

**The World Indigenous Coalition for Action (WICAN): A tool to promote understanding
and respect for the core values of traditional and Indigenous peoples**

Paper submitted on behalf of WICAN by Kelly Bannister¹ and Jo Render² to:

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ABSTRACT:

The Intellectual Property Rights Working Group at the *BUILDING BRIDGES WITH TRADITIONAL KNOWLEDGE II* Conference (May 2001) in Honolulu, Hawai'i, identified the need to provide a forum for Indigenous peoples and supporters to advocate at an international level the development and design of frameworks and mechanisms for the recognition and protection of traditional knowledge systems. A resolution was unanimously passed on May 31, 2001, "To create an independent, international Indigenous and traditional peoples body that can advocate, negotiate, liase, and mediate at the request of Indigenous and traditional peoples' organisations and in relation to traditional knowledge systems and intellectual property rights/traditional resource rights issues." This is the origin of the World Indigenous Coalition for Action (WICAN) [which is pronounced, "We can!"]. The mission of WICAN is to promote understanding and respect for the core values of traditional and Indigenous peoples. This paper outlines the origin, rationale, objectives, contact information, and opportunities for further involvement of interested organisations and individuals.

INTRODUCTION

The World Indigenous Coalition for Action (WICAN) [which is pronounced, "We can!"] was formed by participants of the Intellectual Property Rights (IPR) Working Session at the *BUILDING BRIDGES WITH TRADITIONAL KNOWLEDGE II* Conference in Honolulu, Hawai'i, May 28-31, 2001. The Working Session was convened in honour of the memory and achievements of Darrell Addison Posey (1947-2001), ethnobotanist and Indigenous rights advocate. The session was led by co-moderators Mr. Maui Solomon (Aotearoa) and Ms. Aroha Te Pareake Mead (Aotearoa) and panel members Dr. Elaine Elisabetsky (Brazil), Mr. Alejandro Argumedo (Peru), Dr. David Stephenson Jr. (U.S.A), and Dr. Kelly Bannister (Canada).

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A diverse range of opinions and perspectives were shared during the IPR Working Session. While many individual stories were shared, common interests expressed by the participants focused on:

- Moving beyond “talk” of the issues into action to protect Indigenous *knowledge, values and resources*.
- Harnessing the strength and enthusiasm of the participants and their individual and professional networks to maintain momentum. To do this, participants agreed to form at least an informal electronic network for information sharing, knowledge exchange, mutual learning, and strategy building, working toward the development of a more formal structure.
- Use this forum to begin building a base of shared knowledge and experience from around the world, learning from existing models and mechanisms to protect traditional knowledge and exploring innovation. This will mean exploring current formal “Western” IPR tools as well as those rooted in customary law and tradition.
- Developing a better understanding of local issues related to the exploitation of Indigenous peoples, such as those within Hawai’i, the hosts for the Working Session.
- Building an active coalition that represents the different perspectives and experiences that exist, but coalesced around a shared vision and mission, willing to work together for common objectives.
- Connecting these efforts with other, interrelated efforts to protect underlying biological diversity.
- Developing an Indigenous protocol for research that respects Indigenous concerns and rights (for global use). For example, see the International Society of Ethnobiology Code of Ethics at <http://gualart.dac.uga.edu/ISE>

Four major tangible outcomes resulted from four days of intense discussion at the Working Session:

- i. A contact list was established with the assistance of Ms. Jeanine Pfeiffer (U.S.A.) for participants who wanted to network individually and collectively, and continue group discussions in coming months.
- ii. A listserv was established with the assistance of Ms. Ho’oipo Pa (Hawai’i) and Mr. Kunani Nihipali (Hawai’i) to distribute postings and facilitate continued discussions. Initially communications will use the email address: hooipopa@hawaii.rr.com with plans to set up an expanded internet-based discussion group and website in future.

