

9. And the Local Register?

The Local register are managed and controlled by Indigenous peoples according to their practices and customs. INDECOPI shall lend technical assistance in the organization of such register at the request of the indigenous peoples (Article 24).

10. Is it necessary register a collective knowledge to have protection?

No, It is not necessary. Registration is not mandatory. These registers do not constitute rights. Indigenous peoples have rights over their collective knowledge, either it is registered or not.

11. So, why Registers are important?

The registers are important because they help to preserve and safeguard the collective knowledge and to provide INDECOPI with information that enables it to defend the interests of indigenous peoples concerning their collective knowledge when someone accesses such knowledge without authorization.

12. Who is the Competent National Authority?

The Office of Inventions and New Technologies (OIN) of INDECOPI is competent to hear and resolve in the first instance all matters concerning the protection of the collective knowledge of indigenous peoples; and The Intellectual Property Chamber of the Tribunal for the Defense of Competition and Intellectual Property of INDECOPI is competent to hear and resolve all appeals in the second and last administrative instance.

13. Which are the functions of the Office of Inventions and New Technologies?

- To maintain the National Public Register and the National Confidential Register of Collective Knowledge of Indigenous Peoples and keep it up to date;
- To maintain the Register of Licenses for the Use of Collective Knowledge of Indigenous Peoples and keep it up to date;
- To assess the validity of contracts for the licensing of use of collective knowledge of indigenous peoples, taking into account the opinion of the Indigenous Knowledge Protection Council.
- To initiate ex officio infringement actions or by request of indigenous peoples.
- To perform other functions that may be entrusted to it under these provisions.

14. What Institution in Peru is responsible for combating against acts of Biopiracy

The National Commission for the Protection of Access to Peruvian Biological Diversity and to the Collective Knowledge of the Indigenous Peoples, hereinafter referred as the "National Anti-Biopiracy Commission", was established by Law No. 28216 of 1 May 2004.

The Commission chaired and coordinated by INDECOPI, is made up of governmental institutions representatives, NGOs, indigenous peoples representatives, academic and business representatives.

The National Anti-Biopiracy Commission has the task of developing actions to identify, prevent and avoid acts of biopiracy in order to protect the interests of the Peruvian State.

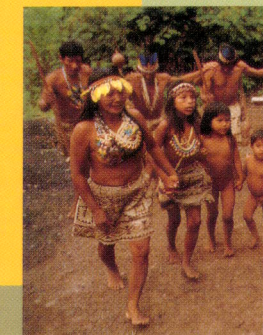
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Law N° 27811

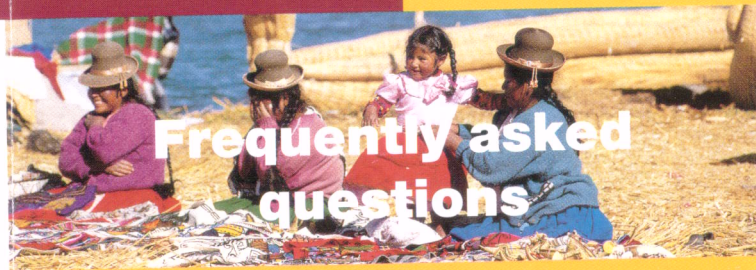


The Regime for the protection of collective knowledge of indigenous peoples related to biological resources



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Frequently asked questions

The Regime for the protection of collective knowledge of indigenous peoples related to biological resources was established in Peru through the Law N° 27811, in force since August 2002.

The main goals of this Regime are to promote respect, protection, preservation and wider application of the collective knowledge of indigenous peoples, to promote fair and equitable benefit sharing arise from using this knowledge and to strength and develop capabilities of indigenous peoples. Similarly, this Law is intended to guarantee the use of this knowledge with the prior informed consent of indigenous peoples. Finally, this law aims at preventing the granting of patents to inventions developed using the collective knowledge of the indigenous peoples of Peru, without taking into account this knowledge in the patentability examination of said inventions.

In order to be able to achieve the goals, Law N° 27811 provides several mechanisms, such as the Public and Confidential National Register of Collective Knowledge, the Local Register of Collective Knowledge, the Fund for the Development of Indigenous Peoples, the Licenses Register for the use of collective knowledge, among others .

In order to accomplish the responsibilities set out by Law N° 27811, as well as achieve the goals set aside, The Peruvian National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) has been working along with various government institutions, non governmental organizations related to the topic, representative organizations of the indigenous peoples, international cooperation agencies, and other related organizations.

1. What is a collective knowledge?

It is an accumulated and transgenerational knowledge that has been developed and preserved collectively by our indigenous peoples. It belongs to a collectivity and not to individuals. It may belong to two or more indigenous peoples.

2. What is the scope of protection afforded by the Law N° 27811?

Law N° 27811 establishes a sui generis regime for the protection of collective knowledge related to properties, uses and characteristics of biological resources. (Article 3)

3. What is the Prior Informed Consent?

It is the authorization needed by any person or institution wanting to use a collective knowledge with scientific, commercial or industrial purposes. Those interested in having access to collective knowledge shall apply for the prior informed consent of the representative organizations of the indigenous peoples. Previous provision of enough information on the purposes, risks or implications of the said activity, including uses that might be made of the knowledge and, be it the case, its value, shall be made.

4. What is the protection granted by this regime?

This Regime protects indigenous peoples against the disclosure, acquisition or use of collective knowledge without their consent and in an unfair way, in case such collective knowledge is not in the public domain. (Article 42)

5. What does mean that a collective knowledge is already in the "public domain"?

A collective knowledge is in the public domain when it has been made accessible to persons other than the indigenous peoples by massive media such as publications or, when the properties, uses or characteristics of the biological resource have become extensively known outside the confines of the indigenous peoples and their communities (Article 13).

6. What kind of Registers are foreseen by the Law N° 27811?

The Law foresees three kinds of Registers: The National Confidential Register, the National Public Register in charge of INDECOPI; and The Local Register which is managed and controlled by the Indigenous Peoples according to their practices and customs.

The Indigenous Peoples may, through its representative organization, apply to INDECOPI for the registration of the collective knowledge they possess in the Public National Register or in the Confidential National Register.

7. What kind of collective knowledge can be registered in the National Confidential Register?

The collective knowledge that is not in the public domain can be registered in the National Confidential Register. Therefore, the information included in this register may not be accessed by third parties.

8. What kind of collective knowledge can be registered in the National Public Register?

The collective knowledge that is in the public domain can be registered in the National Public Register. The Law states that INDECOPI shall register the collective knowledge that is in the public domain in this Register and shall send the information contained in this register to the main worldwide Patent Offices, so as to it can be taken into account in the patentability examination of patent applications related to inventions developed using collective knowledge of the indigenous peoples of Peru.