



# **The Role of Documentation in Intellectual Property Protection of Traditional Knowledge/Traditional Cultural Expressions**

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# What is Documentation?

- A simple photograph
- An isolated record
- A written note



- A process by which traditional knowledge and/or traditional cultural expressions are identified, collected, organized, registered or recorded in some way
- For example, databases, registers



# Why to document?

- **Preservation** – prevent its loss and erosion
  - Promotion
  - Information-exchange between communities
  - Education and awareness-raising
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- **Defensive protection** within the existing patent system
  - Support some *sui generis* protection systems

## Be Careful

- Documentation does not ensure legal protection.
- It can destroy rights and options, if without an IP strategy.



# WIPO Cultural Documentation and IP Management Training Program



Video of Digitizing Traditional Culture in Kenya is at <https://www.wipo.int/tk/en/resources/training.html>.



# The Traditional Knowledge Digital Library (TKDL)

- Objective: Prevent erroneous patents on Indian TK
- How?
  - For use of International Patent Offices: For search and examination only ... can give print outs to patent applicants for citation purposes
  - The content should not be disclosed to third parties

# Insignia Database

- Since 2001, USPTO Database of Official Insignia of Native American Tribes
- Objective: **TCEs Defensive Protection**
- How does it work?
  - USPTO can refuse to register a trademark which is confusingly similar to an official insignia or falsely suggests a connection with an indigenous tribe or beliefs held by that tribe.
  - Searchable database does not grant rights *per se*, but provides registered tribes with evidence of the relationship between the tribe and their insignia.

## Panama Law on the special intellectual property regime upon collective rights of indigenous communities, for the protection of their cultural identities and traditional knowledge

- Law's objective
  - protect the collective IP rights and TK of indigenous communities through the **registration**, promotion, commercialization and marketing of their rights in such a way as to give prominence to indigenous socio-cultural values and cultural identities and for social justice (Preamble and Article 1 of the Law; Preamble of the Decree)
- Main points
  - Registration of rights with the Department of Collective Rights and Forms of Folkloric Expression
  - Indefinite copyright exploitation rights
  - No fees
  - Other states benefit from the same rights based on reciprocity



# Useful resources/publications

- Documenting Traditional Knowledge – A Toolkit:  
<https://www.wipo.int/publications/en/details.jsp?id=4235>
- Intellectual Property and the Safeguarding of Traditional Cultures – Legal Issues and Practical Options for Museums, Libraries and Archives:  
[https://www.wipo.int/edocs/pubdocs/en/tk/1023/wipo\\_pub\\_1023.pdf](https://www.wipo.int/edocs/pubdocs/en/tk/1023/wipo_pub_1023.pdf).
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