

Joint IPOP HL-NCIP Administrative Order No. 01, 2016

Rules and Regulations on Intellectual Property Rights Application and Registration Protecting the Indigenous Knowledge Systems and Practices of the Indigenous Peoples and Indigenous Cultural Communities

WHEREAS, the 1987 Constitution provides that the State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law;

WHEREAS, the 1987 Constitution recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development and that the State shall consider these rights in the formulation of national plans and policies;

WHEREAS, an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products;

WHEREAS, it is also a State policy to streamline administrative procedures of registering patents, trademarks, and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines;

WHEREAS, the indigenous cultural communities are entitled to the recognition of full ownership and control and protection of their cultural and intellectual rights;

WHEREAS, the use of intellectual property bears a social function;

WHEREAS, the Indigenous Peoples Rights Act of 1997 gives the indigenous cultural communities the right to special measures to control, develop and protect their sciences, technologies, and cultural manifestations, including indigenous knowledge systems and practices (IKSP);

WHEREAS, the Intellectual Property Office (“IPOP HL”) is the main government agency that administers and implements the State policies on intellectual property including the rules and regulations governing the registrations of intellectual property rights applications;

WHEREAS, the Intellectual Property Code of the Philippines mandates the IPOP HL to coordinate with other government agencies and the private sector efforts to formulate and implement plans and policies to strengthen the protection of intellectual property rights in the country;

WHEREAS, the National Commission on Indigenous Peoples (“NCIP”) is the primary government agency responsible for the formulation and implementation of policies, plans, and programs to promote and protect the rights and well-being of the indigenous cultural communities and indigenous peoples;

NOW THEREFORE, the following Joint IPOP HL-NCIP Administrative Order seeking to use the intellectual property system to protect the IKSP of the indigenous peoples and indigenous

cultural communities is hereby promulgated, adopted, and prescribed for the information and guidance of all concerned.

Chapter I Title, Scope, Objective, and Definition of Terms

Rule 1. Title.- This Joint IPOPHL-NCIP Administrative Order shall be referred to as the “Rules and Regulations on Intellectual Property Rights Application and Registration Protecting the Indigenous Knowledge Systems and Practices of the Indigenous Peoples and Indigenous Cultural Communities”.

Rule 2. Scope.- These Rules and Regulations shall apply to the examination and registration of intellectual property rights application in the IPOPHL that use the IKSP of the indigenous peoples and indigenous cultural communities.

Rule 3. Objective.- This Joint IPOPHL-NCIP Administrative Order aims to provide a harmonized rules and regulations of the IPOPHL and the NCIP to protect the intellectual creations including the IKSP of the indigenous peoples and indigenous cultural communities. The rules and regulations seek to provide institutional arrangement between the IPOPHL and the NCIP to prevent the misappropriation of the IKSP of the indigenous peoples and indigenous cultural communities and encourage tradition-based creations and innovations.

Rule 4.- Definition of Terms.- For purposes of these Rules and Regulations the following terms are defined as follows:

- a) “Collective Management” is the exercise of the intellectual property rights by organizations or persons acting in the interest and on behalf of the owners of these rights;
- b) “Community Intellectual Rights” refer to the rights of the indigenous peoples and indigenous cultural communities to own, control, develop, and protect: (a) the past, present and future manifestations of their cultures, such as but not limited to, archeological and historical sites, artifacts, designs, ceremonies, technologies, visual and performing arts and literature as well as religious and spiritual properties; (b) science and technology including, but not limited to, human and other genetic resources, seeds, medicine, health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, resource management systems, agricultural technologies, knowledge of the properties of fauna and flora, oral traditions, designs, scientific discoveries; and, (c) language, script, histories, oral traditions and teaching and learning systems; (*Rule II Section 1(j) NCIP Administrative Order No. 01-98*)
- c) “Customary Laws” refer to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective indigenous peoples and indigenous cultural communities; (*Section 3(f) Rep. Act No. 8371*)
- d) “Free and Prior Informed Consent” refers to the consensus of the members of the indigenous cultural communities to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community; (*Section 3(g) Rep. Act No. 8371*)
- e) “Indigenous Knowledge Systems and Practices” or “IKSP” refer to systems, institutions, mechanisms, and technologies comprising a unique body of knowledge

