

IPR for IK and the Survival of IK in the Emerging Global Village

Muyingi, Hippolyte N
 School of Information Technology
 Polytechnic of Namibia, P/Bag 13388
 Windhoek, Namibia
 Tel: +264-61-207-2888
 Hmuyingi@polytechnic.edu.na

ABSTRACT

This panel discusses the intellectual property rights of indigenous and traditional knowledge (IK) as currently billed by relevant international bodies and organisations. We focus on their relevance to communities in Sub-Saharan Africa as may be seen by researchers in IK as well as the communities under investigation. We highlight a few approaches from experts and indigenous people that should be considered in the burgeoning of global research and public exposure of IK value.

Keywords

Intellectual Property Rights, Indigenous Knowledge, Traditional Knowledge, Customary Laws, Sui Generis Rights, Communities.

1. INTRODUCTION

The bible, including the Jewish Old Testament, might well be the most used indigenous knowledge (IK) and traditional knowledge (TK) in the non-Asian public domain. It is also the most freely and, even contentiously, interpreted and used; partly due to lacks in both contextualization effort by readers and clear localization and ownership of its many translations and versions. Is that what we want with existing IK in millenniums to come?

“Indigenous and local communities often do not have strong traditions of ownership over knowledge that resemble the modern forms of private ownership. Many have clear traditions of custodianship* over knowledge, and customary law* may guide who may use different kinds of knowledge at particular times and places, and obligations that accompany the use of knowledge” [1]. Examples are the use, modification, alterations of traditional symbols, designs as mascots, derivative arts and crafts; traditional songs; the patenting of medicinal plants uses; copyrighting and distribution of traditional stories [1]. It is argued that “misappropriation and misuse” may cause serious physical and spiritual repercussions in their cosmological systems. Critics used to say that “such demands for “respect” are really an attempt to prevent unsubstantiated beliefs from being subjected to the same scrutiny as other knowledge claims...” otherwise IK practice can be used to justify any activity...” [1; *(highlighted by us)]. These raise questions. What are the content, methodologies and criteria

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of this claimed scrutiny? Are public knowledge, community knowledge and private knowledge necessarily antagonistic? How do we promote the “current know now, have known, or will know?” [2]. Can modern IPR effectively help IK to survive?

2. TOPIC

The Convention on Biological Diversity (CBD), following the high-level Brundtland Report (1987) [3] have helped to establish strong recognition of the “collective human rights of indigenous and local communities” by the Declaration on the Rights of Indigenous Peoples (2007) [5]. However there are still unclear points. What do IK researchers, local and indigenous communities in Sub-Sahara Africa think about the 2007 Declaration? And what have been done to materialize its implementation especially in Sub-Sahara Africa? What are local people approaches to IK, TK protection issues (as cultural heritage; collective human rights; sui generis rights; or approach specific to them). How regional agreements on IPR can coexist and function for Indigenous Intellectual Property (many TKs or IKs in a region)? What has been the role of concerned governments and nations in the current fever of globalization? Should IK/TK be given deference or not [1]? Have nations managed to set an “international legally-binding regime on access and benefit sharing (ABS)” [5, 6], target by 2010 during the Eighth meeting (COP8), 2006 in Curitiba, Brazil?

The recent financial crisis and its slow-to-vanish economic recession has triggered the old colonial instinct of wild conquest war of rich natural resources overseas directly (e.g. oil in Iraq, Cote d’Ivoire, Libya) or indirectly through 3rd party (e.g. coltan minerals in DR Congo); how research communities feel about this potential threat to IK promotion effort? Can we guarantee that wide/extensive mining exploitation is in harmony with biodiversity of exploited lands?

On Creative Commons and IP [7]: “It has been argued that traditional knowledge is an important source of health security, food security and livelihood security for the world’s poor. As such, it has been argued that the benefits of sharing and actively disseminating traditional knowledge outweigh the benefits of protection and recognition of ownership”[1]. This is about “commons”, and sharing, but sharing calls for reciprocity. But actors within “Commons” and free IP rights in global society are at the same level of understanding in terms of contributions of each party involved in the property production. Intellectual Property Rights (IPRs) Policy for Kerala by the Government of India released in 2008 [8, 9], proposes adoption of the concepts ‘knowledge commons’ and ‘commons license’ and not “public domain”. Can this model effectively apply in IK of low literate or illiterate communities, especially when their socio-economic

survival is tightly bound to the value embedded in their IK? What is the position of local and indigenous communities in Sub-Saharan Africa, and researchers?

