



Seed Saving & Seed Sovereignty

What is Seed Saving?

Seed saving is the process of saving seeds from one harvest for the subsequent harvest. In the past, the process of seed saving was a necessity especially for Indigenous communities that relied on certain crops for not only consumption, but for cultural and social purposes. Many indigenous communities developed highly-evolved systems of seed saving that often included optimal season times for seed saving, seed-saving rotations, containers and storage units that lasted for hundreds of years, processes that considered pollination patterns and systems, and associated cultural meaning to the different stages of the seed-saving process.

With the emergence of commercialized seed markets in the 1980s, seed savings may have become informal and may have even decreased. But today, seed savings still remains a vibrant and important tradition in many Indigenous communities for the promulgation of Indigenous seed varieties that have existed in Indigenous communities since time immemorial. With increasing attention on development of local food systems and, in many cases, blow back against genetically-modified seeds, saved seeds are in greater demand, particularly heirloom seeds. However, due to the rise of seed patenting, intellectual property law, trademarking, and focus on seeds as commercial products, seed saving is becoming more problematic, especially for Indigenous communities.

What is Seed Sovereignty?

Seed Sovereignty is the right of a farmer to save, use, exchange and sell his or her own seeds.¹ The primary issue that seed sovereignty seeks to address is the ownership of seeds as a larger majority of seeds are becoming property of several major agricultural/seed corporations. As large commercial agricultural interests begin to claim ownership over seeds, many farmers and Indigenous communities will have difficulty in saving local seeds that have existed in their communities for centuries.

Definitions

The process of seed ownership can be confusing and below are some common definitions used related to property ownership, including seed ownership.

- ❖ **Trademark** is a marker of a product that establishes quality, source, branding and goodwill of the maker. The Lanham Act defines trademark as a word, name, symbol, device or any combination thereof used (or bona fide intention to use) in commerce to

¹ Center for South Asian Studies. "Seed Sovereignty is Just a Fight But What Else Should We Consider?" <http://www.hawaii.edu/csas/seed-sovereignty-is-a-just-fight-but-what-else-should-we-consider/> (Accessed December 4, 2014).





identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown.² A trademark does not have to be registered in a national registry.

- ❖ **Patents** refer to a set of [exclusive rights](#) granted by a [sovereign state](#) to an inventor or assignee for a limited period of time in exchange for detailed public disclosure of an [invention](#).
- ❖ **Copyright** is a legal concept that grants the creator of an expressible original work (usually writing, film or recording) [exclusive rights](#) to its use and distribution with the intention of enabling the creator to receive compensation for their work and be able to financially support themselves.
- ❖ **Collective Marks** are a type of [trademark](#) used by members of a collective, association or other organization to indicate membership and/or to distinguish the goods and services of members from those of non-members.³
- ❖ **Certification Marks** are any word, name, symbol or device, or any combination thereof, used by a person other than its owner or which its owner has a bona fide intention to permit a person other than the owner to use in commerce to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such person's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.⁴
- ❖ **Trade Secret** is a [formula](#), [practice](#), [process](#), [design](#), [instrument](#), [pattern](#) or compilation of [information](#) which is not generally known or reasonably ascertainable, by which a [business](#) can obtain an economic advantage over competitors or customers.⁵
- ❖ **Right of Priority** refers to the sequence of patent registration. Basically, the right of priority means the first person to register the patent gets the right of priority. The Paris Convention distinguishes between country-specific registrations by giving priority to those countries who are members of the convention.

² 15 U.S.C. § 45

³ Cornell University Law School. "Collective Mark," http://www.law.cornell.edu/wex/collective_mark (Accessed December 4, 2014).

⁴ 15 U.S.C. § 45

⁵ Eiichiro Kubota: *Protection of Trade Secrets in Japan*. A.I.P.P.I. (Journal of International Association for the Protection of Intellectual Property of Japan) 36(5), 231 – 238.





What is the relevant U.S. law regarding seeds?

This is a list of some of the most important laws and cases regarding plant and seed patents. However, this is not an exhaustive list.

❖ *The Patent Act of 1790*

This is the first piece of legislation passed in the United States shortly after independence in order to promote innovation. Patentable material were “any new and useful art, machine, manufacture, or composition of matter, or any new or useful improvement.” This act excluded math, natural laws or products of nature.

❖ *The Plant Patent Act 1930 (PPA)*

During the 1930s, agricultural research became privatized and many state universities began to research and breed new seed varieties to improve yields. The Plant Patent Act of 1930 was drafted and passed in a response to the new research from plant breeders who were not allowed to patent their new plant and seed varieties. However, the *PPA* was limited to asexually producing plants.

❖ *The Plant Variety Protection Act (PVPA)*

Its purpose is to "encourage the development of novel varieties of sexually reproduced plants" by providing their owners with exclusive marketing rights of them in the United States. The PVPA included the protection of new plant and seed varieties that were created both using traditional methods of breeding or modern methods.

