

Documenting and Disseminating Traditional Knowledge and Cultural Expressions in Brazil

Final Report

Volume I: Survey

Prepared for the
World Intellectual Property Organisation (WIPO)
by Antonio A. Arantes, PhD



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**DOCUMENTING AND DISSEMINATING
TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS
IN BRAZIL**

Volume 1: Survey.

Volume 2: Brazilian intellectual property and cultural heritage legislation, institutional guidelines and instruments.

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VOLUME I: SURVEY

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FOREWORD

This survey focuses on the codes, guidelines and practices regarding intellectual property (IP) issues relevant to making registers of intangible cultural heritage (ICH) in Brazil. Within the framework of the World Intellectual Property Organization (WIPO) Creative Heritage Project, this reconstruction of the Brazilian case follows the conceptual baseline presented in this foreword.

The basic legal instrument that regulates the making and disseminating of image, sound or textual registers of cultural products and practices of any kind in the country is Federal Law 9610, known as the *Copyright Act*, of 19 February 1998 reproduced in Volume II of this report. Consequently, the documentation and dissemination of heritage registers in Brazil must follow this statute. However, as cultural products are intricately linked to their producers' social life and necessarily convey socially-produced information, a survey on documentation practices must also take into consideration the legal regimes affecting both the populations involved, and the protection of their heritage.

Not all social practices, knowledge or forms of expression are relevant to this survey. Since it is intended to provide “*a practical complement to the ongoing discussion of sui generis measures for the protection of traditional cultural expressions and knowledge*” in the international cultural public sphere,¹ an adequate point of departure are the definitions of “*traditional cultural expressions*” (TCEs) and “*traditional knowledge*” (TK) and of ICH as formulated by WIPO and UNESCO, respectively. Such definitions will be used here as operational tools.

TCEs are described, within WIPO's work, as follows:

*“any forms, whether tangible and intangible, in which traditional culture and knowledge are expressed, appear or are manifested, and comprise the following forms of expressions or combinations thereof:(I) verbal expressions, such as: stories, epics, legends, poetry, riddles and other narratives; words, signs, names, and symbols;(ii) musical expressions, such as songs and instrumental music;(iii) expressions by action, such as dances, plays, ceremonies, rituals and other performances whether or not reduced to a material form; and (iv) tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewelry, baskets, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments; and architectural forms; which are:(aa) the products of creative intellectual activity, including individual and communal creativity; (bb) characteristic of a community's cultural and social identity and cultural heritage; and (cc) maintained, used or developed by such community, or by individuals having the right or responsibility to do so in accordance with the customary law and practices of that community”.*²

The expression “TK” refers, within WIPO's work:

“to the content or substance of knowledge resulting from intellectual activity in a traditional context, and includes the know-how, skills, innovations, practices and learning, that form part of traditional knowledge systems, and knowledge embodying traditional lifestyles of indigenous and local communities, or contained in codified knowledge systems passed between generations. It is not limited to any specific technical field, and may include agricultural, environmental and medicinal knowledge, and knowledge associated with genetic resources.”³

These definitions are close to the concept of ICH as defined by UNESCO at Article 2(1) of the 2003 Convention⁴, which reads:

“the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.”

In addition to the Copyright Act mentioned above, the safeguarding, protection and promotion of officially listed ICH is regulated in Brazil by Federal Decree 3551, dated August 4, 2000, which has been replicated by several provincial decrees. TK associated to socio-biodiversity and genetic resources is dealt with by a complex set of national regulations⁵ built around the Convention on Biological Diversity, adopted in Brazil by Decree 2519, dated March 16, 1998, Legislative Decree 02, dated February 3, 1994, and by Provisional Act 2186-16, dated August 23, 2001, all of which are reproduced in Volume II of this report.

Although WIPO’s descriptions are clear about the role of cultural communities as bearers, custodians or practitioners of TK and TCEs, it is relevant to mention UNESCO’s definition in this context because it clearly links heritage to local values and practices, implying its embedment in ways of life and world-views, as well as its necessary articulation to their producers’ and bearers’ religious, aesthetic and moral values. Similarly, local history and values are also *embedded* in TK and TCEs and in the registers (image, texts, sound recordings, etc.) in which they may be contained. Documentation of ICH conveys information about their referents, that is, the subject matters that they represent. It is essential to bear this point in mind in order to fully understand the complex feedback effects on local lives of heritage protection, safeguarding and promotion, as well as of documentation.

Social practices obviously presuppose agents and agencies. Part of the difficulties of this research is that the populations involved do not form a homogeneous whole, or a definite and identifiable number of small groups. The producers and bearers of TK and TCEs in Brazil fall

into various social categories such as *Indians, rubber tappers, land laborers, fishermen*, various categories of *mestizos* and *caboclos*. In a word, *people* living in forests, in remote regions of the country, in exotic villages as well as in urbanized or semi-urban social groups. These segments of Brazilian society cannot be labeled *traditional* as opposed to *modern*, or *simple* as opposed to *complex*, or *isolated* as opposed to *integrated*, or *primitive* as opposed to *developed*.

They vary in terms of historic and ethnic backgrounds; in the ways and degrees in which they relate – at the local, regional, national, international and global levels – to hegemonic cultural systems; in their relationships with dominant economic and power structures; in the degrees of participation in formal and informal political arenas (the public sphere); in the values attributed to what is considered “*ICHP*”, both in the broader (WIPO) and narrower (UNESCO) meanings of the term; and from the legal point of view. *Indigenous peoples* are an extreme category in this ensemble, in the sense that the national Constitution of 1988 (especially Title VIII, Chapter VIII) as well as Federal Law 6001, of 19 December 1973, known as *Indigenous peoples’ statutes*, grant them specific rights.⁶ Given such conditions, the documentation of indigenous cultural heritage is not only regulated by the above-mentioned Copyright Law, but also by the National Foundation for the Indian (FUNAI), regulations included in this report.

The subject matter of the recordings and registers are living practices of populations who have historically built distinct – and distinctive – ways of life from hegemonic and massive Brazilian national cultures. These social groups underwent various forms and degrees of exclusion from citizenship, and some are presently engaged in developing affirmative action, fiercely struggling for rights, including those related to cultural and heritage policies. *Author, owner, creator or bearer of cultural traditions*, these are concepts that do not fit all the world views in such a diversified reality. However, the market economy has created a “common arena” for these various groups by progressively appropriating local TK and TCEs for industrial and commercial purposes and including — particularly since the 1980s in the case of Brazil — symbolic effects of *tradition* and *authenticity* as added values of cultural commodities. Consequently, the dissemination of heritage artifacts as well as of textual, image and sound recordings of cultural heritage cannot be dissociated from market relations, mechanisms and regulations. Similarly, the understanding of issues concerning the laws and guidelines applied to the matter cannot be dissociated from the “common arena” built by the market economy.

Besides the economic transactions involved in the activities of registration and dissemination of heritage, we should take into account the fact that they are, to a large extent, part and parcel of the complex political processes of identity-building. In heritage matters, the attribute *historic* actually refers both to continuous and to discontinued, and often reinvented, practices. For that reason, one important aspect of heritage is whether and how it is included in present-day narratives and practices about social identities and with cultural identifications within and outside the country.

Heritage, as I have argued,⁷ specifically refers to reflexive symbolic constructions (representations of social identity and the cosmos) involving negotiations (or cultural dialogue) between agencies and agents that may fall into two polar types: those that are *internal* to local communities and those that are *external* to them. These constructions have both political and economic significance – hence *value* – attributed by the parties involved. The values ascribed from the outside may not be consistent with those that are internally recognized and enforced. If the “*ingredients*” of heritage can be identified and listed in inventories that are necessarily relative and open-ended (since culture is historical and dynamic), the values assigned to them by cultural communities are mostly situational and contextual, hence more elusive.

Registers – or ethnographic documents in general – are interpretations of tangible manifestations of cultural practices by means of texts, images, sound and other media made available by technological development. Dissemination is the process by which these interpretations are made public, thus feeding back cultural dynamics and the production of commodities with cultural values derived from their publicity. It is a process that builds access to registers (photographs, textual records, sound and image recordings, etc.) as well as to the information embedded in them.

Therefore, the processes can be summarized as follows. Localized – not to say territorialized – cultural realities (such as healing practices, pottery, fishing, cultivating gardens, drawing, body ornamenting, singing and dancing, worshipping the gods or the ancestors, celebrating life, etc.) developed by many different non-hegemonic segments of the Brazilian population are interpreted, captured and edited in registers by researchers, filmmakers, institutional agents, etc. This process tends to focus particularly on cultural items that are valued as heritage and traditional by the social groups concerned, or as particularly strong expressions of their identities, carrying communally produced information, know-how, values and beliefs rooted in their cosmologies.

By disseminating such symbolic representations and the information conveyed by them, additional moral, intellectual and economic values are produced and exchanged in the local, regional, national, international and global trade systems. These registers, with their added market and symbolic values feed back cultural dynamics. The information and values appropriated and re-elaborated by the available technologies generate what is called the “creative economy”, and may feed-back, in this new format, local cultural dynamics. The circle closes itself, or rather, the spiral gives another turn since the starting point – the “origins” – may be missed or not met again in this re-elaboration process.⁸ On the other hand, documentation and dissemination sponsored by Governmental or private organizations may increase, from outsider perspectives, the visibility and legitimacy of some social practices; this is another important in-put to be interpreted and appropriated by local lives. The presentation of the data produced by the survey is structured in a way that intends to reflect this complex social reality. Among the consulted institutions that are directly or indirectly involved with the

production and dissemination of information or registers of ICH, some are more generalist and broader in scope than others, but most – and the more influential ones – specialize in particular areas. Some focus on indigenous cultures in general or an ethnic group or region in particular; others on Afro-Brazilian traditions. Some have their own codes of conduct and procedures in addition to the general legislation applicable to the subject matter; others just follow the general legal framework. The end result of the processes focused by this survey is necessarily the outcome of the social arena formed by these agents and agencies, and includes the conflicts and values that are embedded in their mutual relationships.

This very broad outline presents some aspects of my interpretation of the data produced in Brazil for the WIPO Creative Heritage Project. The argument will be based on information gathered both on the Internet and in direct consultation with several institutions' staff members. Interviews with some of the country's most experienced anthropologists have helped clarify important aspects of the IP issues relevant to TK and TCEs in Brazil.

Acknowledgments

I would like to acknowledge the generous collaboration of the consulted institutions' staff members, as well as that of various colleagues for their thoughtful contributions to this project.⁹ Among them, I would like to mention anthropologist Dominique Tilkin Gallois who generously shared her knowledge and professional experience, and included me in the training workshops for the Wajãpi researchers. I am particularly grateful to the Wajãpi who received me in Macapá and at their Terra Indígena [Indigenous Land] and to the Iepé - Institute for Research and Training in Indigenous Education staff who gave support to the brief encounter in which chapter 2 of this report is grounded and inspired.

I am most grateful to the researchers who actively collaborated to making this incommensurable task a reasonable object of study, and to the WIPO Creative Heritage Project staff, in Geneva, particularly for two reasons. First, for their understanding of the practical difficulties that one faces in such a venture and second, for giving me the unique opportunity to reflect on some issues with some of the people most interested in the results: a small group of creators and practitioners of TK and TCEs from the Brazilian Amazon.

Part I. Framing the object

1. NOTE ON METHOD

The overall picture on which this survey is based was drawn by means of a preliminary search of information available on the Internet, as well as in catalogues and guides of institutions, and with discussions with professionals directly or indirectly involved with digitizing, recording or disseminating cultural heritage in Brazil.

The delineation of our scope of study opened a wide and rich horizon of investigation. It is necessary, therefore, to carefully define the concepts that will constitute the investigation's point of departure so as to have clear indications as to which instances should be included in the survey, and which should not, and why.

For the purpose of this project, “*digitization*” and “*recording*” are understood as modes of “*documentation*” of TK and TCEs in various formats, and by means of all existing (past and present) technologies. These activities involve many agencies, agents and procedures: archives and museums, researchers, art and media producers, the manipulation of progressively sophisticated technologies, etc. Furthermore, they usually derive from, or are a complement to, “*collecting*” which is here understood as the systematic extraction of artifacts or recorded information out of their original contexts.

On the other hand, one must consider that, as argued in the previous pages, cultural records are not merely objects, but instruments of communication that convey information and meaning. Consequently, *dissemination* must be interpreted not just as *dispersion* of objects and of records made about them, but as a complex process that necessarily implies the disclosure of different kinds of cultural contents (such as religious, aesthetic, sociological, political, technical), and serve many different purposes (intellectual, economic, humanitarian, among others). For these reasons, interpretation of the subject of this survey must depart from a broad understanding of its constitutive practices and social arenas in which these practices take place.

In relation to IP issues, “*dissemination*” is a very central process. It represents an important point of articulation between local cultural agencies and the wider public, which is operated by institutional practices, which usually take place in the cultural goods and information market. This is as a crucial facet of our problem. .

Given this approach, activities such as “*exhibition*” (of artifacts), “*publication*” (of recorded information, in print or in digital format), “*promotion*”, “*commercialization*” and “*development*” of products derived from these practices were included in the scope of the present survey.

“*Promotion*” includes all possible uses of traditional culture for education, as well as for the marketing of added cultural value to economic goods and services. “*Commercialization*” refers to trading arts and crafts either for profit, or *pro bono publico* in view of raising family revenues and standards of living. “*Development*” is used here in the sense of introducing changes in traditional cultural forms and processes in order to facilitate the marketing of cultural products (tangible or intangible), as goods or services.

As research developed, this preliminary universe was progressively filtered and a relatively small number of cases was retained for deeper observation, as they were as much as possible representative of this complex and diversified reality.

RESEARCH PROCEDURES

The information produced by a preliminary scanning of this scope was filtered, structured and stored in a database. Our study began with a group of 1,031 institutions under our ***General registry***. As research progressed, the structure, limits and nuances of this scope became increasingly apparent. 466 of these registers were tentatively migrated to a ***Preliminary list*** of cases, 64 of which were ***Selected*** for in-depth observation via the Internet and/or face-to-face interviews. Sufficient information was only obtained for 37 of the institutions that were finally ***Consulted***. (See Table 1)

Table 1: Institutions by groups, according to type

Type	General Registry	Preliminary List	Selected	Consulted	Total
Afro-Brazilian organizations	0	4	3	2	9
Archives and libraries	4	0	0	0	4
Arts and media producers	7	5	8	3	23
Cultural centres	21	0	0	0	21
Development agencies	174	0	0	0	174

Type	General Registry	Preliminary List	Selected	Consulted	Total
Government agencies	63	11	2	6	82
Indigenous organizations	0	308	2	7	317
International agencies	32	5	0	0	37
Museums	14	31	0	7	52
Network of institutions	9	4	0	2	15
Popular organizations	16	11	2	1	30
Producers, practitioners or local traders	4	15	2	0	21
Professional associations	2	3	1	3	9
Research institutions	64	0	2	2	68
Sponsor institutions	145	3	0	0	148
Support organizations	6	0	3	3	12
Traders	4	2	2	1	9
Total	565	402	27	37	1031

One of the most significant results achieved by this procedure is the confirmation of the plurality of agents and agencies involved in the field of ICH in Brazil. It is also an empirical indication of the magnitude and complexity of this subject matter. The lists of types of activities and agencies give an idea of the way in which this social field is structured in Brazil. Although the use of computers and databases is quite widespread in Brazil and stimulated by several government programs – not to mention the incentives and appeals of the hardware and software markets – not many institutions provide sufficient and updated on-line information

for research, particularly about the themes focused on in the present survey. As to indigenous and other people organizations, the availability of website information is in fact exceptional.

It is noteworthy that this information is very seldom sufficient for drawing reliable and updated institutional profiles, as it tends to be synthetic, incomplete, outdated and often promotional, with rare exceptions. A preliminary search indicates that few institutions have specific IP related guidelines and codes, and only in a few cases are these accessible on-line. Given the dimensions of this project – limited time and resources – the strategy has been to concentrate our observation on institutions that have sufficient accessible information.

Hence, the identification of informants is subject to a large margin of error, in addition to being a very time-consuming task. After being preliminarily identified, another difficulty was to contact the institutions' representatives, in order to obtain the information needed to decide whether or not these organizations should be included in the survey list, and finally persuade them to actually include the interview in the institution's work routines. What became apparent in this process is that these agencies (1) frequently do not have their own formal and systematic guidelines and protocols to deal with IP issues, and follow the existing legislation as well as the codes of ethics of relevant professional associations; (2) they often give priority to the extremely sensitive issues related to the protection of TK and TCEs, rather than to questions about documents and records made about them; and (3) some declared that the institutional discussion about IP issues was in progress and quite recent. As can be seen from some interviews, the project seems to have contributed to strengthening the institutions' existing preoccupation with the development of IP instruments and guidelines about the production and dissemination of ethnographic records. This information is, in itself, a relevant result of the surveys.

SOURCES, INSTRUMENTS AND VARIABLES

In designing the research protocols used both for on-line search and for interviews (face-to-face and via the Internet), the following variables were chosen.

Relevant issues for the consultation of institutions.

Identification

Designation/ Acronym/ Homepage/ City/ State

Contact, person in charge/ mailing address/ telephone / email

Specific IP guidelines and codes [if existing (yes/no) / if available online (yes/no)]

Legal status: public (multilateral, federal or provincial), private, third sector (not-for-profit civil society), mixed. These distinctions are appropriate since social responsibilities, financial resources, political and ethical commitments and obligations set by the national legislation or by international agreements vary according to the organization's legal nature. Examples of relevant public sector entities are ministries, special programs of public policies, museums and research institutions; of private sector organizations are traders, supporting institutions, etc.; the third sector includes indigenous organizations, professional associations, institutional networks, etc.

Territorial scope: local, ethnic, provincial, federal, international. Besides the entities that act within the country (at the federal level, within a province, or in an ethnic territory), international and multilateral organizations play a significant role in documenting and disseminating indigenous or popular cultural heritage in Brazil. This broad perspective is justifiable here because (1) there are institutions whose mission is defined in territorial or ethnic terms, (2) the legal regimes that regulate some of these activities may be federal or both federal and international, (3) some multilateral institutions are partners of the local government in implementing ratified international agreements (ex. UNESCO, WIPO), (4) national entities are sometimes members of international networks or associations that have explicit IP guidelines that should be implemented locally (ex. ICOM), and (5) various international institutions establish their own ethical parameters and conditions to projects that are developed with their financial support (ex. DoBes program).

Types of institutional activities: given the perspective outlined above, the institutions included in the survey fall in one or more of the categories set out below. For a preliminary organization of the data, cases were classified according to main or most characteristic type of activity. *Afro-Brazilian organizations:* social and political organization dedicated to the promotion of cultural rights and interests of Afro-Brazilians, or networks of such organizations.

Archives and libraries: institutions devoted to collecting, conserving and disseminating textual or recorded documentation of TK and TCEs.

Arts and media producers: organizations that – not belonging to a local community – produce and sometimes disseminate artifacts (such as texts, drawings, printed materials, analog or digital sound and/or image recordings, tri-dimensional objects, etc.) or performances (vocal or instrumental music, dance, drama, puppetry or any other expressive or artistic language) that register, reproduce, re-create, modify or are inspired by TK and TCEs.

Cultural centers: institutions that promote performances and other public events aiming at the dissemination of TK and TCEs.

Development agencies: private or third sector organizations that develop or give support to projects or programs aiming at safeguarding cultural heritage and/or at using heritage for human, socio-environmental and economic development.

Governmental agencies: Brazilian agencies of the public sector that develop or give support to projects or programs aiming at safeguarding cultural heritage and/or at using heritage for human, socio-environmental and economic development.

Indigenous organizations: social and political organizations congregating indigenous peoples dedicated to the promotion of indigenous cultures, rights and interests, or networks of such organizations.

International agencies: public, private or third sector organizations or networks of such organizations whose actions transcend the Brazilian territory and whose mission is to develop or give support to projects or programs aiming at safeguarding cultural heritage and/or at using heritage for human, socio-environmental and economic development.

Museums: institutions devoted to collecting, conserving and disseminating artifacts as well as textual or recorded documentation of TK and TCEs.

Networks of institutions: networks of public, private or third sector institutions operating within the country whose mission is to develop or give support to projects or programs aiming at the safeguarding of ICH and/or at using heritage for human, socio-environmental and economic development.

Popular organizations: entities that congregate one or more ethnic groups other than indigenous and Afro-Brazilian populations aiming at the implementation of these groups' cultural rights and interests.

Producers, practitioners and traders: community-based organizations that create, re-create, produce, develop or disseminate — through trade or by other means — products of TK and TCEs.

Professional associations: entities that congregate the practitioners of a specialized activity, as well as networks of such organizations.

Research institutions: institutions or programs dedicated to the improvement of systematic knowledge and documentation of cultural heritage, particularly of TK and/or TCEs.

Sponsor institutions: private or third sector organizations that provide capacity building or financial support to actions aiming at the safeguarding of ICH and/or at using heritage for human, socio-environmental and economic development.

Support organizations: non-governmental organizations that congregate professionals, activists and other individuals in their support to indigenous' or traditional peoples' cultures, rights and interests.

Traders: trading entities – such as shops, wholesalers, e-commerce agencies and fair-trade organizations – not belonging to a local community that develop or intermediate – either for profit or *pro bono* – the dissemination or commercialization of products of TK and TCEs.

Themes for consultation with institutions. Web search and interviews were guided by the following subjects:

Institutional mission and formation

Administrative structure, financial resources, supporting entities, partners and community participation

Collections: typology, formation (collected by whom, when, how; relation with cultural communities); conditions of acquisition; present priorities.

Inventory making, documenting and disseminating ICH: main programs and projects; community involvement.

IP issues: legislation in use, guidelines and practices

Suggestions for WIPO

Consultation with individuals

A similar procedure was adopted for the identification of professionals, academic researchers, artists, traders and other individuals connected with intangible cultural heritage issues. 23 professionals were effectively interviewed among activists, consultants, media producers, artists and/or interpreters, and researchers.¹⁰

Individuals were much more receptive to the project. A small percentage did not answer the questionnaire and most interviews were very elucidative of the problems faced by researchers and by the communities they work with.

In addition to the information available to those who participate in professional meetings and public life, experts or culture specialists were identified both by means of guides and catalogues

published by professional associations, and through the Lattes Platform of CNPq – National Research Council. Again, the number of occurrences was very high.

IP issues are relevant to a large number of academic fields. Collectors and/or dealers of heritage arts and crafts, working for museums and other public institutions, also establish direct contact with traditional communities and mediate the appropriation of their heritage assets by the market and outside communities in general. Artists or designers, as well as researchers in biology, agriculture and pharmacology appropriate TK and cultural themes as raw material or as references to their own artistic or technological creation. To a great extent motivated by such increasing pressure on traditional contexts, particularly in the last 5 or 10 years, interdisciplinary discussion groups are being created to exchange ideas and stimulate research about IP issues concerning traditional or indigenous groups. Many anthropologists, lawyers and other professionals also collaborate with non-governmental organizations in this area; some do it professionally, others *pro bono*. So, this is an area of research in its own right.

The ethical basis of the work carried out by individual researchers is usually provided by the professional and academic fields, either formally by means of codes of ethics, or as a matter of public opinion within the professional communities. Significantly, the Brazilian Association of Anthropology, for instance, has a committee on research ethics, the Brazilian Association of Ethnomusicology is in the process of creating one and the Brazilian Bar Association has a commission on IP rights.

Professionals, specialists and experts identified in this survey can be sorted according to the following categories of activities (see Table 2 below). As in the case of institutions, for a preliminary organization of the data individuals were classified according to main or most characteristic type of activity.

Activist: organizer of actions aiming at bringing about change in matters concerning current social practices and/or in support of local claims.

Consultant: expert or specialist who gives professional advice on matters concerning the implementation of social or economic processes or the development of commodities, technologies or communication practices either for source communities or third parties.

Documentary maker: professional who, not being a community member, produces textual, sound and/or image documentation of current cultural practices and knowledge, for the use or appreciation of source communities and/or third parties, using various analog or digital technologies.

Local documentary maker: a community member who produces textual, sound and/or image documentation of current cultural practices and knowledge, for the use or appreciation of the local community and/or third parties, using various analog or digital technologies.

Media producer, artist or performer: one who, not being a local practitioner, creates or brings into existence art works of any kind (texts, drawings, printed materials, tridimensional objects, etc.) or performances (vocal or instrumental music, dance, drama, puppetry or any other expressive or artistic body language) that reproduce, re-create, modify or are inspired by TK and TCEs.

Researcher: one that carries out investigation in the various fields of academic knowledge.

Staff member: one who works permanently for a governmental, private or third sector institution.

Trader: one who, not being a community member, collects, sells or intermediates in the commercialization of heritage commodities, either for profit or *pro bono*.

Table 2: Individuals by category¹¹

Category	Selected	Consulted
Activist	2	1
Consultant	3	0
Media producer, artist and/or interpreter	5	1
Researcher	13	12
Trader	1	1
Total	24	15

Themes for consultation with individuals

Identification

Name/ http/ email/city/state

Contact (institution/ mailing address/ telephone)

Category and field of specialization

Production and dissemination of records of TK and TCEs: selected projects and relevant experiences.

Development of goods and services based on ICH: selected projects and relevant experiences.

Relevant publications or products

Relationship with cultural communities on practical matters (political and economic areas)

IP and ethical issues in general: institutional affiliation; relevant experience; conduct.

Suggestions for WIPO

Indication of other professionals for future consultation

2. THE PROBLEM: FROM THE WAJÁPI POINT OF VIEW

(Ethnographic Notes on Intellectual Property Issues)

The issues focused on by the Creative Heritage Project, as well as the objectives of this WIPO initiative, make it essential to conduct direct consultations with the agents of the cultural practices being considered, namely, the stakeholders of TK and TCEs. There are various reasons for this. These issues refer to behavior patterns (individual and collective) and to ethical principles that are embedded in distinct cultural and political configurations, and whose meanings can only be fully understood in the contexts to which they belong; they derive from tensions between generic administrative procedures, based on national legal systems, and practices institutionalized by custom – which are, for this reason, qualified as traditional and extremely variable; and they are, furthermore, actions motivated by interests that are frequently diverse and often conflicting.

It could be argued that this methodological (and ethical) course presents itself as, if not impractical, at least not very productive for at least two reasons: (1) because these statements can be conceptually sustained, with no need of much empirical basis; (2) because of the immense diversity of situations found in the world, or even in a single country of continental dimensions such as Brazil. Nevertheless, it is an inescapable challenge for those who intend to go beyond the most superficial level. In fact, simply passing along the rough and rocky land on which ethnographic experience is constructed shows the extreme complexity of the practical and symbolic realities affected by the creation of registers of TK and TCEs, and evaluate the nature of the difficulties faced by the agents and agencies involved at the global, national and local levels. As a result, the limitations inherent to generic legal instruments or practical guides designed to broadly steer negotiations between traditional populations and agents of public, private or third sector institutions become clear, relative to the copyright, rights of performers and other aspects of IP.

In the case of Brazil, the production of parameters indicative of the nature of the problems calls for the conduct of a series of carefully selected case studies. However, given that it is not the aim of the WIPO Creative Heritage Project to address such issues, a single situation will be sketched in this report as an example: the state of IP among the Wajãpi of Amapá.

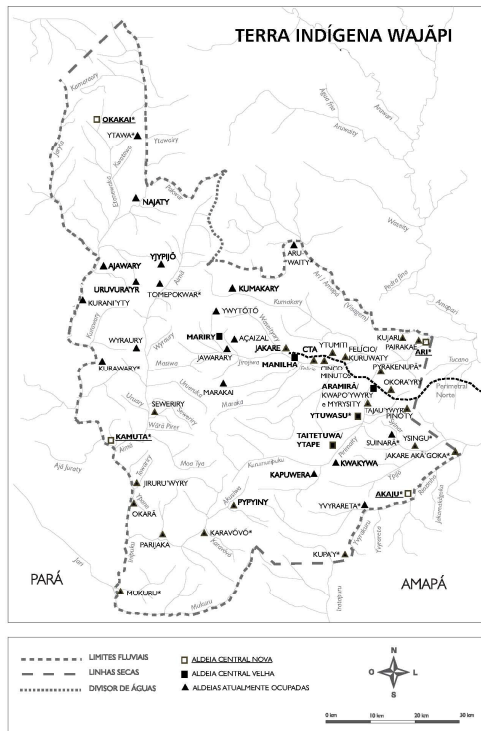
Although results are still preliminary and of an exploratory nature, these notes have two main objectives. The first is to bring an indigenous perspective to the analysis of the WIPO Creative Heritage Project. This perspective is profoundly distinct from that expressed by the Western institutions consulted, and is essential for understanding the difficulties confronted in their action. The second is to stimulate the development of similar ethnographic surveys, which can

lead to comparative reflections on the concrete situations existing throughout the world, projecting on this background, the core issues of this important initiative of WIPO. Hence, effective and useful instruments and procedures could perhaps be created to safeguard the IP of traditional populations.

INTRODUCTION

The notes presented here are based on direct observation and consultations conducted among the Wajãpi of Amapá as well as on some of their publications, or those that circulate among them. The objective of this brief fieldwork was to explore, with a group of producers and holders of TK and TCEs, the following issues, among others: from the Wajãpi point of view, who are the authors of the graphic expressions, festivals, songs and dances practiced by this people? To whom do they belong? Do they permit audio and or visual recording of these practices by non-members of their community and the dissemination of these registers outside of their territory and society? Why? - to a yes or no answer. Who takes this decision, how, and in whose name? If permission is granted, what limits and conditions are established to such undertakings? Are the benefits stemming from these permissions, when they exist, shared? According to what criteria?

The population self-denominated Wajãpi lives in three locations in the region bordering Brazil and French Guyana and does not constitute a culturally homogeneous community. For the purposes of our survey, a group of approximately 915 people (cf. Apina, 2008) who live in the 48 existing villages in the Terra Indígena Wajãpi [Wajãpi Indigenous Land] (TIW) is particularly relevant. Following the current use in consulted official documents (Museu do Índio, 2002; IPHAN, 2006, and others), this group is designated as “*the Wajãpi of Amapá*.” This choice is due to the fact that the measures for safeguarding the graphic language *kusima*, which was registered on December 20, 2002, in the *Livro de Registro das Formas de Expressão* [Registration Book of the Forms of Expression] by IPHAN as an element of Brazilian Cultural Heritage were addressed to this group. The graphic language was proclaimed – together with the corresponding orally transmitted knowledge – a Masterpiece of the Oral and Intangible Heritage of Humanity by UNESCO, in the same year, 2002. The TIW was established in 1996 and is located in central western Amapá, covering 607,000 hectares.



