

CALL OF THE EARTH LLAMADO DE LA TIERRA

ISSUES IN INTELLECTUAL PROPERTY POLICY 3

Indigenous Traditional Knowledge for food, agriculture and medicine & Intellectual Property Policy

The Issue:

Several high profile examples have generated much publicity on the issue of who benefits from the traditional knowledge of Indigenous Peoples relevant to food, agriculture and medicine.

Indigenous Peoples assert that the appropriation of indigenous cultural, genetic or biological resources, without the informed consent of the Indigenous Peoples in whose culture the resources originate, is misappropriation.

Recognition of issues of equity and ethics arising from the misuse and misappropriation of traditional knowledge has been one catalyst for the myriad of policy responses in international and national fora. These responses address the issue in various ways, such as through aiming to directly prevent misappropriation, to the development of IP based and other rights that would enable Indigenous Peoples to hold rights in relation to traditional knowledge originating in their own communities.

The following examples illustrate the type of conflicts arising in communities.

Examples:

Hoodia

In 2002 the San people of Southern Africa came to an agreement with South Africa's Council for Scientific Research (CSIR) over the misappropriation of the traditional knowledge and use of Hoodia, an appetite suppressing cactus plant.

CSIR patented Hoodia's active ingredient P57. This was licensed to the corporation Phytopharm who then entered into a licensing agreement with the pharmaceutical giant Pfizer for the commercialization of P57, ostensibly as an obesity remedy (Madeley 2001). The San people felt that they should benefit from the profits of the commercialization.

With the assistance of the Working Group for Indigenous Minorities in Southern Africa (WIMSA) and lawyer Roger Chennels, the San lodged a legal demand for compensations. An agreement was reached with CSIR. However, as Pfizer and Phytopharm operate by virtue of their license by CSIR, the San will receive payments only from the licensing fee paid to CSIR, rather than what is likely to be the far greater profits made by Pfizer and Phytopharm.

Ayahuasca

Loren Miller, a citizen of the United States, lodged a patent in the United States over a particular variety of the vine, *Bannisteriopsis caapi*, commonly known as the Ayahuasca vine. This vine has hallucinogenic properties and is used ceremonially by peoples in the Amazon Basin. The Indigenous Peoples involved were concerned that a plant they use for sacred ceremonial purposes could become the subject of ownership, especially considering that they had known about the plant and used it for years. With the support of COICA and legal assistance from the Center for International Environmental Law, a request for the re-examination of the patent was filed. The patent was overturned, but only on the basis that the variety was proved to be already in existence rather than on the grounds that a ceremonial plant should not become the subject of a patent. After the patent was revoked, Loren Miller successfully appealed.

ICGB Maya

A \$2.5 million US Government funded bio-prospecting project based in the Chiapas region of Mexico was cancelled in November 2001. ICGB-Maya was a joint project of the US government's International Collaborative Biodiversity Group (ICGB), the Mexican College of the Southern Frontier, the Mexican government and a Welsh biotechnology firm. It was designed to collect information on the properties of plants in the Chiapas region including through traditional knowledge of these plants. While the project did allow for some benefit sharing (including development of communal gardens, a trust fund for community development and royalty payments upon any commercial discovery, indigenous organizations in the region alleged that the project had inadequate consultation procedures. The Council of Traditional Doctors and Midwives from Chiapas (COMPITCH) requested that the project be stalled until further input had been obtained from the Indigenous Peoples involved. COMPITCH also suggested a set of guidelines on bio-prospecting to the Seventh Annual International Conference of Ethnobiology. Although these guidelines were not adopted, COMPITCH and others were ultimately successful in exerting the pressure that contributed to the abandonment of the project (Land 2002).

Indigenous Perspectives:

Indigenous Peoples assert a right of control of their traditional knowledge consistent with the principle of self-determination. There is various opinion among Indigenous Peoples over whether knowledge should be subject to commercialisation and whether patenting and/or other Intellectual Property Rights (IPRs) based solutions for the 'protection' of traditional knowledge are appropriate.

The way forward: they have the opportunity of full and effective participation in decision making processes relevant to these issues.

Notes

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