
HARMONY

The Native American Tribal Intellectual Property Project

A White Paper discussing the concept and outline development plan for a national resource for the recognition, protection, management and monetization of Intellectual Property in Indian Country.

Prepared by:

Kim Ribbans,
Executive Director
Native American Intellectual Property Enterprise Council

April 2013



CONTENTS

OVERVIEW	1
ABSTRACT	2
INTRODUCTION	3
HARMONY	6
IP Strategy and Policy Institute	6
IP Education and Research Hubs.....	8
Tribal IP Data Repository.....	9
IP Asset Exchange	10
DEVELOPMENT, FUNDING AND SUPPORT.....	11
CONCLUSION.....	13
ABOUT NAIPEC	13

OVERVIEW

This document outlines the concept and development plan leading to the establishment of a national resource, founded and supported by Native American Tribes, available to all Native American and dedicated to the recognition, protection, management and monetization of Intellectual Property in Indian Country.

The paper briefly examines the established need for such a resource; the outline development plan for its establishment; and the goals and wider implications of such a resource on economic and community development for Native Americans Tribes.

ABSTRACT

The National Native American Tribal Intellectual Property Project, (HARMONY Center) is envisioned as being established as a network of physical and virtual facilities with four overall short- and long-term areas of interest and goals:

IP Strategy and Policy Institute To assist Tribes, and Tribal businesses to most effectively develop robust, strategies to ensure the short and long-term protection and recognition of Tribal IP.

IP Education and Research Hub To provide (a network of) facilities and virtual resources to assist Tribes, Tribal Colleges and Tribal businesses in developing educational resources; curriculum assets and research and prototyping labs across specific areas of activity.

Tribal IP Data Repository To track, recognize and preserve existing and new Tribal Intellectual Property instruments, such as Patents, Trademarks and Copyrights. To also provide resources to assist in Native-language application support; language preservation, and; the establishment of a recognized, national Native IP database.

IP Asset Exchange To develop, in the long-term, an Intellectual Property Asset Pool. This would be established with existing and acquired IP assets and operated as a licensing and IP Asset fund, for the benefit of its asset owners and members.

The HARMONY Center will be founded, developed and managed by the Native American Intellectual Property Enterprise Council, (A Native controlled, 501c3 organization) with support from Native American Tribes; Tribal Businesses; Private Funding; Local, State and Federal support, and; selected corporate and institutional in-kind contributions and funding.

The overall body will consist of both physical resources, located in, potentially numerous and widespread, Native American communities; and virtual resources and assets, managed and operated by NAIPEC in collaboration with Native American Tribes, businesses, Tribal Colleges and Universities and other relevant organizations.

INTRODUCTION

In a keynote address to the World Intellectual Property Organization in 2004, Chulsu Kim, President of Seoul University, talked about the Korean Experience as a once under-developed economy.

“The intellectual property system was an important catalyst for the development of indigenous technology by (South) Korean companies, several of which have become global market leaders. Korea’s spectacular transformation from a poor farming economy in the 1960s with a per capita income of less than US \$100 to a highly industrialized country with a per capita income of US \$12,000 today, resulted from a systematic economic and trade development policy that included incentives for technological innovation and the development of domestic intellectual property assets.”¹

In many ways Native American communities in the United States exist as a parallel, often hidden economy.

While huge steps have been taken to assist and incentivize robust growth in Indian Country, many of the poorest communities today in the US are on Indian reservations², Native youth have the lowest High School graduation rates and highest drop-out rates³, and; according to research conducted by NAIPEC in 2012, Native Americans represent one of the lowest proportions of Patent holders among minority communities, in the US.

“Intellectual property protection contributes to economic growth in both developed and developing countries by stimulating innovation, cultural diversity and technical development as part of a larger policy framework. Properly used, intellectual property rights can also be key tools for the alleviation of poverty through trade.

International Chamber of Commerce

*“Intellectual Property:
Source of innovation, creativity,
growth and progress” - 2005*

¹ Chulsu Kim, Integrating Intellectual Property into the National Development Policy: the Korean Experience, keynote address at WIPO/ KIPO Ministerial Conference on Intellectual Property for Least Developed Countries - 2004.

² According to the Economic Research Service at the U.S. Department of Agriculture, nearly 60 percent of all Native Americans who live outside of metropolitan areas inhabit persistently poor counties. - 2010

³ National Center for Educational Statistics, 2010

Yet Native Americans have a history of innovation that is, at least, as strong as any other community in the world.