- iii. Session notes were documented by Dr. Kelly Bannister (Canada) and Ms. Jo Render (U.S.A.) and a summary of statements representing the range of perspectives of the participants on issues of IPR and traditional knowledge was compiled for distribution with the assistance of Dr. Peter Hanohano (Hawai'i).
- iv. A new Indigenous traditional knowledge and IPR advocacy group called World Indigenous Coalition for Action (WICAN) was established and a Task Team was formed to build organisational capacity and secure funding for WICAN.

The following sections are based on a summary prepared for the Proceedings of the *BUILDING BRIDGES WITH TRADITIONAL KNOWLEDGE II* Conference. They provide important background information on current issues leading up to the IPR Working Group session at the Building Bridges Summit Meeting, and the establishment of WICAN.

REACTING TO THE “RUSH” ON INDIGENOUS KNOWLEDGE

There is considerable international focus and interest in researching the traditional knowledge of Indigenous and traditional peoples and local communities. Over the last decade and particularly in “Western” countries, awareness of the “value” that traditional knowledge may offer to botanical, pharmaceutical, agricultural, biotechnological and other such research has significantly increased.

It is, however, increasingly obvious that such cultural knowledge is not necessarily highly regarded for its intrinsic worth but for its *instrumental* value, i.e., the commercial potential that traditional knowledge and associated genetic resources contributes to the global economy and the development of new products. It is no exaggeration to say we are amid a world wide “rush” to research, document, control, and/or exploit the traditional knowledge of Indigenous and traditional cultures and local communities. While it is acknowledged that there are some researchers who are endeavouring to adopt ethical standards and guidelines to guide their work, these people and organisations are still in the minority. Many research endeavours at all levels (academic, industrial, governmental) continue to be undertaken using unethical and unfair means to exploit traditional knowledge. A common means by which outside interests seek to control knowledge is by obtaining rights to intellectual property over products that result from the research.

Article 8(j) of the 1992 United Nations (UN) Convention on Biological Diversity (CBD) provides limited protection for the holders of traditional knowledge, asking national governments to:

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous peoples and local communities embodying traditional lifestyle relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

However, the convention acknowledges that nation states have “sovereignty” over their genetic resources and also stipulates that any protection mechanisms developed under the CBD are “subject to national legislation”—in other words, are not binding on governments unless legislated by local authorities. Despite these obvious drawbacks from an Indigenous perspective, Indigenous peoples have generally chosen to participate in the CBD process because it is one of a very limited number of UN instruments that recognises the rights of Indigenous peoples and the importance of their cultural knowledge.

As a result of intensive lobbying by Indigenous peoples at successive annual meetings of the CBD (commonly referred to as Conventions of the Parties or COP meetings), a Working Group on Article 8j and related provisions (WG8j) has been established. WG8j is open to the participation of Indigenous peoples but governments, who are the “Parties” permitted voting rights under the CBD, make final decisions.

At the fourth meeting of the CBD (known as COP4) in Bratislava in 1998, the Parties mandated the World Intellectual Property Office (WIPO) to undertake work on the development of IPR mechanisms for the recognition and protection of traditional knowledge systems. Since that time, WIPO has carried out a significant number of “fact finding missions” around the globe to identify what it is that Indigenous peoples are saying. Almost without exception, Indigenous peoples have been saying that the existing IPR system is completely inadequate to recognise and protect knowledge systems of Indigenous cultures. The IPR system was developed last century to protect inventions and investments in industrial innovations by the granting of *private property rights* to those who invested

their intellectual and/or financial capital in these processes. They are private, economic rights-based legal instruments developed to protect investments.

By comparison, traditional knowledge systems have been developed in accordance with customary laws over centuries or millennia and passed on from one generation to the next. This knowledge is generally regarded as the *collective* “property” of the local communities upon whose existence the protection and perpetuation of this knowledge is fundamental. Indigenous peoples generally see themselves as guardians of land, air, and sea and therefore bound by reciprocal obligations and responsibilities to the natural resources within these realms and their divine creators. Indigenous peoples regard themselves as existing in a “seamless whole” with the natural world—in contrast to the colonial ethic of being separate from and superior to the rest of nature. Thus, before any *rights* can be asserted over resources, there are *obligations to respect* the creators of those resources, as one would show respect for a member of one’s own family.

