



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SAC-22-038

TITLE: Calling for Immediate Nation-to-Nation Consultation with the Federal Government Regarding Negotiations in the World Intellectual Property Organization

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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 and the United Nations Declaration on the Rights of Indigenous Peoples, 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), is a Specialized Agency of the United Nations with 193 member states, including the United States; and

WHEREAS, the United States has been participating in WIPO negotiations of international legal instruments that would protect traditional knowledge, genetic resources associated with 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), which is within the United States Department of Commerce, for these WIPO negotiations; and

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

WHEREAS, NCAI adopted a resolution in 2016 (Resolution #PHX-16-054) in which NCAI: (1) called on USPTO, the State Department, and any other applicable federal agency involved in

WIPO IGC negotiations to immediately begin direct formal government-to-government consultation with tribes, regarding the United States' WIPO negotiating positions and textual recommendations; (2) 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, genetic resources associated with traditional knowledge, and traditional cultural expressions; and (3) called on the United States Government 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 traditional knowledge, genetic resources associated with traditional knowledge, and traditional cultural expressions; and

WHEREAS, in the six years since adoption of NCAI's Resolution concerning the WIPO negotiations, 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 from tribes on negotiating positions or text regarding traditional knowledge, genetic resources associated with traditional knowledge, and traditional cultural expressions, and the USPTO continues to take positions in the negotiations that are detrimental to the rights of tribes; and

WHEREAS, there continues to be harm to tribes from the misappropriation, misuse and exploitation of traditional knowledge, genetic resources associated with traditional knowledge, and traditional cultural expressions because of the lack of protections within the U.S. intellectual property system; and

WHEREAS, tribes need information, resources, an NCAI International Committee, and capacity necessary to meaningfully engage with U.S. agencies on matters concerning the implications of intellectual property negotiations and regimes on traditional knowledge, genetic resources associated with traditional knowledge, and traditional cultural expressions.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls for Nation-to-Nation consultation with the White House, the Secretaries of the Departments of State, the Interior, Agriculture, and Commerce; regarding both substantive and procedural matters at issue in the WIPO IGC negotiations; and

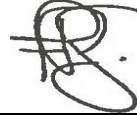
BE IT FURTHER RESOLVED, that NCAI will support tribes, through creating an information clearinghouse, with resource development, and capacity building for tribal leadership and staff on relevant subject matter and processes and coordinate representation at tribal consultations and WIPO, in pursuing a complete resolve to NCAI Resolution #PHX-16-054; and

BE IT FURTHER RESOLVED, that the NCAI Human, Religious, and Cultural Concerns Subcommittee and the NCAI Litigation and Governance Committee recommends that NCAI should create the International Committee to discuss and advocate for matters such as those involving traditional knowledge, traditional cultural expressions, genetic resources and associated traditional knowledge, and biodiversity within the United Nations and other international processes, and related matters that may impact tribal sovereignty; 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 2022 Annual Conference of the National Congress of American Indians, held in Sacramento, CA, October 30-November 4, 2022, with a quorum present.



Fawn Sharp, President

ATTEST:



Stephen Roe Lewis, Recording Secretary