

Intellectual Property Rights: Does Protection Extend to Indigenous Peoples?

Jennifer Yanni

November 28, 2006

## Intellectual Property Rights: Does Protection Extend to Indigenous Peoples?

Jennifer Yanni

In the wake of industrial progress and technological advancement, the advent of innovation has signaled a new era for the world, one that includes the need for protection of such innovation, otherwise known as intellectual property rights. Intellectual Property Rights (IPR) are the rights of individuals to protect the expression of their ideas or their unique creations. These rights are the means by which advancement is facilitated and originality is rewarded. The three most common types of IPR are patents, copyrights, and trademark. There are some who claim that IPR are successful in providing indigenous peoples with sufficient protection of their knowledge and resources. Local communities can use the strict rules governing patents to their advantage. They may “contest the rights of others to patent an invention based on information acquired from the group and used without their authorization” (Posey & Dutfield, 1996, Chapter 8). Nongovernmental organizations can even play an integral role in advocating the rights of these groups and protecting the knowledge and resources that are indigenous to various regions of the world by offering mechanisms by which to enforce IPR. However, there are others who argue that IPR is insufficient in helping local communities protect their knowledge and resources because the stringent measures associated with IPR can make them inapplicable in most developing nations. However, it is important to realize that IPR cannot be applied across borders; they are specific to every community. Contrary to majority belief, IPR can be sufficient for defending the rights and resources of local communities as long as they are flexible enough to allow for customization that caters to communities’ specific needs and values.

As the world continues to progress, more feasible solutions have emerged to address IPR’s inability to provide for indigenous peoples. First and foremost, it is necessary to recognize

that, according to The New Delhi Declaration, “There can be no uniform set of standards and norms of equal validity or relevance applicable to a wide range of developing countries which are obliged to respond to the imperative of their respective cultural and socioeconomic needs” (Posey & Dutfield, 1996, Chapter 9). Since the success of IPR can only be measured by their ability to respond to the cultural and economic needs of specific communities, the rules that apply to IPR in developed nations cannot be the same as those in developing nations.

Consequently, many countries have recognized the need for Traditional Resource Rights (TRR), which allow for protection, compensation, and conservation. Because they are specific to the communities and the resources to which they have access, TRR can easily be applied to a number of situations by building upon the already established framework of IPR and specifying the specific problems that need to be addressed from one local community to another. TRR are significant because they “recognize the inextricable link between cultural and biological diversity and see no contradiction between the human rights of indigenous and local communities” (Posey & Dutfield, 1996, Chapter 9).

Another way to ensure that IPR protects specific groups is to develop partnerships between the corporations that rely on the local resources for their specific products and the local peoples that use the resources as part of their everyday lives. The corporations could rely on local knowledge in order to further the development of their research and manufacturing, while the indigenous people could use the funds given to them by the corporations in order to achieve sustainable development. One way to carry out this alliance is to develop a clear separation between the research sector and the manufacturing sector. Scientists, for example, may travel to the Brazilian rainforests in order to attain a specific plant for their new medicine. However, in order to ensure that exploitation of the local peoples does not occur, the corporation’s role should

end at the scientific research. These corporations can develop agreements with the indigenous community and incorporate them into the manufacturing of their drug. By co-opting these groups into the actual process of creating the product, corporations have no choice but to give credit to the local people and provide them with funds in order to ensure sustainable development.

Perhaps what is the most important feature of third world development in the context of Intellectual Property Rights is the existence of an international organization with the power to enforce treaties and to monitor nations' ability to adhere to the mission of promoting advancement for all. The World Intellectual Property Organization (WIPO) is one such organization that seeks, as its mission, to "set standards that regulate the production, distribution and use of knowledge" (Future of WIPO Declaration, page 1). WIPO, as it works in conjunction with the United Nations and follows the framework of TRIPS and the Paris Convention, must export its objective to make development available to all countries. Seeking to facilitate development, economically, socially, and culturally, WIPO knows that nations must work together in a partnership in order for such advancement to occur. This development agenda is not only aimed at developing nations or the North. "It is an agenda for everyone...all nations and people must join and expand the debate on the future of WIPO" (Future of WIPO Declaration, page 2).

In essence, IPR can and must promote third world development. The presence of Intellectual Property Rights does not necessarily exclude the rights of developing nations, since "the Third World has the most to gain from the continued spread of innovation" (Intellectual Property and Its Discontents). Rather, there is hope for the future. There is reason to believe that corporations can learn to work in conjunction with local peoples. There is evidence to assume that international organizations, particularly the WTO, UN, and WIPO, will be instrumental in

facilitating the egalitarian spread of ideas across borders and from one culture to another. Most importantly, there is hope that innovators will not lose sight of the humanist aspect of invention. The purpose of innovation is to provide for the general welfare of all and to ensure that the needs of people are met. Intellectual Property Rights, therefore, can serve as a beacon of light for the future of development of nations, corporations, and individuals learn to work together in a way that brings about the greatest good for all.

#### References

- “Geneva Declaration on the Future of World Intellectual Property Organization.” Retrieved November 24, 2006. <http://www.cptech.org/ip/wipo/genevadeclaration.html>
- Giovanetti, T. (2004). *Intellectual property and its discontents*. Retrieved November 24, 2006. <http://washingtontimes.com/commentary/20041013-091045-3952r.htm>
- Peeters, C. & Pottelsberghe de la Potterie, B.V. (Eds.). (2006). *Economic Management Perspectives on Intellectual Property Rights*. New York: Palgrave MacMillan.
- Posey, D.A. & Dutfield, G. (Eds.). (1996). *Beyond intellectual property: Toward traditional resource rights for indigenous peoples and local communities*.