



WORLD
INTELLECTUAL
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Works done at the international level

The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations. It was established by the WIPO Convention in 1967 and is dedicated to developing a balanced and accessible international IP system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.

WIPO's activities on TK, TCEs and GRs comprise complementary and related norm-building and capacity-building activities.

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC) is an international forum mandated by WIPO's Member States which brings together representatives of governments and indigenous and local communities to discuss and address policy development and norm-building in relation to IP and TK, TCEs and GRs. The IGC is examining "draft principles and objectives" that could shape *sui generis* (special, of their own kind) instruments on TK and TCEs.

While conventional IP laws already provide protection to a certain degree to TK and TCEs, a policy question that remains is to what extent could *sui generis* measures or frameworks complement the existing IP system and respond to concerns raised by indigenous and local communities.

The IGC has also identified and discussed the key policy issues relevant to IP and TK and TCEs, as well as the types of "gaps" that exist in the existing international IP system and options for filling them.

The ten key issues:

1. Scope of the subject matter to be protected;
2. Beneficiaries;
3. Objectives for protection;
4. Forms of misappropriation;
5. Exceptions and limitations to rights;
6. Duration of protection;
7. Gaps in existing IP system;
8. Sanctions or penalties to apply;
9. Division between international, regional and national regulations; and
10. Treatment of foreign rights holders/beneficiaries.

It is important to bear in mind that the protection of TK and TCEs could be achieved through both legislative measures as well as practical tools.

WIPO's capacity-building activities in this area comprise a range of complementary practical activities, such as national and regional consultations, legislative assistance, awareness-raising and training. WIPO has also developed many practical tools, such as draft patent examination guidelines, a "toolkit" on TK documentation and resources on digitizing cultural heritage.

For queries and more information related to WIPO's activities in the area, please see <http://www.wipo.int/tk/en/> or direct them to grtkf@wipo.int

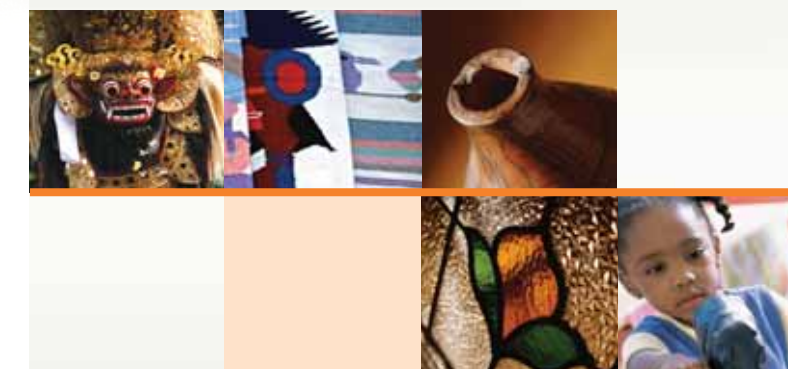
It should be noted that complementary work in the area is also being done by, amongst others, UNESCO, CBD, OHCHR, UNPFII, FAO, WHO and WTO.

The Caribbean Working Group

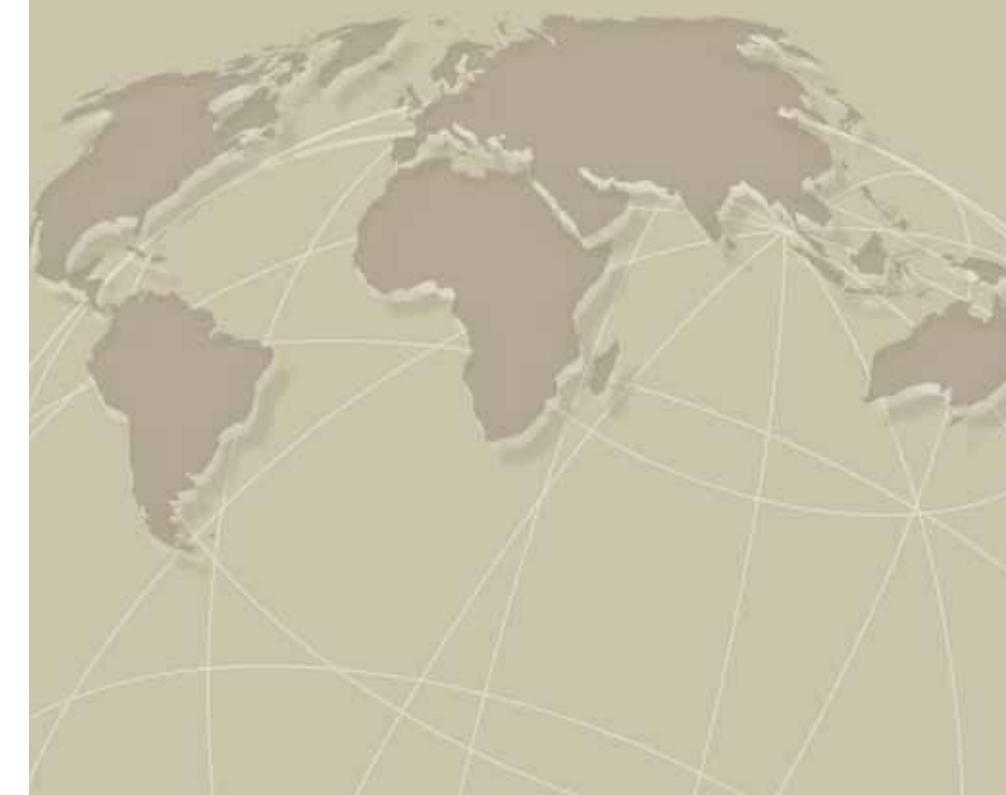
The Working Group was established at a Regional Expert Meeting that took place in March 2008 in Kingston, Jamaica and plays a critical role in responding to a Resolution adopted by the Ministers responsible for IP in the Caribbean. This Resolution called for the establishment of a regional framework on TK, TCEs and GRs and for WIPO's assistance.