-----	River	□ New central
borders		village
— — — —	Land	■ Old central
borders		village
.....	Watershed	▲ Currently
		occupied
		villages

My stay at the Wajãpi Indigenous Land took place during the workshop for training researchers given by anthropologist Dominique Tilkin Gallois at the Aramirã Post. I sought to clarify the objectives of the WIPO Creative Heritage Project and obtain consent to observe the workshops and conduct interviews, both with the partner organization, the Iepé, as well as, and mainly, with the Wajãpi Council of Villages (APINA) and with the Association of Wajãpi Indigenous Peoples of the Amapari Triangle (APIWATA).

At the time of this study, nearly twenty indigenous researchers were staying at the *Kvapo'y nyry* village, next to the Aramirã Post, most of them men aged between 20 and 30, coming from various villages, accompanied by their immediate family. In addition, personnel from Iepé provided logistic support to the activities and to the camp, and employees of the National Indian Foundation (FUNAI) occasionally passed by as well as others from the National Health Foundation (FUNASA), and other Wajãpi, on their way to their village or to Macapá. Besides informal observation and participation in everyday life activities at the village and interaction with the workshop participants, interviews were conducted with Chief Matapi (through an interpreter, his grandson Kuripi), 10 indigenous researchers, one indigenous teacher and the presidents of the two indigenous organizations.

The Wajãpi have intense and diversified contact with the Brazilian State and national society, as well as with cultural and finance agencies and the international community of researchers. This makes it necessary for them to have a good knowledge of the Portuguese language while, at the same time, they seek to maintain and strengthen their traditional language. Jawaruwa Wajãpi, who was one of the researchers attending the workshop, questioned the increasing use of Portuguese words that do not have corresponding terms in Wajãpi language, when stating what he considers as the most important domains of traditional culture:

J – More important? For example, our language...is more important to us because...For example, when we translate our language to another language of the karai kô [non-Indians], of the whites...we have difficulty translating our language. So we use the language of the whites and are unable to make a correct translation.

The difficulties in communication and intercultural understanding are not limited to the sphere of language. The Wajãpi have been targets of prejudice and discrimination in Macapá, the capital city of Amapá Province. They report being targets of taunting by passersby who laugh, make derisive remarks and imitate Indian dances by tapping their hands to their mouths as seen in some movies. They try to avoid the humiliating remarks by using clothes and shoes (principally bras, pants and sneakers) or by adopting styles and mannerisms of non-Indians (haircuts, makeup or cologne). Some men prefer not to “make their body dirty” [draw *kusima* on their bodies] with *jenipapo* or *urucum*, especially when they are not in the fields. Nazaré Ajãreaty (N) explained in an interview:

N – Its not just the boys, girls also want to use the clothes of the karai kô; they want to be like the karai kô. Men too, a young man who wants to be just like the karai kô,

uses shoes, cuts his hair, doesn't want to be an Indian, wants to be white, I don't know why.

A – Why?

N – We speak with the youth “why do you change [cut] your hair? Do you want to date a karai kô?”. “No, it seems... how do you call it? Indian bóio... I don't know. A prejudice, right.

A - Prejudice.

N - Wajãpi has no boió.

A – What is boió?

N – Bo..boiola.

A – Ah, boiola [gay].

N – That's it.

A – That's why a Wajãpi cuts his hair?

N – They say gay because he has long hair. That's it. For this reason when a young person goes to Macapá he cuts his hair. We say “why do you cut your hair like that?” Because the whites say to us: “you look like a woman with long hair. That's why we cut our hair”.

Gender is not the only source of humiliating stereotypes; the Wajãpi are also seen as poor people, outsiders to the local economy. Rosenã adds, referring to how representations of rich and poor affect values and attitudes of many young Wajãpi:

[many young people] What they like most in the city is to see the things of the whites...they think everything is pretty...money as well. They think that money...they think that the whites earn money easily. In reality, only those who work earn money. Those who have a profession, only that person has money. They [many young people] think that we [if we] go live in the city, we would have money;[that] when we study in the city, we will have money. In reality, they only think of the things of whites...[they say with prejudice] “this is poor, this one has nothing, has no money”. We, a few Wajãpi, know that we are not poor, we do not depend on the things [of] the non-Indian, we have the land, our land is rich. So, we do not depend on the non-Indian. We do the planting, we plant for our families, we have everything here on our land. We always say this to them.

In contrast with the praise — in Brazilian and international preservationist circles — of the *kusiva* as a masterpiece of human or Brazilian cultural heritage, the Wajãpi are not very visible in the press and in local political and administrative fields. There is little news in Amapá about their being the stakeholders of this heritage, and the official education programs are slow to accept the need to include in the curricula information about their culture, their right to difference or other issues of practical or political interest to them.

On the other hand, they have been developing, with the collaboration of academic partners and those from indigenist institutions, the training of indigenous teachers and researchers. These educational activities have been designed to contribute to strengthening Wajãpi culture, and to create two-way access routes between traditional issues and concepts and subjects that arise because of the relations that this people maintains with Brazilian and international society.

The training of agents capable of actively participating in the processes of intercultural translation is an initiative that is extremely important, given that it contributes to resolving, by the Indians themselves, the problems related to their insertion in broader social, economic and political structures. Wajãpi researchers and teachers participate in the creation of a social space for negotiation that is essential for supporting inter-ethnic relationships. This is one of the spheres where Wajãpi political, cultural and socio-environmental agendas are formed and develop. In recent years, the issue of IP has become an important issue on these agendas.

ORIGIN, POSSESSION AND TRANSMISSION OF KUSIWA

- In the past, there were no graphic paintings of the Wajãpi. With the passage of time, various paintings and colors arose. The colored paints came from the belly of the dead Cobra Grande [Large Snake]. The animals, birds and fish chose from it and took the colors to paint themselves.

At this time, the “origin” [sic] of the Wajãpi participated and got the kusiva paintings of the butterfly, pacu fish, surubim fish, macaws, monkeys etc. And the “origin” of the Wajãpi participated and also got the paints from the belly of the dead Cobra Grande [Large Snake]. At this time, the animals, birds and fish were like people and spoke a single language. Also at this time, the Wajãpi took advantage and learned the songs of birds and other animals and plants.

For this reason, we are not the owners of the kusima paintings, songs and festivals; but this intangible knowledge remains for us, because we know and strengthen it until today.

Today there is also the jenipapo tree; it is very important, because this tree provides green fruits that we use to prepare the liquid [paint]. [We] take this liquid to [make] the various types of painting that we know.

Although this text is still considered unfinished by the authors, it was prepared by a group of indigenous researchers during a workshop that had the objective of clarifying for the non-Indians the origin of the *kusima*. According to a personal statement by Gallois, since 2000 she has been regularly conducting activities in which old indigenous chiefs, researchers or teachers are encouraged by outside facilitators (anthropologists or others) to explain in their own language – and later to translate into Portuguese – what they consider important to say about their culture to the non-Indians. In this dialogical context they use written scripts, titles, illustrations or that is, they appropriate formats that are commonly used by non-Indians in their forms of expression.

Two important sources for this study resulted from this work conducted in workshops: the publications entitled *Ia ma'e kô*, about “the owners”, which was concluded in 2006, and *I'a*, about “doubles” and images, completed in 2008. Also made aware of the issue by questions raised by this consultant in workshops of this nature, the Wajãpi expressed themselves, through written texts and in recorded interviews, about important issues regarding IP. I will review some of them.

The narrative about the genesis of the *kusima* refers to time immemorial, to times of indifferentiation, “*when all spoke the same language*”, as well as to the action of the “*animals, birds and fish*” who “*chose and took*” from the belly of the Cobra Grande the paints to paint themselves and, finally, to the agency of the “*origin of the Wajãpi*”, which I interpret as the “Wajãpi ancestors”, who became possessors of *kusima* and left it as a legacy to this people. The ancestors had “learned” *kusima*, songs and festivals, as would be seen later, from “*the owners*”. The text read by Jawapuku affirms that “*we are not owners of the kusima*”; *but this knowledge remains for us* [permanece para nós] because the Wajãpi have practiced it and strengthened it over time. That is, the possession of this form of cultural expression appears to be made legitimate by an ancestral negotiation, as well as by the creative and continued practice of many generations of descendents.

To be the “*owner*” of something is not an expression that should be understood here at face value and interpreted according to the meaning that is usually attributed in other cultural

contexts. It is a linguistic construction that describes, in Portuguese, the relationship between the *I'já* and things. The youth Kupaenã (K) explains with greater detail to the anthropologist (A) the Wajãpi use of the Portuguese word “*dono*” [owner], also navigating in intercultural waters:

K – There is [an] owner of the trees, there is [an] owner of the rivers, there is [an] owner of the earth, owner of the stones, there is [an] owner of the mountain, and there is [an] owner of the marshy forest, there is [an] owner ... how do you call it? Of dense forests... that's how it is.

A – Do people have an owner?

K - Yes.

A - Who?

K – We call him Janaijã... Jesus.

A – The creator?

K – Our creator. [For] this reason we call him the “owner” because he created [us], you understand?

A – I understand. Not that he is the owner in the sense that he can give or sell someone or something. He is the owner because he created the person (...), the owner because he created that animal.

K – Like we raise animals; [the animal] has an owner because he [the owner] created it. So there is an owner.

A – What is the word for owner in Wajãpi?

K - I'já.

According to Kupaenã, the owner is the one who conceives, raises, protects, cares, and cultivates; and this being remains – as will be seen below – linked to the creation, even when others are allowed access, as it is the case with the Wajãpi ancestors. The chief Matapi, who is a respected man among the elders, expands on the explanation by highlighting, within the notion of “owner”, the concept of “guardian,” and in terms of possession, the idea of commitment and punishment for one who exercises some form of appropriation unauthorized under custom. He (M) explained, with his grandson Kuripi (K) to interpret:

M/K – He said that the butterfly has an owner (...) that a butterfly that always flies by here does not live without an owner (...) in reality the owner sees the butterflies, he sees when someone kills the butterfly and he makes something happen to this person, because he killed the butterfly and so the owner gets angry. Then he gives the person a fever or... he could get sick, or something happens. The person begins to shake too, and it will always be like this.

A – And if a kusiva is made of the butterfly?

M/K – He said that when we paint with jenipapo, we design the butterfly, the owner also becomes happy, nothing happens to the person, because he sees that the person is painting and is pleased; (...) because this design of the butterfly is truly traditional, it's not for anyone [to make] (...) it's just for us, because this knowledge came just for us, it's not for anyone. For example [the] non-indigenous wants to see and study this knowledge, we will not authorize this (...) because [if we did so] this design, we would not be content...we would be quite concerned (...) we learn this knowledge with the owner of the butterfly, [it was] he who gave this knowledge to us and we discovered and practiced it.

The authorized practice of the *kusiva* is the one made “with knowledge” in at least three senses: (1) technical knowledge, which is transmitted among members of the same families in the local groups; (2) with understanding of the meanings expressed by the motifs designed and that belong to Wajãpi cosmology; and (3) with observance of the prohibitions established, from time immemorial, by the “owners” (*I'jã*) for the Wajãpi ancestors. These interdiction recognize and reinforce the belief in the mystic strength of the *kusiva* and, for this reason, are observed by the current heirs, the legitimate practitioners of the *kusiva*. They use them both to decorate and to protect their bodies.

The text read by Kupañã, which was produced by another group of researchers, shows that learning the *kusiva* implies becoming capable of reproducing the graphic motifs and combining them, creating new compositions:

We, Wajãpi, have different customs of making the design of the painting, for example, designs of the butterfly combined with fish scales. We do not always copy how another person painted them; we think and invent a way of combining the kusiva standards to make the composition (...) the person learns many types of designs and combines them differently.

The young people do not learn alone to make paintings. They learn with their father, their mother and with other people.(...) Painting cannot be learned quickly and easily ; [it is] like (...) learning to write with a pencil for the first time.

Reading another text produced by the indigenous researchers about what they call “rules for Wajãpi graphic arts,” Rosenã discussed the nature of the connection between the “owner” and those who were authorized to “imitate” the ancestral paintings on their bodies, i.e., design them. It is worth noting that the action of designing (imitation) is understood as a way of performing pre-existing motifs, whose symbolic power is controlled by the “owners” of things, the I’ã. The narrative of Rosenã clarifies the use of spells and interdictions:

Only the people who are not under ritual interdiction [não fazem resguardo] can imitate paintings on their bodies. From the origin, our ancestors knew these rules; which we continue to use and respect until today. In the past, [when] the animals spoke like humans, each owner of the paintings explained his rules of the paintings to our ancestors [who] learned them. The owners of the paintings spoke to our ancestors: you cannot imitate my paintings on newborns and [on] those who have a new born baby and [on] a young woman who is menstruating.

They also told our ancestors: we will always keep an eye on our paintings. If you use them or do not respect these rules, we will get angry and cast a spell on this person who used our painting improperly. The owners of the things do not appear; only the invisible appears [which is seen only through the shaman’s mirror]. For this reason we continue to do this until today.

Although these interdictions are frequently mentioned, it appears that there is no impediment to the “imitation” by the Wajãpi of graphic, choreographic or musical motifs of other peoples. The publication *I’ã* states: “for us, the Wajãpi, a’ãga is imitation. For example, (...) when we visit another village and see some artifacts, later we return (...) and we imitate that artifact that we saw. (...) We also imitate the roar of the jaguar and bird songs (...) a canoe made by another group and their houses (...) some body paintings.” (Pesquisadores Wajãpi, 2008, p.23). It can be suspected, therefore, that motifs and objects of other peoples and cultures are, so to say, considered to be free to access. Because they are not transmitted, used and reproduced in the space regulated by the Wajãpi custom, they can be freely practiced and probably acquire new meanings in the contexts to which they are transferred.

Nevertheless, Rosenã warns of another important factor: “to imitate” also means to recognize that one belongs to the other. The original link is not automatically erased in the copy; its omission can reveal that it involves a counterfeit:

R – *These days we travel a lot (...) [to] visit indigenous peoples, to exchange experiences. At times we imitate graphic art that other peoples use, we imitate it. But we know that is the art of other peoples and we know our art.*

A – *You don't mix one with the other.*

R – *We don't mix them. Here in our village that painting does not exist, we know that it is from another people. But when other peoples tell the story, we also bring them to tell here in our area ...village. Other peoples think about this, about the relation of forests. And the festivals, it's difficult, isn't it? A festival is different. They sing differently as well, [the] other peoples. We don't even know their language, it is difficult to copy festivals.*

A – *Because the language is different.*

R – *The language is different. Others... others are some craftspersons who we imitate, we learn from them. We learn and we bring it here to imitate for the community to see.*

A – *Do you think that this is interesting? That there is an exchange between the cultures (...) Do you think this is something good or something bad?*

R – *Learning from the other?*

M – *Yes.*

R – *It depends on the people, right? Some people went there and weren't interested in this, and did not learn. But it's good isn't it? When going to the other... visiting other indigenous peoples, we have to show our culture to that people. This is our knowledge, this is how we live, this is our *kusiwa*, because each *kusiwa* has a meaning behind it. This has to be shown as well for the indigenous peoples to know...because they have to know later, when some people take this body painting to them, to say "this is mine." When someone sees it, they will say "this is *Wajāpi*." They will warn them.*

It is relevant, to adequately understand this aspect of the problem, to note that Japarupi (J) identifies a certain degree of naivety in the use of *kusiwa* motifs by people from outside when he comments on the designs that Marāte made on my arm, as had occurred, as well, with other visitors and outsiders:

J – *The painting that you are using here [indicating my arm] you know nothing of the history. Inside here is a history; each painting that we use has a history different than the other design.*

C – For me, this here is a memory that I am taking of this week that I spent here... So, when I look at my arm, I remember that I was here, that I liked it, that it was good.

J - Well, inside here there is much history to write...

In the *kusima*, as in other practices and knowledge codified by custom, the interviewees make it clear that access is inherent to the status that individuals have in society. Japarupi (J) explains:

J – I, for example, I know how to do that, but women do not know; and [there are things that] women know, and I don't know. And there are adults of 60 – 70 years who know how to do things that I don't. (...) For example, my father can teach me, but someone else's father, my oldest relative, can't. Or he [the relative] can speak with my father, or my father can teach him, and he [my father] can pass it on to me. (...) Then, things that I learned with him, I will pass to you? No! It's not like that. It is slow, when one reaches 70...then it can be told.

A – When you speak to the researcher and you tell what you learned (...) the researcher publishes and anyone can find out.

J – These days, for us [to] show to a non-Indian...to respect... then, we show [in] writing in a notebook (...) Another thing, that shouldn't be told, we wouldn't talk about it. (...) I can tell my son, but my son who is 20 or 30, I can tell it like that.

C – When he has the age to know?

J – That's right, I can't tell a 12-year-old child because he will tell. Because a child, when we tell something to him, he tells everyone.

JANE'Ā AND A'ĀGA: VITAL PRINCIPLE, IMAGE AND THE DOUBLE

The Wajãpi understand that some part of the person or of the object made or represented – which they translate as “its vital principle” – is present in the artifacts, in the imitations and in the designs. “During its lifetime, a person works a lot and makes constructions: a house, crafts, arrows, etc. For this reason, the marks of the hands (*ipoãgverã*) and the soul (*i'ã*) of a person stay forever on these artifacts” (Pesquisadores Wajãpi, 2008, p.3). The issue is even more sensitive when referring to

photographic or audio images (“imitations”). *“The photo and the image in the film are like a double of the person. But there is i’ã behind the photos, which is invisible. (...) When we take an image ta’ãga of the person to send to some place, i’ã goes with it and also opinarã. (...) When we record a person’s speech, i’ã and opinarã go with the recording”* (idem, p.26-27).

Japarupi’s comments about photography are extremely valuable to understand the meaning of the rules established by the Wajãpi about capturing images, principally the restrictions made to the audio and visual recordings made by non-Indians, as well as their reason for learning how to use audiovisual technology.

A - Yes. There are many stories that I don’t know. And with photography, in the case of the people who will take photographs?

J - That’s it, as I said, there are secrets... secrets. I don’t know if I can tell you, but... I have to ask the chief for authorization to tell. But... (...) for us, the Wajãpi cannot take a picture of his relative. So I can’t, I can’t take his picture because [he would ask:] “what will you do with my photo? Where will you take it?” I can’t. I can take a picture with him; but alone, I can’t take a picture. (...) This photo there on the poster [indicates the poster on the wall in the room portraying a female Indian] no one touches, no one will do anything with it, she is there, I know that she will stay here protected; a non-Indian will not take it to throw it here or there and do who knows what with it. Non-Indians, to take a picture, have to take it to store it so that in the future the son can see the photo of his father.

A - Can you take a picture of your sons?

J - I can.

A - Can your sons take your picture?

J - They can.

A - Can you take pictures of your brothers?

J - I think I can’t, no...together with him I can, separately I can’t. For example, I know that my brother is not... my brother, for example, I cannot take a picture of my brother’s wife. My brother does not trust me. Because many people enter my house, they could take it, they will see. So I cannot take her picture.

A - And of a relative of yours from another village?

J - In the past we got married to someone betrothed. Today it’s not like that, we marry in another village, here and there (...) if I marry a woman from another village (...) perhaps she will get angry, take that photo of my brother, of my nephew and do

something wrong with it, then [I am] the guilty person, because my brother will say: "That photo that you took [of me], do you have it? No! I look for it and don't find it (...)

A – So, you can only take a picture when there is trust?

J - Yes, trust. (...) These days, the elders [are] saying that non-Indians cannot take photos because non-Indians take the soul very far, our spirit, and we wind up becoming weak... they don't let non-Indians in [to] take photos anymore. There [is] a woman [indicates the poster with the photo of the female Indian]. She is a woman. But the spirit, her soul, is suffering there, it never returned to her village. Then one shouldn't let them [photograph]... then it's complicated for us, photos can't be taken. Because she [the woman in the poster] is there, but the owner is traveling (...) and the photo here is suffering, no one knows (...)

A – It turns yellow...

J – We are also beginning to think of not letting them film anymore, because the person winds up traveling there inside... it's sad... not being there, the spirit... because we wind up not seeing... not bringing [anything] good for us, no... when one watches television, travels there inside the television, it doesn't work... when non-Indians enter the [indigenous] area, they can't, no, [let] them film, because it's very bad for their spirit, they don't want to send it out.

The initiative of the request to register *kusiwa* graphics by the National Historic and Artistic Heritage Institute (IPHAN) and, later, the proposal for the proclamation as a Masterpiece of Oral and Intangible Heritage of Humanity by UNESCO were motivated by the Wajãpi's complaints about the improper use of their image. The Amapá government had used the photo of an Indian woman who had committed suicide in a promotional shirt, as well as images of Indians in billboards, triggering a movement to raise awareness and protest about the improper uses of images. For these reasons, Rosenã explained in an interview that it is necessary to inform non-Indians about the dangers of photographing a Wajãpi, especially a shaman, to whom the power of making spells is attributed:

R – Mainly a shaman, the photo of a shaman... When it travels to another country, for other peoples to see, then they will soon see, [the] other Indians, that this [man photographed] is a shaman, because they will also see his spirit, his substance. He is a shaman! They will see. Then, later, he will seek revenge, that shaman, in our village. For this reason, it [is] dangerous to take a picture of a shaman, according to our knowledge.

A - Why?

R – (...) *He orders people to die. That's why.*

REGULATION: BETWEEN THE CUSTOM AND THE LAWS

Brazilian legislation states that authorization requests to study indigenous populations must be submitted to the Indians themselves, to the National Indian Foundation (FUNAI), to the Scientific and Technological Development Council (CNPq) and, when it concerns TK associated to genetic resources, to the Genetic Heritage Management Council (CGEN). The legislation has been applied with great rigor. Concerning the Wajãpi, it is important to mention the efforts made by their researchers, assisted by technicians and partners of the Iepé, to expand the knowledge of the Indians themselves and the general public about the legal and moral issues related to the making of audiovisual records, and collection of ethnographic materials.

The publication *I'ã*, mentioned a few times in the preceding pages, concludes by saying that “we researchers will advise non-Indians so that problems do not occur” in relation to the production and dissemination of “images.” I consulted some indigenous researchers about the issue and discussed this statement with them, collectively, during the workshop. Their opinions about the possible retaliations oscillated between the traditional forms of control – whether by spells or blows from a stick (mentioned in jest) and the experience accumulated with the application of legal norms.

The following formulation was reached, but not finalized by the end of my visit. According to the researchers participating in the workshop (and this is not an official decision of APINA or APIWATA), requests for authorization to conduct research and produce audio and/or visual documentation with the Wajãpi, must meet the following requirements (transcript of the provisional text produced by the researchers):

1. *Identify the proponent in detail, declare his or her residence and most efficient form of contact (telephone, e-mail, etc).* [One of the objectives of this request is to respond to the need to locate the solicitant quickly in case of conflict or violation of any agreement].

2. *Request authorization to conduct the work, initially sending the documentation to the Apina organization – Council of the Wajãpi Villages and APIWATA – Association of the Wajãpi Indigenous Peoples of the Amapari Triangle, who will make a preliminary response and send it to FUNAI, CNPq and also CGEN, when necessary. The approval of the request by the indigenous organizations will be discussed once the other agencies issue a position. [This procedure would invert the usual process which, today, is initiated at the official agencies, suggesting the desire to establish direct communication with any proponents; the Wajãpi reserve the right to have a final say about the issue after hearing the official agencies and having consulted each and every one of the chiefs, either by radio or in assembly if necessary].*
3. *Present in detail the objectives of the project or the proposal, specifying if the activities will be for commercial purposes or not, and the forms of dissemination of the results. [This involves the need to send a prior and informed authorization request, suitably clear and detailed.]*
4. *If the request is approved, the terms of agreement must be signed, indicating material and moral elements of the transaction and establishing penalties for non-compliance. [The difficulty of inspection was raised, in relation to which the informal and general methods, through the action of government authorities, allies and partners, were mentioned].*
5. *Deposit integral copies of the results of the work undertaken and of the registrations realized at the Wajãpi Documentation Center, in Aramirã. [This Documentation Center is being built in Aramirã with resources from private sponsors and as part of the Kusima Safeguarding Action Plan. Suitable equipment is provided and personnel trained to receive, preserve and make this collection available for consultation].*
6. *Register the terms of agreement with a notary public. [The use of a public document seeks to reinforce the effectiveness of the sanction].*

Through the consultations and debates I observed that the collective decision-making process does not appear to be a particularly significant problem. All of the villages are connected with a radio system that not only allows communication among them, but also with the main office of the Council of the Wajãpi Villages (Apina) and APIWATA, in Macapá. The mechanism currently used was described in the following terms. Requests for authorization, as well as other documents, are sent to the Apina offices in Macapá; from there they are sent to APIWATA and to the chiefs of the various villages who, after discussing the issue in their locality and among each other, contact the entity. If there are differing positions, a compromise is sought. Therefore, the tendency is not to decide by majority but by consensus. In the cases where the authorization involves material benefits, these are sent to Apina, which uses them to support all, or redistributes them, following *ad hoc* deliberations.

Considering the limited character of this field work, it was not possible to determine to what degree this system effectively works and how conflicts, which certainly do occur, are resolved. Even if there are tensions and problems, various statements corroborate that, in principle, this process makes viable the internal consultations and the external interlocutions of the Wajãpi in various types of negotiations.

With regards to the use of formal legal instruments on copyright and performers' rights by the Wajãpi, only one case has arisen so far: the registration of the book entitled *I'ã ma'e kô* at the National Library. For this work, which had support from the Ministry of Education, the generic denomination "Professores Wajãpi" [Wajãpi Teachers] was used to indicate the authorship and included lists of the names of the authors of the texts and designs, the usual credits of those responsible for specific aspects of a publication and an explanatory note about how the work was conducted.

FINAL REMARKS

During my fieldwork, as was expected, it became difficult for the workshop participants to understand and elaborate on the notions of IP. Following the usual strategy of the workshops, the basic elements of these concepts and their most immediate implications were presented; in complement, it was proposed that they reformulate the concepts in their own terms, according to their own understanding, in order to make them understandable to the elders. This exercise intended for them to work dialogically and simultaneously with western juridical issues and local knowledge. With the participation of Gallois and myself, they reached the synthetic phrase "*I jarã omarã kuwa rupi te oinõ momae'ko*," which can be interpreted as: "the owner is the one that makes things with knowledge, on the way to experience."

From the standpoint of the workshop's discussions, this statement seems to condense basic areas of IP from their perspective: (1) the moral foundation of ownership; (2) the relationship between ownership and effective practice; (3) commitment with socially codified and signified know-how as the legitimate basis of practice, and (4) experience in a changing context as a field where tradition can creatively meet with innovation.

A few comments are in order before concluding this brief account of the beliefs and practices of the Wajãpi in view of regulating the transmission, transformation, documentation and dissemination of aspects of their own culture as heritage.

It is practically common knowledge in anthropology that (1) there are always contrasting and, at times, conflicting versions of a myth or ritual, and that no version is truer than another; (2) this being so, the most relevant ethnographic evidence is the variability of these discursive practices within a given social context; (3) this variability suggests a twilight zone of beliefs and values where disagreements are made explicit and disputes can be settled in ways prescribed by local custom. The relevance of bringing this issue at this point of my argument is that it must be clear to the reader that the present notes do not intend to be either a complete version of the facts concerning Wajãpi's regulations and practices, nor the expression of a community consensus on the subject. It is a fact that many passages of my text refer to views that were publicly discussed and agreed upon by the indigenous researchers who happened to be in the village at the time of my visit. It is also true that supporting evidence for my argument has been cross-checked with several individuals and with the Iepé anthropologists. However, my modest intention is to delineate the themes that give a particular shape to this zone of uncertainty, and highlight the topics that seemed to me, in this very brief encounter, to be a part of the IP problematic from the Wajãpi's point of view.

More comparative work must be done before any generalizations can be made. However, it seems that the greater difficulties in the field of IP – in the Wajãpi case at least – lie not only in the mechanics or the politics of obtaining prior informed consent, as has often been suggested in relation with other societies, but in managing the deeper cultural issues related to what are called image and performers' rights. These, in the Wajãpi reality, stem (1) from the complex meanings and values socially attributed to “imitation” or to the “double,” (2) from the particular circumstances of present day practitioners, being the custodians of forms of knowledge and expression that became accessible to them through dealings that took place at times immemorial between the mythical owners of things and the ancestors; and (3) from the fact that the continuity of this form of possession depends on the continuous and creative practice of this symbolic language as regulated by local custom, which includes the observance of cultural interdictions.

REFERENCES

Interviews from Dec. 7 – 15, 2008 with Aipi, Caubi, Japarupi, Jawapuku, Jawaruwa, Kupaenã, Kuripi, Marãte, Matapi, Nazaré Ajãreaty, Parikura, Rosenã.

GALLOIS. C. – **Wajãpi rena: roças, pátios e casas**. Rio de Janeiro: Museu do Índio/Apina/CTI/NHII-USP, 2002. ISBN 85-85986-04-2

IPHAN **Dossiê 2: Expressão Gráfica e Oralidade entre os Wajãpi do Amapá**. Rio de Janeiro: Iphan, 2006. ISBN 85-7334-025-8

MUSEU DO ÍNDIO. Expressão Gráfica e Oralidade entre os Wajãpi do Amapá. **Boletim do Museu do Índio**: Documentação, nº 9, outubro 2002. Dossiê de candidatura submetido à Segunda proclamação das Obras Primas do Patrimônio Oral e Imaterial da Humanidade, UNESCO, 2002, elaborado por Dominique Tilkin Gallois.

PESQUISADORES WAJÃPI **Pã**. Iepé e Apina: Macapá, 2008.

PROFESSORES WAJÃPI Ija mã'e kô. Iepé e MEC. São Paulo, 2006.

