

WIPO Regional Seminar on Intellectual Property and Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions, Bangkok, Thailand, December 16 and 17, 2009

The Role of IP in the Documentation of TK and TCEs and the Establishment of Databases thereof

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Menu of Options



Policy

- Development of principles and objectives

Legal

- Examination of existing laws on IP and culture
- Determination of the role of customary laws
- Establishment of a *sui generis* framework

Practical

- Documentation of TK and TCEs
- Establishment of TK/TCEs databases
- Development of practical tools (guidelines, protocols)

Capacity Building

- Community consultations
- Awareness-raising campaigns
- Practical training programs



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TK-TCEs Documentation

Is documentation of TK/TCEs a form of protection?

Documentation is a mean towards:

protecting TK and TCEs

preserving TK and TCEs for future generations

sustaining cultural creativity

empowering communities

Documentation is therefore not an end in itself...



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Key questions:

What are the objectives?

What TK and TCEs should be documented and/or included in the database?

Who can or should get access?

Who should hold the rights?

How should the database be managed?



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TK-TCEs Documentation

Key Issues and Implications:

- Creation of “new” rights
 - ... over the documented TK and TCEs
 - What about the “underlying” TK and TCEs?
- Role of customary laws
- Access, use and benefit-sharing
 - The use of “practical” measures to effectively control access to and use of documented TK and TCEs and to ensure equitable benefit-sharing



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TK-TCEs Databases

Conventional IP system provides protection to databases and compilations of TK and TCEs – WCT, 1996

Key Issues and Implications:

- Creation of “new” rights
 - ... over the compilation of TK and TCEs
 - but does not extend to TK and TCEs themselves
- Access, use and benefit-sharing
 - The use of “practical” measures to effectively control access to and use of the compilation/database and to ensure equitable benefit-sharing



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Capacity-Building

OCTOBER 2009

CAPACITY-BUILDING Intellectual Property and Traditional Knowledge

It may seem, at first glance, that WIPO's work on intellectual property (IP) and traditional knowledge (TK), traditional cultural expressions (TCEs) and genetic resources (GRs) concerns mainly the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). But, in fact, WIPO's extensive capacity-building program occupies most of its Traditional Knowledge Division's time!

Amidst growing concerns over the continued misappropriation of TK, GRs and TCEs, stakeholders wish to take the practical and immediate steps available to them now to protect and derive benefit from these valuable resources. Such steps include using existing IP systems to the extent possible, creating policies and special legal measures, developing cultural protocols and model contracts and establishing effective institutions. These are the kinds of requests for capacity-building that WIPO receives.

WIPO's range of unique policy materials and specialized practical tools in the area of TK, TCEs and GRs – including guidelines, toolkits and this demand, and this demand is growing and diversifying. Government officials, indigenous and local communities, non-governmental organizations (NGOs) and research and cultural institutions from around the world all benefit from this capacity-building program, which draws from a wide portfolio of expertise, practical experience and collaboration in the field. The program remains rooted in the needs and expectations identified by the Organization during its 1998 and 1999 fact-finding missions.

Provided upon request, WIPO's assistance includes facilitating national and regional consultations, providing legislative and policy guidance, organizing study visits, undertaking research and offering support for awareness raising and training.

Activities:
2008-2009 Biennium

WIPO is currently supporting on the regional level, the work of:

- the Caribbean Working Group of Experts, in developing a regional instrument for protecting TK, TCEs and GRs;

- the Pacific Islands Forum Secretariat (PIFS) and the Secretariat of the Pacific Community (SPC), in executing a "Traditional Knowledge Action Plan" in six Pacific Island countries, based on the "Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture" that WIPO helped draft in 2002;
- the 2012 Festival of the Pacific Arts, due to take place in the Solomon Islands, in developing IP guidelines and licenses; and
- the African Regional Intellectual Property Organization (ARIPO) and the *Organisation de la Propriété Intellectuelle* (OAPI), on developing regional instruments.

In the last few months alone, the TK program also has been active in or supported work at the national level in Argentina, Azerbaijan, Brazil, Bulgaria, Fiji, India, Iraq, Guatemala, Kenya, Kyrgyzstan, Malaysia, Mongolia, Peru, Russian Federation, Solomon Islands, South Africa, Sudan, Syria, Thailand, Trinidad and Tobago and Venezuela.

The Creative Heritage Project

WIPO's Creative Heritage Project is developing an integrated set of practical resources and guidelines for cultural institutions – such as museums and indigenous communities – on managing IP options when documenting, digitizing and disseminating intangible cultural heritage. The Creative Heritage Project recently collaborated with the IP Registry of Guatemala to develop a national inventory of Guatemala's intangible cultural heritage and address the corresponding management of IP issues.

The Organization has published several surveys of existing IP-related protocols, codes and guidelines related to the recording, documentation and digitization of intangible cultural heritage, and established a searchable database comprising samples of resources and practices. A compendium for museums, libraries and archives on managing IP interests in indigenous collections will soon be published.



Chief Moses Olo Niso of the Laikipia Maasai community receiving formal hand over of the digital recording assignment from Ms Wand Wier-Hoand (WIPO TK Division).

Creative Heritage Project

WORLD INTELLECTUAL PROPERTY ORGANIZATION

PROGRAM ACTIVITIES

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TRADITIONAL KNOWLEDGE, GENETIC RESOURCES AND TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE

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- TCEs/Folklore
- Creative Heritage Project
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- Intergovernmental Committee
- NGO Participation
- Gap Analyzes
- Resources
- Consultation Processes

RELATED LINKS

- Human Rights
- Life Sciences

E-NEWSLETTERS

Subscribe to receive general information updates concerning traditional knowledge-related developments and events.