❖ *Diamond v. Chakrabarty*⁶

The U.S. Supreme Court’s 1980 decision held that live, man-made organisms are patentable under U.S. Patent Law Section 101. According to this law, “whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.”⁷

❖ *Ex Parte Hibberd*⁸

“The U.S. Patent and Trademark Office (USPTO) rules that genetically modified plants, seeds, plant tissue and cultures can be patented. The ruling is effectively an extension of *Diamond v. Chakrabarty*, which dealt specifically with the genetic modification of microorganisms.”⁹

What are some of the issues?

Intellectual property encompasses a wide range of issues that are seemingly country-specific. However, intellectual property law in most countries is heavily influenced by international agreements and the country’s ability to protect, trade and accept other country’s products that may be protected under international law.

⁶ *Diamond v. Chakrabarty*, 447 U.S. 303 (1980).

⁷ 35 U.S.C § 101.

⁸ 227 U.S.P.Q. (BNA) 443.

⁹ - See more at: http://www.lifesciencesfoundation.org/events-Ex_parte_Hibberd.html#sthash.gEt82851.dpuf





International Agreements

❖ **The Paris Convention**

The Paris Convention address industrial property, trademark patents and industrial designs. It sets out two important considerations: 1) it sets the minimal standard for national treatment and minimal protection of all member countries and, 2) it sets out the Right of Priority. However, Paris Convention violations are handled at the diplomatic level.

❖ **The TRIPPS Agreement**

The TRIPPS Agreement is the grandest of intellectual property agreements, but builds on The Paris Convention. The most important provisions in the TRIPPS Agreement are the minimal substantive standards for intellectual property, trademark, patent, trade secrets and geographical education that go beyond the national standards in every country that is a part of the World Trade Organization (WTO). Enforcement of the TRIPPS agreement is initiated in the WTO in essentially what is a world court.

❖ **The Bernie Convention**

The Bernie Convention is copyright specific that provides similar protections to copyrights that The Paris Convention gives to industrial property, trademark patents an industrial designs.

❖ **The Open Source Initiative**

This is a more recent 2014 initiative that began out of the University of Wisconsin. This initiative is attempting to address the proprietary structure of seed ownership, but allowing the free use and planting of seed varieties in order to stimulate seed use and variety. The open source initiative allows for the public use of the seeds that cannot become someone's property. There are 29 different seed varieties of 14 different crops that are being utilized in the new open source seeding.¹⁰

What can tribes and Indigenous communities do to protect their seeds?

These are some examples of possible action steps that can be taken. Each step requires careful consideration and deliberation and should not be construed as actual legal advice.

- 1) Tribes and tribal organizations can do an intellectual property audit on all cultural and agricultural property belonging to the tribe.
- 2) Tribes can also create an intellectual property management plan that includes the drafting of intellectual property codes that lay the groundwork of ownership according to the social and cultural norms of the tribe or community.
- 3) Pass resolutions adopting international agreements at the tribal level, although serious deliberations and relationships with both federal and international actors should be considered and mapped out. Tribes need not be members of the world organizations that the respective international agreement is directed toward.
- 4) Continue to strengthen traditional or intergenerational social and cultural seed-saving ways, but ensure the integrity of those ways are safely kept among the actors.
- 5) Create a seed bank. Many Indigenous communities and community members have seeds that are now considered rare and may even be classified as extinct. Creating a

¹⁰ Charles, Dan. "Plant Breeders Release First Open Source Seeds,"

http://www.npr.org/blogs/thesalt/2014/04/17/303772556/plant-breeders-release-first-open-source-seeds?utm_source=facebook.com&utm_medium=social&utm_campaign=npr&utm_term=nprnews&utm_content=20140417 (Accessed December 4 2014).





seed bank ensures that seeds are reproduced and live on within Indigenous communities.

- 6) Ensure that documentation, whether oral or written, is deliberately and carefully kept about seed varieties to demonstrate use and significance.
- 7) Be cautious with important Indigenous seeds. The legal implications sketched out above note that the seeds of Indigenous communities can be targeted for ownership by outside interests. Thus, Indigenous communities who may not look to “own” Indigenous seeds, must be aware that others may prey upon Indigenous seeds for ownership. Thus, plans for preservation must be discussed, designed, examined and implemented in Indigenous communities. At the very least, see bio-piracy education about what is necessary.

Seed saving and seed sovereignty projects in (and out of) Indian Country

- ❖ **The Anishinaabe Seed Project.** The Anishnaabe Seed Project is restoring Bear Flint Corn varieties that were Indigenous to the Anishnaabe people.
<http://anishinaabeseedlibrary.com>
- ❖ **The Native Seeds/SEARCH** www.nativeseeds.org
- ❖ **The Native Harvest- Indigenous Seed Sovereignty Network**
<http://nativeharvest.com/Indigenous+Seed+Sovereignty+Network>

Resources

- ❖ **Center for South Asian Studies Forum** <http://www.hawaii.edu/csas/seed-sovereignty-is-a-just-fight-but-what-else-should-we-consider/>