Even from this brief comparison of the IPR system with traditional knowledge systems, the fundamental differences are readily apparent. The two systems are based on diametrically *opposed* sets of *values*. The former is based on *private economic rights* and the latter on *collective inter-generational rights and obligations*.

WIPO’S MANDATE TO PROTECT THE IPR SYSTEM

WIPO was established in 1967 under the Convention Establishing the World Intellectual Property Organisation. As mentioned above, WIPO’s constitutional mandate (Article 3) is to protect and promote the existing IPR system (available at <http://www.wipo.org/members/convention/>). WIPO is also currently under pressure as the lead international agency to assist in the current drive for an international harmonization of IPR rules and mechanisms. If IPR laws as they currently exist are not appropriate for protecting traditional knowledge systems, the question may be asked: why is it that WIPO has been given the mandate by the CBD to undertake this work? One possible answer is that Governments (who are the Parties under the CBD) have vested interests in maintaining the *status quo* and increasing access to what has been acknowledged by industry and researchers to be commercially valuable. The apparent rationale of most States is: the quicker that access to this knowledge is gained, the sooner it is commercialised, the better off society (including Indigenous peoples) will be.

WIPO is of the view that the interests and concerns of Indigenous peoples can be addressed within the existing IPR system with some slight “modifications.” However, Indigenous peoples are advocating fundamental changes. For example, the Organisation of African Unity (OAU) has called for a complete ban on patenting of plants, animals, and other life forms through a model law on community rights and access to biological resources that they have been working on for several years. Only recently has WIPO sent a team to Africa to criticise this new model and, in particular, the provisions concerning banning of patents.

It is noteworthy that patent offices in the U.S. and Europe are already facing challenges to assigned patents that are said to be based on traditional knowledge or based on plant varieties already used by Indigenous groups. The presently narrow view of “prior art” enables “biopiracy” of Indigenous knowledge and traditional resources through patenting of “discoveries” (rather than “inventions”). Certainly the subsequent revocation or withdrawal of patents (e.g., on turmeric and neem-derived compounds, among others) by the U.S. and European Patent Offices are indicative of important weakness in existing patent laws—and will lead to costly resolutions. Changes in current IPR laws that would assist in identifying prior art could include a requirement in patent applications to declare that knowledge and resources were obtained both lawfully and rightfully, and full disclosure of the source material (including knowledge and resources) used in the invention.

Clearly, robust, viable protection mechanisms cannot be developed in the absence of a clear understanding of traditional knowledge—which can only come from the traditional knowledge holders. Moreover, the IPR system cannot protect *underlying value systems* of Indigenous peoples. It was not designed to do so and it is incapable of doing so.

THE NEED FOR INDIGENOUS PEOPLES TO EXERT CONTROL OVER THIS PROCESS

Given that it is the cultural knowledge of Indigenous peoples that is at stake, it is logical that Indigenous peoples ought to be in control of the process of developing mechanisms for protection. However, there are a number of other reasons why Indigenous peoples ought to be in control of this process, for example:

- The original holders of cultural knowledge will know best how that knowledge is to be protected.