Long before the first European's discovery expedition washed ashore, some of the greatest civilizations in the world thrived in the Americas. Complete with major population centers; technologically advanced cultures that often radically engineered the landscape across the continent, to the point that even "timeless" natural features like the Amazon rainforest can be seen as products of human intervention, these civilizations ultimately fell under European expansion and the disease and cultures that came with it.

These first Americans lived fruitful lives with the benefits of creative and innovative discoveries ranging from arts, environmental sciences, metallurgy, medicine, astronomy, and many more areas of science and religion. Most of these discoveries were handed down from many tribal groups of formal and informal leaders. Many of these valuable discoveries have been overshadowed in the history books and lost in modern history.

Native Americans have always been resilient people which stems from a culture of natural, and forced understanding on how to survive and adapt using innovation, with a creative understanding of how to adapt and thrive. Native Americans are known to be spiritual, creative people with a keen understanding on how to adapt to our surroundings. They have a rich legacy of finding new ways to improve their environment and efficiently maximizing the ways of making simple things better.

As Plato described, *necessity is the mother of all invention*, and this adage, not only through history but also to our present and future need for growth as a people and a culture, applies as strongly as ever. Native American's proud history has always had a connection to art, sciences, and the ecology both as a way of life and as a method of striving to live.

Today more than any time in history, our modern world is in critical need for true innovation; Innovation that acts as a beacon for economic and global salvation. The contribution of Native Americans has the potential to be more valuable now than ever before.

In codifying the establishment of the Bureau of Indian Affairs, the Snyder Act of 1921 stated that:

"...the Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:

- *General support and civilization, including education.*
- *For relief of distress and conservation of health.*

- *For industrial assistance and advancement and general administration of Indian **property.***

Intellectual Property, its protection, development and, importantly, its recognition as a key asset in economic development, has developed to a sophisticated level in the 21st Century. Native Americans represent an important source of innovation and invention, not only for the benefit of Indian Country, but also for the economy and well being of the entire United States.

“America stands at a critical juncture in our economic evolution, and intellectual property will play a key role in driving our economic growth and renewal...

...IP is – in effect -- the global currency of innovation.”

David Kappos

Under Secretary of Commerce for Intellectual
Property and Director of the United
States Patent and Trademark
Office - 2009 to 2013

The Native American Tribal Intellectual Property Project – HARMONY, will play an important role in assisting Native Americans in the advancement, management and utilization of Intellectual Property as a critical element of economic advancement.

HARMONY

The Native American Tribal Intellectual Property Project – HARMONY, will be focused on four main areas of activities, each with specific goals related to the achievement of an overall objective of assisting Native American in the advancement of Intellectual Property assets and using innovation as a catalyst for economic and community growth.

Functions associated with these goals and overall objective will be distributed among a network of both physical and virtual facilities and resources (TIP Centers), sited in or near Native American communities and led, supported and managed by Native Americans, Tribes and Native Organizations.

IP Strategy and Policy Institute

To assist Tribes, and Tribal businesses to most effectively develop robust strategies to ensure the short and long-term protection and recognition of Tribal IP.

The theft, misappropriation, and overall dilution of intellectual Property assets are phenomena prevalent across the entire world of commerce and business. Among Native Americans this is an issue that has persisted for many hundreds of years.

From the curing of rubber and the game of Lacrosse to the cultivation of tomatoes, rice, beans and other crops through planting techniques, seed manipulation and crossbreeding; to everyday items like tortillas, balloons, potato chips, the hammock, beef jerky and root beer, Native American innovation has contributed to modern life in immeasurable ways. While the retrospective protections of such things are impractical, the protection of future innovations and intellectual property assets is critical for Indian Country and the US as a whole.

Recent national and international attention has been drawn to cases involving Native Americans. The Navajo Nation's legal action against Urban Outfitters for trademark infringement goes beyond a simple case of commercial theft to highlighting the nature of protection for Native American core assets - including the very name of the Navajo People. It also highlights the issue of Native Americans and how their heritage can be protected against commercial gain from non-native actors, now, and in the future.