Creative Heritage Project: Strategic Management of IP Rights and Interests

Resources for developing best practices

- Surveys of existing practices, protocols and policies
- A searchable database of codes, guides, policies, protocols and agreements relating to IP and the digitization of ICH
- Short case studies presenting informal summaries of best practices
- Multimedia materials, articles, laws and other resources

IP Management by Museums, Libraries and Archives

Cultural institutions play an invaluable role in preserving and providing access to their collections...

IP and Handicrafts

Traditional handicrafts form an integral part of the historical and cultural identity of many communities and their promotion and protection contribute to cultural diversity...

Community Cultural Documentation

New technologies provide communities with fresh opportunities to document and digitize expressions of their traditional cultures...

IP Management related to Arts Festivals

Arts festivals provide a valuable opportunity for rich and diverse cultures to be performed, shared and preserved...

RSS | Terms of use

Creative Heritage Project

Is...

- developing best practices and guidelines for **managing IP issues** when recording, digitizing and disseminating intangible cultural heritage
- providing basic hands-on **training** in documentation, recording and digitization of intangible cultural heritage



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***...for the Strategic Management
of IP Rights and Interests!***

WIPO Training Programs

DIGITIZING TRADITIONAL CULTURE

WIPO Training Program for Indigenous Communities

Indigenous cultures the world round have seen their ritual ceremonies, music, symbols and creative arts imitated, reworked, copied and sold without acknowledgement or authorization, and often without respect for their cultural and religious significance. Many communities feel that enough is enough! They are now actively exploring how best to protect their heritage from the "free for all" while at the same time preserving it for future generations.



A traditional Maasai performance.

This was the situation of the Maasai community of Laikipia, Kenya, when they first requested assistance from WIPO in 2006. As a result of an exploratory visit to the community, WIPO will launch in September a pilot training program designed to assist indigenous communities to document their own cultural traditions, archive this heritage for future generations and manage their IP interests when doing so.

Using technology to preserve tradition

New digital technologies offer a practical means to document, record and digitize expressions of traditional cultures. Such means respond to the strong desire in indigenous communities to preserve, revitalize and promote their cultural heritage, and to pass it on to succeeding generations. However, the documentation and digitization of living traditions, which embody both communal creativity and individual artistic expression, is highly complex. Further, without careful IP management, digitized

intangible cultural heritage is vulnerable to unwanted exploitation.

WIPO's pilot training program will respond to both the utility of technology for indigenous communities and the paramount need to empower communities to make informed decisions about how to manage IP issues in a way that corresponds with community values and development goals. The primary goal of the program is to provide community members with the practical skills and technical knowledge needed in the fields of cultural documentation, archiving and IP management, which would enable them to record, archive and manage access to their own cultural heritage. The program will assist communities to develop their own IP policies, protocols and technology-based tools to manage access to their recordings and other forms of cultural documentation (see text box).

The pilot program in September will be run in collaboration with the American Folklife Center at the Library of Congress in Washington D.C. and the Center for Documentary Studies at Duke University in Durham, North Carolina.

Maasai community first to benefit

In September two members of the Maasai community and an expert from the National Museums of Kenya will travel to the American Folklife Center and then to the Center for Documentary Studies for the training. The intensive, hands-on curriculum will include such topics as project planning, research ethics, digital archival methods, documentation techniques and database and website development and management. WIPO staff will provide the IP component of the training, with the support of the US Copyright Office.

- The Creative Heritage Training Program on Cultural Documentation and Intellectual Property Management
- For: indigenous peoples and representatives of cultural institutions



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WIPO Training Programs

This is about:

- Empowering indigenous and local communities with the basic technical skills so that they are able themselves to conduct research into, document, record, archive, digitize and disseminate their own cultural expressions
- Engaging indigenous and local communities in further consideration of the ethics, standards and best practices pertaining to cultural research, project planning and documentation
- Fostering an understanding of the importance and relevance of IP protection and, more specifically, of the IP implications and options associated with cultural documentation
- Encouraging positive and mutually-beneficial collaborations and partnerships between indigenous and local communities and cultural institutions, such as museums and archives, in their own countries

...a collaborative effort!

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Our Tools and Resources...



TRADITIONAL KNOWLEDGE, GENETIC RESOURCES AND TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE

Traditional Knowledge

Genetic Resources

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Creative Heritage Project

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Consultation Processes

RELATED LINKS

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Database of Existing Codes, Guidelines and Practices

This database comprises examples of codes, guides, policies, protocols and standard agreements relating to the recording, digitization and dissemination of intangible cultural heritage, with an emphasis on intellectual property issues.

- The database responds to a widely-felt need for more empirical information on current experiences and practices concerning these issues.
- These resources may serve as a basis for distilling IP-related "best practices" and guidelines.
- The database is complemented by [surveys](#) commissioned by WIPO and [case-studies](#) drawn from the surveys.
- The database can be searched by keyword, category, and country/region. Some resources may appear in more than one category.
- The compilation is work in progress. Corrections and additions may be sent to heritage@wipo.int

Database

- » [Resources for Museums and other Collection-Holding Institutions](#)
- » [Resources on Inventory-Making](#)
- » [Resources for Researchers and Field-Workers](#)
- » [Resources for Commercial and Other Users](#)

- » [Resources by Indigenous and Local Community Organizations](#)

- » [Standard Agreements, Consent Forms, Licenses and Undertakings](#)
- » [Technical Standards, Indexical Languages and Thesauri](#)

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