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**Paper Proposal: Intellectual Property, Traditional Knowledge and Fairness: Rethinking Recognition and Rewards arising from Intellectual Endeavor of Indigenous Communities**

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**Abstract:**

The intellectual property (IP) system has come under huge criticism for its failure to adequately reward the intellectual contributions of indigenous peoples through their traditional knowledge and innovations. In this context, the question of ‘fairness’ of the IP system, as a representative system of fair reward for global intellectual creativity has received considerable attention. Indigenous communities globally, have expressed discontent with the working of the IP system, by which innovators are able to acquire IP rights over inventions based on traditional knowledge with no recourse to the indigenous peoples from which this knowledge was obtained. The result is an ever-widening economic gap – both with respect to recognition and reward – between indigenous communities whose traditional knowledge is utilized in innovation and third parties that are able to secure IP rights over the inventions.

While several have argued that such traditional knowledge is in the public domain, third world activists have developed the term biopiracy to counter the subtle endorsement of free-riding which the IP system gives to innovators with respect to the knowledge and resources of indigenous peoples. These concerns have further been heightened due to the resistance by leading users of the IP system who have sought to prevent the IP system from being used to monitor compliance with other international treaties addressing concerns of fairness and equity over the use of indigenous knowledge.

This paper addresses a central question: is the IP system unfair to

indigenous peoples and their local innovation? The paper discusses the issue of fairness within the context of the historical mandate of the IP system, highlighting the omission of indigenous innovation from this plan, particularly in the very rationales which underlay the foundational thinking of an IP system. It examines next the questions of fairness based on the national practice of three jurisdictions: Canada, Australia, and South Africa. Finally, this paper proposes suggestions for improving fairness within the working of the IP system through a reflection on possible ways forward within the WIPO IGC.

The proposal is part of CIGI research project on IP and the Governance of TK: Fostering Innovation and Improving Lives [www.cigionline.org/thematics/traditional-knowledge](http://www.cigionline.org/thematics/traditional-knowledge)