The Hopi and Zuni Peoples were recently unsuccessful (April 2013) in preventing the sale of a collection of 70 Hopi and Zuni masks being auctioned by an auction house in Paris, France. A collector had amassed the array of katsinam masks over the course of 30 years, and they are said to date to the late 19th and early 20th century.

The IP Strategy and Policy Institute of the Native American Tribal Intellectual Property Project will comprise a policy-making and strategic Think-Tank body. It will assist Tribes in the development, management and protection of its Intellectual Property assets. It will also help to create strategic plans for Tribes that will enable them to protect their core assets at the same time as developing robust strategies for licensing and IP asset management.

It is proposed that the IP Strategy and Policy Institute will be a physical facility, a TIP Center, co-located with a leading Tribal College or University, and employ the resources of leading IP experts and academics from both within and outside of the Native American community.

This TIP Center will be instrumental in assisting individual Tribes and Tribal businesses in developing real-world strategies for protecting and managing their Intellectual Property. It will also develop and publish academically and commercially significant work such as Position Papers and Strategy Memos on the subject of IP and Native Economic Growth, and provide important supporting documentation and support for the establishment and verification of the value of Native American Intellectual Property.

It will be funded and supported by contributions from Native Tribes, as part of the NAIPEC TIP Center program, and will also solicit and incorporate the knowledge, advice and resources of leading national and international experts in Intellectual Property. These might include leading law firms, IP Asset managers and academic and business leaders.

*Think Tanks have been described as **“Helping to bridge the gap between knowledge and policy”**.*

Major policy bodies such as the Brookings Institution, and the World Resources Institute, concentrate on conducting high quality, independent research and, based on that research, in providing innovative, practical recommendations that advance their particular areas of concentration.

Established in a similar fashion to leading policy bodies, or “Think Tanks”, the IP Strategy and Policy Institute of the Native American Tribal Intellectual Property Project will become a leading source of knowledge in the area of Native American IP.

IP Education and Research Hubs

To provide (a network of) facilities and virtual resources to assist Tribes, Tribal Colleges and Tribal businesses in developing educational resources; curriculum assets and research and prototyping labs across specific areas of activity.

Perhaps the most critical need in business education, both in Tribal College and University programs and, indeed, in the mainstream education sector, (in both business and law disciplines), is a knowledge of Intellectual Property. Both as a legal subject that only a small proportion of lawyers practice, and more importantly as a vital component of a growing modern international economy, IP and knowledge of its power in economic development often represents a “missing link” in education.

This gap also exists, perhaps at an even greater level, in the minds and knowledge of most businesspeople and economic development practitioners.

Part of NAIPEC’s core mission has been to conduct outreach to diverse Native American business sectors on the subject of IP. This has included Tourism, Govt. Contracting and even the issue of Global Information Systems.

Additionally the ability of Native American innovators and inventors to research, prototype, test and protect new innovations, processes and ideas has been limited to the extent that the key players are aware of the protections available to them, the ability to pay for the use of these types of facilities and their appreciation of the importance of these steps in establishing new economic and community development initiatives.

The IP Education and Research Hubs of the Native American Tribal Intellectual Property Project will comprise a network of academic and research facilities based in Indian Country across the US.

Largely co-located with a Tribal Colleges or Universities (TCUs) these TIP Centers will serve one or more of the following purposes.

- Develop resources for formal education (TCUs) - These might include Study Guides, Multi-Media Resources (Video and Audio), Teaching Notes and Course Materials
- Provide IP Centered Resources for Tribal businesses and communities – These would include, small business workshops, visiting speakers and expert clinics, access to USPTO and USCO databases through dedicated computer “kiosks”.
- Establish small-scale R&D Facilities – These would be workshops, fabrication laboratories (Fab-Labs), testing facilities, computing assets (CAD, 3D printers etc), and a center for IP knowledge.

NAIPEC is in the early stages of developing a feasibility study for the establishment of a small-scale R&D facility at the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation in South Dakota.

It is envisioned that this facility will be owned and managed by the Sisseton-Wahpeton Oyate Tribe, and be available as a resource for other Tribes in the region and around the country. We are currently determining the scope, nature, and goal of this facility and the feasibility study will determine the costs and other factors of establishing it.

Tribal IP Data Repository

To track, recognize and preserve existing and new Tribal Intellectual Property instruments, such as Patents, Trademarks and Copyrights. To also provide resources to assist in Native-language application support; language preservation, and; the establishment of a recognized, national Native IP database.