Part II. Institutional framework

Introductory note

The issues raised in the previous chapter are illustrative of the difficulties faced by traditional peoples as well as by private and public institutions, and by individual researchers, activists or artists, in producing and disseminating TK and TCE records. In principle, each cultural community has its own way of dealing with issues that are relevant from the perspective of their social practices and heritage, such as ritual secrecy, disclosure and dissemination of information, transmission of skills and division of labor, control and distribution of raw materials, regulation of market relations and so on. The Wajãpi, focused on in Chapter 2, constitute one of such cases. I believe that the ethnographic notes presented previously indicate how deeply the breach of customary regulations can affect and destabilize basic assumptions about the world in which one lives, not to mention shared aspirations and projects.

A contradiction between plural consensual worlds and uniform contractual systems lies under this rough surface. While particular and varied customary laws sanction the traditional ways of dealing with local cultural treasures, national legal instruments and bureaucratic apparatuses provide usually uniform contractual means by which they become legally protected heritage, and available for dissemination in the global system. The existing gap between the cultural and ideological assumptions of each of these profoundly distinct realities demands adequate forms of intermediation.

The next chapters provide an overview of the legal framework and of the governmental institutions concerned with the management of heritage, as well as with documenting and disseminating TK and TCEs in Brazil. A sample of civil society institutions is also presented as a way of providing a first sketch of the Brazilian intangible heritage arena. These institutions are grouped in terms of their main missions, as follows:

Group I: Cultural heritage and intellectual property management institutions

Government agencies

Institutional networks

Professional associations

Group II: Public collections

Museums

Research institutions

Archives

Libraries

Group III: Heritage holders and support organizations

Afro-Brazilian group

Oiapoque group

Rio Negro group

Ticuna group

Wajãpi group

Group IV: Traders

Group V: Media producers

3. Cultural heritage and intellectual property management

CONSULTED INSTITUTIONS

3.1 GOVERNMENT AGENCIES

Ministry of Culture

CGDA – General Coordination of Copyright

FBN – National Library Foundation

FCP – Palmares Cultural Foundation

IPHAN – National Historic and Artistic Heritage Institute

Ministry of Development and Foreign Trade

INPI – National Institute for Industrial Property

Ministry of Environment

CGEN – Genetic Heritage Management Council

Ministry of Justice

FUNAI – National Foundation for Indigenous Peoples

3.2 NETWORKS OF INSTITUTIONS

ABPI – Brazilian Intellectual Property Association

INBRAPI – Brazilian Indigenous Institute for Intellectual Property

3.3 PROFESSIONAL ASSOCIATIONS

ABA – Brazilian Association of Anthropology

ABET – Brazilian Association of Ethnomusicology

OAB – Brazilian Bar Association / Intangible Property Rights Commission

3.1 Government agencies

DEPARTMENT OF INTELLECTUAL RIGHTS/MINISTRY OF CULTURE
DIRETORIA DE DIREITOS INTELECTUAIS – DDI/MINC

CLASSIFICATION

Type: Government agency
Legal status: Public (federal)
Scope: National

CONTACT AND ADDRESS

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MISSION AND PROFILE

The competencies of the Department of Intellectual Rights of the Ministry of Culture (MINC), established by Federal Decree 6835/2009, article 11, are:

Article 11. The Department of Intellectual Rights shall be responsible for the following:

I - promoting, directing, supervising and carrying out activities relating to the implementation and dissemination of the principles and goals of copyright and related rights;

II – evaluating and disseminating alternative ways of licensing intellectual works protected by copyright;

III – proposing legislative measures for resolving conflicts of interest between creators, investors and the final users of works protected by copyright;

IV – subsidizing activities to comply with and improve the legislation on copyright, both national and international, including that on the trade-related aspects of intellectual property;

V – monitoring the negotiation of international treaties and conventions on copyright and related rights and introducing measures pursuant to the international treaties and conventions on these rights ratified by Brazil;

VI – coordinating, supporting and directing the registration of intellectual works protected by copyright;

VII – promoting the setting up and development of associations for the collective management of copyright; and

VIII – supporting and promoting education and research on copyright in Brazil, in addition to the training of human resources with a professional profile to meet needs both in the sphere of copyright and in that of traditional knowledge and expressions of folklore.

INTELLECTUAL PROPERTY ISSUES

In Brazil, the rights related to intellectual works and their dissemination, whether free of charge or not, are governed by Law no 9.610/1998, known as the Copyrights Law. The Ministry of Culture, through its Department of Intellectual Rights, is the ministry responsible for the management of copyright policy in Brazil. All of the issues related to copyright law for intellectual works are the responsibility of this Ministry.

The DDI distinguishes between “traditional knowledge” that is, the content of the traditional knowledge [TK], and “traditional cultural expressions” [TCE], that is, the form and expression of this knowledge. The institution understands that, for a number of reasons, the Copyright Law is not suitable to the protection of copyrights and related rights concerning traditional cultural manifestations and that, for the reasons presented below, it is necessary to create *sui generis* legal protection for the TK&TCE, and for the documentary records made about them.

This initiative became necessary, in the first place, because this legislation did not consider that traditional intellectual works are of collective and undetermined authorship. It also does not recognize the specific forms of social organization of the groups that generate TK&TCE, which many times impede these groups from being characterized as legal corporations, which is legally required for the economic transactions involving copyrights. Another problem identified by MINC is the fact that if the author (an individual) is unknown, the traditional work is legally considered to be part of the public domain, which, in fact, does not correspond to the reality. The time limit for the protection, which is another characteristic of intellectual property rights and of copyrights, is another problem considered. As is known, the legal protection of these rights is in vigor for a given time and the transmission of traditional practices supports the continuity of the social groups, and cannot, therefore, have a legal time limit. It also considers that new legislation should define its objective more broadly than current law, because the legislation in vigor refers exclusively to traditional knowledge associated to genetic patrimony and biodiversity while the cultural patrimony of the traditional populations is a much broader reality.

On the other hand, the interpretation and the documentary records made concerning this knowledge (sound, visual or in other support media) are the work of the author and therefore, governed by the protection of the Copyright Law. Copyrights include those of the author and related individuals. In this category the beneficiaries of the rights include the artists, interpreters or performers, the producers of the phonograms and the broadcast agencies. Thus, the related rights of the producer of the phonogram or of the recording in any other media, as well as those of the interpreter or performer, are guaranteed by the Copyright Law. These norms govern both the producers in the cultural industry, as well as those concerning traditional knowledge or cultural expression.

Thus, current legislation in Brazil does not apply to traditional knowledge and cultural expressions *per se*, but to the production and dissemination of the documentary records of their material manifestations, realized by anyone at all, as long as it is an identifiable individual or corporation. These rights are protected for a period of 70 years, counted from the production of these recordings, photograms, etc. Their dissemination does not depend on the registration of creation or of authorship, which is optional and does not establish rights *per se*. In the case of literary works, in general, as well as music (words and or scores), designs or photographs, this registration can be made at the Fundação Biblioteca Nacional [National Library Foundation], which is an institution linked to MINC.

SELECTED IP RELEVANT PROJECTS AND PROGRAMS

The Ministry of Culture is currently preparing a proposal for the reform of the Copyright Law, which includes the concept of “collective work of traditional populations” with special procedures for protection and commercial use.

SUGGESTIONS FOR WIPO

The CGDA believes that the WIPO secretariat plays a decisive role in stimulating the discussion of these issues. The first recommendation is that it works impartially. The second is that the IGC promote the preparation of one or more international instruments related to the issue.

LEGISLATION, CODES AND GUIDELINES (See Part 3 of present report)

Law no 9.610/1998, known as the Copyrights Law

Federal Decree 6835, 30 April 2009

CONSULTED SOURCES

<http://www.cultura.gov.br>

E-mail interview with CGDA’s coordinator

ADDITIONAL READING

CGEN/MMA – Conselho de Gestão do Patrimônio Genético [Genetic Heritage Management Council]

FBN – Fundação Biblioteca Nacional [National Library Foundation]

IPHAN – Instituto do Patrimônio Histórico e Artístico Nacional [National Historic and Artistic Heritage Institute]

Ministry of Culture

FBN - National Library Foundation

OFFICIAL DESIGNATION

Fundação Biblioteca Nacional, Ministério da Cultura

CLASSIFICATION

Type: Government agency; library

Legal status: Public (federal)

Scope: National

CONTACT AND ADDRESS

Escritório de Direitos Autorais

Rua da Imprensa nº16

20.030-120 Rio de Janeiro, RJ

Fone: (21) 2220-0039 / 2262-0017 / Fax: 21- 2240-9179

[E-mail:eda@bn.br](mailto:eda@bn.br)

MISSION AND PROFILE

The National Library, considered by UNESCO to be one of the world's ten largest national libraries, is also the largest in Latin America with holdings of approximately 9 million items. The original nucleus of the collection, with 60,000 works, including books, manuscripts, maps, stamps, coins and medals, was brought to Brazil in 1808, along with the Royal Family. In 1990 it was transformed into the Fundação Biblioteca Nacional [National Library Foundation] (FBN), an institution linked to the Ministry of Culture.

The FBN is the sole beneficiary of Law no. 10.994, of Dec. 14, 2004, which governs Legal Depository procedures, for the registration and storage of Brazilian intellectual productions, allowing control, preparation and dissemination of the current Brazilian bibliography, as well as protection and preservation of the national language and culture. For the purposes of the Legal Depository, a publication is “any registered work in any support medium, produced for sale or free distribution.” Recording and registration of copyright are conducted through the Escritório de Direitos Autorais [Copyright Office] (EDA). The FBN is also the Brazilian Agency of the International Standard Book Number (ISBN), and as such, coordinates and encourages the use of the international numbering system for books and attributes codes to Brazilian publishers and publications for the purpose of dissemination and sale.

RELEVANT PROJECTS AND PROGRAMS

The Copyright Office (EDA) has operated uninterruptedly since 1898 to record works. Its purpose is to provide the author security about his or her work, according to Law no. 9.610/98. The record facilitates the recognition of authorship, specific moral and economic rights and establishes deadlines for their protection both for the author or right holder as well as for their heirs. In addition to governing issues related to the provision of rights, it contributes to the preservation of the national memory, one of the missions of the National Library Foundation, through the Legal Depository Law.

At the Copyright Office it is possible to register books, poetry, music (lyrics and/or scores), designs and photographs.

INTELLECTUAL PROPERTY ISSUES

The issue is regulated by a set of legal measures and administrative instruments. (See the list under Documents below).

SUGGESTIONS FOR WIPO

Nothing to add

SELECTED LEGISLATION, CODES AND GUIDELINES

LAW 9.610, Feb.19, 1998. Provides for copyright and establishes other provisions.

LAW 10.994, Dec. 14, 2004. Concerns the legal storage of publications at the National Library, and makes other provisions.

FBN - NATIONAL LIBRARY FOUNDATION. Norms for registering original works published with the Copyright Office of the National Library Foundation.

FBN - NATIONAL LIBRARY FOUNDATION. Procedures for registering lyrics and music for songs and musical compositions.

CONSULTED SOURCES

<http://www.bn.br>

ADDITIONAL READING

CGDA/MINC – Coordenação-geral de Direito Autoral do Ministério da Cultura [General Coordination of Copyright of the Ministry of Culture]

Ministry of Culture

FCP - Palmares Cultural Foundation

OFFICIAL DESIGNATION

Fundação Cultural Palmares, Ministério da Cultura

CLASSIFICATION

Type: Government agency

Legal status: Public sector

Scope: National

CONTACT AND ADDRESS

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MISSION AND PROFILE

Established by Federal Act n° 7.668, of Aug. 22, 1988, the Palmares Cultural Foundation (FCP) is a public entity linked to the Ministry of Culture. Its mission, as defined by Article 1 of this Act, is to “promote the preservation of cultural, social and economic values derived from participation in the formation of the Brazilian society.” Thus, the FCP formulates and implements public policies to increase the participation of the black Brazilian population in the development process, based on its history and culture. These actions seek to reinforce the citizenship, identity, action and memory of this portion of the Brazilian population.

Among the important areas of operation, the Directory for the Promotion, Study, Research and Promotion of Afro-Brazilian Culture (DEP) stands out. It is now organizing a new Center for Information and Reference of Black Culture as well as carrying out events, cultural projects and research and study aimed at strengthening respect for Afro-Brazilian culture and history. Through the Directory for Protection of Afro-Brazilian Heritage (DPA), the Foundation also works on the ethno-development of the remaining Quilombo communities and in the preservation and dissemination of cultural and intangible Afro-Brazilian heritage.

RELEVANT PROJECTS AND PROGRAMS

The Palmares Foundation undertakes various projects, some of its own and many through agreements with other institutions and with representatives of civil society. They are highlighted by the “Learning Digital Cinema,” “Sharing Knowledge,” “Strengthening the Intervention of Black Women” and “Soul, Samba and Hip Hop” projects, all of which began in 2007 – some are completed, other still underway.

Learning Digital Cinema is a project focused on the technical training of young Afro-descendants, of both sexes, residents of socially disadvantaged communities. The students

must be high school graduates, between 18 and 35 years old. They are trained to work in the audiovisual sector, with a focus on digital filmmaking, by means of practical and theoretical classes. Training is free and conducted in partnership with the Centro de Informação e Documentação do Artista Negro (CIDAN) [Center for Information and Documentation of the Black Artist] and the Centro de Apoio e Desenvolvimento (CAD) [Center for Support and Development]. In its final edition, it also had the support of the government-owned oil company Petrobras. The main results of these training workshops have been the insertion of graduates into the labor market, above all at television stations.

Sharing Knowledge, also known as *Project Nzũmba*, was an initiative of the Associação Cultural de Preservação do Patrimônio Bantu [Cultural Association for the Preservation of the Bantu Heritage] (ACBANTU). In partnership with the Palmares Cultural Foundation, the Association created a course with three modules: Afro-descendent hand embroidery; Afro-descendent cooking; and Afro-descendent bibliographical archives. The first challenge, according to the project coordinators, was to raise the self-esteem of the participants. The embroidery module, for instance, stimulated re-learning of difficult stitches that require great effort and which were almost forgotten, contributing to building respect for the ancestral cultural heritage and creating the opportunity for a new source of income for black women. Meanwhile, the Afro-Brazilian cooking course, undertaken with the community of the *terreiro* Ilê Axé Ijê Ati Oyá, at the urban Quilombo Engenho Velho de Brotas, in the city of Salvador, allowed experimenting ancestral recipes in cooking for the community and made possible the collection of old recipes that were only found in the memory of the *mães-de-santo* and community leaders. The third focus of the project, which consisted in the constitution of bibliographic archives, began in May 2007, with the delivery of computers and books about Afro culture and history to the ACBANTU offices, in the historic Pelourinho district. They will become a traveling library, to be taken by a computerized library-bus to poor communities in the city of Salvador.

Strengthening the Intervention of Black Women in Human, Economic, Social and Cultural Rights is the name of a project made possible by an agreement between the Palmares Foundation and the non-governmental organization Fala Preta! [Speak Black Woman!] in São Paulo. The project consists in offering training in human rights issues in eight workshops, seeking to strengthen the capacity for intervention of the students – who are 45 black women with different backgrounds and experience. They range from former prison inmates to social workers, teachers and lawyers. At the conclusion of the workshops, the students present proposals for social insertion in the fields of healthcare, education, violence against women, the labor market, human trafficking, media and racism. The Black Women's Network was also created to monitor actions in support of human rights in São Paulo and in cities inland. The Observatory of Law 10.639 was also established to monitor the application of this law, which calls for the inclusion of Afro-Brazilian culture and history in school curriculums.

Soul, samba and hip hop: black dance in São Paulo was a project undertaken by the NGO Quilombhoje [Quilombotoday], in partnership with the Palmares Cultural Foundation, with the goal of documenting, through a video and a book, an activity important to the black population of São Paulo: black dance. Bringing together people of various age groups, dance is a space not only for leisure, but for construction of identities and sense of belonging, contributing to raising the self-esteem of young black participants. The documentary prepared by Quilombhoje includes declarations from the owners of dance clubs such as William, from the casa Zimbabwe; of people who go to the dances and also of an anthropologist, to evaluate the influence of dances on São Paulo's black community. The video-documentary became a book with statements and photographs and both were distributed in schools.

In addition, the *Radio Palmares* project, the result of an agreement between the institution and the non-governmental organizations Criar Brasil, Centro de Imprensa, Assessoria e Rádio [Create Brazil, Center for the Press, Assistance and Radio] and Afirma - Comunicação e Pesquisa [Affirm - Communication and Research], in 2004, allowed the production of 2,000 CDs, with 32 radio programs, in addition to five radio spots, providing themes linked to affirmative actions. According to the entity, “*Radio Palmares fosters the promotion and dissemination of Afro-Brazilian culture, using radio to promote new concepts and knowledge about the contribution left by Afro-descendants to the cultural formation of Brazil. It also expands the visibility of the policies of affirmative action and of the Palmares Foundation as the institution responsible for the protection of tangible and intangible Afro-Brazilian assets.*”

The Foundation also has a line of action aimed at audiovisual dissemination, which is called *TV Palmares*, but which in reality provides videos supporting Afro-Brazilian culture and history. There are videos that have won the first Palmares Communication Award and the National Competition for the Production of Videos on Afro-Brazilian Culture and History, as well as cinematographic works by Zózimo Bulbul. Finally, the Internet portal of the Palmares Foundation promotes news, courses and events related to Afro-Brazilian culture and offers an on-line dictionary of Afro-Brazilian expressions.

INTELLECTUAL PROPERTY ISSUES

Currently, the contracts for support to outside projects and/or actions simply establish that the proponent must give prior authorization to use the work in not-for-profit initiatives. In the case of digital media, the proponent specifically authorizes the placement of the work on the Foundation's website. Nevertheless, this appears insufficient, considering that many projects supported by the Palmares Foundation deal differently with the registration and dissemination of TK. To give only two examples, the CD “Bate Folha,” produced as part of the “Rádio Palmares” project, has stories of the Nkisi (gods), as well as music from the Bantu culture,

which originated in Angola and Congo. The CD “Quilombos” has music from the cultural traditions of the Quilombos of Maranhão.

Those interviewed said that the Palmares Foundation should improve discussion about IP. It is only in recent years that they have become aware of the importance of protecting copyright more rigorously and are preparing new internal standards and guidelines, mostly based on participation in a Ministry of Culture working group on this issue.

According to the head of staff of the Palmares Foundation, “we frequently receive projects for documentaries, videos and photographic catalogs. Today, the availability of these materials on the Internet allows us to request that the projects come with their rights. But it was not always like this. And in truth, since the Ministry of Culture is re-discussing the issue at this time – and we are linked to the Ministry – we are awaiting the decisions. Our manual for presentation of projects considers the current law, but the guidelines related to copyright are still not complete. This concern is still relatively new here at the Foundation. The impulse to rethink the rights arose from a large project that we are preparing and that should be implemented by the end of 2009. We will inaugurate the Black Culture Information Reference Archives, which will store the Foundation archives, produced over twenty years – reports, photos, videos – and which will simultaneously function as a reference center for other entities and researchers. Our idea is to have as much information as possible in digital form. Nevertheless, we realize that we cannot digitize and make available old products, because we do not have authorization. In 1988, for example, beautiful catalogs were made and some exhibitions organized, without authorization to use the images. Now we will have to contact the people who were responsible for those projects at the time to determine what documentation will be necessary, etc. For this reason, the person responsible for the Black Culture Information Reference Archives is in permanent contact with the Copyright Forum of the Ministry of Culture.”

SUGGESTIONS FOR WIPO

Since those who deal with the documentation and dissemination of TK and TCEs do not always have information about the legislation or the recommendations about this issue, it is suggested that the communities involved receive clear information about these issues in training sessions.

SELECTED LEGISLATION, CODES AND GUIDELINES

Nothing to add.

CONSULTED SOURCES

www.palmares.gov.br

E-mail interview with Daniela Hallwass, Strategic Management Assistant of the Palmares Cultural Foundation

E-mail and telephone interviews with Eliane Borges da Silva, Chief of Staff of the Palmares Cultural Foundation, on March 10, 2009.

ADDITIONAL READING

CONAC – Quilombola Black Rural Communities

IPHAN – National Historic and Artistic Heritage Institute

Ministry of Culture

IPHAN - National Historic and Artistic Heritage Institute

OFFICIAL DESIGNATION

IPHAN - Instituto do Patrimônio Histórico e Artístico Nacional, Ministério da Cultura

CLASSIFICATION

Type: Government agency

Legal status: Public (federal)

Scope: National

CONTACT AND ADDRESS

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MISSION AND PROFILE

Iphan is Latin America's oldest cultural heritage preservation agency. It was created by Decree-Law nº 25/193, with the goal of protecting the Brazilian cultural heritage and is an institution linked to the Ministry of Culture. With the promulgation of Decree nº 3.551 the safeguarding of Brazil's ICH also fell within its scope of activity.

Iphan has in its organizational chart various museums, libraries and cultural centers which house hundreds of collections and thousands of documents in various media concerning the national cultural heritage. These entities undertake countless educational activities and actions seeking the promotion and dissemination of this important archive. One is the National Folklore and Popular Culture Center (CNFCP), which is part of this survey (see CNFCP Identification Summary) and the Department of Intangible Heritage (DPI), which is responsible for the management of the National Intangible Heritage Program.

RELEVANT PROJECTS AND PROGRAMS

The production of inventories and documentation of intangible cultural heritage, as well as the development of safeguarding action plans, is conducted directly by DPI/IPHAN or through public bidding processes, using budget resources and those from the National Cultural Fund, which are made possible by the Cultural Incentive Law.

INTELLECTUAL PROPERTY ISSUES

In all of the actions seeking the identification, recording and safeguarding of ICH, measures are taken to obtain the prior informed consent of the communities. (cf. Formulário de declaração de anuência quanto ao início do processo de inventário) [Form for the declaration of acceptance to initiate the inventory program]. In the case of inventories conducted by third parties, Termo de Responsabilidade para o uso da metodologia do Inventário Nacional de Referências Culturais [Responsibility Agreements for the use of the Methodology of the National Inventory of Cultural References] and other documents related to the granting of copyright, as well as in relation to the selection, promotion and editing of the study results.

These authorizations are normally given by the entity that issued the documents and by the research informants. In the case of databases prepared from the inventories, access is selective and differentiated, according to three categories of users: researchers, institutional administrators and the general public. Concerning the sharing of benefits, safeguarding actions are designed to benefit the communities and groups involved. The publications, for example, are broadly distributed to the groups and educational and research institutions and sold at production cost to the general public. The issue is regulated by legal measures and administrative tools. (See list under Legislation, below).

SUGGESTIONS FOR WIPO

Nothing to add

SELECTED LEGISLATION, CODES AND GUIDELINES

THE BRAZILIAN CONSTITUTION OF 1988. Title VIII: The Social Order. Chapter III, Section II: Culture. Art. 215, Art. 216.

CONVENTION FOR THE SAFEGUARDING OF INTANGIBLE CULTURAL HERITAGE, adopted by UNESCO, on Oct. 17, 2003. Refers to existing international human rights instruments, in particular to the Universal Declaration on Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966.

DECREE-LAW 25, Nov. 30, 1937. Organizes protection for national historic and artistic heritage.

DECREE 3.551, Aug. 4, 2000. Institutes the registration of cultural goods and intangible productions that constitute the Brazilian Cultural Heritage, creates the National Program for Intangible Heritage and makes other provisions.

IPHAN - NATIONAL HISTORIC AND ARTISTIC HERITAGE INSTITUTE. RESOLUTION 07, Dec. 01, 1988. Establishes standards and procedures to be followed for archeological research.

IPHAN - NATIONAL HISTORIC AND ARTISTIC HERITAGE INSTITUTE. Authorization by authors of documents and informants exposed in audiovisual and written records for use of sound and images produced for the INRC [National Cultural References Inventory] database.

IPHAN - NATIONAL HISTORIC AND ARTISTIC HERITAGE INSTITUTE. Procedure for use of methodology for the National Cultural References Inventory - INRC

IPHAN - NATIONAL HISTORIC AND ARTISTIC HERITAGE INSTITUTE. Terms of declaration of permission to begin inventory process.

IPHAN - NATIONAL HISTORIC AND ARTISTIC HERITAGE INSTITUTE. Terms of responsibility for use of the INRC - National Cultural References Inventory.

CONSULTED SOURCES

<http://www.iphan.gov.br>

E-mail interview with institution's staff members

ADDITIONAL READING

CNFCP – National Folklore and Popular Culture Center

CGDA – General Coordination of Copyright, Ministry of Culture

Ministry of Development and Foreign Trade

INPI - National Institute of Industrial Property

OFFICIAL DESIGNATION

Instituto Nacional de Propriedade Intelectual, Ministério do Desenvolvimento e Comércio Exterior

CLASSIFICATION

Type: Government agency

Legal status: Public (federal)

Scope: National

CONTACT AND ADDRESS

Patrícia Peralta, industrial property technician

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MISSION AND PROFILE

The purpose of the National Institute of Industrial Property (INPI) is to register trademarks and patents, register technology transfer, business franchising contracts, computer programs, industrial designs and the use of geographical indications and designations. The institute was created on December 11, 1970. It is a federal authority linked to the Ministry of Development, Industry and Foreign Trade.

In addition to working with IP protection, INPI also uses the industrial property system as a tool for training and competitiveness, in order to foster the country's technological and economic development. The creation of the ombudsman and Directory of Articulation and Information Technology, in 2004, has made these goals possible. The technological information available at INPI is now more accessible and the IP culture better disseminated.

INPI seeks to consolidate its ties with the main institutions of the National System for Innovation, business associations, federations, universities and development agencies. The INPI also seeks the effective participation of Brazilian companies, through the National Confederation of Industry, on training programs related to IP. It establishes partnerships with Sebrae to encourage small and micro companies to promote local productions.

RELEVANT PROJECTS AND PROGRAMS

INPI is initiating a research project designed to analyze and suggest what would be the best form of protecting Brazil's ICH. It will be prepared in conjunction with IPHAN. The project, however, is still in the earliest development phases.

INTELLECTUAL PROPERTY ISSUES

INPI is the only agency responsible for registering trademarks, patents, industrial designs, the use of geographic indications and designations, software and integrated circuits. Copyright is under the jurisdiction of the Ministry of Culture (books and films) the Ministry of Education (graphic and plastic arts, music), the National Council of Engineering and Architecture (architectural, engineering and landscape projects) and INPI (software). The rights to images are regulated by the Civil Code and there is no agency with specific responsibility in this area.

Thus, the role of INPI in the protection of audiovisual records is to grant commercial trademark rights and to record distinct figures and symbols linked to a type of product or service. A collective mark, owned by an association and not an individual, can serve this purpose. INPI soon hopes to offer registration of audio trademarks for short, distinct sound bites. INPI also works with the rights to use geographic indications and designations to protect typical products from a region, including crafts.

In the field of patents, INPI's audiovisual records can serve to prove that a given practice belongs to certain communities, thus stimulating the sharing of benefits of a invention that uses TK. Finally, industrial designs allow registering "the ornamental, artistic shape of an object or the ornamental set of lines and colors that may be applied to a product, offering a new and original visual result in its external configuration and that can be used for industrial fabrication."

SUGGESTIONS FOR WIPO

There are discussions at INPI about the use of industrial design for the protection of crafts. INPI's difficulty in adopting this framework is due to the fact that objects that can only be made by hand may not pass the technical examination for registration. They can use registration of geographic indications and designations or collective marks to protect and/or add value to local productions. But this is still being examined by INPI. In the case of protection of drugs and their combinations based on TK, a patent appears to be the only way to achieve this objective. However, patents have a limited duration and after expiration they fall into the public domain, which would be inadequate from the point of view of traditional creations.

LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

www.inpi.gov.br

Interview by e-mail with Leonardo Germano, researcher technician of INPI.

E-mail interview with Patrícia Peralta, technical researcher of INPI.

ADDITIONAL READING

CGDA – General Coordination of Copyright Law, Minister of Culture

Ministry of the Environment

CGEN – Genetic Heritage Management Council

OFFICIAL DESIGNATION

Conselho de Gestão do Patrimônio Genético, Ministério do Meio-Ambiente

CLASSIFICATION

Type: Government agency

Legal status: Public (federal)

Scope: National

CONTACT AND ADDRESS

Secretaria Executiva do CGEN

Departamento do Patrimônio Genético (DPG)

SCEN, Trecho 2, Ed. Sede do Ibama, Bl. G

70818-900 Brasília, DF

Tel: (61) 3307-7110

Fax: (61) 3307-7124

E-mail: cgen@mma.gov.br

MISSION AND PROFILE

The Convention on Biological Diversity, ratified by Brazil and approved by Legislative Decree no. 02/1992, establishes the sovereignty of each country to regulate, by national legislation, access and sharing of the benefits related to genetic resources and associated TK. In Brazil, the issue is regulated by Article 225 of the Federal Constitution and more specifically by Provisional Act 2.186-16/2001, which provides for access to genetic resources, protection and access to associated TK, benefit-sharing, as well as transfer of technology for its conservation and use, and creates the Genetic Heritage Management Council – CGEN, within the Ministry of Environment.

RELEVANT PROJECTS AND PROGRAMS

CGEN undertakes actions to fight biopiracy by means of application of a set of legal instruments and technical and administrative standards. These actions are highlighted by:

- A cooperation agreement between the National Historic and Artistic Heritage Institute and the Ministry of Environment to safeguard specific TK, upon request of the communities, in the Book for Registration of Knowledge, which is part of the Brazilian Cultural Heritage.
- Workshops to raise awareness and provide information about the protection of TK aimed at indigenous and traditional communities (such as the Quilombolas and Riverside communities, among others).

- The preparation of didactic material to raise awareness about this issue.
- The preparation of informative calendars for indigenous and traditional communities for awareness, prevention of illegal access and protection of TK and genetic resources.
- An agreement with the organization Amazonlink for the implementation of the “Vigilant Villages” project in Acre State, involving awareness workshops and integration of the agency for inspection with the indigenous communities.

INTELLECTUAL PROPERTY ISSUES

The issue is regulated by a set of legal measures and administrative instruments. (See list under Legislation, below).

SUGGESTIONS FOR WIPO

Nothing to add

SELECTED LEGISLATION, CODES AND GUIDELINES

THE BRAZILIAN CONSTITUTION OF 1988, especially Article 225.

DECREE 3.945 dated September 28, 2001. Defines the composition of the Genetic Heritage Management Council and makes other provisions.

LEGISLATIVE DECREE no. 02 dated February 3, 1994. Approves the text of the Convention on Biological Diversity.