- The values upon which the knowledge is based must be preserved if the knowledge is to be preserved. The notion of commercialisation of knowledge as the priority objective of the IPR system is fundamentally and philosophically at odds with the general worldview of Indigenous peoples.
- The survival of cultures and the maintenance of the interrelated biological diversity of the resources within the territories of Indigenous and traditional peoples and local communities are dependent on the survival of this knowledge. In other words, the maintenance of cultural diversity is inextricably linked to the maintenance of biological diversity.
- Giving Indigenous peoples greater control over this process will ensure more viable and robust mechanisms into the future. And ultimately, if Indigenous peoples are not satisfied with the mechanisms that are “forced” upon them by WIPO and States, the ongoing collateral costs of litigation and activism by Indigenous peoples and their allies in opposing these mechanisms will far outweigh any perceived gains to be made in the short term.
- Indigenous peoples are not advocating the complete disbandment of the IPR system. Rather, they are saying: *Let us decide for ourselves what characteristics of the IPR system can best be used to assist us in protecting our values and our cultures.*
- It is common throughout most Indigenous cultures to share knowledge and resources. But there must first be acknowledgement and respect shown for the holders of that knowledge—what might be seen in the West as “professional courtesy.” Unfortunately, this has rarely been demonstrated. Indigenous peoples have often inherited a bitter legacy of poverty, dispossession, and distrust. The onus is therefore on governments and intergovernmental institutions to “trust” that Indigenous peoples know what is best for themselves and are prepared to share (as is their custom) this knowledge and the benefits that flow from it in a way that firstly acknowledges and respects the underlying values of the culture.
- Indigenous peoples should determine also, in accordance with their traditional beliefs, which aspects of the knowledge may be commercialised and which aspects may not.
- Many Indigenous peoples are prepared to work alongside WIPO, the World Trade Organization and other UN agencies in the development of protective mechanisms for cultural knowledge—but not in a subjugated role. Assimilationist and integrationist policies of successive colonising powers have simply not worked. It is time that Indigenous peoples are given responsibility and self-determination over their future direction.

No clearer case for this exists than enabling Indigenous controls over the design of frameworks for protecting and utilising the traditional knowledge of Indigenous peoples.

It is noteworthy that during the last meeting of WIPO's Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Folklore in December 2001, some State delegations took up the call for greater direct involvement of traditional knowledge holders in their deliberations. This call even resulted in commitments to establish a participation fund. The question WIPO now faces is how to effectively engage traditional knowledge holders and Indigenous peoples into the work of the committee. A new mechanism is needed, one that ensures that the needs and desires of Indigenous peoples are placed firmly in the forefront of the debate.

RATIONALE FOR ESTABLISHING WICAN

The major rationale for establishing WICAN at the *BUILDING BRIDGES WITH TRADITIONAL KNOWLEDGE II* summit meeting (Hawai'i, 2001), was:

“To create an independent, international Indigenous and traditional peoples body that can advocate, negotiate, liaise, and mediate at the request of Indigenous and traditional peoples' organisations and in relation to traditional knowledge systems and intellectual property rights/traditional resource rights issues”

The session participants recognised the need to identify, bring together, and work with the many *existing* organisations (some of which were represented at the Working Session) that advocate for Indigenous rights, and thereby build upon past and present accomplishments to strengthen the voices of Indigenous peoples in protecting their traditional knowledge systems.

The draft objectives of WICAN currently include:

1. To promote understanding and respect for the core values that underpin the cultures of Indigenous and traditional peoples and local communities (hereinafter collectively referred to as Indigenous peoples).
2. To act in an advisory and advocacy capacity for Indigenous peoples when requested to do so by Indigenous peoples' groups and organisations.

3. To undertake research and other work as necessary to develop strategies, position papers, and submissions toward the development of legal and non-legal mechanisms for the better recognition, protection, maintenance, and development of traditional knowledge systems of Indigenous peoples.
4. To collaborate and work with other bodies, groups, organizations, or persons whose purposes are broadly similar to those of WICAN, in order to work toward common objectives.
5. To raise funds, seek grants, donations, bequests and apply for such other monies to establish the infrastructure and organisational capacity to carry out and maintain an indefinite commitment to the above objectives of WICAN.

SUMMARY

Many of the desired outcomes of participants were achieved during the Working Session at the *BUILDING BRIDGES WITH TRADITIONAL KNOWLEDGE II* summit meeting. The remainder serve as important challenges for WICAN and its supporters to meet in the coming months, as we seek to move beyond words and toward a mechanism of action to advocate for Indigenous peoples' intellectual and cultural property rights and resources, and protection of traditional knowledge through this new organisation.

For more information, to offer your support, or to join the WICAN Internet discussion list, please contact:

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