As highlighted by the recent, informal, research conducted in 2012 at the United States Patent and Trademark Office by NAIPEC, Native Americans fall far short of other minorities, and the population as a whole, in availing themselves of the protections offered by this body. Additionally in a study conducted by NAIPEC in 2011 and 2012 under a grant from the Native American Business Development Institute, it was found that the vast majority of Economic Development professionals at various Tribes in the Great Plains region were unaware of either the importance of Intellectual Property or how to use the systems already established to protect Patents, Trademarks and Copyrights.

The Tribal IP Data Repository of the Native American Tribal Intellectual Property Project will establish a comprehensive and publically accessible database that captures historical data on issued IP protections, and will keep current with all future IP applications by Native Americans.

Additionally it will serve as a repository and data source for other, previously unprotected IP assets and innovation. This type of data might include information on what would today be protectable assets classes. For example, knowing the value of such innovations that are recognized as being developed by Native Americans in the past would, while offering no retrospective protection, establish baselines and important historical data for future establishment of the value of such assets.

Finally it will offer the ability to develop original, formal filing documentation in the native language of the applicant. The USPTO accepts applications in languages other than English, as long as an English language translation is also provided. Developing applications, whether at source from the applicant, or by the use of native-speaking individuals identified as a resource to and by this program, will ensure that the original, pure description and meaning, particularly in the cases of Trademarks or Tribally unique cultural IP assets, is preserved.

The Tribal IP Data Repository of the Native American Tribal Intellectual Property Project will identify and retain any assets that are instrumental in providing original Native American language documentation, assist the inventor in ensuring that the original application, and English language version (if applicable) captures the essence of the application, and; ensure that the description of the asset in the originators native language captures the originator's intent.

It is proposed that these resources be distributed across the network of TIP Centers of the Native American Tribal Intellectual Property Project, provide regional assets, and retain regional language resources for use by native language speakers in those regions.

The IP Data Repository will be housed in a centrally located database, and accessible through publically available, but protected, access.

IP Asset Exchange

To develop, in the long-term, an Intellectual Property Asset Pool. This would be established with existing and acquired IP assets and operated as a licensing and IP Asset fund, for the benefit of its asset owners and members.

An IP Pool, or “Patent Pool”, is an agreement between two or more patent, or other IP, owners to license one or more of their assets to one another or third parties. A pool allows interested parties to, for example, gather all the necessary tools to practice a certain technology in one place, e.g., “one-stop shopping,” rather than obtaining licenses from each IP asset owner individually.

In the context of the Native American Tribal Intellectual Property Project, this type of consortium allows for a number of important strategic and tactical goals to be achieved:

1. It will allow members of one particular Tribe, Tribal nation, or other affiliation to utilize the IP assets assigned to that group in a protected and recognized setting.

For example it would allow members of any of the Pueblo Peoples of the South West United States to collectively protect a trademark such as, for instance, “Pueblo Pottery”, to use that Trademark in commerce, as members of that group; to restrict that use exclusively to members of that group if desired; and to provide a legal and commercial foundation for active IP protection efforts, and licensing programs.

2. It will offer a mechanism for Pool members - groups of Tribes - to acquire or assign protected IP assets – whether originated within Indian Country, from outside of it or as a combination of both – and to build licensing and other programs to generate revenues for members of that “pool”.

For example, many companies divest themselves of large portfolios of patents or trademarks. Often these are sold on the open market, through IP Trading Boards, or are donated to non-profit bodies (such as NAIPEC). These collections of IP assets can then be collectively acquired by members of the Pool, used in the development of Native business enterprises, sold, or licensed to other interested parties as appropriate, garnering ongoing revenues to the Pool members.

It is envisioned that this type of resource will be developed in the longer term, based on support and buy-in from leading Tribes and the availability of assets and protection mechanisms.

The IP Asset Exchange of the Native American Tribal Intellectual Property Project will be managed primarily as a program of NAIPEC, with the assistance of and from Tribes and other leading IP experts.

DEVELOPMENT, FUNDING AND SUPPORT

While NAIPEC is currently developing the specific details of many of the elements described in the paper, it is envisioned that the priorities for overall development of the Native American Tribal Intellectual Property Project will primarily and actively pursue the establishment of the **IP Strategy and Policy Institute** as a primary goal, along with the projects currently underway to conduct feasibility studies that fall under the heading of the **IP Education and Research Hubs**. The establishment of these core programs will allow us to quickly create the infrastructure that will support the development of the **Tribal IP Data Repository** as a tangible asset.

