



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PHX-16-054

TITLE: Calling for Immediate and Direct Consultation by the United States with Tribes Regarding On-Going International Negotiations in the World Intellectual Property Organization on Matters that May Affect Tribal Sovereignty including Protection of Indigenous Traditional Knowledge

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the World Intellectual Property Organization (WIPO), within the United Nations System, is an international Specialized Agency that reports to the Economic and Social Council, which in turn reports to the Committee on Social, Humanitarian and Cultural and Human Rights, which in turn reports to the U.N. General Assembly; and

WHEREAS, in 2000 WIPO established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore; and

WHEREAS, in 2009 WIPO agreed to develop an international legal instrument (or instruments) that would protect indigenous genetic resources, and traditional knowledge and traditional cultural expressions; and

WHEREAS, the United States has been participating in the WIPO negotiations of this international legal instrument (or instruments) that would protect indigenous genetic resources, and traditional knowledge and traditional cultural expressions; and

WHEREAS, the United States Department of State has delegated authority to the United States Patent and Trade Office (USPTO) for these WIPO negotiations; and

WHEREAS, the USPTO in these on-going WIPO negotiations has taken or is taking positions that directly abrogate, diminish or impinge upon tribal sovereign rights and jurisdiction, particularly regarding indigenous traditional knowledge and traditional cultural expressions; and

WHEREAS, the USPTO in these on-going WIPO negotiations recently has introduced text that could lead to a binding international treaty that establishes, confirms or asserts the plenary authority of intellectual property offices around the world to regulate indigenous traditional knowledge and traditional cultural expressions; and

WHEREAS, the USPTO's WIPO negotiating positions and text assert that indigenous traditional knowledge and traditional cultural expressions can and should be protected only for a limited duration of time and with limited protections; and

WHEREAS, the USPTO's WIPO negotiating positions and text assert that the majority of indigenous traditional knowledge and traditional cultural expressions is already in the public domain, and that the USPTO has the authority to place indigenous traditional knowledge and traditional cultural expressions into the public domain, notwithstanding indigenous peoples' right to free, prior and informed consent for its access and use, and other rights as embodied in the United Nations Declaration on the Rights of Indigenous Peoples and tribal treaties and other federal law; and

WHEREAS, the USPTO's WIPO negotiating positions and text assert that it has the authority to unilaterally abrogate, diminish or impinge upon tribal sovereign authority, by subjecting indigenous traditional knowledge and traditional cultural expressions to claims by non-tribal citizens, entities, and governments to access and use indigenous traditional knowledge and traditional cultural expressions without indigenous peoples' free, prior and informed consent, and in contravention of tribal treaties and other federal law; and

WHEREAS, in 16 years and over 30 WIPO discussion and negotiations sessions, neither the USPTO nor any other U.S. agency has engaged in formal government-to-government consultation with tribes or achieved free, prior and informed consent on negotiating positions or text regarding indigenous traditional knowledge and traditional cultural expressions; and

WHEREAS, tribal sovereign authority over traditional knowledge and traditional cultural expressions has never been ceded to the United States, nor expressly abrogated or diminished by an act of Congress.

NOW THEREFORE BE IT RESOLVED, that the USPTO, the State Department and any other applicable federal agency involved in the WIPO IGC negotiations on indigenous intellectual property, genetic resources, and traditional knowledge and traditional cultural expressions should immediately begin a direct formal government-to-government consultation with tribes, regarding the United States' WIPO negotiating positions and textual recommendations regarding traditional knowledge and traditional cultural expressions; and

BE IT FURTHER RESOLVED, that the United States Government should direct the USPTO and any other applicable federal agency, in such consultations with tribes, to recognize and

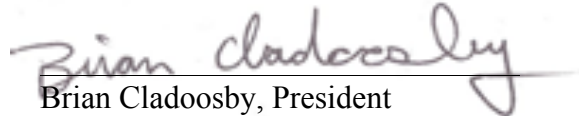
protect tribal sovereign rights and authority over traditional knowledge and cultural expressions; and

BE IT FURTHER RESOLVED, that the United States Government should ensure that in the transition to the next Presidential Administration that actions will be taken to ensure tribal consultations and free, prior and informed consent in the development of domestic and international policies, rules, legislation, and instruments that affirm tribal sovereign rights and authority over indigenous traditional knowledge and traditional cultural expressions; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2016 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center, October 9th- 14th 2016, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary