

Policy Objectives for the Protection of Traditional Knowledge, Folklore/Traditional Cultural Expressions and Genetic Resources in the Caribbean - the Role of Government

Bernard Jankee

African Caribbean Institute of Jamaica/Jamaica Memory Bank (Institute of Jamaica)

Preamble

By way of preface I would like to recognise and pay tribute to the work of the World Intellectual Property Organisation in this effort as well as our own Jamaica Intellectual Property Office. In this regard I first encountered WIPO more than ten years ago in the form of Wend (Wendland) and his colleague at the time, and it is amazing that after more than ten years neither of us has aged, despite the intensity of the work that we have all been engaged in.

This is an important forum, part of a series of fora that have been organised by WIPO, bringing to the fore some critical issues that have to do with the protection of traditional knowledge, traditional cultural expressions and genetic resources.

Introduction

Intellectual property rights and their protection have long been the concern of societies in which folklore, traditional knowledge and traditional cultural

expressions have continued to have a strong influence on the cultural ethos of these societies. In some instances the cultural expressions have 'graduated' from the realm of the 'folk' to become part of the mainstream popular culture, as in the case of Reggae and its variants and evolutions in Jamaica. However, there continues to exist, in the Caribbean, strong elements of what are considered the traditional - music, dance, ritual, foodways, healing processes and interpretations of the body in relation to the universe; in other words humanity and its relationship to the physical and spiritual environments. I intend to briefly look at some of the issues, some of which common to societies and cultures in other parts of the world, certainly within the Caribbean region because these continue to signify in our context what is Jamaican both nationally and internationally and which have implications, certainly on a policy level for the protection of traditional knowledge, traditional cultural expressions and genetic resources in our current context.

The current situation: popular vs. traditional culture

Looking at the current situation and what exists, we have a number of issues to place squarely on the table, one of which is the traditional versus the popular and I know in the Anglophone Caribbean, certainly in Jamaica, the definition of what constitutes traditional culture and popular culture are different from how our Latin American brothers and sisters construe these terms. The traditional culture in our context refers to those expressions, the holding of knowledge of a particular set of people, mainly considered to be rural peoples. These expressions have tended, in the past, not to move beyond the specific communities in which they exist, whereas popular culture

has entered the mainstream and is largely considered in our context an urban phenomenon, which resonates nationally and internationally. So that, by way of a broad definition establishes some parameters and some differences. However, much of what is considered popular culture has drawn, and drawn heavily, on the traditional for sustenance and there are many examples of this; the antecedents of Reggae music, as a case in point, coming out of Mento, coming out of Burru, out of Kumina, out of Revival, which are particular traditional cultural expressions and traditional ways of life in various parts of the country. This I contend has, in its own way, implications for intellectual property and intellectual property protection.

Articulating the issues

Against this background, how do we articulate the various issues that arise in the congeries of the environments in which many of our traditional cultural expressions exist, as they do as part of the way of life of particular communities, within the framework of an essentially amoral and dispassionate Eurocentric legalistic structure? That complex of the traditional versus the modern, Afrocentric versus Eurocentric serve in a real and fundamental way to problematise the issue of intellectual property and impact on notions of ownership, use and protection. In considering the establishment of regimes of protection for traditional knowledge, traditional cultural expressions and genetic resources there is the need to recognise the communal dimension inherent in the world view and daily life practices of these communities. That way of life, from our experience, has not as a matter of course evaluated cultural expressions, traditional knowledge and genetic resources in terms of their economic value. Rather, they are seen as essential elements of maintaining and sustaining the very life - the physical and spiritual well being of these communities. So the foodways, rituals, stories, healing practices and even modes of dress are part

of the fabric, as it were of everyday existence, some of which are commonly known within the communities and some of which resides in particular members or groups within these communities. To be sure, some communities have established protective mechanisms to counter the appropriation of their 'indigenous' forms of cultural expression. In this regard the Maroon communities of Jamaica come to mind. There is still to this day a reticence born out of their particular history of resistance to colonial domination and enslavement. In the same vein, although probably to a lesser extent, other groups have tried to establish some degree of control over access to their forms of cultural expressions, broadly defined. In some respects this is grounded in a fear of persecution, ridicule and to counter perceptions of backwardness. The motive here has more to do with self preservation and maintaining dignity, rather than with seeking to exploit any potential economic value that may be attendant on the knowledge that exists within a particular community.

The challenges of postmodernity and beyond

Traditions, existing as they are in contemporary society are increasingly facing the challenges of postmodernity and beyond, particularly in this current global environment. The traditional is confronting, as it were, different ways of seeing, different ways of appropriating what was previously seen as part of the everyday life of a community. As a striking, if inexact example of how this appropriation can and does take place is the case of that iconic image of Che Guevarra,¹ who in many ways embodied the Cuban Revolution led by Fidel Castro and the transformation of that image in an entirely different way to serve commercial ends. What that image represented to the Cuban people and Revolution, as a symbol of resistance and

¹ This refers to a photographic portrait of Che Guevara in his trademark beret, taken by Alberto Korda on March 5, 1960,

defiance was transformed internationally into a veritable logo in advertising campaigns to sell Tee shirts, coffee, music and other consumer items ways that eventually caused the Cuban government to intervene in an attempt to control the use of the image. This represents the challenge that faces the traditional ways of living and doing things in the context of the wider world.