PROVISIONAL ACT 2.186-16 dated August 23, 2001. Regulates item II from Paragraph 1 and Paragraph 4 of Article 225 of the Constitution, Articles 1, 8, item “j”, 10, item “c”, 15 and 16, items 3 and 4 of the Convention on Biological Diversity, provides for access to genetic resources, protection and access to associated TK, benefit-sharing and as well as transfer of technology for its preservation and use, and other provisions.

CGEN – GENETIC HERITAGE MANAGEMENT COUNCIL. Guidelines for researchers dealing with local populations and preparation of terms of prior informed consent.

CGEN – GENETIC HERITAGE MANAGEMENT COUNCIL. Terms of prior informed consent. Example 1: referring to the study “Paisagens Baniwa do Içana” [Baniwa Landscapes of the Içana].

CGEN – GENETIC HERITAGE MANAGEMENT COUNCIL. Terms of prior informed consent. Example 2: referring to the study “Agrobiodiversidade e conhecimentos tradicionais associados na Amazônia” [Agro-biodiversity and associated traditional knowledge in the Amazon].

CONSULTED SOURCES

www.mma.gov.br/cgen

ADDITIONAL READING

FUNAI – National Foundation for Indigenous Peoples

IPHAN – National Historic and Artistic Heritage Institute

INBRAPI – National Indigenous Institute for Intellectual Property

Ministry of Justice

FUNAI - National Foundation for Indigenous Peoples

OFFICIAL DESIGNATION

Fundação Nacional do Índio, Ministério da Justiça

CLASSIFICATION

Type: Government agency

Legal status: Public sector (federal)

Scope: National

CONTACT AND ADDRESS

Márcio Augusto Meira, President

SEPS Quadra 702/902 Projeção A, Ed. Lex

70.390-025 Brasília, DF

Tel: (61) 3313-3500

MISSION AND PROFILE

The National Foundation for Indigenous Peoples (FUNAI) was created by Law nº 5.371, Dec. 5, 1967. It is the successor to the Service for the Protection for Indians (SPI), created by Decree nº 8.072, of July 20, 1910, which was modified by Decree nº 9.214, of Dec. 15, 1911 and sets the main guidelines for Brazilian indigenous policy. FUNAI is the agency that establishes and executes Brazilian Indigenous Policy, in compliance with the Constitution of 1988.

FUNAI is responsible for promoting basic education for indigenous peoples, demarcating, securing and protecting the lands that they traditionally occupy and stimulating the development of studies and surveys about indigenous groups. It is also responsible for defending the indigenous communities, to raise awareness in the Brazilian society about indigenous peoples and their causes, to manage their assets and monitor their lands, impeding predatory actions of miners, squatters, lumberpersons, and any other activities that occur on their lands and that represent a risk to the life and preservation of these peoples.

FUNAI is based in Brasilia. It has 45 Regional Administrations, 14 Indigenous Support Centers, the Museum of the Indian, 10 Inspection Posts, and 344 Indigenous Posts, all located in different parts of Brazil.

RELEVANT PROJECTS AND PROGRAMS

The most noteworthy activities are those of the General Coordination for Study and Research concerning the preparation of contracts for the protection of rights for use of images, sounds and voices of the indigenous communities, filming and making of documentaries, according to FUNAI Ordinance no. 177/2006 and those developed by the Museum of the Indian (Cf. Identification Summary).

INTELLECTUAL PROPERTY ISSUES

The issue is regulated by a set of legal measures and administrative instruments. See below.

SUGGESTIONS FOR WIPO

Nothing to add

SELECTED LEGISLATION, CODES AND GUIDELINES

THE BRAZILIAN CONSTITUTION OF 1988. Title VIII: The Social Order. Chapter III, Section II: Culture. Art. 215, Art. 216. Title VIII: The Social Order. Chapter VI: The Environment. Art. 225, Paragraph 1º, measures i, ii and iii. Title VIII: The Social Order. Chapter VIII: Indians. Art. 231, Art. 232.

LAW 5.371, Dec. 5, 1967. Authorizes the establishment of the National Indian Foundation and makes other provisions.

LAW 6.001, Dec. 19, 1973. Regulates the Statute of the Indian.

FUNAI - NATIONAL INDIAN FOUNDATION. NORMATIVE INSTRUCTION Nº 1, Nov. 29, 1995. Regulates access to indigenous lands for the purpose of scientific research.

LAW 9.610, Feb.19, 1998. Provides for copyright and establishes other provisions.

FUNAI - NATIONAL INDIAN FOUNDATION. EDICT 693, July 19, 2000. Creates the Registration of Indigenous Cultural Heritage at the Museum of the Indian and establishes other measures.

FUNAI - NATIONAL INDIAN FOUNDATION. EDICT 177/PRES, Feb 16, 2006. Regulates the administrative procedure for authorization by the National Indian Foundation (FUNAI), for access to Indian lands, by people interested in the use, acquisition and or grant of copyright in indigenous material, and guides related procedures, with the purpose of respecting the values, artistic creations and other indigenous cultural expressions, and also protects their social organization, customs, languages, beliefs and traditions; and establishes other measures.

CONSULTED SOURCES

www.funai.gov.br

ADDITIONAL READING

CGEN – Conselho de Gestão do Patrimônio Genético, MMA [Genetic Heritage Management Council, Ministry of Environment]

Museu do Índio [Museum of the Indian]

3.2 Networks of institutions

ABPI - Brazilian Intellectual Property Association

OFFICIAL DESIGNATION

Associação Brasileira de Propriedade Intelectual

CLASSIFICATION

Type: National network of institutions

Legal status: Not-for-profit civil society

Scope: National

CONTACT AND ADDRESS

Juliana L. B. Viegas, President

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20070-004 Rio de Janeiro, RJ

Tel: (21) 2507-6407 / Fax: (21) 2507-6411

E-mail: juliana.viegas@bakernet.com

MISSION AND PROFILE

The Associação Brasileira da Propriedade Intelectual [Brazilian Intellectual Property Association] is a non-profit organization founded on August 16, 1963, as the Brazilian Association for the Protection of Intellectual Property. It includes companies, industrial property agents, law firms and specialists in the field. It consists of an Executive Committee, a Board of Directors and an Editorial Board.

The purpose of the Association is to study all issues related to IP, particularly industrial property law, copyright law, competition law, transfers of technology, and related issues. It is dedicated to improving the legislation, doctrine and case law in these branches of law. It organizes conferences, congresses, seminars, symposiums and debates, and produces publications about these topics.

RELEVANT PROJECTS AND PROGRAMS

Among its 10 commissions for study and permanent scientific activities, the most relevant ones include those related to copyright, the use of geographic indications and biotechnology.

INTELLECTUAL PROPERTY ISSUES

All of ABPI's activities are focused on IP, but it still has not conducted a detailed study on IP in relation to TK and TCEs.

CONSULTED SOURCES

www.abpi.org.br

E-mail interview with Juliana L. B. Viegas, President of ABPI.

READ ALSO

INBRAPI – Indigenous Brazilian Institute for Intellectual Property

INBRAPI - Brazilian Indigenous Institute for Intellectual Property

OFFICIAL DESIGNATION

Instituto Brasileiro Indígena para propriedade Intelectual

CLASSIFICATION

Type: Network of institutions

Legal status: Not-for-profit civil society

Scope: Indigenous peoples

CONTACT AND ADDRESS

Lúcia Fernanda Kaingang, executive director

SCS, QD I, BLOCO C, SALA 902
Edifício Antonio Venâncio da Silva

70301-000 Brasília, DF
Tel: (061) 3033-7019 / Fax: (061) 3033-7198

E-mail: inbrapi@yahoo.com.br

MISSION AND PROFILE

INBRAPI is a non-profit non-governmental organization, created in February 2003 by a decision taken by the Brazilian Shamans Meeting in São Luiz, Maranhão, in 2001: “The Shaman and the spiritual indigenous leaders thought about the creation of an entity that defended TK from biopiracy and from exploitation by third parties.”¹

According to INBRAPI’s website, this institution “was not founded to incorporate IP itself, but to understand the mechanisms of such legal frameworks and to promote discussion on such mechanisms among the indigenous communities, in order to contribute to the creation of new legal frameworks for the protection of TK as holistic knowledge. Therefore, the relevant part of the name of the Institute, besides the noun “indigenous”, is the preposition “for” and not “of”, in order to show the mission and the orientation of the Institute: to promote and to understand IP mechanisms to propose a holistic protection for TK.”

Membership is restricted to indigenous organizations. The board of directors, chaired in 2005/2007 by Daniel Munduruku (president) and Lúcio Flores Terena (vice-president), includes persons “coming from different peoples, with a past of action in the indigenous movement and properly qualified for the exercise of their functions.” The leading members of INBRAPI belong to and sometimes are distinguished members of the following ethnic groups: Munduruku, Terena, Kaingang, Potiguara Tukano, Krenak, Kadiwéu, Guarani, Paresi, Kabixi, Xavante, Kaiowá, Txucarramãe, Xokleng and Bakairi.

The following associations, which are founding-members of INBRAPI, have signed terms of technical cooperation with this institute, in which they agree to give support and ratify the institution’s actions towards the various existing IP agencies: Associação dos Xavante de Pimentel Barbosa (created 1998); Associação One Tiholazere (created 1998); Associação Natureza Sawidi (created 2003); Associação Indígena Umutina (created 1994); Associação

¹ Texts in quotes are available in English at http://www.inbrapi.org.br/abre_artigo.php?artigo=26.
Consulted in 11 July 2008.

Bororo Aldeia Kudorojari Sangradouro (created 1998); Associação Indígena Waymaré (created 1998); Associação ITAO – Terra Indígena Kayabi (created 1999); Associação Comunidade Wochimaucu (created 2002), e COAPIMA - Coordenação das Organizações e Articulação dos Povos Indígenas do Maranhão.

INBRAPI's website mentions the following institutional goals:

- To promote the defense of collective, social and property rights related to the environment and to the intellectual heritage of the indigenous peoples.
- To carry out and disseminate researches and studies.
- To organize documentation regarding IP.
- To promote exchange with other organizations, international and national entities, for the training and qualification of indigenous professionals, always keeping in mind the protection of TK.
- To encourage the creation of *sui generis* legislation, proposed by the traditional representatives of communities, for holistic protection of all cultural manifestations and heritage of the indigenous peoples of Brazil.
- To involve the traditional communities in theoretical debates about IP, in order to offer a reference for their demands related to the protection of intellectual and cultural heritage.

RELEVANT PROJECTS AND PROGRAMS

The institute conducts local, regional and national seminars on the protection of TK; provides legal assistance to indigenous communities and organizations for the protection of their heritage through IP mechanisms; informs indigenous leaders about the existence of national and international mechanisms aimed at protecting TK and about how to use these mechanisms.

Actions worthy of mention include the preparation of the Human Rights Guide for Indigenous Peoples and the Protection of Cultural Heritage, the incentive to discuss in the communities the creation of mechanisms for protection of cultural heritage by the indigenous peoples themselves, and the distribution in the villages of the periodic bulletin “Maracá,” which disseminates the results of the discussion forums about TK, articles about the protection of indigenous cultural heritage and information about indigenous issues on a national level. As concerns international conventions, INBRAPI participated at the 9th Session

of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources,
Traditional Knowledge and Folklore (IGC).

INTELLECTUAL PROPERTY ISSUES

According to INBRAPI's website, "TK of the Brazilian Indigenous Peoples [...] is considered to be holistic, circular, with no discontinuity between the Sacred and the Profane. This idea of TK is well represented in the maracá, considered to be the essential instrument to treat humanity considered here in the Western way: "square", divided into compartments, making man distant from nature, dominating and destroying everything."

"Inbrapi's aim is to be an agent for the dissemination of the holistic knowledge, by the sound of the maracás, by the power of the herbs and of the dreams of our pajés, but also by the competence of its directors, collaborators and partners. It seeks new forms and new methods to create laws, which could blend our way of thinking into the Western thought to protect the real interests of the indigenous communities."

The site presents articles from various authors, particularly Daniel Munduruku, about issues related to the institution, reports on national and international meetings about protection of TK and, at the time of consultation, had news about the following pronouncement of André Baniwa, a member of the board of the Federação das Organizações Indígenas do Alto Rio Negro [Federation of the Indigenous Organizations of the Upper Rio Negro] (FOIRN): "The provisional measures that exist today are based on the concept of IP, which is not indigenous. The State is only concerned with the knowledge associated to genetic resources, for the economic purposes of this protection."

SUGGESTIONS FOR WIPO

Nothing to add

SELECTED LEGISLATION, CODES AND GUIDELINES

LAW 9.279, May 14, 1996. Regulates rights and obligations related to industrial property. Modified by law 10.196, Feb. 14, 2001. Known as the Industrial Property Act.

LAW 9.610, Feb.19, 1998. Provides for copyright and establishes other provisions.

INPI - NATIONAL INTELLECTUAL PROPERTY INSTITUTE. INPI RESOLUTION 075, Nov. 28, 2000. Establishes new procedures for the registration of geographical indications.

CONSULTED SOURCES

<http://www.inbrapi.org.br>

Consultation with attorney Luciana Cundari, an aide to INBRAPI

ADDITIONAL READING

ABPI – Brazilian Association of Intellectual Property

3.3 Professional associations

ABA - Brazilian Association of Anthropology

OFFICIAL DESIGNATION

Associação Brasileira de Antropologia

CLASSIFICATION

Type: Professional association

Legal status: Not-for-profit civil society

Scope: National

CONTACT AND ADDRESS

Carlos Caroso (2008/2010)

Departamento de Antropologia

Campus Universitário Darcy Ribeiro

Asa Norte - ICC Centro, Sobreloja - B1-349/65

Caixa Postal nº: 04491

70.904-970 Brasília, DF

Tel/fax: (61) 3307-3754

E-mail: aba@abant.org.br

MISSION AND PROFILE

The Brazilian Anthropology Association is the oldest scientific society in the country in the social sciences. It was created as a result of the first Brazilian Meeting of Anthropology, held at the Museu Nacional in Rio de Janeiro in 1953, and was officially established at the 2nd Brazilian Anthropology Meeting in Salvador, in July of 1955. Despite the vicissitudes of the field of knowledge and the political turbulence experienced in the country during the military regime, the ABA has maintained regular activities. The 26th Brazilian Anthropology Meeting was held in June 2008. At that time, the association had 1,519 members, including 1,166 full members, 314 student members and 39 corresponding members.

The purpose of the ABA is to bring together anthropologists working in teaching and research to promote the development of anthropology, the exchange of ideas, the debate of problems, and the protection of the interests of its members. It is committed to defending ethnic minorities and human rights, combating social injustice, promoting public policies referring to education and to working in social activities. It is a founding member of the Latin American Anthropology Association and of the World Council of Anthropological Associations.

RELEVANT PROJECTS AND PROGRAMS

The ABA is organized in thematic commissions and work groups. Relevant ones include the Indigenous Peoples Affairs Commission and the Working Groups concerning Quilombos, Cultural Heritage and Visual Anthropology. Issues related to the IP of traditional populations are increasingly being discussed at the biannual Brazilian Anthropology Meeting.

INTELLECTUAL PROPERTY ISSUES

Ethical questions related to the professional activities of anthropologists are regulated by the Code of Ethics of the Anthropologist and are settled by the Ethics Commission, which is composed of the Association's three past presidents.

SELECTED LEGISLATION, CODES AND GUIDELINES

Code of Ethics of the Brazilian Anthropological Association

CONSULTED SOURCES

<http://www.abant.org.br>

READ ALSO

ABET – Brazilian Association of Ethnomusicology

OAB – Brazilian Bar Association

ABET - Brazilian Ethnomusicology Association

OFFICIAL DESIGNATION

ASSOCIAÇÃO BRASILEIRA DE ETNOMUSICOLOGIA

CLASSIFICATION

Type: Professional association

Legal status: Not-for-profit civil society

Scope: National

CONTACT AND ADDRESS

Samuel Araújo, President (2006-2008)

Rua do Passeio, 98. Sala 28

20021-090 Rio de Janeiro – RJ

Tel/Fax: (21) 2532-4649

Tel./Fax.: (21) 2240-1441

abetnomusicologia@gmail.com

MISSION AND PROFILE

The Associação Brasileira de Etnomusicologia [Brazilian Ethnomusicology Association] (ABET) is a private not-for-profit organization of researchers, ethnomusicologists, professionals in related fields, institutions and regional associations related to ethnomusicology. It has 204 members.

ABET was created at the 36th Congress of the International Council for Traditional Music (ICTM) held in Rio de Janeiro in July 2001. Its objectives include providing support for ethnomusicology, research, the organization and preservation of ethnomusicological documents, exchange with associations in related fields in Brazil and abroad and the organization of an annual meeting to promote work and research in the field.

RELEVANT PROJECTS AND PROGRAMS

No information.

INTELLECTUAL PROPERTY ISSUES

In 2006, during the 3rd National Meeting of ABET, a proposal was made to create an Ethics Commission, to address ethical and moral problems confronted by researchers investigating traditional musical knowledge, creations and practices. This commission presented an opinion about the issue declaring that “the researchers are at the threshold between research *per se*, promotional activities (or “production” in the commercial sense) and the public presentation of musical practices, of the people or groups studied.”² Their “role as mediators in relation to other producers and to the public in general” creates various dilemmas for researchers. However, according to the entity’s board of directors, the proposal to prepare a code of ethics or other document that would allow “resolving these problems and identifying principles, rights, responsibilities, and other factors inherent to the work of ethnomusicologists” has still not found sufficient support from the members of ABET and was put off to a more opportune occasion.

LEGISLATION, CODES AND GUIDELINES

Nothing to add.

2

http://www.musica.ufrj.br/abet/index.php?option=com_content&task=view&id=18&Itemid=12

CONSULTED SOURCES

<http://www.musica.ufrj.br/abet>

Interview with Samuel Araújo and Alberto Ikeda.

READ ALSO

ABA – Brazilian Association of Anthropology

OAB – Brazilian Bar Association

OAB - Brazilian Bar Association

OFFICIAL DESIGNATION

Ordem dos Advogados do Brasil

CLASSIFICATION

Type: Professional association

Legal status: Not-for-profit civil society

Scope: National

CONTACT AND ADDRESS

OAB/Intangible Property Rights Commission

Paulo Oliver, President

Rua Anchieta, 35 - 1º andar

01016-900 São Paulo, SP

Phone: (11) 3244-2013 / 2014 / 2015 / Fax: (11) 3244-2011

E-mail: propriedadepatrimonial@oabsp.org.br

MISSION AND PROFILE

The Ordem dos Advogados do Brasil [Brazilian Bar Association] was created by Decree 19.408, of Nov. 18, 1930; it is guided by Law nº 8.906, of July 4, 1994. Its purpose is to: “I – defend the Constitution, the legal order of the democratic rule of law, human rights, social justice and work for the good application of laws, for the quick administration of justice and for the improvement of culture and of legal institutions. II – promote, with exclusivity, the representation, defense, selection and discipline of lawyers in the entire Federal Republic of Brazil.”

RELEVANT PROJECTS AND PROGRAMS

The activities developed by the Intangible Property Rights Commission of OAB's São Paulo Section aim to promote research, discussion, an exchange of ideas and the improvement of present legislation regarding intangible rights. It congregates 37 members, as well as consultants and law students. It is organized in ten thematic chambers, each dealing with different areas in the field, none of which specifically deal with rights of traditional populations.

INTELLECTUAL PROPERTY ISSUES

Nothing to add

SELECTED LEGISLATION, CODES AND GUIDELINES

Code of Ethics and Discipline of OAB.

By-laws of the Commission of Intangible Property Rights.

CONSULTED SOURCES

<http://www2.oabsp.org.br>

READ ALSO

ABA – Brazilian Association of Anthropology

ABET – Brazilian Association of Ethnomusicology

4. PUBLIC COLLECTIONS

CNFCP - National Folklore and Popular Culture Center

LISA - Sound and Image Laboratory in Anthropology

MAE - Museum of Archaeology and Anthropology

MI - Museum of the Indian

MN - National Museum

MPEG - Emilio Goeldi Museum

NUPAUB – Research Center on Human Populations Living in Brazilian Wetlands

CNFCP - National Folklore and Popular Culture Center

Official designation

Centro Nacional de Folclore e Cultura Popular, IPHAN, Ministério da Cultura

CLASSIFICATION

Type: Museum; archive; library; research institution.

Legal status: Public (federal)

Scope: National

CONTACT AND ADDRESS

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MISSION AND PROFILE

CNFCP is an institution linked to the Intangible Heritage Department (DID) of the National Historic and Artistic Heritage Institute (IPHAN), of the Ministry of Culture. It was created in 1958 as part of the Campaign for the Protection of Brazilian Folklore, conducted by the former Ministry of Education and Culture. In 2003, it became part of IPHAN. Its mission is to design and implement research, documentation, dissemination and funding of programs and projects concerning expressions of popular cultures.

The Center is composed of the following sections: the Biblioteca Amadeu Amaral [Amadeu Amaral Library], whose collection includes some 40.000 publications; the Acervo Sonoro e Visual [Sound and Visual Collection], with approximately 160.000 audiovisual records collected in nearly all of the Brazilian territory; an Archive with some 100 linear meters of institutional documents; the Museu de Folclore Edison Carneiro [Edson Carneiro Folklore Museum], with archives gathered since 1968, totaling close to 14.000 items; and the sectors responsible for research and public communication.

RELEVANT PROJECTS AND PROGRAMS

Celebrations and Knowledge of Popular Culture is a program that, since 2001, has realized 14 inventories of intangible heritage and coordinates various plans for safeguarding items registered by IPHAN as Brazilian Cultural Heritage.

The *Craftmaking Communities Support Program* has been undertaken since 1998, particularly in partnership with ArteSol, and has assisted hundreds of craftworkers and their families, by means of different projects to build support and respect for traditional crafts in various locations in Brazil. It principally works through direct actions in the craft-producing regions, according to the needs of the groups and based on ethnographic studies. The program includes training, preparation of creation spaces, exhibition of crafts, purchase of raw materials, and work tools and support for craft sales.

The Sala do Artista Popular [Popular Artist's Gallery], is an exhibition space where more than 130 exhibitions have taken place since 1983 to promote the individual or collective work of popular artists and craftspeople, and to facilitate access to the market to contribute to the sale of their products.

INTELLECTUAL PROPERTY ISSUES

Specific forms for copyright assignments are used in the production of CD-ROMs, DVDs, exhibitions, books and other products that contain portions of audiovisual works produced by professionals from other institutions or authors not linked to the CNFCP (portions of music, film, photographs, etc.).

Prior informed consent for the dissemination of images, statements, music and knowledge of the populations studied by CNFCP is formalized in a specific authorization form for the use of the image, in which the CNFCP agrees not to use the data for profit-making activities. If the data is issued to third parties, the CNFCP requests, through another specific form, that if it is for commercial use, that the granting institution negotiates sharing of the benefits directly with the community that detains the TCEs in question.

The CNFCP adopts two procedures in relation to public access to the archives of photography, video and other works produced by third parties and deposited in the institutions: a) terms of responsibility with the author of the material, in which the CNFCP agrees to give broad or restricted public access to these works in conformity with the authorization granted by the author of the material; b) terms of agreement by the user of the archives concerning copyright and observance of the limitations for use and reproduction of works consulted and/or borrowed.

For the setting up of cultural inventories, IPHAN devised a new form, which will also be incorporated in the work of the CNFCP. This form is to be signed by researchers hired to

conduct inventories and concerns the grant of economic rights to IPHAN for the studies financed with resources from the Ministry of Culture.

Questions related to the different degrees of access to information produced through fieldwork still lack specific formalized procedures. Nevertheless, this issue should be included in a future workshop planned for the institution's own researchers.

The institutional production is not made for profit and as such, the question of sharing material benefits from the use of sound and visual recordings is not raised. Except for the store directly linked to the Sala do Artista Popular, the benefit is indirect and found in the visibility that the traditional peoples obtain from the exhibition of their products and the added market value created by the exhibits, ethnographic catalogs and space for sale and other activities.

The institution is currently conducting studies to reformulate IP forms and procedures. A guidebook is being prepared for researchers with guidelines concerning copyright, use of images, access to TK, prior informed consent and benefit sharing. CNFCP is also studying the application of other instruments of the IP system — such as trademarks and geographical indications — to add value to the crafts. These studies seek to answer the demands of producing communities.

Mechanisms are being created to guarantee the protection of copyright and image rights under the National Inventory of Cultural References. In partnership with the Genetic Heritage Management Council of the Ministry of Environment (CGEN/MMA), studies are also being conducted to establish procedures compatible with existing law on access to genetic resources and associated TK for the making of cultural inventories in regions of great biodiversity and/or practices that involve access to this type of knowledge.

SUGGESTIONS FOR WIPO

Due to the diversity of the contexts in which the TCEs are produced, the CNFCP administration believes that the creation of a single international instrument for protection is perhaps not the best form for protection, because it is difficult to encompass the reality of such distinctive groups. Therefore, it is necessary to establish guidelines and standards, including suggestions for model contracts and terms of consent and for the sharing of benefits that can be adjusted by the institutions of the countries according to local specificities.

Among the measures that can contribute to a better processing of the issues of IP related to TK and TCEs, the CNFCP makes the following suggestions:

- Create programs for professionals in research institutions in developing countries that have a large amount of socio-bio-diversity to train these professionals in the use of mechanisms of IP adapted to the protection of TCEs – provide in-person and distance courses about the issue; finance study grants; etc.
- Disseminate through publications experiences with positive results that can guide institutional actions.
- Create programs for financing, support and promotion of the use of mechanisms for protection such as collective marks and geographical indications, when these are suitable to the demands of the populations.

LEGISLATION, CODES AND GUIDELINES

CNFCP – NATIONAL FOLKLORE AND POPULAR CULTURE CENTER. Terms of authorization for use of images.

CNFCP – NATIONAL FOLKLORE AND POPULAR CULTURE CENTER. Terms for granting use of audio, visual, audiovisual and written documents in research, surveys, dossiers and printed materials.

CNFCP – NATIONAL FOLKLORE AND POPULAR CULTURE CENTER. Terms of provisional granting by the CNFCP of audio or visual recordings of its property, for purposes of reproduction by third parties.

CNFCP – NATIONAL FOLKLORE AND POPULAR CULTURE CENTER. Terms of responsibility for the use of materials in the archives of the CNFCP/ Amadeu Amaral Library.

CONSULTED SOURCES

<http://www.cnfcp>

E-mail interviews with staff members

ADDITIONAL READING

ARTESOL – Solidary Crafts

IPHAN – National Historic and Artistic Heritage Institute

LISA - Sound and Image Laboratory for Anthropology

OFFICIAL DESIGNATION

Laboratório de Imagem e Som em Antropologia, Universidade de São Paulo

CLASSIFICATION

Type: Research institution; archive

Legal status: Public (Provincial, State of São Paulo)

Scope: National

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MISSION AND PROFILE

This institution is linked to the Department of Anthropology of the Universidade de São Paulo (USP). Its financial resources come from projects of its associated researchers, department funds and the sale of audiovisual products. Its objective is to promote research, meetings of professors and researchers, academic field training in visual anthropology and

ethnomusicology and to make accessible to professors, students, researchers and the public in general recordings in sound and images of the communities studied.

It was created at the initiative of a group of USP professors, and was inaugurated in 1991. Since 1995, it has housed the Visual Anthropology Group (GRAVI) which gathers graduate students in Anthropology and researchers interested in this field, as well as in the possibilities for analysis of images from an anthropological perspective. Since 2005, the Laboratory has also included the Anthropological Center for Performance and Drama, which is dedicated to the anthropology of performance, drama and ritual.

The archives include about 1,000 videos, 8,000 images (color slides and glass plates), cassettes, vinyl records, CDs, books, theses and catalogs. The image base can be accessed over the Internet, after registration via e-mail, on the site <http://www.expoweb.com.br/lisa/bd.shtml>. Consultation of documents must take place at the Laboratory.

RELEVANT PROJECTS AND PROGRAMS

Project *Alterity, Cultural Expressions in the Perceptible World and Construction of Reality* (2003-2007). This project seeks to deepen theoretical and methodological analysis of issues raised in research and realizations in video and photography of the *Image in Focus in the Social Sciences* project conducted from 1998-2002. Undergraduate, graduate and post-doctoral students in anthropology conduct research with indigenous communities (Bororo, Pankararu, Gavião de Rondônia, and others), craftspersons from the Jequitinhonha Valley, cultural youth groups from the periphery of São Paulo, circus artists from the center of São Paulo and Islamic communities from São Paulo. As a result, 20 works were produced including videos, CD-ROMs, and Internet sites. Shows and seminars were also organized. The people and entities of the communities that participate in the realization of the works each receive a copy of the final product.

Copyright for Image, Sound and Knowledge Production. This colloquium was organized in conjunction with the Associação Brasileira de Antropologia [Brazilian Association of Anthropology] in 2005. It gathered anthropologists, photographers, archivists and lawyers. The debate focused on problems related to IP and copyright for images. Some texts were prepared for the event, but there was no publication. The texts circulated in a limited manner.

INTELLECTUAL PROPERTY ISSUES

There are currently 39 videos for sale, with 80% of the sales price going to the Laboratory and 20% to the authors. The revenue is used for expenses for product distribution, equipment maintenance and investments in infrastructure needed for audiovisual production. The average price of these products is R\$20,00 (approximately US\$10,00). Copies are donated in variable quantities to the communities.

Audiovisual production is conducted only when there is explicit and documented consent of the groups in focus. The groups authorize the making of recordings free of charge when they believe that it is important to have a certain image disseminated, but frequently, authorization is not granted for filming and recording. Authorization is often recorded in audiovisual media. According to one person interviewed, this process “is as correct as [writing] on paper. Since they are societies with oral traditions, we get the statement of the person and (...) this has worked.” Due to some experiences with producers of commercial television and books, some indigenous communities believe that the earnings from capturing sound and image is large, and stipulate amounts that at times are very high, of some US\$20,000 - US\$60,000 per filming.

In many cases, the communities also participate in decisions about the portions of the recordings that can be displayed to the public. In addition, they have access to the publications and recordings that concern them, whether by distribution (at no cost) by the researcher or person making the document, or by visiting the Laboratory to watch films or see photographs in the archives. In some cases, they participate in the filming, the preparation of the screenplay and at times in the editing. Some audiovisuals have two versions: one that circulates at film festivals and debate forums, and another for sale. At times the works are made at the request of the communities studied.

