

PROPERTY RIGHTS AND TRADITIONAL KNOWLEDGE*

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Summary

For the past several decades, there has been a push to provide some sort of right akin to an intellectual property right in traditional knowledge and traditional cultural expression. This push has encountered staunch resistance from a number of different quarters. Many of the objections are practical. However, underlying these practical concerns is a core philosophical concern. A system of traditional knowledge rights, this argument suggests, simply does not satisfy the basic rationale for granting property rights in intangibles like inventions and expressive works. Intellectual property is meant to encourage innovation and creative activity. Most traditional knowledge, by contrast, is not innovative, at least in the same sense as the inventions and works that qualify for patents and copyrights. At present, the "anti-property" camp seems to have the better of the argument, as even the World Intellectual Property Organisation has abandoned the notion of true property rights.

This article seeks to refute this philosophical objection to a property model for traditional knowledge. It argues that the classic philosophical argument justifying intellectual "property" namely, that property rights are justified only as a way to spur innovation and other creative activity is incorrect in two ways. First, the argument misstates the main goal of an intellectual property system. While intellectual property may serve as an incentive for innovation, society's primary concern is not the innovation *per se*, but instead the dissemination of knowledge. Second, there may be policy reasons other than the development of knowledge that can justify intellectual property-like rights.

The article then applies these observations to the particular question of traditional knowledge and cultural expression. It demonstrates that a system of property rights could be useful in helping to encourage the dissemination of traditional knowledge, even if that knowledge is not "new" in the classic sense. Second, other important social concerns, especially the goal of ensuring accuracy in knowledge, may justify a system of property rights. While these

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arguments may not ultimately support a property rights system—after all, the practical concerns remain very real—they do help to refute the underlying philosophical objection.

Keywords:

Property rights; indigenous knowledge; traditional knowledge; cultural expression; intellectual property; culture.