

# Mutual Impacts of Emerging IPRs and Human Rights

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## The Universal Declaration of Human Rights

- Article 27 (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

- Clear recognition of individual intellectual property rights.
- Reaffirmed in the International Convention on Economic, Social and Cultural Rights.
- **Article 15**
- 1. The States Parties to the present Covenant recognize the right of everyone:
- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

- Emphasis was placed on groups of minorities as deserving special rights to culture, religion, or language in the International Convention on Civil and Political Rights.

- ***Article 27***

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

- Developments in the UN concerning the protection of the rights of indigenous peoples culminating in the adoption of the UN Declaration on the Rights of Indigenous Peoples on 13 September 2007.
- Article 31
- 1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
- 2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

- Parallel efforts in World Intellectual Property Organization to give communal rights to holders of traditional knowledge (TK), traditional cultural expressions, and genetic resources.
- The 20 meetings of the WIPO Intergovernmental Committee (IGC) on the 3 thematic issues of TK, TCEs, and GRs were actively participated by indigenous peoples organizations.
- Clear adoption of the prior informed consent principle and the fair and equitable sharing principle in line with the the Convention of Biological Diversity (CBD) and the Nagoya Protocol on “Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation” (the Nagoya Protocol).

- Strong demand by the indigenous peoples for the beneficiaries of the TK, TCEs, and GRs to be the indigenous communities.
- Latest negotiations of the IGC on the definition of beneficiaries came up with options on the beneficiaries.
- “Beneficiaries of protection for traditional cultural expressions, as defined in Article 1, are indigenous peoples/communities and local communities, who develop, use, hold and maintain the cultural expressions”.

But several countries insist that holders of TCEs and TK should not be confined to indigenous communities only:

“Beneficiaries of protection of traditional cultural expressions, as defined in Article 1, are the holders of traditional cultural expressions which may include: a) indigenous communities b) local communities c) traditional communities d) cultural communities e) families f) nations g) individuals within the categories listed above; and h) where traditional cultural expressions are not specifically attributable to or confined to an indigenous or local community or it is not possible to identify the community that generated it, any national entity determined by domestic law.”

- So the definition of beneficiaries of the emerging IP rights seems to be wider than the ones stated in the UN Declaration on the Rights of Indigenous Peoples.
- If the definition of beneficiaries of the emerging IPRs is not limited to the indigenous peoples or indigenous communities, there is a strong recognition that local communities of nationals should also benefit.
- Works in the WIPO are helping to expand the individual rights and indigenous peoples' rights under the human rights instruments to the communal rights regardless whether the communities concerned are indigenous or not.

- Human rights in the future will not be particularly focused on individual rights but on communal rights.
- Communal rights that are eligible to holders of emerging IPRs, by virtue of them being holders, not by virtue of who they are.
- Mutual expansion of traditional scope of protection of human rights and IPRs is fast emerging.