

Community or commodity:

What future for traditional knowledge?

GRAIN

Do we need intellectual property protection to safeguard the continued development of traditional knowledge systems?

A number of developing country governments seem to think so. At an international meeting in March at the World Intellectual Property Organisation (WIPO), many of them pushed very strongly for the creation of a special (*sui generis*) system of intellectual property rights (IPR) adapted to traditional knowledge (TK).¹ What is more, they did so with the explicit support of the indigenous peoples' observers present at the meeting.

It is not difficult to understand how this idea has come up. Rich countries and large corporations have developed IPRs into a very powerful means of appropriation and control. Intellectual property is used to ruthlessly privatise and exploit traditional knowledge held by peasants and indigenous communities across the globe. Neither

communities nor developing country governments have much defence against this, and feel equally powerless. From their frustration springs the idea to create a 'counter-IPR' specifically designed to protect the original TK holders. If corporations can have strong IPRs to use against communities, why not the other way around?

While perfectly understandable, this is a tragically misguided idea. Not misguided in the sense that it would be impossible to realise. There is nothing to stop governments from agreeing a treaty about a new *sui generis* form of IPRs for traditional knowledge. But misguided because even if it were realised, it could never achieve the kind of protection envisaged by its proponents. On the contrary, by resorting to IPRs, TK holders would lose just that which they were trying to salvage.

Many of the governments behind this proposal, in particular the African Group which initiated it,

¹ The WIPO Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore. See GRAIN, "The Great Protection Racket: imposing IPRs on traditional knowledge", *Seedling*, December 2003, p 13, for a full background and analysis of the TK *sui generis* proposals: www.grain.org/seedling/?id=260



no doubt share an honest concern for the future of traditional knowledge systems. They want to create the conditions for TK holders to continue to function and develop according to their own logic, protected from unfair exploitation and unwanted commercialisation. And so, of course, do the indigenous peoples' organisations who come to WIPO as observers.

What both groups seem to ignore or underestimate is how the introduction of IPRs will inevitably change the very nature of traditional knowledge – its community character. Both African governments and indigenous observers underscore that the IPR elements in a *sui generis* system must be complemented by a number of additional provisions in order to ensure respect for cultural and religious heritage. But no matter how much is added, the basic fact remains that intellectual property protection can apply only to *property*. In order for anything to be covered by an intellectual property right, it must first be made into property, into a commodity, into something that can be bought and sold. This is where IPR systems fundamentally clash with the notion of traditional knowledge as a community heritage, as something which by its nature cannot be sold or bought.

“Traditional knowledge holders will be pitched against each others as competitors, exactly like Western scientists, and the capacity of their knowledge systems to continue to develop will gradually cease”

What a *sui generis* IPR system for TK could achieve is to help TK holders to commercialise parts of their knowledge. *Sui generis* IPRs could be made more accessible to peasants or indigenous communities, less cumbersome and less costly to

use than the industrial patent system. It would make it easier for them to extract some of the *content* of traditional knowledge systems and make it available in a marketable format, with clearly defined exclusive ownership rights and thus compatible with dominant legal systems. What would be lost is the *context* in which traditional knowledge has developed and thrived – and with that, its future. Should IPR-based commercialisation become widespread among TK holders, it is very doubtful if TK could continue to develop in a community context at all. The logic is that its further development would also move over into a market context, and much of it would cease to happen altogether. TK holders would win intellectual property, but lose their intellectual community.

The sad example of academic science is instructive here. Despite the obvious differences, the knowledge systems of Western academia have

shared an important characteristic with the traditional knowledge systems of indigenous peoples, fisherfolk, pastoralists and peasants. In both cases, knowledge has been held and managed as a common good within a self-organised community, not as a privately owned commodity. But in the academic world, this is now mostly history, and that is a direct consequence of the proliferation of IPR protection inside scientific institutions.

It started in the exact same way as the TK IPR discussion. Scientists noted how their work was increasingly appropriated and commercialised by corporations with the help of IPRs. This led academics and universities to start seeking IPR protection themselves, originally mostly as a defensive measure, but before long with equally commercial intent as the corporations. In only a few decades, this development has fundamentally changed the way academic science is done. The institutions for cumulative knowledge building and sharing that had been continuously developed since the Renaissance are now in essence lost. The publishing of papers in academic journals or at scientific conferences is now a formality without real significance. The real event is the patent application. And even more strikingly, the continuous informal sharing between research groups which was so important for the efficiency of the system has all but ceased. Nothing can ever be shared for fear that a future patent might be compromised.

Sure, the occasional scientist has struck gold and made a few million out of a successful patent, and some university departments have greatly improved their finances in the same way. But the only real winners are the handful of large corporations which now control not only most of technology development, but most of basic science as well, directly or indirectly. They are the masters of the IPR system and it is their exclusively commercial logic which has taken over also within the academic world. Important to note is that the corporations could never have transformed academia so rapidly or completely as scientists have done themselves from within. By trying to beat the corporations at their own IPR game, they instead delivered the whole academic system on a plate for the corporations to control. Today, academic scientists struggle in fierce competition to produce the patent which will win them fame and fortune, in the form of a contract with one of the corporate giants, who need assume little of the risk or cost with basic science, but are free to pick and choose from the best results.



There is absolutely no reason to believe that traditional knowledge holders will be more capable of defending their intellectual community if they choose to play the IPR game. If the largest universities in the rich world have failed, what are the chances that poor peasants, indigenous peoples and developing country governments would do better? There will be a pot of gold for the lucky few, but the price will be an accelerated breakdown of traditional institutions across the board and the delivery of the corpus of traditional knowledge to the market. TK holders will be pitched against each other as competitors, exactly like Western scientists, and the capacity of TK systems to continue to develop will gradually cease.

There is certainly an urgent need for political action to strengthen the legal protection of TK systems, including in the international fora of the UN system. But this cannot be done by creating new forms of IPRs. Intellectual property is not only irrelevant to this goal, it is positively harmful. Its very nature is to promote commodity-oriented forms of organisation, based on exclusive property, and therefore it always undermines community-based systems which rely on other and broader driving forces. If we want to protect TK, what must be institutionalised is recognition and respect for the long-standing intellectual community of TK holders as a proven and viable alternative to commodified knowledge.

