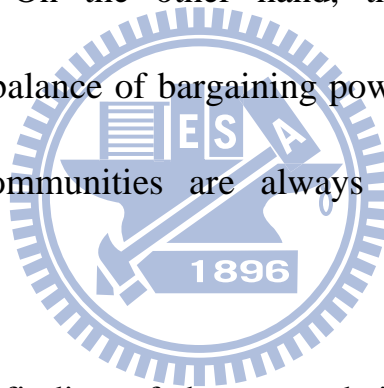


## **Abstract**

In the wake of increasingly widespread bioprospecting and commercial use of indigenous knowledge by enterprises and research institutions, a variety of international agreements such as Convention on Biological Diversity (CBD) (1992), the CBD Bonn Guidelines, the Food and Agriculture Organization's (FAO) International Treaty on Plant and Genetic Resources (2001), the World Intellectual Property Organization (WIPO) Draft Provisions on Traditional Cultural Expressions/Folklore and Traditional Knowledge (2004) have proposed certain formulas for the protection of traditional knowledge (TK) from misappropriation at the international level. But all these global frameworks lack of specific instruments of TK protection, and rather constitute a soft law. All their protective measures merely boil down to liability protection: prior informed consent, access and benefit sharing. There is still no operating binding international agreement that provides effective protective measures. The aim of the research is to propose an optimal tool of adequate protection of TK-holders and bioprospectors at the international level.

The important finding of this dissertation is that private contractual arrangements constitute one of the major means to protect TK during bioprospecting process both on national and international levels. The research aims to assess the strength and weakness of using contracts for the protection of TK holders. Among the most significant advantages are the freedom of concluding a contract and its flexibility. Thus, the contract could be of a very flexible instrument, fitting the peculiarities of a particular transaction. On the other hand, the approach has some limitations, such as imbalance of bargaining powers between contracting parties. Indigenous communities are always a weaker side of the collaboration.



The second essential finding of the research is to recognize property rights of indigenous people over TK and transfer it under licensing agreement. The ownership ensures that indigenous peoples can engage with the state and third parties as active stakeholders rather than as passive beneficiaries, and thus increases the bargaining power of TK holders. The dissertation analyses two approaches here: applying existing property rights to TK or creating special ones. The conclusion is that

existing IPRs, i.e. trade secret, are more likely to be accepted and applied in the international bioprospecting agreements.

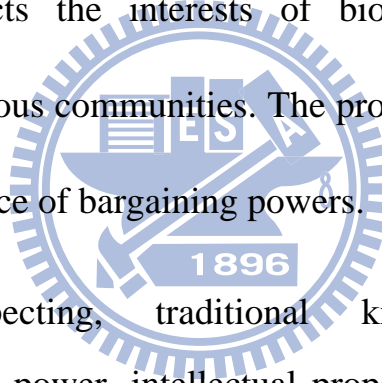
The research is supported by strong and diverse theoretical background: doctrine of countries, several modern economic theories of property.

When pertaining to empirical analysis - a case study - several International Cooperative Biodiversity Group's (ICBG) projects and concomitant contractual agreements are taken as an example of relatively integrated and successful scheme of collaboration between indigenous communities, research institutions and private entities. ICBG projects are characterized with high involvement of traditional knowledge holders or their legal representatives into contractual agreements as a rightful party. Prior informed consent and associated measures are a mandatory part of all ICBG projects. From ICBG case-study it was discovered that one of the ways to enhance the bargaining power of TK holders is to extend property rights over TK. In Peru-ICBG project the indigenous peoples' traditional knowledge was transferred under know-how licensing agreement. Though contracts and IPRs are treated by legal researchers as independent instruments of TK protection belonging to different fields of law, one of the main findings of the present research that these tools are

interconnected: one contributes to the resolution of the problem occurred with implementation of another. Without identifying indigenous peoples' property rights, the contract is more biased in sense of TK-holders protection.

The major contribution of the dissertation is to provide a practical guidance of effective mechanism of collaboration between TK-users and TK-providers, implementing an optimal model of TK licensing agreement that protects the interests of bioprospectors and, more importantly, of indigenous communities. The proposed model is aimed to result in a greater balance of bargaining powers.

**Keywords:** bioprospecting, traditional knowledge, contractual agreements, bargaining power, intellectual property rights, trade secrets (know-how)



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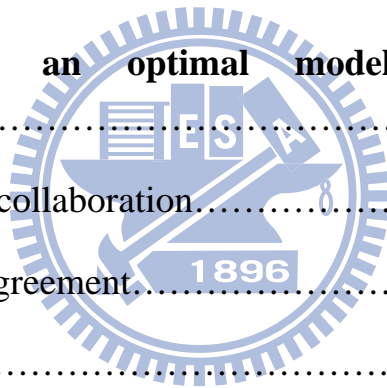


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## Abbreviations

<b>ABS</b>	Access and Equitable Benefit-Sharing
<b>AIDS</b>	Acquired Immune Deficiency Syndrome
<b>CBD</b>	Convention on Biological Diversity
<b>CONAP</b>	Confederación de Nacionalidades Amazónicas del Perú (Aguaruna NGO in Peru)
<b>CTE</b>	Committee on Trade and Environment
<b>DOE</b>	Department of Energy (U.S.)
<b>ECOSUR</b>	El Colegio de La Frontera Sur (A Scientific Research Center in Chiapas, Mexico)
<b>FAO</b>	Food and Agriculture Organization
<b>GRs</b>	Genetic Resources
<b>GW</b>	Glasgow Welcome Research and Development Ltd
<b>ICBG</b>	International Cooperative Biodiversity Group
<b>IGC</b>	Intergovernmental Committee
<b>INDECOPI</b>	Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (The National Institute for the Defense of Competition and Intellectual Property in Peru)
<b>IP</b>	Intellectual Property
<b>IPRs</b>	Intellectual Property Rights



<b>LCP</b>	Limited Common Property
<b>MNL</b>	Molecular Nature Ltd. (Natural Products Pharmaceutical and Botanical Company in the U.K.)
<b>MOA</b>	Memorandum of Agreement
<b>MTA</b>	Material Transfer Agreements
<b>NCST</b>	National Centre for Science and Technology in Vietnam
<b>NDA</b>	Non-Disclosure Agreement
<b>NGO</b>	Non-Government Organization
<b>NIH</b>	National Institute of Health (U.S.)
<b>NOAA</b>	National Oceanic and Atmospheric Administration
<b>NSF</b>	National Science Foundation (U.S.)
<b>OCAAM</b>	Organización Central de Comunidades Aguarunas del Alto Marañon (Aguaruna NGO in Peru)
<b>PIC</b>	Prior Informed Consent
<b>PROMAYA</b>	Protection of Mayan Intellectual Property Rights (the Highland Maya non-profit organization)
<b>SPDA</b>	La Sociedad Peruana de Derecho Ambiental (the Peruvian Society of Environmental Law)
<b>TK</b>	Traditional Knowledge
<b>TRIPS</b>	Agreement on Trade-Related Aspects of



	Intellectual Property Rights
<b>UGA</b>	University of Georgia
<b>UIC</b>	University of Illinois at Chicago
<b>UN</b>	United Nations
<b>USDA</b>	U. S. Department of Agriculture
<b>WIPO</b>	World Intellectual Property Organization
<b>WTO</b>	World Trade Organization



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