The Laboratory guides its researchers to obtain signed authorization or record verbal consent from the communities and individuals studied. The authors-researchers are considered to be responsible for the ethical conduct and must follow the code of ethics of anthropologists as well as copyright law. But in each community there is some kind of negotiation. Everything depends on the level of integration and on the problems that each community experiences. “In our country there are indigenous societies at various levels [of integration]: some have been integrated since the 16th century, others for very little time and others are not integrated. It is very difficult to account for all of this diversity...”

The use of the recordings for purposes of research and intellectual exchange, on the other hand, is not subject to any type of protection; it is necessary to consider the specificity of the record for academic use, for research.

SUGGESTIONS FOR WIPO

A regulatory instrument for general use “would have to be very open or enormous, to be suitable for the various realities.”

SELECTED LEGISLATION, CODES AND GUIDELINES

LAW 9.610, Feb.19, 1998. Provides for copyright and establishes other provisions.

LISA - LABORATORY OF SOUND AND IMAGE IN ANTHROPOLOGY / USP. Terms for granting of distribution and sale of films.

CONSULTED SOURCES

<http://www.lisa.usp.br>

Personal interview with institution's manager.

READ ALSO

Nothing to add

MAE - Museum of Archaeology and Ethnology

OFFICIAL DESIGNATION

Museu de Arqueologia e Etnologia, Universidade de São Paulo

CLASSIFICATION

Type: Museum; research institution

Legal status: Public (Provincial, State of São Paulo)

Scope: National

CONTACT AND ADDRESS

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MISSION AND PROFILE

The mission of the Museum of Archeology and Ethnology of the University of São Paulo (MAE/USP) is to undertake university teaching, research and extension activities in archeology, ethnology and museology, promoting the study, protection, respect for and communication about the Brazilian archeological and ethnological heritage, as well as of the foreign collections in its archives.

The Museum was reestablished by Resolution 3560 of August 12, 1989, which combined all of the archeological and ethnological archives of USP in a single institution. These archives were originally distributed among the Museu Paulista and three institutions of that University: the Institute of Pre-History, the Department of Anthropology and the Museum of Archaeology and Ethnology.

The Museum's ethnological archive includes nearly 20,000 objects and 2,500 recorded images. It gives priority to artifacts of Brazilian Indians, encompassing nearly 70 groups from various cultural areas and linguistic branches. It also incorporates small collections from the peoples of Peru, Bolivia, the Philippines, Indonesia and North America.

Documentary records and objects of TK and TCEs are presented through exhibitions, educational actions, audio-visual materials, publications and scientific reports.

RELEVANT PROJECTS AND PROGRAMS

Brazilian Ethnology.

Among the projects in progress in this field, the following are directly relevant to this survey:

Curatorship of the Kayapó-Xikrin ethnographic collection. Inventory, documentation and analysis of the Xikrin objects based on an interdisciplinary and multicultural approach, considering the perspectives of ethnologists, archeologists, conservators, photographers and indigenous peoples. In this project, a book was made with photos of the items in the collection, accompanied by texts written by researchers. This book received the support of the Xikrin who participated in assembling the collection. The grant of copyright for publication is being negotiated for the Xikrin communities of Cateté and Djudjê-Kô in Pará State.

Tangible culture and cultural dynamic: an ethno-archeological study of the processes of maintenance and transformation of artifacts of the Asurini of Xingu. An ethno-archeological study about different categories of artifacts (pottery, basketry, weapons, weaving, body decorations) of the Asurini of Xingu, some of which are no longer produced. The purpose is to study the processes of production and use of these objects and their meanings, as well as the process of transmission of this knowledge to new generations. One of the results of this project was the preparation of ethnographic documentation (written records, photographs and videos) of the different groups of Asurini artifacts, and of pottery and basket-making production and learning processes. In addition, an inventory was realized, with the assistance of representatives of the Asurini of Xingu population.

Documentation and transmission of the traditional knowledge of the Asurini of Xingu. This project seeks to improve the conditions for transmission, production and reproduction of tangible and intangible cultural goods of the Asurini of Xingu, and to contribute to the preservation of Brazil's ethnic and cultural diversity and to the dissemination of information about this heritage to various segments of society. The results of this project include (1) digitization, organization and cataloging of the audiovisual material of the Asurini of Xingu ethnographic collection; (2) preparation of a CD-Rom with the inventory of its intangible and tangible culture and (3) educational materials to be used by teachers at the Kuatinemu School of the Asurini of Xingu village.

Pottery, basketry, music and dance of the Asurini of Xingu. The objectives of this project are (1) to increase the artistic production of objects, music and cultural performances and (2) to qualify

this artistic production and promote its sale for the Asurini to participate in the market for cultural goods. In addition, distinct educational programs were prepared for the indigenous school of the Asurini of Xingu, incorporating actions integrated to the previously mentioned objectives.

Encounter with the past and the cultural material. This project was developed in partnership with the Museum of Cultures of Basel, Switzerland. Its objectives are the organization of a collection of 3,700 slides, the museological processing of the artifacts and the identification, organization, documentation, photographic recording and storage of a collection of more than 500 drawings produced by the Waurá, inhabitants of the Xingu National Park. The project involved researchers from Switzerland, Brazil and the indigenous community. Waurá representatives, including Cacique Atamai, contributed to researching references about this collection of drawings. Later, the researchers met with the Waurá of the Pyulaga village, to find references for the collection in the context of their production. The project sought to encourage the Waurá to recognize the importance of preservation of their artifacts in museological institutions, as a way to preserve their TK and its transmission to next generations.

The indigenous populations that currently participate in the research projects undertaken by the Museum are: 1) the Terena and Guaicuru of Lalima, MS; 2) the Kayabi from Kayabi Indigenous Land, MT; 3) the Asurini from Kuantinemu, PA. The Xikrin population ended its participation in the study of the ethnographic collection Kayapó-Xikrin in 2004, but has continued to work in conjunction with the Museum's technicians regarding negotiations of copyright assignments for the publication of a book about objects of this ethnic group. These populations, through their representatives, participate in the activities of documentation (filming, photography, cataloging) and analysis of their TK and TCEs and, in the case of archeological research, as excavation assistants.

Normally, the indigenous chiefs define who will work with the researcher. In the case of Lalima and of the Kayabi villages, the indigenous representatives are called to participate in all the excavation activities at the archeological sites located on their lands. In the case of the Xikrin and Asurini ethnographic collections, the indigenous representatives were brought to the city of São Paulo and participated in the research activities, and provided information about the native taxonomies, uses and cultural meanings of the objects.

Afro Ethnology.

This area involves the study of collections and of cultural aspects of the Afro-Brazilian population reflected in these collections. It was established mainly from objects purchased in Africa in the 1970s. Field studies have not been conducted to establish new collections.

The researchers in this field have invested in the creation of a database about the museum collections and in the maintenance of the academic site [HTTP://www.arteafricana.usp.br](http://www.arteafricana.usp.br), which can be accessed directly or through the Museum homepage. This project stands out because it is the first initiative to present online teaching-learning resources prepared from elements of the Museum's collection. It is also a tool for disseminating part of the academic production of African studies at the University.

INTELLECTUAL PROPERTY ISSUES

MAE/USP has guidelines that regulate the purchase, inventory and documentation of artifacts, documents and audiovisual records purchased or received by donation.

The ethnographic research, the promotion of research results, the loan of objects and the reproduction of records require the consent of the indigenous populations and follow the standards established by FUNAI (Cf. Legislation below). The archeological study must be authorized by the indigenous leaders and follow the standards defined by the National Historic and Cultural Heritage Institute. Normally, the possession and use of ethnographic information and material produced in the field remain the criteria of the researcher. Researchers usually avoid the dissemination of strategic information or that which is the object of cultural interdictions. In situations in which they contribute to the orientation and organization of sale of cultural goods, indigenous peoples have autonomy to define prices and negotiate with those who sell indigenous products or others who appreciate their arts (students, professors etc).

Access to the collections by researchers is allowed through the presentation of a research project that is evaluated by the Research Commission and is the subject of a report prepared by a specialist from the Institution. When the project is approved, the researcher has the right to scientific use of the collection for two years. All the images of the collections' items are produced by the Museum's Photography Laboratory and can only be used for educational and scientific purposes.

Access to the collection by representatives and researchers belonging to the traditional populations is allowed when previously scheduled, with the visit accompanied by the researcher and by the technician of the MAE/USP Curating Service. The museum always tries to authorize requests to access the collection sent by indigenous populations.

For the loan of objects for exhibitions and other events, requests must be made with a document that indicates the nature of the loan and the event. It is only granted once a report is issued by a specialist at the Institution and the dispatch of pieces follows common museum procedures.

For the operations in the field of African ethnology, the protocol related to IP does not apply given that the collection was acquired in the 1970s at a time when the objects were no longer in their original socio-cultural context. Nevertheless, MAE/USP believes that the UNESCO guidelines should be observed concerning, above all, the traffic in illicit goods and protection of the African cultural heritage. Firstly, because this is currently one of the most prominent issues for anthropology concerning museum and collection studies, particularly those from Africa. In addition, because in Brazil there are many collections related to Africa, such as those of the terreiros [candomblé shrines] of the first third of the 20th century, composed of pillaged objects, similar to what took place in the large international colonial museums.

SUGGESTIONS FOR WIPO

Given the intense contacts that have been made with the indigenous Amazon populations, the Museum considers it necessary to develop mechanisms to protect the improper exploitation of TK and TCEs. The interest that new generations of indigenous peoples may have in knowledge about the world of non-Indians can lead to a loss of some of their TK. Considering that the building of identities takes place, among other factors, within these situations of contact, the preservation of TK and TCEs can be a way to guarantee the self-determination of these populations as concerns their ethnic identity.

Some issues have been recurrent in the research activities conducted by MAE/USP and clearly require an approach by an organization such as WIPO, including: the sale of indigenous objects without an anthropologically-oriented scientific plan, by people with commercial interests or for economic gain; the use of indigenous cultural materials for economic purposes without a proper agreement with the producing population; the formation of community associations to manage the sale of commercial goods without the proper guidance of those involved.

Tools such as the standards established by FUNAI and by IPHAN, as well as the ICOM ethics code, are considered quite effective for dealing with the kinds of problems that the Museum is confronted with. However, those interviewed said that they believe that WIPO could contribute even more to making these actions more effective and believe it is important that successful practices be promoted and serve as models for future actions.

SELECTED LEGISLATION, CODES AND GUIDELINES

Code of Ethics for Museums , ICOM

MAE-MUSEUM OF ARCHEOLOGY AND ANTHROPOLOGY / USP. Guidelines of the Research Commission, approved by the council that governs the purchase, inventory and documentation of artifacts, documents and audiovisual registrations acquired or received by donation.

UNESCO guidelines on the traffic of illicit goods and protection of the African cultural heritage.

CONSULTED SOURCES

www.mae.usp.br

E-mail interview with institution's staff members

ADDITIONAL READING

Nothing to add.

Museum of the Indian

OFFICIAL DESIGNATION

Museu do Índio, FUNAI, Ministério da Justiça

CLASSIFICATION

Type: Museum; archive

Legal status: Public (federal)

Scope: National

CONTACT AND ADDRESS

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MISSION AND PROFILE

This scientific-cultural agency of FUNAI, the National Foundation for Indigenous Peoples directly subordinated to the Ministry of Justice, was created by Darcy Ribeiro in Rio de Janeiro in 1953. It is the country's only official institution specifically concerned with indigenous cultures. It organizes temporary exhibitions of objects and photos from its technical reserves and develops programs of research, promotion and education in partnership with indigenous groups and supporting organizations, as well as with research institutions.

The Museum has been entrusted with the mission of preserving, from the material and scientific viewpoints, cultural manifestations that represent the history and traditions of Brazilian indigenous societies, as well as with promoting, enhancing and disseminating studies and research on these societies. (Ordinance FUNAI nº 542, dated December 21, 1993).

The Museum collections represent most indigenous peoples in the country. It consists of 17,000 ethnological objects; 68,217 audiovisual documents in various types of formats that are partly digitized and stored on CD-ROMs; 138,044 texts of historical value about various indigenous groups and approximately 200 videos and audio recordings. The Marechal Rondon Library has 24,483 national and foreign publications specialized in ethnology and related areas.

SELECTED PROGRAMS AND PROJECTS

Training and consultancy. Offers training and consultancy services to indigenous peoples interested in organizing museums, cultural centers and/or developing preservation and revitalization projects related to their culture heritage.

Indigenous Villages Exhibition Area. Created in 2003, this space has been used for temporary exhibits put on in partnership with the following nations: Umutina, Bakairi, Suruí, Galibi, Palikur, Karipuna e Galibi-Marworno, who loaned items from their recently created collections.

Artíndia Program. Sale of objects acquired directly from producers, books, t-shirts, CDs, CD-ROMs. The program aims at contributing to the economic self-sufficiency of indigenous peoples and to promote their cultural patterns. The main shop is located at the Museum site in Rio de Janeiro, and there are seven others in other urban centers.

Educational Action. In addition to monitored visits to the exhibits, offers workshops given by people from various ethnic groups on singing, dancing, body painting, ritual and storytelling.

Thesaurus. <http://base.museudoindio.org.br/museudoindio/dicionario>

Documentation of Indigenous Languages and Cultures. Developed with the participation of linguist Bruna Franchetto and of anthropologist Carlos Fausto, from the Anthropology Department of the National Museum, with the support of the Max Planck Institute and DoBes Program of the Volkswagen Foundation, this program includes the Parintintin and Kuikuro peoples, as mentioned in the cooperation agreements included in the Documents' list below.

INTELLECTUAL PROPERTY ISSUES

Access to collections. Biographic Collection (Marechal Rondon Library) Consultation in library only. Loans exclusively to registered libraries.

<http://base.museudoindio.org.br/museudoindio/biblioteca>

Ethnographic Collection (Museology Department). Research only on appointment. Photographing, filming or loaning of items from the permanent collection on a written request outlining work plan and with proof of institutional link. When using the objects, crediting the Museum is mandatory.

<http://base.museudoindio.org.br/museudoindio/museologia>

Audiovisual collection (Audiovisual register service). The audiovisual collection is available for research via the Internet. Using the material *in loco* on appointment, copies must be approved.

<http://base.museudoindio.org.br/museudoindio/audiovisual>

Documents archive (Archive service). This collection contains 504,266 documents (127 meters). It is open to the public. Copies are authorized and in case of publication it is mandatory to give credit to the Museum. <http://base.museudoindio.org.br/museudoindio/arquivodois>

Procedures. The Museum's projects are mainly developed in conjunction with university researchers, "people who are qualified for this type of work with such groups" (indigenous), making possible the "development of products of high quality" and developing an adequate relationship with indigenous peoples, says Museum Director. All projects depend on the clear and detailed written authorization of the indigenous party.

The *Documentation of Indigenous Languages and Cultures Program* follows the research ethics and IP principles set by the sponsors (Max Planck Institute and DoBeS Program, of the Volkswagen Foundation) as well as by the Brazilian Anthropological Association, adapted to the realities under study.

For granting the rights to use images for commercial purposes (to TV networks, for example) the Museum used to have a price list which became outdated in comparison with today's market. Presently, the price is established according to the standards set by the interested institutions for the use of their own images, which signifies billing at the market price. The resources provided by these authorizations used to be deposited on a specific FUNAI account. Now they are sent to the National Treasure, returning as added resources to the Museum annual budget.

SUGGESTIONS FOR WIPO

Nothing to add

SELECTED LEGISLATION, CODES AND GUIDELINES

THE BRAZILLIAN CONSTITUTION OF 1988. Title VIII: The Social Order. Chapter III, Section II: Culture. Art. 215, Art. 216. Title VIII: The Social Order. Chapter VI: The Environment. Art. 225, Paragraph 1º, measures i, ii and iii. Title VIII: The Social Order. Chapter VIII: Indians. Art. 231, Art. 232.

LAW 9.610, Feb.19, 1998. Provides for copyright and establishes other provisions.

FUNAI - NATIONAL INDIAN FOUNDATION. EDICT 177/PRES, Feb 16, 2006. Regulates the administrative procedure for authorization by the National Indian Foundation (FUNAI) for access to Indian lands, by people interested in the use, acquisition and/or grant of copyright on indigenous images and text, and guides related to procedures, with the purpose of respecting the values, artistic creations and other means of indigenous cultural expression, and also protects their social organization, customs, languages, beliefs and traditions; and establishes other measures.

FUNAI - NATIONAL INDIAN FOUNDATION. NORMATIVE INSTRUCTION N° 1, Nov. 29, 1995. Regulates access to indigenous lands for the purpose of scientific research.

FUNAI - NATIONAL INDIAN FOUNDATION. EDICT 693, July 19, 2000. Creates the Registration of Indigenous Cultural Heritage at the Museum of the Indian and establishes other measures.

FUNAI - NATIONAL INDIAN FOUNDATION. EDICT 177/PRES, Feb 16, 2006. Regulates the administrative procedure for authorization by the National Indian Foundation (FUNAI), for access to Indian lands, by people interested in the use, acquisition and or grant of copyright in indigenous images and text, and guides related to procedures, with the purpose of respecting the values, artistic creations and other means of indigenous cultural expression, and also protects their social organization, customs, languages, beliefs and traditions; and establishes other measures.

FUNAI - NATIONAL INDIAN FOUNDATION. Norms and procedures of the Museum of the Indian.

FUNAI - NATIONAL INDIAN FOUNDATION. Terms of cooperation between the Kuikuro Indigenous Association of the Upper Xingu and the National Indian Foundation for the creation of the archives of the Kuikura culture.

FUNAI - NATIONAL INDIAN FOUNDATION._Terms of cooperation signed by the Organization of the Indigenous People Parintintin of the Amazon (OPIPAM) and the National Indian Foundation for the creation of a cultural archive of the Parintintin indigenous people.

Codes of conduct of the Max Planck Institute and DoBeS Program.

CONSULTED SOURCES

<http://www.museudoindio.gov.br>

Interview with the Museum's Director

ADDITIONAL READING

FUNAI –National Foundation for Indigenous Peoples

National Museum

MN - National Museum

OFFICIAL DESIGNATION

Museu Nacional, Universidade Federal do Rio de Janeiro

CLASSIFICATION

Type: Museum, research institution

Legal status: Public (federal)

Scope: National

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MISSION AND PROFILE

The National Museum/UFRJ is Brazil's oldest scientific institution. It was created on June 6, 1818 under the name Museu Real [Royal Museum]. In 1946 it was incorporated to the University of Brazil and is now part of the academic structure of the Federal University at Rio de Janeiro. The National Museum has the largest scientific archives in Latin America, including research laboratories and graduate programs. The institution also includes the Botanic Gardens and the Central Library.

The Museology Section (SEMU) of the National Museum is responsible for the organization, conservation and maintenance of exhibitions, either long term or itinerant. It also coordinates the research and planning for their implantation. The exhibitions are currently organized in the following halls: "Meteorites," "Paleontology," "Biological Anthropology," "Archeology" and "Ethnology". The 3,000 objects that compose the exhibits open to the public are part of a broader group of 20 million items from the collections studied by various research and education departments that are part of the Museum: anthropology, botany, entomology, invertebrates, vertebrates, geology and paleontology.

The National Museum offers the following graduate courses: Specialization in Indigenous Languages; Specialization in Geology of the Quaternary Period; Master's and doctorate in

Social Anthropology; Master's and doctorate in Archeology; Master's and doctorate in Botany, and master's and doctorate in Zoology. The graduate program in Social Anthropology at the National Museum (PPGAS), created in 1968, was Brazil's first graduate course in Social Anthropology and its academic quality has been recognized by CAPES [The Coordination of Continued Education of College Personnel— of the Ministry of Education], which has uninterruptedly issued the department the highest grade since the initiation of evaluations of graduate programs in Brazil. PPGAS maintains regular relations with some of the leading Brazilian and international centers for teaching and research in the social sciences and has one of the most complete libraries in the field, with more than 30,000 works and subscriptions to more than 200 Brazilian and foreign journals. In addition, the magazine *Mana: Estudos de Antropologia Social* [Social Anthropology Studies] is a highly regarded bi-annual publication. Organized by the graduate Social Anthropology program at the National Museum, it presents and discusses research and theoretical works that contribute to the understanding of the socio-cultural reality and to the development of anthropology.

RELEVANT PROJECTS AND PROGRAMS

Two projects sponsored by the Caixa Econômica Federal bank are currently being developed by the Museology Section: the first involves reformulation of the Paleontology Hall, with a new presentation for the large mammals and dinosaurs; the second is related to the reformulation of the Indigenous Ethnology Hall, where the museum's rich collection of artifacts belonging to various indigenous groups living in Brazilian territory will be displayed.

The Graduate Social Anthropology Program at the National Museum organized two events in 2008 related to the theme of WIPO's Creative Heritage Project. The first was the seminar, "When the Field is the Image File," held in December to "reflect on the use of archival sources in anthropological research and their relation with ethnographic production." The second was the lecture cycle "Art, Image and Memory," which in September included French guests Carlos Severi, Anne-Christine Taylor and Pierre Déléage. In August 2006, a series of lectures issued by the Director of the National Ethnology Museum of Lisbon Joaquim Pais de Brito, entitled "Nós e as coisas" [Things and Us], directly addressed the relationship between anthropology and museology as well as tensions and paradoxes contained in the formation of the ethnological collections.

Researchers and professors at the National Museum have been involved with various projects that include the registration and dissemination of TK and TCEs. João Pacheco de Oliveira, for example, coordinated an exhibit that was presented in Recife, Pernambuco, from December 2006 to February 2007, entitled "Índios: Os Primeiros Brasileiros" [Indians: the First Brazilians]. The proposal was to present, through photos, music, video and documents, the different ways in which indigenous peoples were perceived and incorporated to the process of national construction, by "offering to the public images and information of a historic and

cultural nature, presenting indigenous cultures as something living and dynamic; above all, offering a positive identification with these collectivities.” This project was an initiative of the National Museum (through the Laboratory of Research in Ethnicity, Culture and Development/LACED) and of the Joaquim Nabuco Foundation (through the Directory for Social Research/DIPES), with support from APOINME (the Organization of Indigenous Peoples of the Northeast, Minas Gerais and Espírito Santo), the Brazilian Anthropology Association (ABA) and Petrobrás Cultural.

There are various projects at the National Museum to document cultures and languages of indigenous populations living on the Brazilian territory. Professors Carlos Fausto and Bruna Franchetto, for example, are developing a systematic documentation in the Parque do Xingu, with a focus on the Kuikuro ethnic group. While Franchetto is documenting the language, Fausto is dedicated to the rituals. Both are training indigenous researchers and film makers so that they can conduct the documentation process of their own culture. The results of this project include the recording of 100 hours of ritual singing, still awaiting editing. In addition, Fausto was curator of an exhibit hosted by the Museum of the Indian, in Rio de Janeiro, in April 2008: “Tisakisú: Tradition and New Memory Technologies.” With 11 videos and 100 photos of the Kuikuro (in Mato Grosso), in addition to the films produced by the Xinguanos themselves and awarded at Brazilian film festivals, the guiding focus of the show is an analysis of the relation between tradition and modernity, which currently challenges the peoples of the Parque do Xingu.

Meanwhile, Franchetto represents the National Museum in the DoBES Project, launched in 2007 with the purpose of creating digital and multimedia archives for the documentation and preservation of indigenous languages. It also calls for the technical training of researchers and the provision of the latest tools to create the archives and databases. The project will be the foundation for the creation at the Museum of the Indian, of a Center for Linguistic Records. Four initiatives for documenting indigenous languages in Brazil, undertaken by the National Museum/UFRJ in Rio de Janeiro and the Goeldi Museum in Belém in cooperation with the Free University of Berlin, the Max Planck Institute of Psycholinguistics and the University of Leiden, are part of the project. The researchers have collected ethnographic and linguistic material from six indigenous ethnic groups in Brazil with threatened languages: the Karib languages of the Upper Xingu or Kuikuro, Awetí, Trumai, Bakairí, Sateré and Kaxuyana.

INTELLECTUAL PROPERTY ISSUES

Researchers at the National Museum are frequently confronted with issues related to IP and copyright. In the case of the documentation project of the Kuikuro language and culture, led by Carlos Fausto and Bruna Franchetto, one of the biggest questions – which is still under discussion – is: once the ritual chants are recorded, should they become freely available? To decide case by case – and at the request of the head of the community studied – an indigenous

association was created to represent their interests. In addition, training was offered to indigenous youth so that they could participate in the documentation and establish a payment standard for each recording. The amount of the payment was proposed by the researchers – after a failed attempt to have the Kuikuro propose a price. The amount established by consensus was between R\$100,00 and R\$200,00 per hour of recording, depending on the importance of the song ritual. Since a ritual cycle lasts from 5 to 20 hours, the master singers receive from R\$500,00 to R\$4.000,00 when they are recorded. A documentation center was created at the village, with Internet access, which is only used by the young directors of the association and by other Kuikuru leaders. All the audiovisual records taken to the National Museum and to the Museum of the Indian, in Rio de Janeiro, must have a copy on file at the Kuikuru documentation center. This agreement was published in the federal government's *Diário Oficial da União* publication in both Kuikuru and Portuguese. The researchers interviewed declared that they use part of the materials collected in publications and exhibitions, based on previous agreements with the Indians. (There was a case in which the Kuikuru vetoed the use of two photos planned for a catalog. In other cases, the use of the images, sounds and information were authorized). Whenever products are sold, royalties are sent to the association. Another counterpart offered by the researchers of the National Museum is assistance to the Kuikuru Indigenous Association of the Upper Xingu (AIKAX) when the need arose to draft contracts to grant rights to the image. This was the case of the contract signed with two photographers, Sebastião Salgado and Georgia Fiori, who paid for the right to photograph and allowed the Indians to make commercial use of the photos in the future. Contracts to grant rights to the images were also signed between the Kuikuru and the BBC radio and television networks and the National Geographic – always with the assistance of anthropologists.

SUGGESTIONS FOR WIPO

In the first place it is recommended that some flexibility be used in the concept of property and that the final document of the WIPO Creative Heritage Project present the various forms by which IP is understood by the world's different traditional peoples.

Second, it was suggested that mechanisms be created that place limits on the granting of rights and knowledge, in three ways:

- Consider the hypothesis of inalienability of some cultural items for which rights may not be granted;
- Be open to discussing non-human and partial authors (the later of which externalize a manifestation that they received from spirits or ancestors);
- Create a forum to which the minority populations can turn in case of dispute or conflict, a type of international court, which constantly re-evaluates a Convention about the issue and compiles case law.

The people working on the DoBeS project, mentioned above, chose partial restriction of access to the database – not to make public knowledge that is secret and restricted to indigenous roles or subgroups. To do so, a protocol of access rules was created in the framework of the DoBeS project, to which we did not have access.

The documentation project of the Kuikuru culture was based on direct negotiation with the indigenous leaders and did not produce any written protocol related to copyright protection. However, anthropologists coordinating the production, conservation and protection of these documents offered various protective and compensatory measures, including: the publication of bilingual texts; remuneration previously agreed to with the Indians; request for authorization for the publication of research results; and technical assistance in other legal problems of the community. The researchers declared having complete knowledge of current law and of the code of ethics of the Brazilian Anthropology Association (ABA), although they do not use them directly. The option for case-by-case negotiation was thus justified by Carlos Fausto: “These things are highly variable and depend on circumstances internal to the community. A certain chief may be more interested in documentation than another. And when he leaves, you discover that there were people upset with this. But the biggest problem lies in the difference in the notion of property. Among us, once property is transferred according to certain rules, the people who ceded it in a fair transaction can no longer make a claim. Therefore, in the indigenous case, the debt will be eternal; it becomes part of the relationship: the Indians pay the people with whom they relate throughout their lives, with no end. They are never paid up. And for this reason, at times, when the Indians say that they were tricked by the whites, they are only saying that what was paid does not meet the debt. This issue is fundamental. In sum, we are familiar with the documents, but we prefer to speak with the Indians themselves.”

For the other projects and exhibits of the National Museum, no information was obtained as to the existence of rights and documents.

SELECTED LEGISLATION, CODES AND GUIDELINES

Nothing to add.

CONSULTED SOURCES

www.museunacional.ufrj.br

Telephone interview with professor and researcher in the Social Anthropology Department of the National Museum, Carlos Fausto, on March 7, 2009.

ADDITIONAL READING

Museum of the Indian

ABA – Brazilian Association of Anthropology

MPEG - Emílio Goeldi Museum

MPEG - Emilio Goeldi Museum

OFFICIAL DESIGNATION

Museu Paraense Emílio Goeldi, Ministério da Ciência e Tecnologia

CLASSIFICATION

Type: Museum; research institution

Legal status: Public (federal)

Scope: National

CONTACT AND ADDRESS

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MISSION AND PROFILE

Museu Paraense Emílio Goeldi (MPEG) is an independent unit of the Conselho Nacional de Desenvolvimento Científico e Tecnológico (CNPq) [National Council for Scientific and Technological Development] of the Ministério de Ciência e Tecnologia [Science and Technology Ministry]. Recognized as an international reference center for the Amazon Region in the fields of natural and human sciences, its partnerships have been expanded to other countries including the United Kingdom, Canada, Japan, Germany, France, the Netherlands and the United States.

The creation of, MPEG as a natural history museum was proposed by a Provincial Budget Law of 1861 to support naturalists and explorers in the rainforest region, train scientists and establish collections to be kept in the country. In 1968, MPEG incorporated the Amazon Socio-Cultural Studies Center (CESCA). This broadened the scientific interests of this institution to include fishermen, agriculture workers, migrants and indigenous peoples. Since March 1983, the Museum, which used to be part of the National Institute for Research in the Amazon (INPA), became an independent entity, related to CNPq.

The archeological collection consists of over 81,000 objects and ceramic fragments, stone artifacts and other evidence collected from various archeological sites in the region. The ethnological collection, with approximately 14,000 items, is heterogeneous considering the scope of its geographic origin (Brazil, Africa, Peru and Suriname) and its typology, since it includes handicrafts of all categories usually adopted by ethnological and natural history museums. The linguistic collection maintains documented material of Amazonian languages in audio and video formats.

