Protocols are one of the most interesting modern developments in intellectual property law and policy. This is because they are increasingly being used as alternative means for managing access and control of knowledge in contexts where the limits of intellectual property law have been reached. For Indigenous and marginalized communities who have been subject to the extensive knowledge exploration and expropriation endeavors of others, protocols have come to offer themselves as practical strategies that protect and respect local knowledge resources, whilst simultaneously addressing the social and cultural frameworks that enabled the exploitation of these resources without appropriate acknowledgement, consent or respect to begin with. Protocols offer the capacity for both renegotiating unequal knowledge-sharing practices, as well as establishing new relationships between custodians of valuable cultural resources and the multiple external users of these same resources.

**WHAT ARE PROTOCOLS?**

The word *protocol* derives from the Greek *protokollen* meaning ‘table of contents’ or ‘first sheet’ and it implies the initial stage of guidance and instruction offered when encountering something new. In our contemporary moment, protocols can be broadly understood as context driven policy. They provide guidance and instruction when dealing with new issues involving Indigenous rights to derive benefits from knowledge that has been actively developed and nurtured within Indigenous contexts. Protocols are especially helpful for mediating the differing expectations and value systems between industry, research and Indigenous communities. In some instances, protocols can resemble memorandums of understanding, but they can be much more expansive in addressing specific issues regarding consent, benefit sharing, relevant laws and community knowledge management practice. Because of what protocols can incorporate they are becoming the primary means for facilitating the development of future relationships between parties that have historically not substantively recognized, acknowledged or engaged each other.

Protocols function as a means for changing people’s understanding of an issue, and thus, how they act in relation to it. In the context of the sharing, usage and storage of Indigenous knowledge, protocols are being utilized as a strategic way of increasing reflective behavior around Indigenous rights in cultural knowledge and resource use. One clear advantage of protocols is that they can be flexible and adaptable to specific contexts and local interests. This makes them ideal tools for guidance on appropriate and/or ethical behavior and practice. In the absence of formal legal intellectual property mechanisms for recognizing and protecting rights in Indigenous cultural knowledge, and in ever increasing contexts where relationships with Indigenous peoples are sought, or where Indigenous knowledge is used, protocols are providing a productive tool for negotiating new kinds of equitable relationships.

**WHY USE PROTOCOLS?**

The possibility of using protocols in this context emerged out of the problems that Indigenous and local communities have with intellectual property law. In short, intellectual property law, demands that Indigenous knowledge and Indigenous people are identified and categorized in ways that do not necessarily reflect Indigenous laws, epistemologies, ontologies, systems of governance or personhoods. Protocols allow for marginalized and disenfranchised parties to participate and engage in decision-making processes, and to be treated with respect and valued as holders and custodians of cultural knowledge. The development of protocols reflects a critical attention to the initial conditions of incorporating and utilizing indigenous knowledge, as well as how these old practices can be re-interrogated and more appropriately aligned to include Indigenous people as leaders and as active collaborators with legitimate perspectives.
WHO DEVELOPS PROTOCOLS? There are two main kinds of protocols: Sector Protocols and Collaborative Protocols. Sector Protocols are those that are developed by specific groups that share interests. Examples of groups that make Sector Protocols are university and other privately funded researchers, cultural institutions like museums and libraries, and specific industry groups like the film industry or the pharmaceutical industry. What these protocols share is that they are designed to inform the behavior of the relevant sector in relation to their engagement with Indigenous peoples and communities. These protocols recognize power inequalities and the lack of formal legislative options that might otherwise protect parties from unscrupulous behavior. They help to set new terms of engagement that are ethical and respectful to the different needs of Indigenous peoples. They also establish working frameworks and set new standards for practice.

Collaborative Protocols are those developed between parties and that address a specific issue or practice. Collaborative Protocols are targeted to a particular instance - for example the collection of plant samples within a specific context that has resident Indigenous or local peoples - and therefore often also incorporates local needs about the nature of the research and any future expectations about how knowledge from the community can be shared and acknowledged. They are more detailed because of the particularities of the issue and the needs of the various stakeholders. Collaborative Protocols are productive frameworks for developing new relationships between parties as they inevitably have to deal with the unequal knowledge sharing practices of the past. Collaborative Protocols tend to include more formal legal options including contracts and agreements and address issues around informed consent and benefit sharing.

PROTOCOLS, POLICY AND FORMAL LAW While intellectual property law has been slow to develop new frameworks that can incorporate Indigenous needs and expectations around knowledge use, access and control, questions about what practical alternatives exist for protecting indigenous knowledge use, that are not dependent upon a specific legislative remedy, have emerged. It is in this context, and in responding to a lack within current national and international legislation and intellectual property norms, that the possibility of protocols have been raised, developed and utilized. Protocols work to inform and change practice, and to address the exclusion of Indigenous interests within current legal frameworks. As context driven policy they can address particular issues and problems that formal law cannot or where it is not appropriate. They can be made more binding if needed but they start from a position of good faith, ethical practice and equitable relations.

Protocols are a practical adjunct to formal law making processes. The shift to protocols is itself illustrative of current trends in intellectual property towards private law making, for example through agreements and consents. In the next few years we can expect many of the principles that are developed through protocols to inform international law making as well as national policy initiatives. This is because protocols are a vehicle for norm making. This is particularly important in an area that has historically been characterized by exploitative practice.

Protocols are international in scope and reflect the diverse geopolitical dimensions of Indigenous interests in knowledge control and access. They are flexible to different cultural contexts and can accommodate different expectations about the uses of knowledge. They provide an opportunity for developing new and productive ethical relationships.

PLEASE FEEL FREE TO CONTACT ME FOR ADDITIONAL QUESTIONS.

REFERENCES