

ABS, TK and TK Registers

- ❁ **Decision VI/10/Annex1/2 of the CBD requested the**
"identification and assessment of measures and initiatives to protect, promote and facilitate the use of traditional knowledge", and "a mix of appropriate initiatives is emerging that can facilitate the revival and maintenance of traditional knowledge and cultural practices relevant to the conservation and sustainable use of biological diversity", including the "establishment of traditional knowledge registers".



ABS, TK and TK Registers

- * World Intellectual Property Organization
Intergovernmental Committee on Intellectual
Property and Genetic Resources, Traditional
Knowledge and Folklore (IGC or IPGRTKF)**

**IPR-related Approach for solving patent issues,
with focus on prior art determination**





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 **WTO TRIPS Article 27(b)**

Relationship between the TRIPS Agreement and the CBD, and the Protection of Traditional Knowledge and Folklore, pursuant to the Doha Ministerial Declaration Articles 12 and 19.

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- * Debate dominated by Western IPR discourse:**
 - * Grants of IPR rights by states**
 - * Protection against unjust enrichment**
 - * Short-term monopolies granted**
 - * Knowledge career towards the public domain**
 - * Economic incentives for innovation**
 - * Balance of private and public goods**



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✿ Indigenous discourse based on cultural heritage rights and customary law

✿ Debate over terms:

- Property vs. custodianship/guardianship**
- Function of Protection**
- Forms of Protection**
 - Temporary vs. permanent**
 - Property-based vs. rights-based**
 - Alienable vs. inalienable rights**



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*** Debate over terms II:**

- **Collective biocultural heritage vs. individual resource rights**
- **Tangible vs. intangible**
- **Separable vs. inseparable TK/resource relationship**
- **Customary law vs. civil, constitutional and international law**



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✿ Debate over terms III:

- ✿ Sovereignty and self-determination**
- ✿ Supremacy, abrogation and comity**
- ✿ Evolving human rights system**
- ✿ Global commons, national and local commons**



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- ✿ **To be resolved:**
- ✿ **Conflict of laws**
- ✿ **Conditions of encounter: TK/resource matrix**
- ✿ **Extraterritoriality**
 - ✿ **Gene flow vs. MTAs**

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- ✿ **TK heritage archives vs. prior arts databases**
- ✿ **Customary law**
- ✿ **Documentation burdens / burdens of proof /
duty of care / due diligence / baselines**
- ✿ **Benefit sharing measures / Development
Agenda**



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- TK Registers:**
- Control of databases / prior informed consent**
- Oversight**
- Ownership of information**
- Status of information (public disclosure vs. secure disclosure)**



ICONS / Storybase

✿ Icons/Story Base

✿ Indigenous control

✿ Distributed database model

✿ Multilayer access

✿ Currently species and narrative-level information

✿ Can be modified to include genetic resource information



Icons Use Rights Security

- ❁ **Custodians: Stored use right / aboriginal copyright notice**
- ❁ **Database Level Security: Password-restricted access**
- ❁ **Privacy Code: Record-level access**
- ❁ **User-group Restrictions: Defines field-level access**
- ❁ **Use of Native Languages**
- ❁ **Encryption**






Huchosedee Cultural Heritage Act

- * Governance right to set laws: Tribal Sovereignty (Law of Nations)**
- * Aboriginal copyright code / perpetual contracts for access to TK and associated genetic resources**
- * Internal control over movement of TK and cultural heritage**
- * Comity: Transboundary cross-recognition of laws**



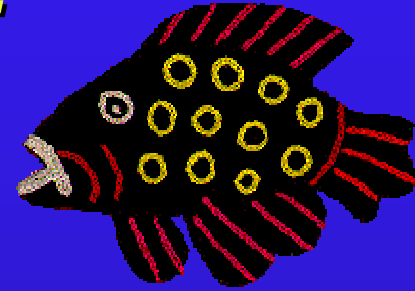


Indigenous networks: technical issues


- * Indigenous groups often lag behind current technology**
- * Indigenous groups often without broadband Internet access**
- * Often rely on multimedia for information dissemination and acquisition (e.g. newspapers, radio, video or cassettes)**
- * Lack of stable servers and server security**



Indigenous networks: capacity issues



- **No governance structure**
- **Rarely have opportunity to meet and plan for information infrastructure**
- **Lack of resources/personnel to devote to information activities**
- **Wide range of experience and capacity in regards to international processes**
- **Biodiversity not seen as a core issue**



Indigenous networks: financial issues

- ❁ Problem of funding thematic networks versus geographically-based networks**
- ❁ Lack of indigenous institutions and economic scope to support a network or clearinghouse**
- ❁ No business model for financing the network**

Tulalip Canoe Family requests permission to come ashore at Makah