Towards a policy framework

Within the context of policy in the contemporary situation, there is the issue of protection, there is the issue of promotion, there is the issue of sharing to be contemplated, particularly in the case of the latter and specifically to do with new and different uses to which traditional knowledge, traditional cultural expressions and genetic resources are being put because a lot of what was traditional was never considered to be for the exclusive use of the communities in which this traditional knowledge and lore evolved. Intellectual property was never considered an issue because there was a sense of community ownership of the lore. We are now facing a situation in which the commercial potential of the traditions is being realised, more often than not by individuals and groups external to the communities in which these traditions exist, and this is happening both on a national and international level and we need to place the national, as far as the commercial interests are concerned, on the table. It is something that, in a lot of these fora, is either not recognised or is glossed over. There is an issue there to contend with as well and this poses a challenge. The very world view out of which a lot of the traditional knowledge emanates is in very fundamental ways different from the ways in which other people see traditional practices. An example of this comes from

the experience of one of the early researchers in the traditional cultures of Jamaica. She was working with a traditional group of cultural practitioners, a Kumina group to be exact, and the drumming techniques of that group were particularly striking. She thought that it would be an excellent idea for children, who were not a part of the group of practitioners to be taught the drumming as part of their musical appreciation and education. She therefore contracted the drummer to teach these classes to groups of children. He turned up on the first day; he might have turned up on the second day and after that he didn't turn up at all, which was unlike him as he was usually very reliable. After not seeing him for some time she went to him and asked what was the problem. After some time, he finally responded by saying "...the drumming is a gift from God. I can't sell it. It is a sin for me to sell it." That was the confrontation between two completely different world views. This raises the question of how we, in a policy context, aimed at protecting and preserving, deal with an issue like that. That is one of the challenges that faced us in the early seventies and continues to face us today.

There is the issue of ownership and divine ownership and inspiration is one element that we should consider in terms of grappling with a policy framework within which to protect traditional culture. There is the issue of common ownership, the issue of origin. Who was it that made the first Prentin drum?² Who was it that conceived the idea and developed the formula for jerk seasoning, which is now internationally famous and which you can see being used in food preparation on any of the cable channels by chefs who have

² A drum used by Jamaican Maroons

never even been to Jamaica? How do ethical and moral considerations come into play? These are questions that constantly confront us and those of us who are involved in cultural heritage research, documentation, preservation and promotion face these issues on a daily basis. How are elements of religious rites and ceremonies to be seen in the context of intellectual property particularly when persons from outside of these communities, both nationally and internationally, appropriate these elements and transform them into secular forms of expression? I am aware that some of these issues might extend beyond the mandate of a WIPO or JIPO yet they are critical issues to be considered. There needs to be sensitivity to how these forms exist *in situ* and how people wish to appropriate these forms for other purposes. There is a very serious concern in some communities that if their traditional knowledge is given to people who are not 'worthy' or not a part of that community, then the individual who is providing that information faces grave and mortal danger. This poses very serious problems, not all of which can be dealt with by intellectual property protection in a legal framework but at the same time any legal framework looking at these issues has to be cognizant of the broader context in which our traditions exist.

Policy Options

The issues are not clear cut and will in all likelihood involve a series of negotiations which need to take place. Policy has to recognise the community, the creation of community, what that community considers sacred, what that community considers

secular. In this regard, government does have a role to play and to some extent is performing a role in the protection of the nation's cultural patrimony, broadly speaking. However, and very much like the situation facing the communities of traditional cultural expressions, government is itself being confronted by the shifts resulting from growing international interest in the commercial value of traditional knowledge, traditional cultural expressions and genetic resources and needs to adapt, and very quickly, to this changing environment. In repositioning itself to meet the current challenges, the policy initiatives at a national level need to:

- Reaffirm, strengthen and extend the process of systematic documentation on a national level in order to establish an internationally recognised inventory of cultural heritage, which will become a point of reference for controlled access, both nationally and internationally, for information on TK, TCE and GR. To a large extent this already exists through the national documentation programme of such institutions as the Institute of Jamaica, the Jamaica National Heritage Trust and the Jamaica Cultural Development Commission;
- Support the process of community registration of intellectual property rights to specific cultural expressions where this is possible;
- Support the process of community registration of rights in the area of traditional knowledge as it relates to processes of unique food preparation, the use of medicinal plants and herbs in healing and associated practices;
- Give national support to the registration of intellectual property rights by maintaining and extending the role of such institutions as the Institute of Jamaica which have a mandate to hold in trust for the nation its cultural memory. The Institute of Jamaica, through its divisions maintains a system of protection and access to the

collections under its care which speak primarily to access for educational purposes. It is possible that this could be extended to address commercial uses of material in its care, on behalf of the communities from which this material emanates with due respect to these communities and with the full involvement and support of these communities; and

- Maintain, strengthen and establish where they do not already exist, channels of dialogue between all identifiable stakeholders - individuals, communities, state and private institutions. The involvement of cultural agencies in a forum such as this is one example of useful collaboration in the process of protecting our traditional culture.