In 1989 MPEG organized the first International Congress of Ethno-biology, on which occasion the Belem Charter was approved as the first international document in the field. Published prior to the Convention on Biological Diversity, the Charter presented the need for prior informed consent of the indigenous peoples involved in research, as well as the need to share the benefits derived from these activities. The Belem Charter became a code of ethics for ethno-biologists.

The Museum was active in the “cupuaçu is ours” campaign, one of the stimulators of the North Network of Intellectual and Biodiversity Property and Traditional Knowledge.

RELEVANT PROJECTS AND PROGRAMS

The following activities in the human sciences stand out in the perspective of the present survey:

Pilot Program for the protection of tropical forests in Brazil (PPG-7), signed by the Brazilian Government and the group of high-GNP countries (G7) during the Rio 1992 UN-Environment and Development Conference.

Research group formed to develop a methodology for the integration of discussions concerning how the CBD affects IP rights, the *sui generis* model, ongoing discussions on both tangible and intangible cultural heritage, reflections on the rights of peoples to their culture, and notions concerning IP based on socio-cultural specificity and common law.

Study and audiovisual documentation of various Amazon indigenous cultural expression (rituals, music, dance) and languages, especially those in danger of extinction.

Regarding the ethno-botanical domain, projects aiming at formulating biotechnology products while respecting ethical principles of common law and the sharing of benefits.

Núcleo de Inovação Tecnológica - NITT [Center for Technology Innovation]. This center's activities focus on strengthening institutional policies to protect knowledge and technology transfers, and are intended to help improve the quality of life as well as to implement a rational use of natural resources in the region. NITT is the result of the Intellectual Property Research Group, which originated from an awareness-raising project for MPEG researchers on the protection of IP related to biodiversity and TK.

CD-ROM “Magüta Aru Inü. Jogo de Memória: Pensamento Magüta” [Magüta Aru Inü. Memory Game: Magüta Thinking]. This project was coordinated by anthropologist Priscila Faulhaber, a researcher at the Museum and included participation of representatives of the Ticuna peoples from the Enepü, Barro Vermelho, Otaware and Ribeiro communities in Amazonas State, Brazil, and in the Arara and Nazaré reserves in the Departamento de Amazonas, Colombia. The CD-ROM includes a set of texts, images, video, a database and animations resulting from an anthropological process of reinterpretation of masks, apparel and ritual instruments used in the puberty ritual of this people, collected by German ethnologist Curt Nimuendaju (1941/1942) and stored in the Museum's technical archives. Two thousand copies of the CD were printed in the first edition, of which 1,200 were issued to the Ticuna with 800 remaining with the Museum for scientific dissemination. The possibility of making a new edition of this digital inventory will be negotiated directly with the indigenous leaders, given that the informational content of the CD is part of the TK of the Ticuna people. The project received the Rodrigo Mello Franco de Andrade award of Brazil's National Historic and Artistic Heritage Institute in 2008, in the category Inventory of Research Archives.

INTELLECTUAL PROPERTY ISSUES

For those who would like to access or use documents of the Goeldi Museum Archive, there is a database available at <http://www.museu-goeldi.br>

The Goeldi Museum follows the required legal procedures regarding the loan of collection items for exhibitions. Contracts must indicate institutional curators as well as the guarantees required to insure complete safety of the items. All items owned by the Goeldi Museum are original and may not be sold. Reproduction may be authorized.

With respect to anthropology or linguistics research projects, the usual practice is to follow the ethical orientations of these disciplines and obtain the consent of communities prior to collecting information or making audiovisual recordings. This procedure takes place in meetings with the target communities where a presentation of the project is made and submitted to the group for deliberation. It is desirable that each research project be carried out with the participation of the community, taking into consideration their views and interests in relation to the research topic.

The work of the research group “Protection of the Knowledge of Indigenous Peoples and Traditional Societies of the Amazon Region” shares the viewpoint that emphasizes the principles established by the following documents: Convention on Biological Diversity, IP Rights regulations, *Sui Generis* System of IP Rights, Safeguarding of Intangible Cultural Heritage and ILO Convention 169 (1989). Guidelines issued by the Genetic Heritage Management Council (CGEN) of the Brazilian Ministry of the Environment are also observed in the case of research and documentation of TK related to biodiversity.

Prior and adequately informed consent takes place in cases of access to TK whether about biodiversity or not, in conformity with the rules set by the country’s legislation, developed from the principles of the Federal Constitution and of the ratified Convention on Biological Diversity. Such decisions are taken by the communities in meetings conducted as specified in CGEN’s ordinances.

SUGGESTIONS FOR WIPO

The creation of international instruments for the protection of IP is considered important, with the condition that they recognize the rights of indigenous peoples and traditional societies to ratify such instruments, which must be based on their system of justice and common law. Likewise, it is of prime importance to go beyond a purely marketing-oriented vision of IP

protection to assure consideration of the symbolic and identity-related values of TK and TCEs, and of those associated with the information disclosed by the documents made about them.

SELECTED LEGISLATION, CODES AND GUIDELINES

CONVENTION 169 ON INDIGENOUS AND TRIBAL PEOPLES, adopted by ILO, on June 27, 1989. (Part II/Articles 13-19)

DECREE 2.519, March 16, 1998. Promulgates the Convention on Biological Diversity, signed in Rio de Janeiro, June 5, 1992.

CONVENTION FOR THE SAFEGUARDING OF INTANGIBLE CULTURAL HERITAGE, adopted by UNESCO, on Oct. 17, 2003. Refers to existing international human rights instruments, in particular to the Universal Declaration on Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966.

Code of Ethics of ethno-biologists (The Belem Charter)

Code of Ethics of the Brazilian Anthropological Association

Code of Ethics of linguists

Code of Ethics for museums / ICOM

MPEG - EMÍLIO GOELDI MUSEUM OF PARA. Regulations for accessing information on the Goeldi Museum website.

CONSULTED SOURCES

E-mail interview with museum staff members

<http://www.museu-goeldi.br>

<http://cienciahoje.uol.com.br>

ADDITIONAL READING

CGEN – Genetic Heritage Management Council, Ministry of the Environment

Magüta Museum

NUPAUB - Research Center on Human Populations in Brazilian Wetlands

OFFICIAL DESIGNATION

Núcleo de Apoio à Pesquisa sobre Populações Humanas em Áreas Úmidas Brasileiras,
Universidade de São Paulo

CLASSIFICATION

Type: Research institution, archive

Legal status: Public (provincial, State of São Paulo)

Scope: National

CONTACT AND ADDRESS

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MISSION AND PROFILE

NUPAUB is an interdisciplinary research center at the Universidade de São Paulo (USP). It was created in 1988 to promote the study of the relationships of human populations in Brazilian wetlands. It has undertaken projects in partnership with researchers from other universities and its financial resources and infrastructure come from USP as well as Brazilian and international research and finance agencies, in addition to the Ministry of the Environment.

Its goals include, (1) to develop interdisciplinary research projects aimed at the study and conservation of biological and cultural diversities in the ecosystems of Brazilian wetlands; (2) to establish and maintain a center for documentation and an information system at a national level; (3) to provide technical and scientific support to social movements, in research for improved living conditions for local communities.

In addition to having published various books, NUPAUB provides access through its website to its library catalog about TK, which is divided into three categories: general, traditional indigenous populations and traditional non-indigenous populations. The site also has a virtual library with various articles, documents, research reports and books that are available for download.

RELEVANT PROJECTS AND PROGRAMS

Among the activities currently underway is a research project in coastal areas about the system of management of the Atlantic Forest and of the marine region between the states of Rio de Janeiro and Paraná. The project's main goal is to identify management practices of fishing resources that can be incorporated into modern legislation for natural resource management.

As a complement, it has organized large events gathering over 1,000 people, including *caiçaras* (traditional populations living on the coast) or indigenous (in this case Guarani) leaders. On these occasions, talks and workshops are given by local masters about the manufacture of *rabecas* [traditional string instruments played with a bow], *violas* [traditional guitar] and canoes.

INTELLECTUAL PROPERTY ISSUES

The center's research projects involve principally – but not exclusively – traditional non-indigenous populations such as *caiçaras*, *ribeirinhos* and *caboclos* and include the participation of local specialists, such as *mateiros* and *mestres do mar*.

In these activities, the NUPAUB researchers follow the common ethical norms of the academic community, in addition to the legal guidelines concerning access to TK, such as the Convention on Biodiversity and Provisional Act 2.186-16/2001, which established the need for prior and informed consent and the sharing of benefits derived from the use of this knowledge.

In the projects in the protected areas, NUPAUB sought to obtain the authorizations needed as established by law. With traditional, non-indigenous populations living outside parks, the researchers reach informal agreements (through verbal consent) based on the explanation of the objectives of each project.

Among the procedures established by professional ethics, it is considered necessary to clarify with the local populations the objectives and methods, as well as to respect the privacy and trust of the subjects of research. It is also considered part of the role of the university to support and respect these historically marginalized communities by disseminating their cultural practices. The dissemination of the research results among the communities and schools, as well as the donation of printed publications and DVDs resulting from the work of the researchers, are considered important factors in the role of the researchers as allies to these communities in the protection of their rights.

SUGGESTIONS FOR WIPO

The dissemination of the actions concretely achieved – mainly those that have been successful – can be useful to establish better knowledge of this field. It would be insufficient to develop at this stage general tools for the regulation of IP and even insufficient if additionally there is no guarantee that the traditional populations will have access to the natural resources necessary for their survival.

LEGISLATION, CODES AND GUIDELINES

DECREE 2.519, March 16, 1998. Promulgates the Convention on Biological Diversity, signed in Rio de Janeiro, June 5, 1992.

PROVISIONAL MEASURE no. 2.186-16, Aug. 23, 2001, which concerns access to genetic resources, protection and access to associated TK, the sharing of benefits and access to technology and transfer of technology for its conservation and use.

DECREE 6.159, July 17, 2007. Modifies Decree no. 3.945, Sept. 28, 2001, which defines the composition of the Genetic Heritage Management Council and establishes the standards for their operation, by regulating arts. 10, 11, 12, 14, 15, 16, 18 and 19 of Provisional Measure no. 2.186-16, Aug. 23, 2001.

CONSULTED SOURCES

<http://www.usp.br/nupaub>,

Personal interview with institution's director

ADDITIONAL READING

CGEN – Genetic Heritage Management Council, Ministry of the Environment

5. PRODUCTION AND DISSEMINATION OF TK AND TCE RECORDS

5.1 Afro-Brazilian group

Arturos Community

CONAC – Quilombola Black Rural Communities

CPI/SP – São Paulo Pro-Indian Commission

CEDEFES – Eloi Ferreira da Silva Documentation Center

5.2 Oiapoque group

APIO – Oiapoque Indigenous Peoples Organization

Kuahí Museum

Iepé – Institute for Research and Training in Indigenous Education

5.3 Rio Negro group

AILCTDI – Indigenous Association of Tariana Language and Culture of the
Iauareté District

FOIRN – Federation of the Indigenous Organizations of Rio Negro

ISA – Socio-environmental Institute

5.4 Ticuna group

Magüta Museum

CGTT – General Council of the Ticuna Tribe

OGPBT – General Organization of Bilingual Ticuna Teachers

5.5 Traders

ARTESOL – Solidary crafts

5.6 Media producers

Cachuêra Cultural Association

Video nas Aldeias

Violado Quintet Foundation

5.1 Afro-Brazilian group

The Black Community of Arturos

OFFICIAL DESIGNATION

Comunidade Negra dos Arturos

CLASSIFICATION

Type: Arts and media producer; archive and library

Legal status: Not-for-profit civil society

Scope: Socio-political (Afro-Brazilian)

CONTACT AND ADDRESS

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Contagem – MG

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MISSION AND PROFILE

The Comunidade Negra dos Arturos [Arturos Black Community] is a folklore group in the municipality of Contagem, Minas Gerais State, which promotes its traditions through religious music and dance of African origin. The Irmandade Nossa Senhora do Rosário de Contagem [Our Lady of the Rosary Sisterhood of Contagem], created in 1972, is the legal representative of the community, particularly in the organization of events. Throughout the year the group organizes festivals to commemorate dates such as the Saints' day Folia dos Santos Reis, and Our Lady of the Rosary Day, one to mark the abolition of slavery and others. The celebrations and rituals most practiced are candomblé, congado and batuque.

The Comunidade dos Arturos was founded 120 years ago by Artur Camilo Silvério, son of the slave Camilo Silvério, who had come from Angola in a slave ship in the mid 19th century. Upon arriving in Brazil, Camilo Silvério achieved a letter of freedom and settled in Minas Gerais, in the Vila de Santa Quitéria, village on Macuco Island, which is now the city of Esmeraldas. He married the freed slave Felisbina Rita Cândida and they had six children.

Artur Camilo Silvério was born in 1885 and from his marriage with the black woman Carmelinda Maria da Silva, 10 children were born. He founded a community on six hectares of land in the village of Domingos Pereira, now Jardim Vera Cruz, in the municipality of Contagem. Today, the community includes 45 families, approximately 450 people, all descendents of Artur Camilo Silvério.

RELEVANT PROJECTS AND PROGRAMS

CD-book *Cantando e reinando com os Arturos* [Singing and frolicking with the Arturos" of 2007. The CD-book was created by the members of the community in order to bring together a representative portion of the musical repertoire linked to their Congado rituals, including the voices and the knowledge of the consecrated masters of the community, some of whom have passed away. The CD includes many photos and digital audio recordings that were made earlier by researchers and documentarians. The community chose the content and participated in the technical discussions about the production procedures, so that the CD-book would reflect its concept of the Congado music. The production run included 1,000 CD-books, 2,000 CDs and 1,000 80-page books. The distribution was conducted by the Ministry of Culture and by the Comunidade dos Arturos/Irmandade Nossa Senhora do Rosário de Contagem. The material was distributed at Congada and popular culture institutions, universities, public libraries in Brazil and abroad and in music schools and popular culture centers.

Preservation of the Roots of Father Artur. The purpose of this project developed since 2007 was to promote the preservation of local culture among children and youth in the community.

Workshops were conducted in singing, building of drums and other musical instruments, traditional dance, Congada clothing, percussion, cooking and in computers.

The project also promoted the re-editing (printing and reproduction) of the CD-book *O Congado dos Arturos*. This CD-book has audio recordings presenting the musical diversity of groups from the Congo and Mozambique who perform in the rituals of the Reinado de Nossa Senhora do Rosário [Our Lady of the Rosary] (Congado) of the Comunidade Negra dos Arturos; brief contextual audio commentaries; bilingual explanatory texts, with details about the history and context of the community, in addition to information about the sounds and musical constructions, their roots and performance conditions, including transcripts of songs and rhythms. The book also includes special sections on the themes: The Hierarchy of the Congado, Cooking in the Comunidade dos Arturos and the Traditional Festivals of the Congado dos Arturos.

Cultural Heritage Management. Introductory 600-hour course given to 15 Arturo youth, under the Factory School Program of the federal government, through the Casa de Cultura de Contagem, in 2006.

INTELLECTUAL PROPERTY ISSUES

Representatives of the Community often participate in seminars and popular culture festivals about copyright. Nevertheless, these issues are only vaguely discussed among the Arturos.

SUGGESTIONS FOR WIPO

Jorge Antônio dos Santos, director of events of the Comunidade dos Arturos, suggests that WIPO learn more about the community's manifestations, history and festivals. Partnerships and discussions about the issue would be well received by the community. There is interest in discussing issues of IP and copyright, but it is necessary to have support from responsible institutions that are committed to preserving Brazil's cultural traditions.

SELECTED LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

Boletim Família

<http://www.overmundo.com.br/blogs/comunidade-dos-arturos-celebra-119-anos-da-libertacao-dos-escravos-no-brasil>

<http://www.palmares.gov.br>

Interview by e-mail with Jorge Antônio dos Santos, events director.

ADDITIONAL READING

Nothing to add

CONAQ - National Coordination of Rural Black Quilombo Communities

OFFICIAL DESIGNATION

Coordenação Nacional de Articulação das Comunidades Negras Rurais Quilombolas

CLASSIFICATION

Type: Afro-Brazilian Organization

Legal status: Not-for-profit civil society

Scope: National

CONTACT AND ADDRESS

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MISSION AND PROFILE

The National Coordination for the Articulation of Rural Black Quilombo Communities – CONAQ was created in May 1996, in Bom Jesus da Lapa, Bahia, during a meeting of the evaluation of the 1st National Meeting of Quilombos. The movement works for the rights of blacks in rural areas joined in a network of quilombo³ organizations from 22 Brazilian states. It does not have a specific legal status. The Executive Coordination is currently composed of representatives from the states of Rio Grande do Norte, Rio Grande do Sul, Mato Grosso do Sul, Rondônia and Rio de Janeiro.

The specific objectives of CONAQ are to guarantee the right to land and the implementation of sustainable development projects in the Quilombo communities; to fight racial discrimination and religious intolerance; to guarantee the rights of Quilombo-dwelling children and teenagers as continuers of the Quilombo culture and traditions; to propose public policies that respect the pre-existing organization of these communities, such as the use of land and of natural resources; and to guarantee the preservation of customs, culture and tradition among the generations of the quilombo populations.

³ Defined by Decree 4.887, 20 November 2003, article 2^o as self-defined racial-ethnic groups descending from African or Afro-Brazilian ancestors who resisted slavery and developed traceable historical bonds with specific territories.

RELEVANT PROJECTS AND PROGRAMS

No information

INTELLECTUAL PROPERTY ISSUES

CONAQ has not yet promoted discussion about IP issues among its members.

SUGGESTIONS FOR WIPO

Provide support to initiate debate about the IP rights of the traditional Afro-descendent populations, particularly in relation to copyright for texts and images.

SELECTED LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

www.conaq.org.br

Interview by e-mail with Ronaldo dos Santos, representative of CONAQ in Rio de Janeiro

ADDITIONAL READING

Nothing to add

OFFICIAL DESIGNATION

Comissão Pró-Índio de São Paulo

CLASSIFICATION

Type: Support organization, archive.

Legal status: Not-for-profit civil society

Scope: National

CONTACT AND ADDRESS

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MISSION AND PROFILE

The Pro-Indian Commission of São Paulo is a non-governmental organization founded in 1978 by a group of anthropologists, lawyers, doctors, journalists and students to defend the rights of indigenous peoples from the growing threats of the dictatorial regime that ruled Brazil at that time.

The Commission now seeks to guarantee territorial rights of the indigenous peoples and Quilombo communities and to strengthen the indigenous and Quilombo political organizations, so that their members become effective participants in the legal and policy processes aimed at their communities. The Commission also promotes the building of fair relations between indigenous and Quilombo men and women and fights racial and ethnic discrimination.

RELEVANT PROJECTS AND PROGRAMS

CPI-SP promotes trainings about various issues (such as laws related to territorial rights of the beneficiary groups, gender relations, project planning and management); assists organizations of beneficiary groups; produces educational material; conducts research; disseminates information about and for the beneficiaries; monitors government actions; organizes seminars; and implements income generating projects.

The two principal targeted publics of their projects and programs are the indigenous peoples and the remaining Quilombo communities, which share a history of resistance to colonial domination. In the 2000 demographic census, the Brazilian Institute of Geography and Statistics (IBGE) found an indigenous population of 63,789 in São Paulo State. There is no census of the Quilombo population, but it is estimated that there are 35 communities in São Paulo, about 30 of which are in the Vale do Ribeira region.

The Quilombo Communities and Territorial Rights Program, undertaken by the Pro-Indian Commission of São Paulo is dedicated to researching and promoting how these rights have been recognized by law, implemented by government and interpreted by the courts. During 2007, CPI-SP continued surveying and systematizing the monitoring data, analyzing more than 500 administrative processes underway in INCRA, judicial actions referring to 50 Quilombo lands and revising Brazilian law. The CPI-SP also made available on its Internet site a page that illustrates and teaches step-by-step how federal law allows gaining title to Quilombo lands.

In 2007, the Commission determined that printed material was needed to improve the opportunity for Quilombo residents to access the results of its monitoring program. This is how the “Terra de Quilombo” [Quilombo Land] bulletin was created, which had two editions in 2007 and was distributed to more than 100 leaders in 20 states and 15 regional coordinating entities. The electronic version was presented to NGOs, the black movement, researchers, attorney generals and members of government agencies. The bulletin, however, does not deal with issues related to IP, only with the right to land. Since 2005, CPI-SP has also monitored the processes for demarcating indigenous lands in São Paulo State. The results of the monitoring were systematized in a pamphlet distributed in 38 villages in São Paulo. They are also available for consultation on the CPI-SP website.

The Commission also trains young indigenous and Quilombo leaders. This initiative was motivated by the need to encourage and prepare youth to defend the rights of their communities. In 2007, the first two steps of the training process were conducted, involving 23 Quilombo residents from communities located in 14 municipalities. The training workshops with Guarani youth involved 25 people from 15 villages located in the state capital, on the

north coast, the south coast, and the Vale do Ribeira. In both cases, the training focused on land demarcation.

The line of action undertaken by the CPI that is most closely related to the issue of the WIPO Creative Heritage Project is that of ethno-development. The New Future on the Horizon of the Guarani of the Boa Vista Village Project involves four years of intense activity of research of income-generating opportunities that can strengthen the sustained use of this indigenous land. The project's principal goals were to support Guarani crafts and increase their environmental sustainability and their potential as a source of income. It was undertaken from 2004-2007 with support from the National Environmental Fund and DKA-Austria.

The actions undertaken by CPI-SP in partnership with the Guarani of Boa Vista revived TK and introduced new techniques for making crafts. The crafts also gained a logo, created in conjunction with the Indians, who now accompany the pieces they produce to the market. The benefiting village comprises of 30 families and is located in Ubatuba, on São Paulo's northern coast. This indigenous land was demarcated by Presidential Decree No. 94.220/87, which guarantees the Guarani 920.66 hectares. Nevertheless, even with their land guaranteed, the Guarani have serious problems in maintaining a sound diet and a decent life. Hunting, which was an important source of food for the population, is no longer common in the region. Meanwhile, in the process of more intense contact with the *juruá* (non-Indians), the Guarani began to consume industrialized products (clothes, food, and household appliances), which created a need for money. In this context, the development of sustainable income-generating opportunities became one of the priority challenges for the Guarani of Boa Vista.

One of the alternatives found was ecotourism. The Boa Vista village is open to scheduled visits of schools and tourist groups. Visitors can visit the village, watch their dances and purchase crafts. The second alternative, which has strong support from CPI-SP was precisely the increased production and sale of crafts.

This activity involves men and women of various ages, who are responsible for producing a broad range of crafts: various types and sizes of baskets, musical instruments, wooden sculptures, pau-de-chuva [rain sticks] and jewelry. The craft production process involves the collection of raw materials in the forests, their preparation (cutting, drying and dying) and the production of the pieces. Depending on the type of craft, this process can take days or weeks. Based on traditional practices for the collection and handling of raw materials, the Guarani of Boa Vista have a quite efficient system. The Imbé vine, the bamboo, the gourds, the cajarana, caixeta, pati and other plant species are collected selectively to guarantee their continued reproduction in the field. Care is also taken to make maximum use of all the raw material collected, to avoid waste.

At the Boa Vista village, basket-making is the most common craft production. The items are made with care and precision in the geometric designs and cuts to the bamboo strips. They have a variety of designs that differ with each craftsperson, while maintaining a relative homogeneity of forms, colors and styles. Craftspersons in the community also produce mats, fans, necklaces, bracelets and rings, musical instruments (rattles, rain-sticks and drums), utensils (bow and arrows, blowguns and axes) and miniature wooden animals of the Atlantic Forest.

INTELLECTUAL PROPERTY ISSUES

According to the executive coordinator “the CPI-SP has no mature discussion about the issues raised by the WIPO Creative Heritage Project. For this reason, the response would require internal analysis by our staff, which we did not have an opportunity to conduct.”

Meanwhile, chapter 2 of CPI’s by-laws determines that its objectives include: “seeking consolidation and advances in legislation, as well as building case law which is favorable to the groups benefitting from its action; proposing the establishment of public policies concerning the rights and interest of the groups that benefit from its actions; defending, preserving and promoting environmental conservation and promotion of sustained development, using legal instruments, in court or out; promoting the defense and conservation of historic and cultural heritage; promoting the study and application of new social production models and of alternative production and commercial systems to benefit the social and ethnic groups who are beneficiaries of its action.” Therefore, although it does not make direct reference to the issue of IP, the concern for this issue is at the foundation of the group’s formation.

Concerning ethics and transparency of the entity in general, CPI-SP is accountable to the Brazilian society through the publication of a report that presents the main activities conducted in the previous year as well as a summary of the income and expenses for that fiscal period. The report is presented on the website and a print version is distributed to the beneficiaries – the indigenous and Quilombo communities – as well as to partners.

SUGGESTIONS FOR WIPO

Nothing to add

SELECTED LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

CPI website: www.cpisp.org.br

Estatuto da Comissão Pró-Índio de São Paulo [CPI by-laws]. Found on-line at:
<http://www.cpisp.org.br/html/estatuto.html>

CPI-SP activities report for 2007. Available on-line at:

<http://www.cpisp.org.br/pdf/relatoriopublico2007.pdf>

Exchange of messages with Lúcia Andrade, executive coordinator of the Pro-Indian Commission.

ADDITIONAL READING

Nothing to add.

CEDEFES - Eloi Ferreira da Silva Documentation Center

OFFICIAL DESIGNATION

Centro de Documentação Eloi Ferreira Da Silva

CLASSIFICATION

Type: Supporting organization; archive

Legal status: Not-for-profit civil society

Scope: Socio-political

CONTACT AND ADDRESS

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MISSION AND PROFILE

CEDEFES is a Non-Governmental Organization that seeks to promote education and social and political training of farm workers, indigenous peoples, popular groups and organizations, and elementary and high school students and teachers. The Center was founded in 1985 and is located in the city of Contagem, Minas Gerais. It is well-known and respected in the region of Belo Horizonte, Contagem, Ibirité and Betim. The name is a tribute to Eloi Ferreira da Silva, a farm worker and union leader assassinated on Dec. 16, 1984, in the São Francisco Valley, Minas Gerais.

Over the years, CEDEFES has given priority to two main issues: land and indigenous peoples, particularly in Minas Gerais. It is the only Documentation Center aimed at recovering, recording and preserving the history of the indigenous peoples in Minas Gerais State. CEDEFES recently began to undertake activities in the field of education, focused on training, discussing with and raising awareness among children, youth and adults. The goal is to propose experiences to foster respect for other ways of life, to stimulate a more democratic and fairer coexistence. The Center has also dedicated special attention to issues related to Afro-Brazilians.

The management of the entity is the political and legal responsibility of the Board of Directors and Fiscal Council, chosen in an Assembly of the members. CEDEFES' members include specialists and people who have experience in popular movements. An executive staff is responsible for the implementation of CEDEFES' action plan, supported by the Board and Assembly of the members.

RELEVANT PROJECTS AND PROGRAMS

CEDEFES maintains document archives that include a variety of books, bulletins, newspapers, magazines, texts from social movements and entities, a news-clipping file going back to 1985, a map room and a collection of posters, videos (films, video, and audiovisual resources) in addition to indigenous arts and crafts. Part of the archives is available for loans, particularly the films and videos.

The documentary archives gives priority to the issues of land tenure, to indigenous peoples of Minas Gerais, and also to black, union, popular and women's movements. The archives are available for consultations and copying. The indigenous crafts collection contains bows and arrows, spears, dolls, ritual instruments, baskets, posters and related objects. The archives has slides and videos about Popular Culture, Human Rights, Economics, Education/Popular Culture, Indians, Youth, the Environment, Communication Media, Children and Adolescents, the Popular Movement/Housing, the Union Movement/Work, Women, Blacks, Politics and Society, Religion and Society, Health and Land and other issues.

CEDEFES also promotes and participates in seminars and debates. The Center is accustomed to documenting meetings, events and mobilizations promoted by the social movements and indigenous peoples.

INTELLECTUAL PROPERTY ISSUES

All of CEDEFES' publications are prepared with respect for legal regulations and in complete agreement with the communities involved. The Center, however, has no project on copyright for the traditional communities it assists. CEDEFES simply makes an effort to provide information related to the issue of IP.

SUGGESTIONS FOR WIPO

No information

LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

www.cedefes.org.br

Interview by e-mail with Pablo Camargo, technical assistant and historian of CEDEFES

ADDITIONAL READING

Nothing to add

5.2 Oiapoque group

APIO - Indigenous Peoples of Oiapoque Association

OFFICIAL DESIGNATION

Associação dos Povos Indígenas do Oiapoque

CLASSIFICATION

Type: Association

Legal status: Not-for-profit civil society

Scope: Indigenous

CONTACT AND ADDRESS

Vitória dos Santos Karipuna, president

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MISSION AND PROFILE

The mission of the Associação dos Povos Indígenas do Oiapoque (APIO) [Indigenous Peoples of the Oiapoque Association] is to represent and defend the rights of the indigenous nations of the Galibi, Palikur, Karipuna and Galibi-Marworno, who inhabit the indigenous lands of Uaçá, Galibi and Juminan. Approximately 6,000 indigenous people live in the Oiapoque River region of Amapá State in the Brazilian Amazon. In addition to working to protect indigenous rights, APIO organizes seminars, conducts projects and provides assistance in the fields of education, healthcare, sustainable development, culture and law.

The peoples of the Uaçá have maintained a constant relationship with Brazilian government agencies, missionaries and NGOs in recent decades. This experience has contributed to having these groups share a joint identity, presenting themselves and being known as the “Indigenous Peoples of the Oiapoque.” Since 1974 these groups have organized themselves politically and built a network of partnerships, coming to claim their rights and fighting to occupy spaces on the social and political scene. Thus, since the 1970s, they have been electing indigenous city council representatives and in the 1990s were able to elect a Galibi-Marworno to be mayor of the municipality of Oiapoque.

The conquests are highlighted by the regularization of land ownership for the indigenous lands, improvements in infrastructure in the fields of health, education, transport, communication and electric energy among others.

RELEVANT PROJECTS AND PROGRAMS

Environmental Library of the Kumarumã Village. The Kumarumã Village of the Galibi-Marworno people has an Environmental Library with nearly 3,000 books donated by the Amapá State government. The library has the support of the NGO Nature Conservancy of Brazil and of countless other partnerships such as the Indigenous Peoples Demonstration Program of the Environmental Ministry, Petrobras, the Museu Emílio Goeldi, France-Libertés, the

Coordination of Indigenous Organizations of the Brazilian Amazon (COIAB), the Associação Galibi-Marworno (AGM), Funai – Oiapoque and the Environmental Secretariat of Amapá State.