evolved through time that embody patterns of relationships between and among peoples and between peoples, their lands and resource environment, including such spheres of relationships which may include social, political, cultural, economic, religious spheres, and which are the direct outcome of the indigenous peoples' responses to certain needs consisting of adaptive mechanisms which have allowed indigenous peoples to survive and thrive within their given socio-cultural and biophysical conditions (*Rule II Section 1(f) NCIP Administrative Order No. 01-98*).

The reference to IKSP also means traditional cultural expressions or traditional knowledge and covers distinctive signs and symbols associated with the indigenous peoples and indigenous cultural communities and shall not be limited to a specific technical field, and may include agricultural, environmental or medical knowledge, and knowledge associated with genetic resources.

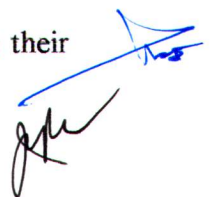
- f) "Indigenous Peoples / Indigenous Cultural Communities" refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. Indigenous Peoples/Indigenous Cultural Communities shall, likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization or at the time of inroads of non-indigenous religions and cultures or the establishment of present state boundaries who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains; (*Section 3(h) Rep. Act No. 8371*)
- g) "Intellectual Property" is the term used to describe intangible assets resulting from the creative or intellectual endeavor of an individual or organization. It refers to creations of the mind, such as inventions, literary and artistic works, and symbols, names, images, and designs used in commerce;
- h) "Intellectual Property Rights" refer to those rights recognized and protected in Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended;
- i) "IPOP HL" refers to the Intellectual Property Office of the Philippines;
- j) "NCIP" refers to the National Commission on Indigenous Peoples; and
- k) "Rules and Regulations" shall refer to this Joint IPOP HL-NCIP Administrative Order No. 01, 2016.

Chapter II

Rights Concerning Indigenous Knowledge Systems and Practices

Rule 5. Right to Indigenous Knowledge Systems and Practices by the Indigenous Peoples

- a) The IKSP of the indigenous peoples and indigenous cultural communities are their collective intellectual rights and are an inherent part of their cultural patrimony.

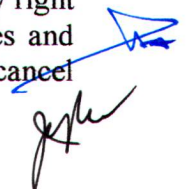


- b) Individuals or specific families may serve as custodians of these IKSP on behalf of the community in accordance with customary laws.
- c) The indigenous peoples have the right to regulate access of their IKSP for research and documentation.
- d) The indigenous peoples have the right to own, control, develop and protect the past, present and future manifestations of their cultures, such as but not limited to:
 - i) archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature as well as religious and spiritual properties;
 - ii) science and technology including but not limited to, human and other genetic resources, seeds, medicines, health practices, vital medicinal plants, animals, mineral, indigenous knowledge systems and practices, resource management systems, agricultural technologies, knowledge of the properties of flora and fauna, and scientific discoveries; and
 - iii) language, music, dances, script, histories, oral traditions, conflict resolution mechanisms, peace building processes, life philosophy and perspectives and teaching and learning systems.

