ANNUAL GENERAL ASSEMBLY
JULY 12, 13 & 14, 2011, MONCTON, NB

Resolution no.15/2011

TITLE:	The Protection of Intellectual Property Rights and the Integrity of the First Nations Strategic Information and Research Governance
SUBJECT:	Indigenous Intellectual Property Rights
MOVED BY:	Grand Chief Konrad Sioui, Huron-Wendat Nation, QC
SECONDED BY:	Quentin Condo, Proxy, Gesgapegiag First Nation, QC
DECISION:	Carried by Consensus – 1 abstention

WHEREAS:

A. The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), and other international agreements, such as the *Convention on Biological Diversity*, acknowledge the rights of indigenous peoples to control, use and transmit to future generations their traditional knowledge, practices and cultural expressions as well as "ownership, control and protection by the First Nations of their knowledge, practices and traditional cultural expressions."

B. First Nations' traditional knowledge and cultural expressions have been developed over centuries and are collectively held by First Nation communities, families and peoples. First Nations have developed an array of cultural expressions including folklore, dance, songs, and knowledge of the use of natural resources, including the sustainable use of biodiversity and medicines. The authenticity, quality and cultural integrity of First Nations' traditional knowledge and cultural expressions have been maintained through the generations.

C. Current intellectual property laws fall short of the protections First Nations seek. Copyright provides a right for innovators to control the reproduction of his or her creations. However, copyright is subject to various exceptions and limitations designed to balance the need to protect creativity while disseminating information. Trademark protection is aimed at the protection of the goodwill and reputation of tradespersons and their products and to prevent the unauthorized use of such signs and symbols by others. Patents are government grants that give inventors exclusive rights to their inventions for a set period of time.

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D. First Nations' cultural expressions and traditional knowledge are frequently appropriated, reproduced, copied, and adapted by others. The current intellectual property regime in Canada encourages non-native peoples to use First Nations' cultural expressions and traditional knowledge without adequate consultation or permission. It also fosters unauthorized reproduction, adaptation and commercialization of First Nations' cultural expressions and traditional knowledge with no sharing of benefits, economic or otherwise, with First Nations.

E. The Assembly of First Nations of Quebec and Labrador (AFN-QL) adopted on January 27, 2011 resolution no. 03/2011 dealing with *The Protection of Intellectual Property and the Integrity of the First Nations Strategic Research Governance* and this resolution indicates that there exists numerous government and private research programs that finance researchers and research institutions, without the consultation nor the consent of First Nations concerning data arising from First Nations' strategic or traditional knowledge, among others, relating to the delimitation, occupation or use of our territories.

F. Some researchers publish works, without the authorization of the First Nation or Aboriginal Nation concerned, the contents of which have been provided by members of the First Nations and whereas some authors publish or authorize university doctoral dissertations, the mandates for which they have already been compensated, but which were never subject to explicit authorization, which may cause prejudice to the First Nation concerned and be a breach of the contractual undertakings of the First Nation in terms of research funding.

G. Some researchers who have worked on First Nations research issues gain knowledge of information that is either confidential or strategic which they publish or otherwise render public without authorization or transmit to other First Nations or institutions, creating a conflict of interest, or with which information they testify before the courts against the rights and interests of the First Nations concerned.

H. The governments of Canada and Quebec, certain government agencies, museums or other organizations and certain private research foundations provide free access to First Nations confidential information, among others, the Indian Affairs Funds (RG10) of the Government of Canada.

I. The protocols and resolutions adopted by First Nations organizations are not sufficient to resolve neither this problem nor these issues and they are more or less respected and have not been successfully implemented.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Declare that the unauthorized use, misappropriation, reproduction and theft of First Nations' cultural expressions, traditional knowledge and genetic resources are prohibited and unlawful under First Nation laws.

2. Mandate the Assembly of First Nations (AFN) to advocate for changes to Canada's intellectual property regime to accommodate First Nation interests and ownership over their intellectual property rights, as well as the entrenchment of adequate protections, both civil and criminal, to prevent further theft of traditional knowledge.

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3. Direct the AFN to advocate for the development of a First Nation-governed national body to review patent, copyright and trademark applications before any intellectual property right is granted to an innovator. Any application that contains traditional knowledge or cultural expressions should be denied unless it is supported by an agreement with First Nations.
4. Direct the AFN to develop First Nation research, ethics and conflict of interest guidelines and standards for potential adoption by research centres, corporations, government and education institutions and present these at the December 2011 Special Chiefs Assembly for adoption by the Chiefs-in-Assembly.
5. Direct the AFN to develop a strategy to deal with those institutions that do not adopt or implement the said guidelines.
6. Assert that the government or private institutions that fund research programs and projects or that administer research chairs and programs dealing with Aboriginal peoples must reach an agreement with the First Nations concerned on a research co-management protocol. Such protocol shall set out the directions of research, orientation, methodology, ethics, intellectual property, dissemination, and access to research data and such institutions shall be served notice thereof by the Assembly of First Nations.

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