Exhibition “*The presence of the invisible in the daily and ritual life among the indigenous peoples of the Oiapoque*,” 2008. “The presence of the invisible” presents a broad and articulated view of the indigenous universe, which gives life and meaning to the daily manifestations and rituals of the indigenous peoples of the Oiapoque. The concept of the invisible is the central theme and connecting element of the entire exhibition and permeates the various environments, elements and manifestations, whether of the Turé or the Christian creeds, the tangible artifacts, the evocation of the stars or of the entities at the depths of the water, the forest and even of the current social-political context.

The exhibition, organized by anthropologist Lux Vidal, of the University of São Paulo, was realized by APIO and Kuahí Museum in partnership with Iepé - Instituto de Pesquisa e Formação em Educação Indígena [Institute for Research and Training in Indigenous Education] and has the support of the Banco Nacional de Desenvolvimento Econômico e Social [The National Social and Economic Development Bank] (BNDES). It is currently on display at the Museu do Índio, in Rio de Janeiro.

APIO Cultural Revival Project / PDPI – MMA, 2004 – 2007. This experience offered greater integration among the indigenous peoples of various ethnic backgrounds and villages, stimulating comparisons, confrontations of identities and new knowledge. The similarities and differences between ethnic groups and places became clearer and more contextualized. All of the activities were registered on video, photos and recordings. Workshops were conducted leading to the production of artifacts and the transmission of knowledge. The material produced included objects, songs, ritual narratives, paintings and objective and subjective statements. Restricted meetings were held with the master crafts producers, their disciples and with collectors of raw material. The activities of the project motivated the realization of craft activities and rituals not initially planned.

The villages visited were Kumarumã (Galibi-Marworno) and Kumenê (Palikur). In-depth interviews were conducted with the craftswoman Edilene dos Santos Santa Rosa, of the Manga (Karipuna) and with the shaman Leven (Galibi-Marworno) in Oiapoque. Participants in the project included the anthropologist Lux Vidal (project assistant), Francisco Simões Paes and a group of indigenous technicians from the Museu Kuahí.

INTELLECTUAL PROPERTY ISSUES

Since various ethnic groups coexist in the region, forming multiple networks of sociability and symbolic frontiers, in addition to continuous contact that has been maintained with the regional society and with government agencies, the idea of property implemented by Brazilian society is not foreign to the local contexts, nor does it cause questioning or problems. The Indians use and sell their artifacts, with the benefits going to the craftsman or woman. Certain practices are secret, such as those special to the shamans, which come through dreams, music or prayers for cures. At times there are veiled accusations that a shaman “stole” songs or marks dreamed by another, but this is rare, with each one possessing their particular creations.

The artistic techniques and talents are transmitted within the families or kinship groups. Today, with the increased material and political value of cultural heritage, complaints arise that individuals from one ethnic group are passing the art from one group to another (in the case of the inter-ethnic marriages). This process always occurs, but these accusations are forms of aggression against a successful person, such as a teacher or leader. Thus, in the case of the Oiapoque peoples, the production of the tangible and intangible culture is already an issue in a broader political and economic sphere, which is reinforced by the fact that they live in the region bordering French Guyana, where the Euro circulates and there are French Government programs for traditional peoples.

Today, the different communities or ethnic groups of the Oiapoque region are more concerned with the internal symbolic, political and economic differences than with the appropriation of their knowledge and distinctive marks by outsiders, simply because there is not very much demand in this area.

SUGGESTIONS FOR WIPO

The IP tools should be clear and accessible to those interested, in this case the indigenous communities, and be evaluated *in loco* for each specific case.

SELECTED LEGISLATION, CODES AND GUIDELINES

Nothing to add.

CONSULTED SOURCES

Interview by e-mail with Lux Boelitz Vidal, anthropologist, museum curator, and assistant to cultural revival projects among the Indigenous Peoples of the Oiapoque.

<http://www.povosindigenasdooiapoque.com.br>

<http://oiapoque.museudoindio.gov.br/exposicao/projetos/museu-kuahi/>

<http://www.institutoiepe.org.br/docs/doc5.pdf>

ADDITIONAL READING

Iepé – Instituto de Pesquisa e Formação em Educação Indígena

Museum of the Indian

Kuahí Museum

Kuahí Museum

OFFICIAL DESIGNATION

Museu Kuahí

CLASSIFICATION

Type: Museum

Legal status: Not-for-profit civil society

Scope: Indigenous

CONTACT AND ADDRESS

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MISSION AND PROFILE

The Museu Kuahí [Kuahi Museum] is located in the city of Oiapoque, Amapá. This region has nearly 6,000 indigenous people in 34 villages located in an area of 520,000 hectares distributed over three indigenous lands: Uaçá, Galibi and Juminã. They represent 40% of the local population. In 1998 the indigenous peoples of Oiapoque proposed the creation of a museum to promote and disseminate their artifacts, knowledge and social practices. Construction of the museum began in 2002 and continued through 2007, when it was inaugurated.

The goal of the museum is to keep alive the traditions of the Karipuna, Palikur, Galibi Marworno and Galibi Kalinã, to integrate the diverse knowledge of these peoples, to promote respect for their cultural identity and to offer activities that maintain the exchange between villages, academic institutions, national and international museums and socio-environmental organizations.

These installations are divided into two exhibition rooms, an auditorium, a bibliographic and audiovisual research room, a pedagogical activities room and a shop with indigenous artifacts. The museum management is organized by the Galibi Marworno people; the 19 employees who are responsible for the administration, monitoring of the visits and general services are indigenous. The Museum is also a space for the making, exhibition and sale of indigenous crafts.

RELEVANT PROJECTS AND PROGRAMS

The Museu Kuahí has three distinct archives: bibliographic, audiovisual and ethnographic. They are open to the public, but it is not possible to make copies – the material cannot be removed from the archive due to the museum regulations, but there is a suitable space for reading. While the artifacts collected belong exclusively to the indigenous peoples of the

Oiapoque, the bibliographic and audiovisual archives include documents referring to indigenous peoples from other regions of Amapá and of Brazil.

The craft shop receives products in consignment. These goods are registered, described and photographed. The Indians themselves establish the prices for their products and the museum adds a small margin to meet its maintenance expenses. At times (but not always) there is flexibility in the price of the commercial transactions with the public. The producers of the crafts individually receive the income from the sale of their products. The economic rights to the IP are not transferred.

In recent years, indigenous peoples have earned good profit by preparing ethnographic collections for the Cultural Revival project, approved by the Indigenous Peoples Demonstration Program of Brazil's Environment Ministry, and to compose the archives of the Museu Kuahi itself and for the exhibition "A presença do invisível," [The Presence of the Invisible] which is on display at the Museu do Índio [Museum of the Indian], in Rio de Janeiro. The profits obtained from works of this nature are always distributed among the producing communities.

INTELLECTUAL PROPERTY ISSUES

Formal consent from the communities for access to information, practices, photos, videos, etc. is always necessary. According to the tradition of these peoples, the decision to grant right is made in assemblies that gather leaders of the four ethnic groups, the Associação dos Povos Indígenas do Oiapoque (APIO) [Indigenous Peoples Association of the Oiapoque] and other indigenous associations, in addition to the local FUNAI representative, whose employees are all indigenous people.

The Oiapoque natives incorporate and reproduce many aspects of the tangible and intangible cultures of other peoples and beings, visible or invisible. Inversely, they generally appreciate it when others do the same with their productions, which are not seen as exclusive heritage. Nevertheless, the sale of the most symbolically representative artifacts of these peoples is prohibited, such as the large feathered headdresses, crowns, maracas with feathers and decorations with animal teeth and bones.

They maintain that each individual is the owner of the sound and visual recordings that they produce and can use them for their own use or to present them in the regional and national

assemblies and to expose and celebrate their indigenous identity. But this concept does not exclude the possibility to charge for registration that could be of interest to others.

For the Indians of the Oiapoque, copying others had been a common and good procedure; but they believe that today this has become something obscure and undesirable. When a need is established to affirm to whom a song or the creation of a given artifact belongs, the answers vary with the context. If the interlocutor belongs to that ethnic group, he considers the individual the rightful owner; if the person is of another indigenous ethnicity, the owner becomes that ethnicity, and when it involves a non-Indian, the owner is the indigenous people of the Oiapoque as a whole. In this case, they refer to “our crafts, our culture,” regardless of the ethnicity or the craftspersons involved.

SUGGESTIONS FOR WIPO

The IP instruments must be clear and accessible to those interested, i.e., to the indigenous communities, and be evaluated *in loco* for each specific case.

LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

Interview by e-mail with Diena Macial Sfair, of the department of the secretarial-computer/administrative-financial department of the Museu Kuahí.

Interview by e-mail with Lux Boelitz Vidal, anthropologist and consultant to the cultural revival projects with the indigenous peoples of the Oiapoque.

Instituto Socioambiental: <http://pib.socioambiental.org/pt/noticias?id=47653>

Portal Amazônia:

<http://portalamazonia.globo.com/noticias.php?idN=54749&idLingua=1>

Official site of the Amapá State government:

http://www4.ap.gov.br/Portal_Gea/museu_kuahi/museu_indio.htm

ADDITIONAL READING

APIO –Indigenous Peoples of Oiapoque Association

Iepé – Institute for Research and Training in Indigenous Education

Museum of the Indian

Iepé - Institute for Research and Training in Indigenous Education

OFFICIAL DESIGNATION

Iepé - Instituto de Pesquisa e Formação em Educação Indígena

CLASSIFICATION

Type: Support organization

Legal status: Not-for-profit civil society

Scope: Indigenous

CONTACT AND ADDRESS

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MISSION AND PROFILE

The creation of the IEPÉ, in September 2002, was motivated by the goal to undertake research and provide direct assistance to indigenous communities in the Amazon region, by providing programs for cultural and political empowerment and the sustainable development of indigenous groups that live in Amapá, and northern Pará.

The organization was designed to offer specialized assistance and diversified technical training for indigenous populations to organize themselves and consolidate a regional articulation to efficiently confront the growing challenges presented by contemporary reality.

To carry out its work, Iepé has partnerships with the following local indigenous organizations: the Association of the Indigenous Peoples of Tiriyo, Katxuyana and Txikuyana (APITIKATXI); the Association of Indigenous People's of Oiapoque (APIO); the Association of Indigenous People's of Tumucumaque (APITU); and the Wajãpi Council of Villages (Apina). It also receives support from various national and international entities such as: the National Foundation of the Indian (FUNAI); the Ministry of the Environment; the Museu Paraense Emílio Goeldi; The Nature Conservancy (TN); WWF-Brasil –Macapá office; the Rainforest Foundation of Norway (RFN); Petrobras; and the Agency for International Cooperation and Development of Norway (NORAD).

RELEVANT PROJECTS AND PROGRAMS

Iepé's action gives priority to culture, administrative training and to accompanying public policies. These lines of action encompass four main programs. Through the Regional Articulation Program it promotes meetings and exchange among indigenous organizations and encourages dialog with the entities that work with indigenous peoples.

The Wajãpi Program is aimed at community training of the nearly 915 Wajãpi who live in the Amapari River region, in Amapá, including initiatives for school education, healthcare education, territorial and environmental control, support for self-management, political strengthening, and strengthening of indigenous cultural heritage.

The Tumucumaque Program responds to a set of needs presented by the Tiriyo, Katxuyana, Wayana and Aparai communities to anthropologists who have worked in these areas for many years. The needs include the training of indigenous teachers and support for local crafts.

The Oiapoque Program, in the Uaçá region and the Lower Oiapoque, organizes workshops for the training of indigenous researchers and managers of cultural heritage and is related to the creation of the Kuahí Museum, built in the city of Oiapoque to promote the culture of the peoples of the indigenous lands of Uaçá, Galibi and Juminã. An ethnographic exhibition organized by the indigenous communities of Oiapoque was inaugurated by the Museum of the Indian in Rio de Janeiro, in June 2007.

Iepé also offers workshops about the indigenous legislation in Brazil and coordinates the Conservation Units and Indigenous Lands project: a proposal for a mosaic of conservation districts for western Amapá and northern Pará. With funding from the National Environmental Fund of the Ministry of the Environment, the project focuses on training the communities involved with the Mountains of Tumucumaque National Park, the Sustainable Development Reserve of the Iratapuru River, the Wajãpi Indigenous Land and the Tumucumaque Indigenous Park, to promote shared planning and territorial management.

In addition, a new line of work opened in 2008, with the signing of a technical cooperation agreement between the National Indian Foundation (FUNAI) and Iepé, for cultural empowerment and community management aimed at sustainable development of the indigenous peoples of Amapá and northern Pará. Valid for five years, the cooperation agreement also includes activities for training indigenous researchers and teachers.

Finally, Iepé will assess the Safeguard Plan of the Intangible Heritage of the Wajãpi, undertaken through a partnership between this organization and the Wajãpi – Apina council, with the support of IPHAN and Petrobrás, among other sponsors.

The Council of Wajãpi Villages includes all the heads of extensive families. This association is also called Apina, which is the name of a subgroup of this ethnicity known for its bravery at war. Apina's goals are to represent the community before authorities and reorient the relationship with the agencies in the field.

Based on the joint action of Iepé and Apina, Wajãpi Kusiwa graphic art - visually sophisticated and rich in meaning – was registered in 2002 by the National Institute of Historic and Artistic Heritage (IPHAN) as part of the Brazilian Cultural Heritage. This was the first registration of the cultural heritage of an indigenous people with IPHAN, marking a new phase in the policy for preservation of Brazilian heritage and paving the way for other initiatives. It is worth emphasizing that the initiative to request the registration of the graphics produced by this ethnic group stemmed from the anger of the indigenous people over the improper use of their images. The government of Amapá had used a photo of an indigenous woman who had committed suicide in a promotional tee-shirt, as well as images of indigenous people in billboards, unleashing a movement of awareness about rights to images.

INTELLECTUAL PROPERTY ISSUES

Iepé, together with the Wãjapi, in Amapá, and with the collaboration of researchers from the University of São Paulo, has undertaken a survey and registration of various aspects of Wãjapi culture including festivals, knowledge of ethno-botany and histories about contact with other peoples. The results of these surveys are being stored in a database. The project emphasizes the training of indigenous researchers, seeking to break the dichotomy between universal and local knowledge. The inventory already includes 4,000 photos; 400 hours of video; 400 hours of audio; 250 graphic patterns; and maps and texts written by the Wãjapi. The selection of cultural elements and the categories of classification are being created by indigenous peoples, who were trained at the Museum of the Indian in Rio de Janeiro.

Another fact worth noting is the difference perceived by the members of Iepé in the mode of recording knowledge when made by the indigenous themselves. “A film-maker or anthropologist filming a festival uses closed shots, cut sequences, and is content with recording one or two examples of the same dance sequence. An indigenous film-maker would use open shots, long sequences and would record all the movements of the participants, even if the

scene is apparently ‘repeated’. In the registration of the versions of the mythic narratives, it is common for the anthropologist to avoid being present, with questions and commentaries, in the recording. For a Wajãpi researcher, these interventions not only are not disturbing, but are respected because they reproduce the traditional forms – in dialog – of production of this type of narrative. The differences in the selection of issues, the forms of systematization of data and the procedures for interpretation are absolutely distinct. This experience reveals how important it is to determine authorship, and therefore to whom the registrations belong. In general, the way that Iepé make recordings and interpretations of indigenous peoples’ knowledge is not interesting to them, and they even think it is “wrong.” They do not see the use of many comments and comparisons common to academic anthropology. For these reasons, the Iepé has been offering technical training to those who detain this heritage so that they can record aspects of their culture on their own terms.

As the recordings multiply, the requirements grow in relation to the non-indigenous. Currently, the Wajãpi, with whom the Iepé work closely, require: 1. Authorization from the subject filmed, photographed or recorded, which must be ratified by the Council of Villages (Apina); copies of recordings made in the village, which are stored in the Council’s office; request for permission before the beginning of the research or of the audiovisual documentation, accompanied by a presentation of the researchers’ or documentary-makers proposal.

Although there is no formal document with behavioral guidelines, the information and statements collected about Iepé allow the identification of some good practices. When involving audiovisual material produced in conjunction with the indigenous peoples, the researchers usually pass along the usage and sale rights to the groups. If a publisher requests a photo for an educational book, for example, they are asked to contact the Apina council to agree to the conditions, or any payment request, etc. And it is this council that authorizes, or not, the Iepé to send a photo, or a video clip, for example. Adopting conduct and formalizing ethical principles for the management of results of anthropological research related to TK is more difficult than controlling the use of audiovisual images and recordings.

It is recommended that copies of audio, video and photographic recordings made in the field and even written texts about the indigenous societies be offered to the subject, because the indigenous peoples increasingly read and watch them, and are interested in research and even come to produce their own recordings.

The most relevant ethical principle – and the most sensible – is the attempt to share with members of the studied communities information about the process of the production of knowledge created based on cultural recordings. The traditional populations should be

informed about the recording techniques, the modes of organization and interpretation of data, the destination of the writings or images and their impact, etc.

Finally, Iepé publications are highlighted by Patrimônio Cultural Material e Imaterial e Povos Indígenas - *Exemplos no Amapá e norte do Pará*, [Tangible and Intangible Cultural Heritage and Indigenous Peoples - Examples in Amapá and Northern Pará], organized by Dominique Tilkin Gallois, in 2006. Although it is not precisely a code of conduct, it contains guidelines related to the respect and protection of traditional cultural knowledge and expressions. The first part of the book explains the creation of UNESCO's current preservation policy, which is also being adopted by the Brazilian government. It traces the conceptual changes in the approach to the so-called traditional and popular cultures and emphasizes promising aspects for the strengthening — inside and outside the communities themselves — of the indigenous forms of thinking, knowledge, and artistic and cultural practices. The second part of the publication illustrates this entire discussion with examples from the Tiriyo and Katxuyana, the Wayana and Aparai, the Wajãpi and from the indigenous peoples of Oiapoque. The third part presents measures to safeguard ICH, citing some experiences and actions underway in Brazil and in other countries.

SUGGESTIONS FOR WIPO

In general, the current legal measures for protection are considered very positive. First, even the simplest legal procedures imposed by agencies such as Funai – authorization to conduct research on indigenous lands, authorization to take photos, video or film – contribute to generate awareness about the groups' valuable cultural manifestations. Second, some recent and sophisticated procedures concerning ethnographic documentation allow the groups to know where they will be stored and how the records of their knowledge and practice will be used, often culminating in a request for copies of the documents made.

Nevertheless, the granting of recording rights raises some new dilemmas and creates new cultural frontiers, as if the cultures were closed universes with ready-made products. Another problem is that the safeguarding programs of the Ministry of Culture and UNESCO tend to be based on the understanding that authorship is individual and hence focus tends to be put on products that can be collected, more than on the processes of construction and transmission of knowledge and practice.

It is understood that international instruments for protection of IP rights of traditional populations are necessary; but that they should first be widely discussed with community representatives and not only with specialists. In the creation or even implementation of instruments – whether national or international – it should be observed that the language used

is almost always foreign to the isolated communities. Therefore, there is a need for formal training of the members of these communities so that they are able to understand and explain to their families the impact of normative instruments. An additional difficulty is that the notion of IP is new for most of the traditional societies. Care must be taken not to consider cultural elements as original and belonging to a single group, when, in reality, many traditions and practices are mobile and appropriated from other societies.

It is also important to recognize that there are usually various versions of a single myth or festival, associated with distinct families or lineages. This fact alerts to the danger of annulling individual variations and re-readings in order to record a collective cultural heritage.

SELECTED LEGISLATION, CODES AND GUIDELINES

Nothing to add

SOURCES CONSULTED

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Activities report 2007. Available at

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Interview with Dominique Tilkin Gallois, January 11, 2008.

ADDITIONAL READING

APIO – Indigenous Peoples of Oiapoque Association

Kuahí Museum

From the Wajãpi's point of view: ethnographic notes on IP issues

BARCELOS NETO, Aristóteles e GALLOIS, Dominique Tilkin. Ilustrações: índios Wajãpi. Kusiwa: pintura corporal e arte gráfica wajãpi. Rev. Antropol., 2002, vol.45, no.1, p.261-263. ISSN 0034-7701.

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5.3 Rio Negro group

AILCTDI - Indigenous Association of Tariana Language and Culture of the Iauarete District

OFFICIAL DESIGNATION

Associação Indígena de Língua e Cultura Tariana do Distrito de Iauaretê

CLASSIFICATION

Type: Association

Legal status: Not-for-profit civil society

Scope: Indigenous

CONTACT AND ADDRESS

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MISSION AND PROFILE

The Tariano, who call themselves Taliáseri, are 1,914 people⁴ living on both sides of the Brazil-Colombia border. The Iauareté settlement, in the middle Uaupés River region in the municipality of São Gabriel da Cachoeira, Amazonas State, is the main population center in this region, with approximately 900 Taliáseri.

Unlike the other ethnic groups in the Uaupés River Basin, most of the Tarianos adopted an Eastern Tukano language, although this ethnic group previously spoke a language from the Aruak family, which is still used in some locations. The transposition of oral to written language marked the beginning of the revitalization process of this culture in the late 1980s. The death of Eugenio Muniz, who conceived and directed this initiative, led to a temporary halt in these activities that were taken up again in the 1990s by the Brito family (of the Mamialikune clan). With help from the linguist A.Y. Aikhenvald, one working group transcribed the words and organized a dictionary in the Tariana language, which were essential tools for this people to be able to study and relearn its language.

The Indigenous Association of Tariana Language and Culture of the Iauaretê District (AILCTDI) was created in the year 2000 to give continuity to these activities and record stories narrated by the Taliáseri in their own language and in Portuguese. At this time, the Tariana Language and Culture Study Center was also created as a space dedicated to the organization of traditional Taliáseri knowledge and its transmission, both to descendants as well as to other peoples. The construction of the facilities of this center was financed by the Indigenous Peoples Demonstration Project of the Ministry of the Environment, based on a proposal prepared by AILCTDI, with the support of FOIRN and anthropologist Marta Azevedo.

⁴ Data provided by ISA – Instituto Sócioambiental.

The creation of AILCTDI was part of a broad revitalization process of the cultures of the indigenous peoples of the Upper Rio Negro, which began with the founding of the Federation of Indigenous Organizations of the Rio Negro (FOIRN), in 1987.

In subsequent years, various other organizations and indigenous associations were created and their assemblies had discussions about the importance of TK transmitted orally to the indigenous population living in demarcated areas. This knowledge, however, is fading. The indigenous directors and their supporters (teachers and anthropologists) present at these assemblies suggested that they make written records and disseminate this knowledge. FOIRN became partners with AILCTDI in this process, providing funding and identifying assistants so that the records were made, edited and published. The project was called “Indigenous Narrators” and one of its results was the preparation and publication of the book *Upíperi Kalísi - histórias de antigamente*, which counted on the assistance of anthropologist Dominique Buchillet Gallois.⁵

RELEVANT PROJECTS AND PROGRAMS

Iauaretê Waterfalls. The Iauaretê Waterfalls in the municipality of São Gabriel da Cachoeira was registered by IPHAN in the Book of Registration of Places as part of Brazil’s Intangible Cultural Heritage, on October 18, 2006. It is a sacred place shared by 14 indigenous peoples of the region of the Uaupés and Papurí Rivers, including: the Arapaso, Bará, Barasana, Desana, Karapanã, Kubeo, Makuna, Miriti-tapuya, Pira-tapuya, Siriano, Tariana, Tukano, Tuyuka and Wanano. It is the main landmark of the people who have cohabited on this territory for millennia and of the close relations that until today have allowed their harmonious coexistence and sharing of cultural standards. The documentation established by IPHAN to record this heritage site, identifies 17 points of reference that indicate the settlement of these groups on that territory.

Some of the stones, slabs, islands and river branches of the waterfalls symbolize episodes of war, persecution, death and alliances described in their origin myths and historical narratives. They also relate to the creation of the plants, animals and to everything that is needed for life and survival of the descendents of the first ancestors.

⁵ Upíperi kalísi = Histórias de antigamente : histórias dos antigos Taliaseri-Phukurana : versão do clã Kabana-idakena-yanapere. [Barbosa](#), M. M.; [Garcia](#), A.M.; [Garcia](#), P.; [Garcia](#), B. Iauaretê, Amazonas, Brasil: UNIRVA; São Gabriel da Cachoeira, Amazonas, Brasil: FOIRN, 2000.

The registration process is based on the project undertaken by the Department of Intangible Heritage and by the 1st Regional Superintendent of Iphan, in partnership with the Instituto Socioambiental (ISA) and the Federation of Indigenous Organizations of the Rio Negro (FOIRN). It has the support of the Indigenous Association of Tariana Language and Culture of the Iauaretê District (ALCTDI), and of various other indigenous entities representative of the multicultural context of the Iauaretê, as well as the Federal University at Amazonas and the government agencies in that state.

INTELLECTUAL PROPERTY ISSUES

No information

SUGGESTIONS FOR WIPO

No information

LEGISLATION, CODES AND GUIDELINES

Nothing to add

SOURCES CONSULTED

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http://www.bdttd.ufpe.br/tedeSimplificado//tde_busca/arquivo.php?codArquivo=4004

Fontoura, Ivo Fernandes. Formas de transmissão de conhecimento entre os Tariano da região do Rio Uaupés, Amazonas. Dissertação de mestrado/ UFPE. Pernambuco, 2006. Accessible at

http://www.bdttd.ufpe.br/tedeSimplificado//tde_busca/arquivo.php?codArquivo=4233

ADDITIONAL READING

FOIRN – Federation of Indigenous Organizations of Rio Negro

IPHAN –National Historic and Artistic Heritage Institute

ISA – Socio-environmental Institute

Video nas Aldeias

FOIRN - Federation of Indigenous Organizations of the Rio Negro

OFFICIAL DESIGNATION

Federação das Organizações Indígenas do Rio Negro

CLASSIFICATION

Type: Association; network of institutions

Legal status: Not-for-profit civil society

Scope: Indigenous

CONTACT AND ADDRESS

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MISSION AND PROFILE

The Federação das Nações Indígenas do Rio Negro [Federation of Indigenous Nations of the Rio Negro] (FOIRN) is composed of 40 organizations, each one representing various indigenous communities located along the main rivers that form the Rio Negro Basin, in Amazonas State. This region includes close to 750 villages, inhabited by nearly 30,000 indigenous people belonging to 22 distinct ethnic groups, speakers of the Tukano, Aruak and Maku languages.

FOIRN's central operational base is located in the city of São Gabriel da Cachoeira, 800 km from Manaus. It functions as an office, logistical and radio communication support center with 35 radio transmitters distributed among the offices of the member organizations. The base includes a traditional maloca thatch structure that serves as a cultural center for assemblies, exhibitions, festivals and training courses. To accompany the indigenous communities, the central base offers office and accounting materials, boats with diesel engines and launches with outboard motors.

The federation was founded in 1987 to fight for the demarcation of indigenous lands and promote actions in the field of healthcare, education and self-sustentation in the region. Currently, its actions seek to improve the living conditions of the indigenous peoples of the Rio Negro basin. To do so, it fights for the autonomy and strengthening of the cultures of these peoples.

FOIRN, in partnership with the Instituto Socioambiental (ISA), promotes economic activities suitable to the regional environment, such as aquaculture, regional crops, community mining, ecotourism and production and sale of women's crafts. It undertakes multicultural and multilingual educational programs, with specific curricular parameters, and offers courses in maintenance for radio transmitters and boat engines, aquaculture, mineral research, accounting, participative planning, traditional design and dance and natural medicine among others. It also supports initiatives to document, disseminate and celebrate the region's ethnic traditions through popular and scientific events, festivals, exhibitions and courses.

To systematize knowledge and experiences lived by the people of the Rio Negro basin, FOIRN facilitates research, and requests, as compensation, access to the results. These projects have focused on issues such as ecological-economic zoning, women's crafts production, demographic surveys, studies about the indigenous languages spoken in the region, and databases.

RELEVANT PROJECTS AND PROGRAMS

Indigenous Narrators of the Rio Negro. “Indigenous Narrators of the Rio Negro” is a series of publications released by FOIRN in 1995 in partnership with the Instituto Socioambiental (ISA) and the Institute for International Cooperation (IIZ). Various ethnic groups from the Rio Negro region were encouraged to document their traditional narratives and knowledge in the form of a book.

The volumes published until today are: 1. Antes o mundo não existia: mitologia dos antigos Desana-Kehírpõrã, [Before the world did not exist: mythology of the ancient Desana-Kehírpõrã]; 2. A mitologia sagrada dos Desana-Wari Dihputiroporã, [The sacred mythology of the Desana-Wari Dihputiroporã]; 3. Waferinaipe ianheke: a sabedoria dos nossos antepassados. Histórias dos Hohodene e dos Waliere-Dakenai do rio Aiari, [Waferinaipe ianheke: the wisdom of our ancestors. Stories of the Hohodene and of the Waliere-Dakenai from the Rio Aiari]; 4. História de antigamente: história dos Taliáseri-Phukurana, [History of antiquity: history of the Taliáseri-Phukurana]; 5. Dahsea hausirõ porã ukushe wiophesase mera bueri turi: a mitologia sagrada dos Tukano Hausirõ-porã, [Dahsea hausirõ porã ukushe wiophesase mera bueri turi: the sacred mythology of the Tukano Hausirõ-porã]; 6. Isa yekisimia masike: o conhecimento dos nossos antepassados [Isa yekisimia masike: the knowledge of our ancestors]. Uma narrativa Oyé [An Oyé narrative]; 7. Livro dos antigos Desana-Guaharia Diputiro Porã [Book of the old people Desana-Guaharia Diputiro Porã].

The authors are indigenous narrators and received technical assistance from anthropologists in the production of these books.

Basá Busá – Dance Ornaments. FOIRN inaugurated the exhibition Basá Busá – Ornamentos de Dança [Busá Busá: Dance Ornaments] on December 9, 2008. The exhibition celebrates the repatriation of nearly one hundred ritual indigenous objects that were in the possession of Salesian missionaries, responsible for the indigenous missions in the region of the Uapés River in the first half of the 20th century. These ornaments form a heterogeneous group of pieces until then part of the archives of the Museu do Índio de Manaus/Patronato Santa Teresinha for the region of the Upper Rio Negro. It is estimated that these objects constituted a legacy of

the ancestors, which brought them from the Lago de Leite [Milk Lake] to the Uaupés River, on their long trip along the Brazilian coast and the Amazon and Negro Rivers.

