

# Traditional Knowledge and Sharing Issues

IPY Workshop

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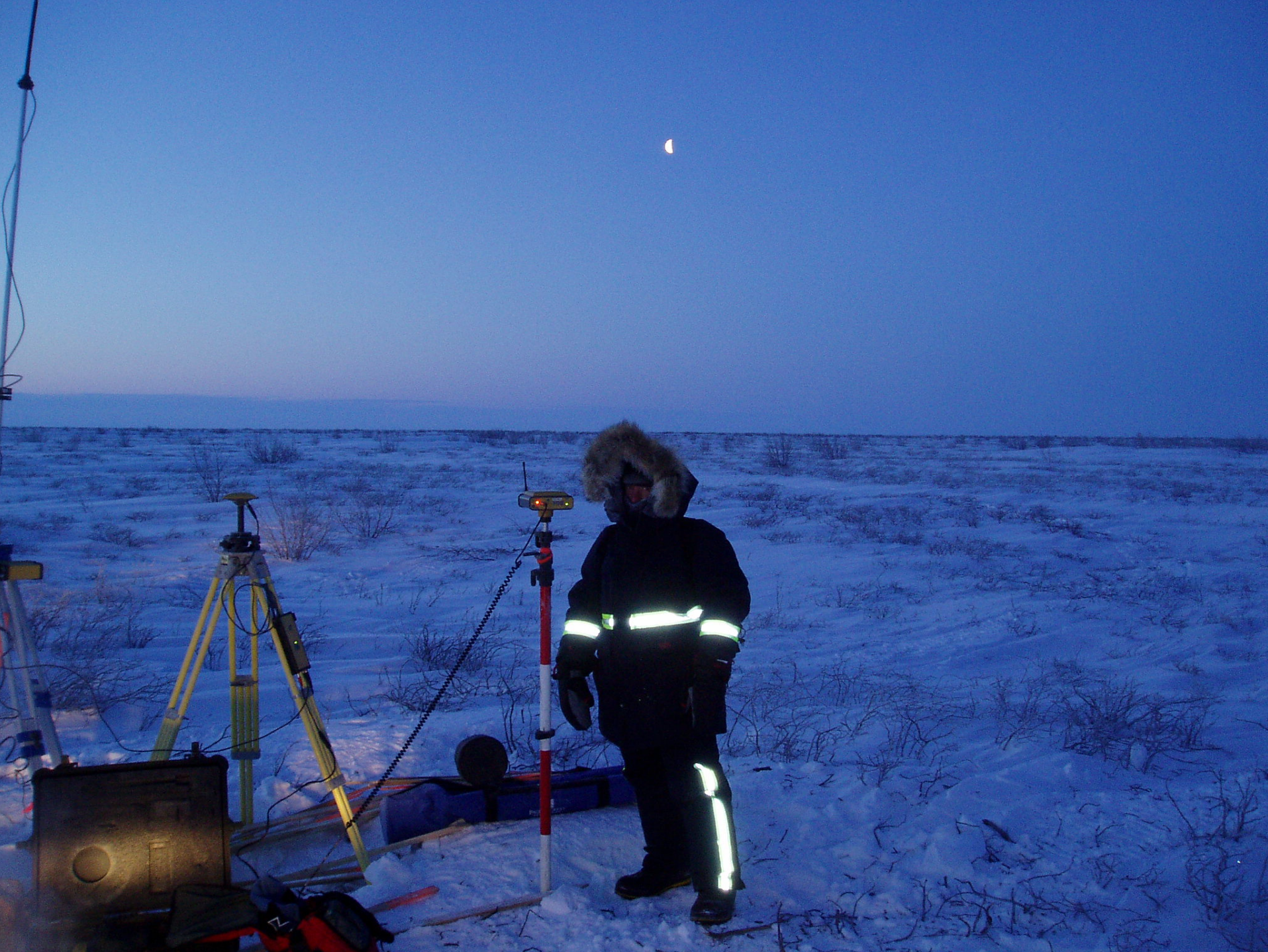


# Introduction

**This presentation intends to provide an overview of Traditional Knowledge and the issues raised by proprietary data. These issues are not limited to Canada and are being raised in other parts of the world.**















# Intellectual Property Rights

Intellectual property rights (IPRs) are the legal protections given to persons over their creative endeavors and usually give the creator an exclusive right over the use of his/her creation or discovery for a certain period of time. Intellectual property protections may include patents, copyrights, trademarks, and trade secrets. Intellectual property is codified at an international level through a series of legally binding treaties.

