



TIP's *Giving Back* Program

Protecting Your Knowledge: Building Intellectual Property Capacity in Huehuetenango, Guatemala

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INTRODUCTION

The Innovation Partnership (TIP) recently held a capacity building program in Huehuetenango, Guatemala aimed at empowering a group of Indigenous People called the Mam People. This program was TIP's first Giving Back initiative, a self-funded program aimed at helping underserved communities around the world improve their understanding, use, and management of intellectual property policies.

TIP supports indigenous communities that want help in developing policies to preserve their culture and knowledge, either by seeking intellectual property rights and taking advantage of the control that they may afford or through other mechanisms. The difficulty, however, lies in the fact that many of the legal instruments that aim to protect traditional or indigenous knowledge purport to do so through a traditional and standard intellectual property framework. Our approach to building capacity with respect to intellectual property involves working in partnership with communities, on their terms, and on those subjects that they choose, while openly acknowledging the inherent tension between the goal of protecting their knowledge as a communal resource and the possibility of choosing to do so by asserting a property interest over that shared resource. By educating our partnering communities about the relative advantages and disadvantages of pursuing different strategies we aim to build decision-making capacity in a way that is tailored to meet our partners' particular needs and sensitive to varying economic and cultural realities.

After numerous conversations with our partners in Guatemala, our experts held a tailored capacity building program to share knowledge about intellectual property and traditional knowledge. This course was taught by TIP Experts Palmira Granados, D.C.L. candidate at McGill University's Faculty of Law, and Matthew Herder, Visiting Professor of Law at Loyola University in Chicago. To overcome the language barrier, they were joined by



three translators. The course was held at the facilities of our local partner – Asociación CEIBA – and participants included members from the community organizations involved – Asociación CEIBA and Campesino Unity Committee (CUC), representatives from the indigenous communities themselves, as well as agronomists.

COURSE OBJECTIVES

The capacity building program had the following objectives:

- To build capacity in participants' ability to identify different kinds of knowledge and resources that can be protected or preserved;
- To build capacity with respect to intellectual property, particularly with respect to the characteristics and requirements of intellectual property regimes available and suitable for the protection of knowledge and resources;
- To help participants identify the advantages and disadvantages of the different available options with respect to protecting and preserving their knowledge and resources so that they can make decisions about possible courses of action they would like to take in that regard.

PROGRAM OVERVIEW

The program included an explanation and analysis of the definition of traditional knowledge adopted by the World Intellectual Property Organization, as well as general principles and requirements of the relevant intellectual property regimes that could be used to protect traditional knowledge nationally and internationally. As such, patents, copyright, trademarks, geographical indications, the plant variety regime, databases, trade secrets, and industrial designs were described in connection with traditional knowledge, including not only their characteristics and requirements, but also their advantages and



disadvantages particularly in connection with traditional knowledge and the Mam community.

International regulation was also discussed, including the Convention of Biological Diversity, the Bonn Guidelines regarding access to genetic resources and just and equitable distribution of benefits, the creation of the Committee of Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore, Decisions 391 and 486 issued by the Andean Community (Colombia, Venezuela, Ecuador, Peru and Bolivia), the UNCTAD, the TRIP's Agreement, and the United Nations Declaration on the Right of Indigenous Peoples.

Cases from other countries were described and discussed, including:

- A case in Brazil where the Federal University of São Paulo (UNIFESP) and the Kraho ethnic people were involved in a two-phase research project intended to (1) identify and document medicinal plants that have an effect on the central nervous system and that are used within Kraho communities for medicinal and ritual purposes, and (2) to study their medical compound and initiate pharmacological and clinical development. The importance of determining what constitutes informed consent (who has to provide it, in what form, etc.) was highly emphasized. In the Brazil case, a lack of proper informed consent from all of the Kraho communities that claimed to utilize the medicinal plants ultimately precluded the benefits that were promised (shared ownership of proprietary rights over the medicinal plants, training in cultivation, and investment in infrastructure) to the particular communities that were involved in the research, whose consent was properly obtained.
- A case in Mexico involving the National Commission for the Development of Indigenous Peoples, which is the body in charge of maintaining a database of the Mexican Indigenous Peoples' medicinal plants and other matters related to Mexican



Indigenous Peoples. In this case, ways in which the government can provide protection, the way in which databases can be used to document traditional knowledge and the communities related to such traditional knowledge, and the list of Mexican and international regulation were described.

The program then moved to a discussion of the community's particular resources, analyzing how best to protect those resources while at the same time avoiding the problems that arose in the above-mentioned Brazilian case, *i.e.* to ensure that tangible benefits are not lost due to an unclear decision-making mechanism when multiple communities are involved. This discussion and analysis was developed in small groups who were given the following tasks: describe a natural resource, artistic creation or agricultural technique that the participants considered to be traditional knowledge, set out the users and uses of such resource, creation or technique, and describe how informed consent would be obtained if they were approached by any outsider (*i.e.* university, pharmaceutical, or company) with the opportunity to exploit the resource, creation or technique in question.

The concept, types and requirements of licensing were also explained as a way to exercise the rights the communities have over their traditional knowledge. Traditional licenses, Creative Commons Licenses and Creative Commons Guatemala, GPLed licenses, and Science Commons were also described and explained, highlighting the flexibility of traditional licenses and the possibility of including any term and condition that the community deems important. The relevance of informed consent in connection with licensing was thoroughly discussed including its characteristics and the need to determine beforehand the methodology to obtain it.

The relevance of alternative strategies to law were also discussed, such as the power of the press in terms of making matters public and the power of public opinion. These



alternatives were discussed as a way to overcome some of the effects of corruption that were mentioned during the course.

CONCLUSION

One of the main conclusions of the capacity building program was that every case involving traditional knowledge needs to be carefully and thoroughly analyzed by the community or communities that utilize the knowledge in question. Participants became aware that various options are available to the community (or communities) and must be examined in light of their advantages and disadvantages. The need to obtain informed consent from all communities that utilize the knowledge and ensure a fair and equitable distribution of benefits was heavily emphasized as well and acknowledged.

At the end of the program, community leaders and key figures of CEIBA and CUC mentioned their interest in continuing to partner with TIP. These on-going partnerships help build the capacity needed by indigenous peoples to preserve their knowledge and protect it from unauthorized appropriation and commercialization. As well, by the end of the program the reluctance to trust intellectual property regimes was diminished as demonstrated by the participants request for further capacity building programs focusing on the Guatemalan regulation of traditional knowledge, as well as further elaboration of international regulation.

For more information on TIP's programs please contact Tal Srulovicz, VP Development and Operations, at tsrulovicz@theinnovationpartnership.org.