3. AIMS

This panel aims to motivate IK researchers and the global scientific community to advocate for better IPR in terms of “sui generis rights” for IK and TK in their research community and decision-making spheres.

4. STRUCTURE

We commence by introducing topic, the panelists and some rules (12 min). Then, we propose warm-up Q&As to panelists followed by the main Q&As to drive discussions (35 min). We will have two rounds of audience Q&As (each 10 min) with inter-panelist conversation between (15 min), before a final wrap-up (10 min).

5. CHAIR & PANELISTS

5.1 Chair

H.N. Muyingi is the MTC Endowed Chair in ICT, School of IT. Prof Muyingi is also with the Namibia Business Innovation Centre (NBIC), a Polytechnic of Namibia Entrepreneurship Incubator, where he integrates IT education and applied research with entrepreneurial skills. As leader of (2001-2008) the Telkom CoE in Developmental Commerce (ICT industry and Dti/NRF/THRIP) in Fort Hare University, SA he co-founded the Siyakhula Living Lab, with the Wireless Village Project field trial, intended to empower rural poor to earn their livelihood security in marketing their local knowledge's products.

5.1 Panelists

Tileinge Sacharias Andima is the Registrar of Companies, Close Corporations and Industrial Property and administrator of Acts thereof (Ministry of Trade and Industry); including regulation and facilitation of the formation of business entities and the processing of intangible assets by the Namibian IP system. He represents Namibia internationally in IPR, trade negotiations, SACU, WIPO Academy, ARIPO and recently successfully organized and hosted the Diplomatic Conference on the adoption of the Swakopmund Protocol on TK and Traditional Cultural Expressions. Andima holds a MSc, (University of Twente) was Education Teacher in University of Sierra Leone and for 10 years he worked for Namibia's Ministry of Education.

Stephan J. Lamprecht is an industrial engineer and advisor to start-ups, corporations and innovation support entities. He formerly ran the SA DST funded Technology Top 100 Awards Programme celebrating innovation. Lamprecht is the past-president of the SA chapter of the Licensing Executives Society International, a not-for-profit association for people with an interest in the licensing of IP and technology transfer. He has hosted interviews with IP stakeholders about their experience in managing IP and recorded some 40 episodes for Summit TV television channel.

“With the increasing demands on the world to solve challenges related to poverty...we need to expedite the translation of all forms of knowledge and knowledge based solutions so as to address these challenges. But not at the cost of the IK owners.” Lamprecht

Christian Toelg joined Polytechnic of Namibia in 2009 to establish the Namibia Business Innovation Centre (NBIC). As

Director, R&D, Dr Toelg supports established companies and public institutions in developing innovative products, services and processes. Christian was Director, Business Development at NEC Lab USA, Inc. responsible for innovation management, technology commercialisation, licensing, spin-offs and product development. Prior, he led the Technology Think Tank of Bertelsmann AG, Germany and held executive positions in several technology start-up companies.

“IK holders typically see little or no benefits even if their knowledge is being used commercially by others. Systems are needed to capture, protect and commercialize such knowledge with a fair share of the returns flowing back to the indigenous communities.” Toelg

Ndasuunje Papa Shikongeni was the Centre Director at John Muafangejo Art Centre until 2009. Since 1993 he has led the development of post-independence Namibia arts education and culture, as well as a creative and freelance artist on his own. He has co-founded and contributed to a number of art profession affiliations in Namibia. Shikongeni has a number of cultural work publications and collections, has produced various famous music performances. He has been organising and leading important groups of Solo and/or cultural exhibitions representing Namibia in the region, EU, and North America, where he won numerous awards.

“IK is dying out gradually because there is no mechanism ... There is a need to mainstream indigenous knowledge within our African ...system.” Shikongeni

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