Traditional Knowledge can be called the “geography of oral tradition” or the “mapping of cultural and resource geography”. It provides a way of telling someone’s story of life on the land. It builds upon the historic experiences of a people and adapts to social, economic, environmental, spiritual and political change

# DEFINITIONS (Cont.)

Someone has said “Traditional knowledge exists. Intellectual property is invented.”

Traditional knowledge = knowledge about the environment, the use of the environment, values about the environment and the knowledge system itself. It is the outcome of complex interactions between a culture and the natural environment developed through everyday activities such as harvesting and hunting.





# TK STUDIES - CANADA

As early as the late 1990's, it was a policy requirement that traditional ecological knowledge (TEK) be incorporated into environmental assessment and resource management in northern Canada: all comprehensive claims agreements in Canada's northern territories call for aboriginal people to be involved in wildlife management.

In 1993 the government of the Northwest Territories adopted a traditional knowledge policy which recognized that traditional knowledge is a valid and essential source of information about the natural environment and its resources and people's relationships with the land. tourism.





# TK STUDIES – CANADA (CONT.)

Section 16.1 of the recently amended *Canadian Environmental Assessment Act* (CEAA), gives responsible authorities conducting an Environmental Assessment (EA) the discretion to consider Aboriginal traditional knowledge in any EA: "Community knowledge and **Aboriginal traditional knowledge** may be considered in conducting an environmental assessment".

The federal environmental process in Canada facilitates the use of TK in the public review phase of developments.



# TK Studies - CANADA (CONT.)

TK studies respond to the concerns and sensitivities of the communities conducting them and impacted by a specific project, and are used to assist in project planning and design, improve impact assessment and fulfill regulatory requirements related to the project.

TK studies in Canada are primarily carried out to satisfy some regulatory requirement.





# TK STUDIES – CANADA (CONT.)

All cultures have traditional knowledge. In this broad context, Aboriginal traditional knowledge can be viewed as knowledge that is held by, and unique to, Aboriginal peoples.

Aboriginal peoples have a unique knowledge about the local environment, how it functions, and its characteristic ecological relationships. This traditional knowledge is increasingly being recognized as an important part of project planning, resource management, and environmental assessment.



# International Situation

Indigenous peoples' traditional knowledge and management systems are the subject of increasing attention in the developed world. The study and preservation of aboriginal traditional knowledge was a little known field of study until it became a public issue on September 23, 1991 when it was featured in a cover story of *Time Magazine*.

Awareness is spreading through the world that TK can be used to improve development planning in regions inhabited by indigenous peoples and it has become especially pertinent to environmental assessment.





# International Situation (Cont.)

The international community is starting to recognize the importance of local knowledge systems in the effective management of natural resources for sustainable development.

Ways to effectively incorporate and use the existing local/indigenous knowledge are still being researched partly due to the inability of the local/indigenous to compete against the competitive world of formal, scientific knowledge thus creating a knowledge divide between the two systems.

This divide in turn affects sustainable development in many ways which are detrimental to all involved – one of the ways, at the international level specifically – leads to “selling” scientific knowledge to communities rather than “scientifying” local and indigenous knowledge.



# COPYRIGHTS & TK

Some cultures are not proprietary about their TK because it is quickly getting lost and they need help in preserving it.

Others feel differently: “maintaining complete indigenous control of the raw traditional land use information must be a cornerstone of linking TK and science. This allows communities to optimize the acknowledged value of this information through skills development, contracted projects and employment and other means. It could be an impact in itself to make certain specific details of land use maps public by publishing maps of prime hunting and fishing sites, gravesites and former community location” (Robert Wavey, Chief of Fox Lake First Nation, Manitoba).





# COPYRIGHTS & TK (Cont.)

**Intellectual property rights guarantee both an individual's right to protect and benefit from its own cultural discoveries, creations, and products but not a group's right - Western intellectual property regimes have focused on protecting and promoting the economic exploitation of inventions with the rationale that this promotes innovation and research.**



# SHARING TK

Intellectual property law facilitates and reinforces a process of economic exploitation and cultural erosion. It is based on individual property ownership, a concept that is not in line with indigenous communities and can be detrimental to them.

In most indigenous worldviews, any such rights, if recognized at all, should be extended to the entire community. They are a means of maintaining and developing group identity as well as group survival.