The Working Group is currently undertaking research, fact-finding and consultations (with local and indigenous communities, government officials, non-governmental organizations, users and other relevant stake-holders) and developing the harmonized framework for review by Caribbean Member States.

**The Working Group can be contacted at
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Towards the Establishment of a Regional Framework for the Protection of Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources in the Caribbean Region





Setting the scene

This brochure is intended to provide background information on the interface between intellectual property and traditional knowledge, traditional cultural expressions and genetic resources, and introduce the mandate, objectives and working methods of the Caribbean Working Group

Traditional knowledge (TK) and traditional cultural expressions (TCEs) are important elements of the cultural heritage and the social and historical identity of many local and indigenous communities, as well as many nations and regions with a shared cultural history.

TK and TCEs are increasingly recognized as key elements of the future well-being and sustainable development, as well as the intellectual and cultural vitality, of such communities. They are often seen as part of the “common heritage of humanity” in the sense that all humanity should share in their benefits. In addition, TK, TCEs and Genetic Resources (GRs) hold a commercial promise, and their exploitation can help establish community enterprises, improve livelihoods and alleviate poverty, as well as be valuable inputs to cultural and other industries, such as agricultural, biotechnological, pharmaceutical and health care industries.

The challenge for policymakers is to find ways of deriving economic benefits from TK and TCEs for the direct advantage of their traditional custodians and countries, while also respecting the cultural roots of TK and TCEs. For example, culturally sensitive TK and TCEs should not be exploited inappropriately and unfairly. The specific issue faced by policymakers, therefore, is to determine the precise contribution of IP principles and systems to the achievement of the cultural and economic goals of communities and their countries in relation to their TK and TCEs.

The core issues: what are TK, TCEs and GRs?

“Traditional knowledge” in its broadest sense includes knowledge and “expressions of folklore” (or TCEs). For the purpose of this brochure however, TK refers to the *content* or *substance* of traditional know-how, skills and learning whereas TCEs refers to tangible and intangible forms of expressing knowledge and culture. These include tales, dances, songs, music, poetry, symbols, words, designs, crafts and architecture.

At present, there is no universally recognized definition of TK or of TCEs.

“Genetic resources”, on the other hand, are defined as “species, sub-species or genetic varieties of plants, animals and micro-organisms that have actual or potential value”. While TK and TCEs are “intellectual creations” and may therefore potentially or actually be protected as IP, genetic resources as such are not.

Value and vulnerability of TK, TCEs and GRs

Tradition-based innovations and creations are valuable cultural and economic assets, developed, maintained and passed on from generation to generation by indigenous and local communities around the world. They often serve as an inspiration to other creators and innovators who can adapt them to derive new creations and innovations.

These creations and innovations have economic and cultural significance when used in entertainment, cultural tourism, architecture, fashion and cuisine. Unfortunately, there are instances where third parties have used them without adequately sharing benefits or even acknowledging the communities and countries of origin.

The term “misappropriation” is often being used in the context of the wrongful or dishonest use of a TK or TCEs by third parties. For the purpose of this brochure, the term refers to the “use of a TK or TCEs without the prior consent of the community of origin”. This is not intended as a precise legal definition, however.

The use of the intellectual property system to protect TK, TCEs and GRs

“Intellectual property” (IP) refers to creations and innovations of the human mind, such as inventions, literary and artistic works, and symbols, names, images, and designs. The IP system protects such creations and innovations from unauthorized use.

“Protection” in this context means defending the knowledge and expressions embedded in TCEs and TK against some form of unauthorized use by third parties. It is this kind of protection, rather than preservation, which is the general function of the IP system, including in the area of TK and TCEs.

“Positive” protection of TK and TCEs entails the active exercise of IP rights over TK and TCE subject matter. “Defensive” protection refers to strategies aimed at preventing third parties from claiming IP rights over TK and TCE subject matter.

IP protection (sometimes referred to as “legal protection”) is therefore distinct from the preservation or safeguarding (sometimes referred to as “material protection”) of TK, TCEs and other forms of intangible cultural heritage. A decision for policymakers is which of the approaches to the “protection” of TK and TCEs best meets relevant cultural and economic goals.

Legal protection of TK and TCEs as IP generally means recognizing and exercising some form of control over the use by third parties of intangible property which is associated with TK and TCE subject matter.

The Establishment of a Caribbean Regional Framework: what are the considerations?

The establishment of a framework, or frameworks, for the protection of the subject matters at hand implies consideration of two related but distinct questions, first, the substance or content of protection and, second, the legal, administrative and operational character of a “regional framework” (or frameworks).