The establishment of the **IP Asset Exchange**, while remaining an important priority for NAIPEC, has many inter-dependent factors that will drive the development plan for this program.

NAIPEC has established a membership structure for the organization that encourages Tribes, Tribal Businesses & Organizations, and other interested parties to both join NAIPEC as a sustaining and founding member, and/or to contribute to the work of NAIPEC in establishing its core programs. This membership program is open only to established Tribes and Tribal Colleges and Universities (TCUs). These members are also encouraged and expected to actively contribute to the overall strategic direction of the organization in the long term.

Associate membership is also available to Corporations, Foundations and other institutions whose support; guidance and input would provide material benefit to NAIPEC in its mission.

Memberships range in annual fees from \$3,000 - \$25,000. It is envisioned that these funds will, in part, underwrite NAIPEC's efforts to establish the overall Native American Tribal Intellectual Property Project, in addition to other grants, individual and organizational funding.

NAIPEC has established an umbrella program to support the **Native American Tribal Intellectual Property Project**, with sub-projects aimed at funding and supporting the other elements of the project.

These funding opportunities, in addition to general funding being sought for the overall establishment of NAIPEC and its core programs, include:

IP Strategy and Policy Institute – Estimated Initial Funding Need: \$500,000 - \$750,000

- Multiple Financial Contributions in the range of \$50,000 - \$250,000 are being sought to underwrite the development of this vital program
- Local, State and Federal Grant and other supporting programs will be identified to further underwrite the program
- In-Kind Contributions from legal services providers, educational institutions, corporations, subject-matter experts and other organizations are identified as being vital to the establishment of this program

IP Education and Research Hubs – Estimated Initial Funding Need: \$25,000 - \$250,000

- Funding for up to three (FYs 2013/2014) feasibility studies (\$25,000 - \$40,000) is currently being identified and pursued.
- Funds, based on the specific needs (as outlined by the feasibility studies) of each TIP Center will be identified and sought from multiple sources
- Funding for individual elements of this program are also being identified. These include:
 - Funding for Curriculum Support projects, such as Video/Audio programs, curriculum resources, teaching aids etc.
 - Funding to support NAIPEC's ongoing outreach efforts to diverse Native American interest groups. Speaking engagements etc.

Tribal IP Data Repository – Estimated Initial Funding Need: \$25,000 - \$75,000

- Financial and in-kind support is being sought to help underwrite:
 - IP (Patent, Trademark and Copyright) application support – legal; language and translation; business; brand valuation studies etc.
 - Computer asset acquisition
 - Computer equipment, software, training etc

IP Asset Exchange – Estimated Initial Funding Need: \$50,000 - \$100,000

- It is envisioned that, in the long-term, the IP Asset Exchange will become self-sustaining and supporting. However initial development funding is being sought for the establishment of the program under the auspices of NAIPEC. Funding opportunities will subsequently include:
 - Funding for specific opportunities identified as being suitable for investment by the members of the IP Asset Exchange
 - Funding to support the solicitation of contributions to the IP Asset Exchange on a non-profit donation basis

CONCLUSION

The establishment of the **Native American Tribal Intellectual Property Project**, with the sub-projects outlined in this paper will, we believe, represent a significant advancement in the protection, utilization and economic and community development associated with Intellectual Property in Indian Country.

For generations Native Americans have sought to identify economic opportunities within the traditional western capitalistic structures of a modern economy. Having the opportunity to be in the vanguard of one of the most vibrant sectors of modern business economics, the development, identification, acquisition and management of Intellectual Property assets will place Indian Country among the modern leaders of a new economy, and provide significant economic development and revenue opportunities going forward.

ABOUT NAIPEC

The Native American Intellectual Property Enterprise Council (NAIPEC) is at the intersection of industry and academia, facilitating opportunity and helping create new knowledge-based enterprises.

NAIPEC is a registered 501c3 organization. Founded by renowned, successful Native American Inventor T. David Petite, (Chippewa) NAIPEC brings together some of the brightest minds in the world with a mission to assist in the field of educating, capturing, managing, developing, and manufacturing the ideas and intellectual property of Native American inventors.