# CHALLENGES

- Data and the informal nature of traditional knowledge challenges
  - Representation of data must be logical for the community members
  - Interpretation of data must be kept to a minimum and QC/QA is more onerous
- Technical challenges of northern communities:
  - Technical capacity in GIS is unavailable
  - High-speed Internet has only been available for a shorth period of time
  - Plotting and/or displaying large format maps is limited by current computer hardware/software
  - Data storage is limited by current computer hardware



# CURRENT DEVELOPMENTS INTERNATIONALLY

- The World Intellectual Property Organization (WIPO) has been working on the IPR associated to TK and has built an inventory of current legislation around the world specifically targeting TK.
- In particular, WIPO is working on a series of Draft Provisions on Traditional Cultural Expressions/ Folklore and Traditional Knowledge. The work of the Intergovernmental Committee has led to the development of two sets of draft provisions for the protection of traditional cultural expressions /folklore and for the protection of traditional knowledge against misappropriation and misuse.





# ISSUES

- A growing number of countries (and peoples) believe that up to now they have not derived great benefits from “traditional” forms of intellectual property although their cultures are rich with traditional knowledge.
- Some groups would like to protect and benefit from these resources; meanwhile, many major corporations would like to develop and market them.
- While companies are looking at ways to exploit Indigenous medicinal knowledge, plants and other resources that are often found in Indigenous cultures and developing countries, the Internet is progressively allowing creators of folklore or folklore-based copyright material to disseminate their material worldwide at low cost.



# ISSUES (Cont.)

- TK raises serious challenges for the current intellectual property (IP) system, which seems unable to respond to the concerns of TK holders. The main reasons TK often does not fit into the IP system are:
  - expressions of folklore and several other forms of TK often cannot qualify for protection because they are too old and are supposedly in the public domain;
  - the author of the material is often not identifiable and there is thus no “rights holder” in the usual sense of the term;
  - TK is owned “collectively” by Indigenous groups and not “individually.”
  - A lot of TK material is clearly unfit for public domain or external protection in any form; including ceremonies, spiritual beliefs, languages, human remains etc.





# ISSUES (Cont.)

Significant discrepancies between TK and the Intellectual Property systems have led certain people to reject the current system in its entirety.

Some have argued that the protection of traditional knowledge requires the establishment of an entirely new system.

In Canada, Aboriginal people want and need to share the ecological portion of their TK.

However they mostly do not have the means to do so.



# ISSUES (Cont.)

In Canada, the main issue facing aboriginal peoples is the **use** of TK and/or a TK study.

Most of the information gathered through a TK study is considered proprietary and confidential.

How can this be preserved when the data is in a GIS and maps and reports provided to project proponent?

It is a matter of fact that once TK data is published, it becomes part of the public domain and cannot be protected by any intellectual property rights.





# ISSUES (Cont.)

Many aboriginal groups and First Nations in Canada make extensive use of a confidentiality agreement between themselves and project proponents.

This type of agreement attempts to restrict the use of the information by the project proponent to its immediate need for regulatory requirements.

Generally, the information provided to the project proponent will be integrated in a larger report filed with the regulatory agency(ies) and can be devoid of specific sensitive data. However this would seem to defeat the purpose of a project proponent funding a TK study in the first place.



# ISSUES (Cont.)

A confidentiality agreement needs to address the issues of disclosure – this is one of the most important issues to aboriginal peoples.

Protecting TK data from disclosure is a difficult task and current IP laws do not address the main component of TK – it is collectively owned by a community and not by individuals.

Managing competing interests is difficult and a confidentiality agreement is only one of the steps that can be taken. For many aboriginal groups and First Nations in Canada, TK needs protection and sometimes non-disclosure is the only way to achieve protection.





# ISSUES (Cont.)

At the same time, agreements with researchers for data sharing and gathering – through the Hunters and Trappers Associations or Organizations at the community level would be welcome. It would enhance the communities participation in arctic research and make TK more viable locally.

There are 14 communities in the Yukon, 33 in the Northwest Territories and 27 in Nunavut – ready made support for researchers.



# CONCLUSION

There are more issues than solutions to the problems, concerns and difficulties identified in Canada and throughout the world.

Some are being addressed by the international Intellectual Property community.

Others, as for some in Canada, depend on the initiative of TK holders and the good faith of project proponents.

Some believe that IPRs do not have to work against the needs and interests of traditional knowledge holders. One of the ways that TK can find its place in the system is through TK registries.





# CONCLUSION (Cont.)

Traditional knowledge registries are official collections of documentation that describe traditional knowledge.

Registries can be established and maintained either locally (within a community) or outside the community itself (external). With a locally maintained registry, the community may collectively decide what is to be included in the registry and what knowledge is to be shared and/or disclosed to people – internally and externally.

The problems are related to capacity at the local levels.



# CONCLUSION (Cont.)

A private registry of TK data can also serve as a catalogue for knowledge that can be licensed to outside parties for research and product development. As a mechanism for cultural preservation, a private registry serves as a cultural library that documents and maintains TK belonging to a community and helps prevent its loss.

