

CALL OF THE EARTH LLAMADO DE LA TIERRA ISSUES IN INTELLECTUAL PROPERTY POLICY 8

Important Terms

The following terms are used throughout these background papers. While they are often used outside this context, the terms when used in other contexts may be used with slightly different meaning.

Appropriation

The gain of proprietary rights. May be in relation to tangible or intangible property.

'Bio-piracy'

The use or appropriation, by an outsider, of traditional biological knowledge or human genetic resources without the informed consent of the relevant Indigenous or Tribal peoples. Commonly associated with the use of traditional medicinal and agricultural knowledge found within the developing world by corporations or individuals from the developed world. Often involves an application for intellectual property rights in a developed country. Lack of informed consent and lack of provision for benefit sharing are hallmarks of bio-piracy.

Control

Power to determine, depending on the scope of that power, access to and use of a subject or object. May or may not, depending on the scope of the rights under which control was conferred, include the right to alienate that subject or object.

Cultural Resources

All manifestations of the culture of an Indigenous Peoples. Includes, for example, traditional knowledge(including biological knowledge) and practices, music, dance and other performing arts, history and mythology, ceremonies and rituals, designs and symbols, traditional skills, handicrafts and artworks (Dutfield 2000)². The word 'resources' implies all forms of value, not only pecuniary value.

Human Genetic Resources

Any material of human origin containing functional units of heredity (whether or not DNA can be extracted in a scientifically useful form). Of actual or potential value³ (including non pecuniary value). Includes all products, data and other information resulting from scientific manipulation or observation.

Human Biological Resources

Includes resources that may contain functional units of hereditary but were obtained for a purpose other than the collection of genetic information. Extends, for example, to stolen body parts and artefacts containing human remains.

Indigenous Peoples

Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions' (Definition adopted in ILO Convention on Indigenous and Tribal Peoples, 1989 [No. 169, art. 1.1(a)). The fundamental criterion for identification as indigenous (for a group or individual) is self-identification (Criterion adopted in ILO Convention on Indigenous and Tribal Peoples, 1989 [No. 169] art 1.2). Various other definitions exist in different national legislative frameworks.

Intellectual Commons

Those abstract objects that remain open to use, whether or not they are accessible (From Drahos 1996, p 55).

Misappropriation

The appropriation of indigenous cultural, genetic or biological resources without the informed consent of the Indigenous Peoples in whose culture the resources originate. 'Appropriation' includes exclusive use through the enforcement of intellectual property rights as well as through other means of achieving exclusive use.

Misuse

The inappropriate use of indigenous cultural, genetic or biological resources. Refusal to grant informed consent for the use is prima facie evidence that the use is inappropriate.

Public Domain

Intangible resources that have been disclosed and so cannot become the subject of proprietary rights.

Traditional Knowledge

Knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles (from the Convention on Biological Diversity 1992, art. 8(j))5).

Notes

Drahos, P 1996, A philosophy of intellectual property, Dartmouth, United Kingdom.

Dutfield G 2000 'Valuing traditional knowledge, a review of the issues', background paper for a seminar at the Rockefeller Foundation, New York, 7 November.

International Labor Organization, Convention on Indigenous and Tribal Peoples, 1989 [No. 169]

UNEP, Convention on Biological Diversity June 5, 1992, 31 I.L.M. 818 (1992) entered into force December 29, 1993

United Nations, Draft Declaration on the Rights of Indigenous Peoples

UNESCO 1989 Recommendation on the safeguarding of Traditional Culture & Folklore (adopted by the General Conference at its twenty fifth session Paris 15 November 1989)