



*Regional Expert Meeting on Caribbean  
Framework for Traditional Cultural  
Expressions, Genetic Resources and  
Traditional Knowledge: Practical Steps  
Towards Developing a Strategy*

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## *The concept paper. . .*

- . . . is a draft for comment and improvement
- Describes the **policy** context, surveys core **concepts**, sets out some key **principles** and suggests **practical steps** towards TK and TCE protection
- Provides initial information on “**regional frameworks**” - nature, objectives, functions, benefits, existing and emerging regional systems in the Caribbean – with reference to other experiences

## *A policy context. . .balancing diverse goals*

- “Protection” of intangible creativity – “ownership” and “stewardship” approaches
- The ownership approach - IP protection – property rights in intangibles - having a say over if, and how, creations of the human mind may be used by third parties
- What role does/should IP protection play in relation to:
  - fostering cultural diversity
  - preserving/safeguarding cultural heritage
  - respecting the rights and interests of indigenous peoples and other local communities
  - protecting creativity and innovation, including through a robust “public domain”
  - promoting economic development?



# 1. Practical steps towards TK and TCE protection

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graph TD; 1[1. Identify what to protect] --- 2[2. Decide on overall goals (why)]; 1 --- 3[3. Survey policy, legal and practical options (how)]; 1 --- 4[4. Coordinate with regional and international processes]; 3 --- 5[5. Establish effective implementation program];
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1. Identify what to protect

2. Decide on overall goals (why)

3. Survey policy, legal and practical options (how)

4. Coordinate with regional and international processes

5. Establish effective implementation program

# 1. Identify what to protect

- Review TK and TCEs held in your country/region
- Identify actual cases of IP-related misappropriation. What is the precise harm? What specific IP needs are there?
- Towards a working description of TK and TCEs:
  - ◆ what are “traditional” knowledge and cultural expressions?
  - ◆ knowledge as such and/or manifestations and expressions of culture – what specific examples are there?
  - ◆ IP focus needed, but not necessarily precise definitions
  - ◆ identifying *protectable* TK and TCEs (criteria for protection)

## 2. Take decisions on overall policy goals

- Key step for designing legal and practical strategies, mechanisms and measures
- “Protection” vs. “preservation/safeguarding” – is this really about IP protection?
- What are the IP-related goals (one or more of): to prevent access and use? to prevent *unauthorized* use? to enable commercial use? to ensure use on fair terms? to regulate manner of use?
- “Positive” and/or “defensive” protection

### 3. Survey the options – policy, legal and practical

- Options within:
  - ◆ conventional IP systems
  - ◆ non-IP systems
  - ◆ adapted and new IP systems
- Existing IP systems already provide some coverage (especially for TCEs) – are they not effectively used? Should any gaps be filled? If so, how?
- What precisely do you want to protect against – copying? adaptation? use? passing off? derogatory use?
- Choice may be made to establish distinct, new systems of protection – if so, what are some of the key questions to consider?



### 3. Survey the options – policy, legal and practical, cont'd

- Options relating to documentation/databases/registries:
  - ◆ documentation not an end in itself
- Role of customary laws
- Institutional mechanisms
- Which issues should be dealt with at the international, **regional** and national levels? – proposed Caribbean regional system

## 4. Coordinate with and contribute to regional and international processes

- International: WIPO IGC, CBD, UNESCO, WTO, FAO
- Regional and inter-regional: CARICOM, Cariforum, ACP *et al*
- FTAs/ EPAs – Caribbean Basin Initiative *et al*

## 5. Create an effective plan of implementation

- Public awareness campaigns
- Training for legal profession, officials, courts
- Legal aid for claimants
- Appropriate management and enforcement of rights
- ...

## *Some challenges. . .*

- Clarification of the IP dimension - distinctions between “IP protection”, “preservation” of ICH and “conservation” of biodiversity
- Tracing “**origin**” – determining “authenticity” and “ownership” in a derivative culture - regional TK and TCEs
- Definition of scope of protection – what **rights** and **exceptions**?
- Management of rights – who **owns** the rights? who **benefits** from them?
- Dealing with past and ongoing uses of TK/TCEs
- **Compatibility** between existing and *sui generis* IP systems – overlapping subject matter
- **Actual and effective use** of TK/TCE protection systems



## 2. Some suggestions for immediate next steps

## *Some suggestions. . .*

- **What to do?**
  - review TK and TCEs in the region
  - identify IP –related needs through documenting actual cases of misappropriation
  - develop non-binding, working definition(s) of TK and/or TCEs
  - conduct audit of:
    - ◆ legal and non-legal expertise/holders and stakeholders
    - ◆ existing IP and non-IP legislation and other measures relevant to meeting needs identified
    - ◆ “gaps”, with reference to specific examples where possible
    - ◆ policy considerations relevant to whether gaps should be filled
    - ◆ what options exist or might be developed to fill gaps
  - explore options for a “regional approach”



- How to do it?

- preliminary awareness-raising & questionnaire
- undertake 5 “to do’s” through fact-finding and desk-based research – WIPO concept paper an input/analytical tool if so wished
- report back to IP offices and consult on findings and recommendations
- communication of findings and recommendations to Ministers
- make information gathered widely available in Caribbean



*Thank you*

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2. What could a regional approach look like? What benefits might a regional approach bring?

- Different forms of regional system – not necessarily a regional law
- Objectives, functions and benefits
- Initial information on existing IP regional systems and on regional TK/TCE systems
  - OAPI/Andean Community – law/decisions - automatic application
  - ARIPO – law, requires national implementation
  - Pacific Community – model law
- Building on existing or emerging regional institutions/systems
- Implications – trade agreements/national treatment, MFN *et al*