Chapter III
Intellectual Property Right Application and Registration, and the Use of Indigenous Knowledge Systems and Practices

Rule 6. Disclosures on intellectual property rights applications.-

- a) An intellectual property right application filed in the IPOPHL shall disclose any IKSP that is used in the subject matter of the application including the source or geographical origin of the IKSP used in the application. The intellectual property right application shall contain the disclosure of IKSP including a statement of compliance to the requirement of free and prior informed consent of the indigenous cultural communities concerned.
- b) Where the intellectual property right is not subject to registration, a disclosure of the IKSP shall be effected in all communication of the subject matter of the intellectual property right to the public.
- c) Notwithstanding the lack of declaration of the use of an IKSP in an intellectual property right application, the IPOPHL may, *motu proprio* or upon request by any person and after initial evaluation by the IPOPHL, refer the application to the NCIP for purposes of verifying the use or ownership of the IKSP and compliance to the requirement of free and prior informed consent of the indigenous cultural communities and, thereafter, determine in accordance with pertinent rules and regulations whether the intellectual property right can be registered.
- d) The registration for an intellectual property right that uses IKSP in the subject matter of the application shall only be effected upon compliance with the disclosure requirement under these Rules and Regulations, particularly, the required free and prior informed consent of the indigenous cultural communities, notwithstanding that such disclosure is not required for the grant of certificate of intellectual property right registration. In case a registration has been issued in violation of these Rules and Regulations, the IPOPHL may, in accordance with its rules and regulations, cancel the registration.



- e) In all intellectual property rights applications, the IPOPHL reserves its judgment to determine the registration of intellectual property rights without prejudice to the filing of the appropriate case by any party alleging and/or claiming the misappropriation of the IKSP of the indigenous cultural communities.

Rule 7. Collective Management.

If the author of an artistic and literary creation or the inventor of an invention cannot be identified, but an indigenous cultural community is recognized to have created and owned the artistic or literary work, or invention, this community is entitled to the collective management of their intellectual property rights over these works. These artistic and literary works and inventions of the indigenous peoples refer to tangible and intangible forms in which their IKSP are expressed, communicated or manifested and include traditional music, performances, narratives, names and symbols, designs, and technological innovations.

Chapter IV

Establishment of a Registry for Indigenous Knowledge Systems and Practices

Rule 8. Registry of IKSP.- The NCIP shall endeavor to establish a registry of the IKSP which the IPOPHL shall use in the examination of intellectual property rights applications. In establishing the IKSP Registry, the NCIP shall coordinate and collaborate with the National Commission for Culture and the Arts, the lead government agency mandated to establish the Philippine Registry of Cultural Property and the Philippine Inventory of Intangible Cultural Heritage, and other cultural agencies, and other government agencies which have existing database or documentation of the IKSP of the indigenous peoples.

Rule 9. Certification of ownership of IKSP by the NCIP, Other Certifying Authority and Indigenous Peoples.- In the absence of a formal registry of the IKSP of the indigenous peoples, the NCIP or any certifying authority including the indigenous peoples recognized or accredited by NCIP is authorized to certify the ownership of the IKSP by the indigenous cultural communities. The certification shall also include information on the compliance with the relevant free and prior informed consent of the indigenous cultural communities. The process of certification of ownership of IKSP by the NCIP or the certifying authority shall run parallel to the examination by the IPOPHL of the intellectual property rights application in accordance with the relevant implementing rules and regulations governing the registration of intellectual property rights.

Rule 10. Validity of the Registry of IKSP and the Certification by the NCIP, Other Certifying Authority and Indigenous Peoples.- The IPOPHL recognizes the validity of the registry of IKSP and/or the NCIP's certification and those certification made by the other certifying authority including the indigenous peoples and shall consider this registry and/or certification in the examination of applications for intellectual property rights protection, as appropriate. The registry of IKSP shall be updated regularly. Nothing in this Rules and Regulations shall prevent the IPOPHL from consulting other sources to determine whether the criteria for the grant of an intellectual property right have been met and from allowing any party to challenge the NCIP's certification and findings.

