

The WIPO TK Documentation Toolkit

- WIPO does not promote documentation per se, but rather, advises governments, cultural institutions and traditional custodians wishing to document TK on related IP issues
- This Consultation Draft (November 1, 2012) has been published for consultation and field-testing and is available on our website in English, Spanish and French at:
<http://www.wipo.int/tk/en/tk/TKToolkit.html>
- Comments are welcome, would be appreciated and may be sent to WIPO's TK Division at grtkf@wipo.int.

The WIPO TK Documentation Toolkit

- Is not an instrument for the protection of TK and **DOES NOT**:
 - replace expert legal advice with regards to more case-specific and thornier issues,
 - provide information with regards to specific IP laws nor interpret IP in any particular way
 - provide any specific option to protect TK,
 - offer advice with regards to whether and how to collect or research in biological and genetic resources which may be related to TK
- But rather, intends to:
 - provide useful practical guidance on how to undertake a TK documentation exercise as a process and how to address critical IP-related issues and questions, as they surface during this effort.
 - empower indigenous peoples to decide for themselves whether they wish to have their TK documented or not, and decide on how to safeguard their interests.

Three Phases

Before documentation

During documentation

After documentation

Before Documentation

- Plan carefully.
- Consult as widely as possible among indigenous peoples, local communities and key stakeholders at an early stage.
- Consider and clarify the role of the different stakeholders involved (researchers, government agencies, communities, etc.).
- Ponder on indigenous peoples and local communities expectations and how best to respond to and reflect them.
- Identify customary laws applicable to sharing, collection and documentation of TK, as well as related to decision-making within indigenous peoples and local communities.

- Consider how to effectively apply prior informed consent (PIC) principles – take note of ‘shared TK’ issues.
- Set out documentation objectives, including IP objectives and develop an IP strategy if and when needed.
- Develop a monitoring and verification plan to provide assurances that documented TK will be used as determined in the documentation process.
- Consider that legal issues may arise in the contexts of existing access to genetic and biological resources policies, and legal frameworks and regulations (ABS).
- Distinguish between non-confidential TK and TK which may be secret (due perhaps to its sacredness) and which may require additional conditions and securities (if it were to be documented).

Steps:

- Planning the documentation process
- Understanding indigenous peoples' interests and concerns
- Defining the objectives of the documentation process
- Participation and prior informed consent
- Assessing legal issues

During Documentation

- Ensure appropriate PIC documentation (or evidence) has been obtained (or is obtained during this phase of the process).
- Document TK in a precise and standardized manner (including through indigenous and local nomenclature or classifications or local management systems).
- Do not disclose non-disclosed or confidential TK, unless a conscious decision is taken to do so and it is part of a strategy.
- Follow agreed guidelines or codes of conduct, obligations and legislation and regulations (including ABS) in place.

- Regularly inform stakeholders, especially indigenous peoples and local communities, about advances and progress in the documentation process.
- Verify whether technological safeties for processing and managing data are operational (safety of the database or registration devices).
- Adapt technology to local needs (if documentation involves interaction directly with indigenous peoples and local communities).
- Ensure appropriate disclaimers are developed and made visible.

Steps:

- Obtaining, organizing, systematizing, maintaining and transmitting TK
 - Direct interviews, or
 - Desktop compilations
- Continuous information sharing with indigenous peoples on the documentation progress

After Documentation

- Verify that TK documentation planning objectives have been met.
- Verify that comments and inputs made by stakeholders (especially indigenous peoples and local communities) have been appropriately addressed.
- Check whether and how national IP offices are using the documented TK, especially if TK was documented for defensive purposes.
- Review periodically the extent to which documented TK is accessed.
- Inform indigenous peoples and local communities about the progress and results of the TK documentation process.
- Carry out periodic reviews of compliance with requirements of storage, maintenance and control.

Steps:

- Promoting the TK documentation database/register
- Technological measures for establishing the ownership over documentation
 - Unauthorized 3rd party access
 - Securing the content
 - Protecting database servers
 - Server hosting at secured site
 - Protecting/securing the website
- Monitoring uses and users of documented TK
- Verifying that initial objectives have been met.

Some common IP-related issues arising from documentation

- Documentation may lead to misuse or unwanted disclosure of TK/TCEs.
- IP rights may belong to those who document or record TK and TCEs and not necessarily to the traditional holders