on Intellectual Property, Genetic Resources, Traditional Knowledge, and Folklore reached an important decision. The WIPO Secretariat was mandated to prepare a working document for the following 13th session. This document was to outline existing international obligations and opportunities for TK protection, identify



existing gaps, and propose measures to address them, with particular attention to legal and policy mechanisms at the international, regional, and national levels.

WIPO defines traditional knowledge as knowledge generated, maintained, and developed by indigenous peoples and local communities, closely linked to their cultural heritage, social or national identity. TK, as an integral part of cultural heritage, is transmitted across generations in oral, written, or other forms, and remains dynamic, evolving over time. It may include know-how, skills, innovations, practices, and teachings that reflect the adaptive nature of culture.

The granting of intellectual property rights (IPRs) over TK to IPLCs has been criticized as potentially creating excessive barriers to innovation. Such measures may restrict information flows, cause economic inefficiencies, and undermine incentives for creation, thereby weakening sustainable development. As Kariyala argues, the primary rationale for granting intellectual property rights (such as copyright and patents) lies in incentivizing the production of “socially desirable inventions and works” rather than in rewarding “social contributions of creativity.”

### **International Experience in the Protection of Traditional Knowledge**

Many countries and regional organizations have developed their own approaches to safeguarding TK. For example, India has established the *Traditional Knowledge Digital Library (TKDL)* to prevent the erroneous granting of patents on inventions derived from TK (Gupta, 2011). Peru has adopted legislation requiring prior informed consent from indigenous communities before the commercial use of their TK (Tobin, 2013).

The African Regional Intellectual Property Organization (ARIPO) developed the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, which provides for “sui generis” protection of TK (Nkomo, 2013). This approach differs from traditional IP mechanisms and takes into account the specific nature of TK.

However, these national and regional initiatives have a limited effect on a global scale. The absence of an international legal instrument on the protection of TK creates gaps in protection and hinders cross-border cooperation in this field.

### **WIPO Recommendations and Their Critical Analysis**

The World Intellectual Property Organization (WIPO) plays a key role in the development of international standards for the protection of TK. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources,



Traditional Knowledge and Folklore (IGC) is working on the creation of an international legal instrument for the effective protection of TK (WIPO, 2019).

WIPO recommends a comprehensive approach to TK protection, which includes:

1. Development of sui generis systems of TK protection that take into account their unique characteristics.
2. Adaptation of existing IP mechanisms for better TK protection.
3. Creation of databases and registries of TK to prevent the erroneous granting of patents.
4. Introduction of requirements for the disclosure of the origin of TK in patent applications.
5. Development of benefit-sharing mechanisms from the commercial use of TK.

However, these recommendations have sparked a range of debates and criticism. Some scholars argue that creating special systems for the protection of traditional knowledge (TK) may lead to the fragmentation of the international intellectual property (IP) framework and complicate enforcement (Drahos, 2014). Others note that TK databases, while useful for preventing the erroneous granting of patents, may also facilitate unlawful access to TK and its misappropriation (Okediji, 2018). According to the Convention on Biological Diversity, State Parties are obliged to respect, preserve, and maintain traditional knowledge, innovations, and practices of indigenous and local communities that are relevant for the conservation and sustainable use of biological diversity. Such knowledge must be used with the approval and involvement of its holders and must ensure the fair and equitable sharing of benefits arising from its application.

The Nagoya Protocol provides that each Party shall take measures to ensure access to traditional knowledge associated with genetic resources subject to the prior informed consent or approval of the indigenous and local communities holding such knowledge, as well as with their participation (Article 7). Furthermore, Article 5.5 requires measures to ensure the fair and equitable sharing of benefits arising from the utilization of such knowledge with indigenous and local communities, based on mutually agreed terms.

The protection of traditional knowledge within the intellectual property system represents a complex and multifaceted challenge that demands a comprehensive approach. International experience and WIPO recommendations provide a valuable foundation for developing effective protection mechanisms. However, proposed



solutions must be critically assessed, with careful consideration of their potential consequences.

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