Chapter V. Institutional Mechanisms

Rule 11. Inter-Agency Coordination.- The IPOPHL and the NCIP shall establish a system of coordination that will be consistent to the policy of streamlining the procedures for the registration of intellectual property rights and enhancing the protection of the IKSP of the indigenous peoples: Provided that the IPOPHL and the NCIP shall promulgate the appropriate mechanisms, jointly or individually, to ensure that the implementation of these Rules and

Regulations will not hinder the speedy disposition of intellectual property rights applications: Provided further, that the IPOPHL and the NCIP shall establish the appropriate mechanisms in defraying the expenses that may be incurred in securing the certification of ownership of the IKSP by the indigenous peoples or the indigenous cultural communities including information on the compliance with the relevant free and prior informed consent of the indigenous cultural communities.

Rule 12. Capacity Building.- The IPOPHL and the NCIP shall undertake activities geared toward building the capacity of the indigenous peoples and indigenous cultural communities to enhance the protection and management of their intellectual property rights and IKSP. The IPOPHL and the NCIP shall encourage the indigenous peoples and indigenous cultural communities to pursue intellectual property rights protection of their intellectual property subject to the free and prior informed consent of the indigenous peoples and the indigenous cultural community concerned. The capacity building activities shall also include initiatives of safeguarding the IKSP of the indigenous cultural communities including those included in the IKSP Registry and the promotion of possible licensing agreements and templates involving the IKSP and intellectual property of the indigenous peoples.

Chapter VI. Other Rights of Actions and Remedies

Rule 13. Actions and Remedies in other Laws.- These Rules and Regulations do not affect other rights of actions and remedies provided for by other laws on intellectual property and the IKSP of the indigenous peoples and indigenous cultural communities. Neither would the acquisition by the indigenous peoples and indigenous cultural communities of intellectual property rights under these Rules and Regulations imply their waiver of their community intellectual rights including their rights and actions over their IKSP as available in other laws and regulations.

Rule 14. Resolution of Disputes.- In cases of disputes between or among indigenous cultural communities arising out of the implementation of these Rules and Regulations, the customary laws and systems of dispute resolution practiced by the indigenous cultural communities shall be applied.

Chapter VII. Miscellaneous and Final Provisions

Rule 15. Public Interest. Where the public interest, in particular, health, nutrition, national security, or the development of vital sectors in the national economy, so requires, the provisions of these Rules and Regulations shall not be applicable.

Rule 16. Amendments to the Rules and Regulations. The IPOPHL and the NCIP either jointly or individually, may initiate amendments to these Rules and Regulations. Prior to the conduct of any public hearing for the proposed amendment, the initiating party shall first inform the other party of the same at least 30 days prior to the date of the first public consultation.

Rule 17. Review of the Rules. The IPOPHL and the NCIP shall jointly review these Rules and Regulations two (2) years after effectivity and every three years thereafter.

Rule 18. Repealing Clause. – All existing rules and regulations, or part thereof which may be contrary to or inconsistent with these Rules and Regulations are hereby repealed or modified accordingly.

Rule 19. Separability Clause.- If any provision of these Rules and Regulations are declared unconstitutional and invalid, the same shall not affect the validity and effectiveness of the other provisions hereof.

Rule 20. Effectiveness. – These Rules and Regulations shall take effect fifteen (15) days after its publication in at least one (1) national paper of general circulation and upon filing at the University of the Philippines Law Center in accordance with law.


NOW THEREFORE, the parties have herein below affixed their signatures to this Joint IPOPHL-NCIP Administrative Order No. 01, 2016 this 28th day of October 2016.

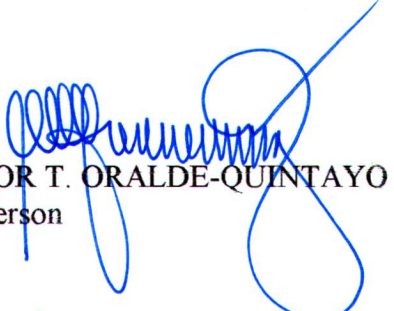
Intellectual Property Office

National Commission on Indigenous Peoples

By:

By:


JOSEPHINE R. SANTIAGO
Director General


LEONOR T. ORALDE-QUINTAYO
Chairperson

Signed in the Presence of:

