# Formal Recognition to "Information Systems" and Prevention of Misappropriation

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The World Intellectual Property Organization (WIPO), through the 'Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)' has been working for over two decades to achieve a global consensus on the protection of genetic resources (GR) and traditional knowledge (TK) under the Patent Law Treaty. The efforts were mainly focused on safeguarding GR and TK from misappropriation and biopiracy through the extant formal Intellectual Property (IP) Systems. The first session of the IGC, held in May 2001, centred on the discussion on IP issues related to access to GR and associated benefit-sharing; protection of TK, innovations and creativity; and protection of traditional cultural expressions (TCEs). In the context of GR and TK, the differences in national legislations related to the enforcement of IP rights versus the rights of knowledge holders added complexity to the matter. That there is yet no consensus on the definition of TK is a further difficulty.[1] Thus, the WIPO Diplomatic Conference held in May 2024 to conclude an international legal instrument on IP, GR and TK was highly significant and attracted the attention of all stakeholders.

The Diplomatic Conference led to the much-awaited WIPO Treaty on IP, GR and associated TK, which member states hailed as a crucial step forward.[2] The key objectives of the Treaty, as defined in Article 1, are to enhance the efficacy, transparency and quality of the patent system and to prevent patent grants on non-patentable subject matter related to GR and associated TK. The Treaty also emphasises the importance of patent offices having access to appropriate information systems on GR and TK to prevent patents from being erroneously granted for inventions that fail to meet the core patentability criteria of novelty and inventive step.

Particularly for India, a land bestowed with rich GR and TK, the deliberations at the WIPO at the IGC and Diplomatic Conference are of immense significance. In the first session of the WIPO-IGC in 2001, India highlighted that *"the existing intellectual property systems were oriented around the concept of private ownership and individual innovations. These appeared to be at odds, but not irreconcilably so, with emerging concerns about utilisation of genetic resources, traditional knowledge and folklore."*[1] In consideration of the complexity and prohibitively high litigation costs associated with post-grant oppositions of patents, India established the Traditional Knowledge Digital Library (TKDL) as well as amended its Patent Law to prohibit patents on subject matter that is in effect TK, and included provisions for mandatory disclosure of the source and geographical origin of GR and associated TK. It was done to prevent the wrongful grant of patents and provide for opposition and revocation of a granted patent in case of non-disclosure or wrongful disclosure of GR or associated TK in patent applications.

Recognising the significant complementary role of documenting TK in preventing the erroneous grant of patents, WIPO has emphasised documenting information about GRs and TK for both defensive and positive protection of GRs and TK and herein "considered the potential roles and uses of databases, registers and other collections of GRs and/or TK as positive and/or defensive protection tools, whether as stand-alone mechanisms and/or as part of and related to the implementation of *sui generis* systems of TK protection".[3] In the context of the source of TK information, the TKDL holds an exemplary global position. With about 0.5 million entries from the Indian systems of medicine and over 350 outcomes of preventing TK misappropriation, the TKDL serves as an effective prior-art TK database. In the first session of the WIPO-IGC in 2001, India suggested "that other countries rich in traditional knowledge systems should consider establishing such a searchable database and WIPO should assist them in their efforts."[4]




Article 1 on Objectives and Article 6 on Information Systems of the WIPO Treaty on IP, GR and associated TK assume greater significance for India. Under Article 6, the Treaty recommends establishing information systems such as databases of GR and TK associated with GR, in consultation with the knowledge holders, namely the indigenous people, local communities and other stakeholders, as relevant nationally. Further, these systems may be made available to patent offices for purposes of search and examination of patent applications to prevent the wrongful grant of patents on GR and TK associated with GR. Article 6 also emphasises the need for "appropriate safeguards" for such information systems. The TKDL, already meeting these criteria, is now poised to bring more focused attention of WIPO and its member states on the importance of including TK databases as part of the PCT Minimum Documentation. India's commitment to this is stated in its National IPR Policy 2016. In the first session of the WIPO-IGC in 2001, India said that "*the TKDL should be prescribed as part of non-patent literature and minimum PCT documentation in order to ensure that patent examiners are duty bound to search the database for any prior art.*"[4] The WIPO Treaty thus offers confidence to India and other similar nations for such an inclusive approach so that their TK and GR remain safe from vested interests and wrongful appropriation through IP systems.

Specifically, on Information Systems, the WIPO Treaty on IP, GR and associated TK aligns with India's commitment and continued efforts to safeguard its heritage and serves as a success of its initiative on the TKDL and Patent Law, particularly Section 3(p), which prohibits patenting of inventions on TK.

Articles 3 and 5 of the WIPO Treaty focus on mandatory disclosures related to GR and associated TK, which is otherwise provided for only in a few national legislations. In this context, it is stated that India already has strong provisions on disclosure, which shall be further clarified in the Patents Act. The Trade-Related

Aspects of Intellectual Property Rights (TRIPS) Agreement under the World Trade Organization (WTO) provides for nations to "implement in their law more extensive protection than is required by this Agreement". India has been a front-runner in matters related to TK and GR through several other *sui generis* legal systems and frameworks, holding a formidable position to safeguard the interests of the nation and its people on these matters. These frameworks include, but are not limited to, the Convention on Biological Diversity (CBD) and the national Biological Diversity Act (BDA), 2002, as amended in 2023, the International Union for the Protection of New Varieties of Plants (UPOV) and Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001, and the Geographical Indications of Goods (Registration & Protection) Act, 1999. The criteria for patentability, terms for disclosures, access and benefit sharing, sanctions and remedies under the relatable provisions indirectly focus on moral rights and an inclusive approach for safeguarding the livelihoods of farmers, forest dwellers and knowledge holders, among others.

From a global perspective, the WIPO Treaty signifies the growing recognition of TK, GR and related information systems by all countries, which was lacking two decades ago. Implementation will require Contracting Parties to bring legislative changes to enforce disclosure obligations on patent applicants. This would also facilitate appropriate recognition to the rights of knowledge holders. For India, the WIPO Treaty on IP, GR and associated TK, which primarily aims at improving the quality of the patent system and associated patent grants on the subject, is a recognition of its sustained efforts of over two decades in this direction. In the context of implementing this Treaty, India's extant initiatives and provisions on GR and associated TK and IP systems, including the source of information and associated disclosures, sanctions, and remedies across diverse frameworks, should serve as a minimum standard towards its effective implementation. The conclusion of the WIPO Treaty marks the beginning of a new chapter with a renewed focus on protecting TK and TCEs, especially the yet-to-be-documented knowledge and practices of the indigenous and local communities. The learnings from these deliberations shall be pointers to future discussions towards better mechanisms to protect GR, TK and TCEs, keeping the interests of knowledge holders and global welfare as key goals.

## References


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