The negotiations for the repatriation of these pieces began in 2006 and were conducted by FOIRN, in partnership with IPHAN and ISA. The two latter organizations were responsible for formulating a legal instrument so that the transfer would be made legally. This action was unprecedented in the country and the legal instrument created had an inaugural character. The Terms of Agreement establish (1) that the objects repatriated are considered the collective property of the indigenous peoples of the Uaupés River basin, given that there is no information about the communities from where the pieces came; (2) that they remain in the custody of the Centro de Estudos e Revitalização da Cultura Indígena de Iauaretê [Center for Studies and Revitalization of Indigenous Culture of Iauaretê] (CERCII), which will act as its legal place of storage. CERCII is an organization directed by a group of elders belonging to various ethnic groups. With FOIRN's support, this group took responsibility for building a maloca at Iauaretê, where these ornaments should be stored when the exhibition is concluded. According to the Terms of Agreement, it is also up to CERCII, with the support of Iphan when requested: (i) to work for the good use of the sacred ornaments, their maintenance and storage in suitable places; (ii) to loan them to the indigenous peoples of the Uaupés River for use in rituals, the production of new ornaments, maintenance or other related purposes, and it is also responsible for taking them back after the authorized use.

The Iauaretê Falls. The Department of Intangible Heritage and the 1st Regional Superintendent of IPHAN, in partnership with FOIRN and ISA, and with the support of various indigenous entities representative of the multicultural context of Iauaretê, undertook the registration project of the Iauaretê Falls, as an item of Brazil's ICH.

The Iauaretê Falls was inscribed in the Registration Book of Places, on Oct. 18, 2006. It is located in the Upper Rio Negro region, in the district of Iauaretê, municipality of São Gabriel da Cachoeira, Amazonas. The Iauaretê waterfalls are considered the Sacred Place of the indigenous peoples of the Uaupés and Papurí Rivers. The region is now inhabited by 14 different ethnic groups, including: the Arapaso, Bará, Barasana, Desana, Karapanã, Kubeo, Makuna, Miriti-tapuya, Pira-tapuya, Siriano, Tariana, Tukano, Tuyuka and the Wanano. This waterfall is the landmark of the origin of these peoples, who have cohabited on this territory for millennia, and of the establishment of good relations that have allowed, until today, coexistence and sharing of cultural standards among them.

In the Registration process, 17 reference points are documented at the site where the Iauaretê Falls are located. They are fundamental witnesses to the settlement of these groups on that territory. Some of the stones, slabs, islands and river branches of the waterfalls symbolize

episodes of wars, persecution, deaths and alliances described in their origin myths and historical narratives. They are places where important facts took place related to the creation of humanity and to the rise of these ethnic groups, which also relate to the creation of plants, animals and of everything that is needed for life at the location and the survival of the descendents of the first ancestors.

INTELLECTUAL PROPERTY ISSUES

No information

SUGGESTIONS FOR WIPO

No information

LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

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<http://www.socioambiental.org/nsa/detalhe?id=2828>

Oliveira, Adão. Etnomatemática dos Taliáseri. Dissertação de mestrado/ UFPE. Pernambuco, 2007.

ADDITIONAL READING

IPHAN –National Historic and Artistic Heritage Institute

ISA – Socio-environmental Institute

ISA – Socio-environmental Institute

OFFICIAL DESIGNATION

Instituto Socioambiental

CLASSIFICATION

Type: Support organization; archive and library

Legal status: Not-for-profit civil society

Scope: National

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MISSION AND PROFILE

Instituto Socioambiental is a nonprofit organization whose mission is to propose solutions to social and environmental issues and defend social, collective and common goods and rights, related to the environment, cultural heritage and human rights of indigenous and traditional peoples.

The Institute was created in the late 1980s from the organization of a group of anthropologists, biologists, geographers, engineers and lawyers who actively participated in the idealization and implementation of actions that focused on the struggle for social and environmental rights, along with different organized segments of Brazilian civil society. These actions contributed to the formulation and approval of collective social and environmental rights in the Federal Constitution of 1988; to the campaign of the Aliança dos Povos da Floresta [Forest Peoples Alliance] (1989); to the Indigenous Peoples Encounter in Altamira (Pará) to protest against a large official plan for hydroelectric use of the Xingu River Basin (1989) and to the creation, in 1990, of the Brazilian Forum of NGOs and Social Movements, in preparation for the United Nations environmental conference held in 1992, in Rio de Janeiro, and participation in that conference. From 1993 – 1995 work was conducted to delineate the structure and lines of action that culminated in the creation of the Instituto Socioambiental.

ISA was officially founded on April 22, 1994, incorporating all of the tangible and intangible heritage of the Indigenous Peoples Program of Brazil, of the Centro Ecumênico de Documentação e Informação [Ecumenical Documentation Center] (PIB/CEDI) and of the Núcleo de Direitos Indígenas [Indigenous Rights Center] (NDI), in Brasília, organizations that had 15 years of recognized action in the field of indigenous rights in Brazil. On Sept. 21, 2001, it changed its status to a Civil Society Organization in the Public Interest (OSCIP).

RELEVANT PROJECTS AND PROGRAMS

Traditional Knowledge: innovate to advance. Proposing new forms of safeguarding the collective intellectual property of indigenous peoples. The purpose of this project is to deepen understanding about the ways in which indigenous people determine their means to protect knowledge, familiarizing them with new digital technologies and with IP legislation. With the project, new routes will be studied for safeguarding intellectual creations of indigenous people so that their particular forms of production and circulation of knowledge indicate the mechanisms for their legal legitimization, instead of seeking to fit them into existing models in established law. A blog was created to present the progress of the discussions and encounters that have been promoted with the indigenous peoples about this issue. The blog's address is <http://ct.socioambiental.org>.

Socio-environmental Law and Policy Program: production and dissemination of technical and legal knowledge. This program contributes to the organization and publication, in print and digital media, of studies, articles, analyses, technical notes, reports, bulletins and news about legal knowledge related to socio-environmental issues. It also promotes and participates in seminars, workshops and debate forums in public, non-governmental spaces, networks of nongovernmental organizations and social movements, in academic environments and those of Brazilian government, as well as those for international cooperation and of international organizations.

The documents and publications related to the defense of the cultural, genetic and tangible heritage include studies on biodiversity, technology, science and culture and about biodiversity and protection of knowledge of traditional communities. They are highlighted by the publication of VALLE, Raul Silva Telles. “Os povos indígenas frente ao direito autoral e de imagem” [Indigenous Peoples and copyright for words and images]. São Paulo: Instituto Socioambiental, 2004. The publication is available on the ISA site in PDF format.

INTELLECTUAL PROPERTY ISSUES

ISA has been working with TK, both at the local level, through its programs in the field, and on the public policy level, by participating in debates about the Convention on Biological Diversity and in forums on IP such as WIPO and the WTO’s TRIPS Agreement.

SUGGESTIONS FOR WIPO

The work undertaken by ISA reveals that existing legal tools related to IP are not suitable for indigenous socio-cultural contexts, where the dimensions of what is collective mixes with the individual dimension, and the premises that guide the notion of property, in the sense used in civil law, do not apply.

Thus, ISA has been criticizing the existing initiatives, that is, both the debate about the adoption of a *sui generis* regime instigated by the Convention on Biological Diversity (even if the Institute recognizes the unwritten law as the source of rights), such as the debates at WIPO’s Intergovernmental Committee (which seeks, in addition to defensive protection, to promote the use of IP principles for TK).

These initiatives are based on the premise that it is possible to establish a regulatory framework for the protection of this knowledge based on existing IP tools. The ISA understands that this is not the best approach to the degree to which it forces the indigenous perspective towards the management of knowledge to conform to these tools. In this sense, it is necessary to

deepen the understanding of the indigenous perspectives about the issue, to allow creating the tools needed to safeguard their knowledge, if the respective peoples desire to do so.

For ISA, the role of the States and international institutions must be to incorporate and recognize in an open manner new possibilities for a view about IP rights, beyond those that exist. This will not be easy, given that the diversity of situations and perspectives is infinite, making it impossible to be codified by a global organization. For this reason, the Institute has been seeking to create solutions, taking the opposite route, or that is, deepening the work at the local level to identify initiatives that can lead to case studies about consuetudinary IP law.

Nevertheless, new forms of circulation of information created by the digital environment have been testing the limits of the IP tools, such as copyright. There is a crisis in the current system of copyright in relation to the new digital tools for sharing data, tools which are already quite widespread in modern society. This situation has given rise to different approaches to this issue such as, for example, the so-called “open access” initiatives.

The ISA supports research about the impacts – both positive and negative – of the circulation of TK in the digital environment, but understands that before seeking to apply IP tools to protect them, it is necessary to understand what are the safeguards that the peoples who hold the TK expect in relation to each cultural manifestation, to then evaluate the options that can guarantee these safeguards.

LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

www.socioambiental.org

Interview by e-mail with Fernando Mathias, ISA attorney.

ADDITIONAL READING

CGDA – General Coordination of Copyright / Ministério da Cultura

CGEN – Genetic Heritage Management Council / Ministério do Meio-ambiente

IPHAN – National Historic and Artistic Heritage Institute / Ministério da Cultura

FUNAI – Fundação Nacional do Índio/MJ

5.4 Ticuna group

Magüta Museum / CGTT

OFFICIAL DESIGNATION

Museu Magüta / CGTT

CLASSIFICATION

Type: Museum

Legal status: Not-for-profit civil society

Scope: Indigenous

CONTACT AND ADDRESS

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MISSION AND PROFILE

The Museu Magüta is an institution linked to the Conselho Geral da Tribo Ticuna (CGTT) [General Council of the Ticuna Tribe]. It is located in the city of Benjamin Constant, which is close to Brazil's borders with Colombia and Peru. The Museum Board of Directors is composed of members of the CGTT and the activities are undertaken by indigenous administrative personnel, with technical support from anthropologists and historians. Funding is obtained through projects approved by agencies such as FINEP, the Ministry of the Environment, FUNAI, FUNASA and the Museu Nacional [National Museum].

The museum's activities have a strong impact on the populations of the municipalities of Benjamin Constant, Tabatinga and São Paulo de Olivença, although it is aimed at the entire Ticuna population.⁶ The institution is recognized and respected by the various leaders of this and other ethnicities (Cocama, Cambeba, Kaixana) present in the Upper Solimões region.

The Magüta Museum is designated according to Ticuna's self-denomination. The mission of the Magüta Museum was established by the Ticuna Tribal Council. It is defined as a place for collecting, preserving and displaying memory; as a support structure for development, health and education projects; and as a place for political articulation aimed at strengthening the Ticuna's social identity and preserving their cultural heritage. An important part of the museum's mission is to develop the awareness and understanding of the local non-indigenous population about everyday life in Ticuna villages, this people's struggle for rights, and their TK, arts and crafts which are highly dependent on the natural resources that are still available in forests on their land.

The museum's inauguration was met with strong opposition. In 1990, when the construction was already concluded, lumberpersons and invaders who opposed the demarcation of the lands of the Ticuna people threatened to burn the site. For this reason, it could only be inaugurated a year later, in 1991. The Upper Solimões Documentation and Research Center gave support to its maintenance. In 1997, the assets of the Museu Magüta were transferred to

⁶ The Ticuna are the largest indigenous population of the Amazon, with an estimated population of 35,000 individuals, distributed among 25 Indigenous Lands, with 135 villages located in the Upper Solimões and its bayous.

the control of the General Council of the Ticuna Tribe (CGTT), which has an exclusively indigenous board of directors.

RELEVANT PROJECTS AND PROGRAMS

The initial objective of the activities conducted by the museum (exhibitions, courses, films, publications, etc.), was to bring together and promote the documentary history of the occupation of the Ticuna land, as well as the culture and social organization of its people. Since 1993, when one million hectares of land were finally designated Ticuna territory, the museum came to work on the formulation of development proposals and for the use of TK for the management of the natural resources of the communities. As part of this policy for strengthening the Ticuna communities, the Museum began to support the creation of indigenous organizations that are representative of specific interests, such as the Associação das Mulheres Indígenas Ticuna (AMIT) [Association of Indigenous Ticuna Women], the Associação de Estudantes Secundaristas (AEITAS) [The High School Student Association], health organizations and farmers, residents and similar groups.

The activities carried out include:

- Training of indigenous administrators to formulate proposals suitable to the development needs of the communities and to their cultural specificities, and to the management of projects.
- In the field of education and research, bilingual education programs have been established to introduce writing and mathematics and to transmit the history of the Ticuna people, their way of life, work and art to the younger generations. A library was established. Support is given to the training of indigenous teachers, to research and to the organization of meetings and exchanges of experiences.

The Ticuna aru ngemaügü tchica project. This project involves the restoration of physical structures, conservation of the archives and exhibitions. Technical training is provided in the management of self-financing of the museum, through the proposal and implementation of new partnerships and projects. Surveys are conducted of the traditional models of appropriation of the main forest resources used in craft production. The impacts caused by the increase in this activity in the Upper Solimões region are also studied.

Museological and promotional projects. Ethnographic exhibition about the struggle to strengthen identity and cultural preservation; digitization of photos of Ticuna artifacts that belong to the archives of the Museu Nacional; training of personnel for the preservation of the ethnographic archives; revival of the traditional festivals; opening of the indigenous crafts store.

Multimedia production and publications. Creation of the Jornal Magüta newspaper, publication of the Cartilha do Tucum textbook (to be published) and of the Caderno de Estudos study books (to be published). Production of the video “Uma Assembléia Ticuna” [A Ticuna Assembly] and of the documentary about the reopening of the Museum; recording of a CD of Ticuna music performed by young artists (in process).

INTELLECTUAL PROPERTY ISSUES

No information

SUGGESTIONS FOR WIPO

No information

SELECTED LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

Controladoria Geral da União

<http://www.cgu.gov.br/convenios>

PRAIA – Programa Regional de Apoyo a los Pueblos Indígenas Amazonicos

<http://www.praia-amazonia.org>

ADDITIONAL READING

OGPBT - General Organization of Bilingual Ticuna Teachers

MPEG - Emilio Goeldi Museum

National Museum

OGPTB - General Organization of Bilingual Ticuna Teachers

OFFICIAL DESIGNATION

Organização Geral dos Professores Ticuna Bilíngües

CLASSIFICATION

Type: Association

Legal status: Not-for-profit civil society

Scope: Indigenous

CONTACT AND ADDRESS

Constantino Ramos Lopes, president

Geno Maximiano Bruno, vice-president

Jussara Gomes Gruber, educational coordinator

Mailing Address:

Caixa Postal 0023

69630-000 Benjamin Constant, Amazonas

MISSION AND PROFILE

The OGPBT was created in 1986. Its offices are located in the village of Filadélfia, in the municipality of Benjamin Constant, Amazonas State. The organization includes nearly 400 Ticuna teachers who work in six municipalities on the Upper Solimões River, including: Benjamin Constant, Tabatinga, São Paulo de Olivença, Amaturá, Santo Antônio do Içá and Tonantins. The Ticuna people form the most numerous indigenous population of the Brazilian Amazon, with 35,000 inhabitants distributed in a region that extends from Amazonas State in Brazil to the neighboring countries of Peru and Colombia. Its objectives are:

- To undertake educational programs that give priority to the protection of land, the environment and health, the study of the Ticuna language, their art and culture, sustaining the TK and providing new knowledge, techniques and information.
- To stimulate, in the indigenous schools, a commitment to the needs, problems and future plans of the communities, through actions that effectively contribute to the improvement of the population's living conditions.
- To consider, in the development of projects and programs, the role of the school as an agency for the protection of rights guaranteed to indigenous peoples by the federal Constitution and educational laws concerning indigenous school education.

Since 1993 the OGPBT has maintained the Centro de Formação de Professores Ticunas – Torü Nguépataü [Ticuna Teacher Training Center]. Defined as a “house of studies,” this institution offers courses and workshops and organizes meetings and encounters of indigenous leaders. Its various programs include the participation of professionals invited from universities and other teaching and research institutions. The educational activities are assisted by the Study and Pedagogical Orientation Center, which is coordinated by anthropologist Jussara Gomes Gruber.

RELEVANT PROJECTS AND PROGRAMS

Since its founding, OGPBT undertakes activities of basic and continued education of indigenous Ticuna teachers, in keeping with the general objectives of the organization. These activities are primarily aimed at the Ticuna population and also include participants of the Cocama and Caixana ethnicities. Since 1997, an intermediate level course is offered, which provides teaching certification and in which more than 200 indigenous teachers have been trained. According to information on the OGPBT site, the school census registered 16,586 students matriculated in Ticuna schools, of which 4,580 are in the final elementary school grades and high school. These activities have been undertaken with the support of the Coordination of Indigenous School Education of the Ministry of Education of Brazil.

OGPBT has participated in activities seeking the implementation of a program of university training for indigenous professionals in partnership with the University of Amazonas State (UEA) and with the support of the Secretary of Higher Education, of the Ministry of Education. The proposal has been debated in various general assemblies of the OGPBT, and calls for the participation of OGPBT consultants, teachers from UEA and of a Ticuna teacher as responsible for indigenous coordination of the course. Some of them have been studying for two years in the Indigenous Certification program, a college level course that is being given by OGPTB in Tabatinga (AM), in partnership with the Amazonas State University.

One highlight of OGPBT activities is the “Nature According to the Ticunas” program, which was classified in second place in a contest promoted by the Regional Program for Support for Indigenous Peoples of the Amazon Basin and other partner organizations in Iquitos, Peru, 2002. One product of this project is the “Livro das Árvores” [Book of Trees], which won an award from the National Foundation of Books for Children and Youth in 1997.

In December 2004 the CD Cantigas Tikuna Wotchimaucü was produced by Eliberto Barroncas, with the support of the Banco da Amazônia. The CD includes 12 traditional Ticuna songs with authorship attributed to the OGPBT and performed by the group Wotchimaucü (a Tikuna word that means collectivity), whose 12 members live in the Cidade de Deus neighborhood in the Zona Leste region of the city of Manaus.

INTELLECTUAL PROPERTY ISSUES

In the sources studied, although publications based on Ticuna oral traditions are mentioned, there is no reference to IP issues. Nor is there information about whether the issue is a specific concern of OBPBT or if it has conducted any specific field activities about this issue.

SUGGESTIONS FOR WIPO

No information

SELECTED LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

<http://www.ogptb.org.br>

<http://www.brasiloeste.com.br>

<http://www.overmundo.com.br>

ADDITIONAL READING

Magüta Museum/CGTT

National Museum

MPEG - Emílio Goeldi Museum

5.5 Traders

ARTESOL – Solidary crafts

OFFICIAL DESIGNATION

ArteSol - Artesanato Solidário

CLASSIFICATION

Type: Development agency

Legal status: Not-for-profit civil society

Scope: National

CONTACT AND ADDRESS

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MISSION AND PROFILE

ArteSol was created in 2002 with a foundation in 6 pilot-projects dedicated to fighting poverty in regions affected by a 1998 drought, particularly in the Brazilian Northeast and northern Minas Gerais State. ArteSol now has 93 projects in 17 Brazilian states. It is dedicated to stimulating, developing and selling traditional crafts in localities with low Human Development Indexes, to generate jobs and income and to disseminate and sell craft products according to fair-trade principles. It works with the support of partners and sponsors. In late 2006, it received the certificate of the International Fair Trade Association - (IFAT) and now composes the small group of some 200 organizations throughout the world with the mission of improving the living conditions of small craft producers.

The program understands traditional crafts as the know-how shared by certain social groups that transmit techniques and knowledge associated to their identity, from generation to generation. At times, these techniques are found dormant or latent and the program develops recovery workshops. It also promotes the creation of new products based on traditional techniques that have market appeal.

RELEVANT PROGRAMS AND PROJECTS

Products from the communities in the program are sold both in the showroom in São Paulo and in a online catalog, with nearly 300 products such as ceramic, wooden and dry-grass and reed utensils and decorations, cotton fabrics, lace, embroidered goods, toys and etchings, all made with traditional techniques.

After a training program offered by ArteSol with the support of various partners, the objects can be purchased directly from the farmers. The entity applies a fair trade policy, which in Brazil is called “ethical and solidary commerce”, through which transparent commercial partnerships are established, aimed at the sustainable development of the artisan communities.

ArteSol’s social technology is based on the understanding that crafts producers are actors of local development. It conducts specific projects for each group and craft type, adding actions that focus on different aspects of social life and the economy, such as identity, culture and citizenship, management and organization of production, product improvement, and market relations.

INTELLECTUAL PROPERTY ISSUES

The products sold by this OSCIP [Public Interest Civil Society Organization] are accompanied by identification tags. These inform consumers about who, where and with what techniques and raw materials each piece was produced, in addition to indicating special care that may be needed. The promotional and sale materials for the products emphasize the history and identity of the group and technique. Prices are established directly by the producers.

The craftspersons that participate in this program have not established any restrictions concerning the promotion and circulation of their products and design. In relation to catalogs, at times they participate in the choice of products to be photographed. In the case of exhibitions, their participation is less direct, because it is an activity with an institutional objective, organized by specialists.

Reports on ethnographic field observations are elaborated by the ArteSol technicians. Diagnoses and technical questionnaires used in interviews with the master craft producers are filed for internal use by the institution. Concerning the use of images in audiovisual or printed material, authorization from the craftsperson is always requested.

The decisions about design occur in a process of collective creativity and imply a tenuous balance between tradition and the development of products that have a broader consumer market and accessible prices. ArteSol strives to educate consumers to respect and value the craftsperson: “to entice the consumer to see value in what is unique to that community, without interfering in the design. [...] This is complex. You see an extremely poor, needy group, which needs income; on the other hand you do not want to change the product,

because perhaps this can make the situation worse [self-esteem]. At least, as long as they maintain that [traditional technology] they still have their cultural heritage, an identity. But, on the other hand, the market may not accept this [...] We know that this [the production of ordered objects] will improve the life of the group for some time, but the crafts product will simply become merchandise; it loses its intellectual propriety [...] they [the craftspersons] are in contact with the world. They buy magazines, exchange ideas, models [...] that is, what is traditional is the technique. The market is a reality, and we need to be very careful to not freeze [the ICH].”

According to the ArteSol manual, crafts products from these projects can be loaned in the following cases and under the following conditions:

- For any media that comes to publish or promote the image of the product the following conditions should be obeyed, including:
- The loan will only be made with approval of the person responsible for the communication and promotion of ArteSol.
- The loan will only be made after the signing of the Loan Agreement.
- In case a product is promoted by a store that is a client of ArteSol, the product can only be taken by media representatives if there is sufficient quantity in stock to send to the store to be promoted.

For companies or organizations that are looking for corporate gifts and need a sample of the product for approval, the following orientations should be obeyed:

- The loan will only be made through the signing of a Loan Agreement.
- The loan will only be made with the approval of the person responsible for institutional relations at ArteSol.
- The products should be tagged with the proper codes and credits to Artesanato Solidário and to the producing group.

SUGGESTIONS FOR WIPO

Consider the Fair Trade principles as an important complement to IP protection.

SELECTED LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

Web search

<http://www.artesol.org.br>

Personal interview with institution's coordinator

READ ALSO

CNFCP - National Folklore and Popular Culture Center

5.6 Media producers

Cachuera! Cultural Association

OFFICIAL DESIGNATION

Associação Cultural Cachuera!

CLASSIFICATION

Type: Research institution; arts and media producer; archive

Legal status: Not-for-profit civil society

Scope: Sociopolitical

CONTACT AND ADDRESS

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05014-001 São Paulo, SP

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Email - cachuera@cachuera.org.br

MISSION AND PROFILE

Cachuêra! is a not-for-profit association that seeks to contribute to the understanding and promotion of Brazilian music and dance created from oral traditions. It was officially established in 1998 based on activities undertaken since the late 1980s that principally focused on Afro-Brazilian traditions and their expressions in the country's Southeastern region. Its activities include the performance of music and dance by the groups' researchers-artists, as well as the production of CDs, videos and publications.

It inaugurated its main offices in 2000, which in addition to having facilities for presentations and recordings, houses one of the country's most important sound and audiovisual archives of this kind. In 2007, the Association received the Cultural Order of Merit and the Popular Cultures Award, both issued by the Brazilian Ministry of Culture.

The entity is organized into five areas: Archives (conservation and cataloging, attending requests, research and recording of cultural manifestations); Events (presentations, workshops, lectures, courses); Studio (audio recordings); Grupo Cachuera! (dissemination of the materials in archives in shows and workshops); and Administrative (providing support for the other areas). The decisions are made collectively by the coordinators of these fields, who are also responsible for the relationships with the local communities. The projects and programs are financed by funds from donations, partnerships and sponsorship from various public and private institutions.

The archives are dedicated to Brazil's music and dance created from oral traditions. It contains nearly 1,300 hours of audio recordings, 8,400 photos and 900 hours of video, from more than 140 locations as well as a library with 3,477 books, journals and other publications. The archives are open to the public on appointment and free of charge. No copy can be made of any material in the archives, in any media. In exceptional cases, copies may be authorized, if consent is granted by the people whose voices or musical performances were recorded, and from the political and religious leaders of the communities. In addition, no document is available on the Internet. The site only provides access to the data base of references to the recordings in the archives.

RELEVANT PROJECTS AND PROGRAMS

The Association's work project is illustrated by the implementation of the "Acervo Cachuera – Edições Didáticas" [Cachuera Archives – Didactic Editions], which returned (with stipulations) items from the archives related to three communities of Afro-descendants (Jongo do Tamandaré; Batuque de Tietê, Piracicaba and Capivari, SP; and the Irmandade do Rosário de Jatobá, MG). The project includes actions such as the creation of self-administered local memory centers, workshops and courses about the organization and conservation of archives and about copyright. Based on archives from each community, a set of products has been developed including a book, CD and DVD to be used as pedagogical support material in local schools. The purpose of the project is to support implementation of Law No. 10.639/2003, which mandates the teaching of African and Afro-Brazilian history and culture in elementary and high schools throughout the country.

Three documentaries made with young participants from the Tamandaré Jongueira community, in Guaratinguetá, São Paulo State, with the assistance of partner NGO Kinoforum, is also an example that deserves special mention. On countless occasions, members of the communities also participate as assistants in the recording activities (field production, lighting, handling of microphones, and at times, photographing and operating the video camera).

INTELLECTUAL PROPERTY ISSUES

Activities such as field recording, choice of CD repertoires, documentary synopses and screenplays, production of exhibitions and others are most often carried out by the association's researchers. Since 2006, researchers have sought to provide incentives for their partner communities to take initiative to record and disseminate their TK and production practices, and to manage the memory of their culture.

When conducting field recordings, or when distributing phonograms or images, prior authorization must be obtained from the community; this is done through direct and personal contact with leaders and performers. Concerning the use of material recorded for non-commercial purposes, oral agreements prevail to allow parties to make joint decisions.

Because of their ethnographic nature, recordings are made with a commitment to respecting the time of the ritual, their stages and interdictions imposed by custom. For this reason, the consent given by the community refers solely to the right to record in certain media (at times, only in audio, due to ritual interdictions), or to store the documents in archives, not allowing the making of copies. A community may also decide not to authorize the use of certain phonograms in commercial editions, although it may authorize their use for publications that are not for sale. This is due, above all, to the prohibition of presenting sacred repertoires in commercial products.

In exchange for such authorizations, the Association provides local communities with copies of the documents produced in formats that are most convenient to them. Concerning the publication of items from the archives on CDs, DVDs or printed material, existing copyright and related rights law, as well as image rights, are respected. Other ethical considerations are also taken into account, given that, from the Association's perspective, existing legislation does not sufficiently protect copyright and related rights for text, images, and associated materials arising from these traditions, which are sometimes mistakenly considered to be part of the public domain.

The Association considers the popular musicians to be the authors and performers of their works and pays them according to market value. In the case of recordings, copyright and performers' rights royalties account for 18-20 % of the production cost of the product. In the case of participation in documentaries, this amount is variable, according to the type of performance and extent of involvement of those who participate in production. Contracts stipulate the performers' remuneration for use of their phonograms in the work in question. The amounts agreed upon are valid solely for the work and production, as specified in the document that is signed by the legal representatives of the Associação Cachuera! and the communities involved. For each new edition of the same work, additional remuneration is sent to the community.

An advanced payment system has been used for copyright and related rights for the entire production. The communities decide whether they want to receive the remuneration in money or in products (the quantity of which is based on the amount stipulated in the remuneration,

divided by the production cost of the item). In most cases, the latter option has been the preferred choice. The sale of these products is made at a price that the community agrees to be fair. Nevertheless, the Association always suggests a minimum value. This procedure, according to the Association, stimulates the community's ability to obtain resources from their cultural products (even if produced by third parties), and also helps raise their self-esteem.

In the case of public performances by the communities outside of their regular context (for example in schools, theaters, etc.), contracts are signed to protect the rights of the authors and performers, and to determine payment. Protection is also granted when recording the performance, in which case an agreement is made with the community to provide a copy of the uncut material in digital form. The use of this material in publications is also subject to new contracts.

To obtain authorization, the contracts are initially submitted for evaluation by the community leaders and the performers. Given the communities' little familiarity with legal procedures, it is necessary to provide detailed information about the terms of negotiation. The Association has encouraged them to consult specialists. Their preparedness for dialog with government and economic agents became a concern both among producers of TK and TCEs as among researchers and cultural producers. Lately the Associação Cultural Cachuera! began to expand the sharing of experiences and knowledge with these communities and its current and future projects follow this line of conduct.

New IP guidelines are being created in collaboration with specialized lawyers, which may be more satisfactory to both parties – the Association and the Communities. New models for authorization documents and even partnership contracts will be prepared, for the archiving and preservation of the phonograms recorded in the communities and for their distribution in different media.

SUGGESTIONS FOR WIPO

The Association considers it necessary to establish criteria and limits and to better define the roles of the various actors involved in the context of research, dissemination and promotion of TK and TCEs. These criteria should recognize the importance of NGOs, producers and researchers and guarantee control over the preservation and distribution of the knowledge and material by the real holders of TK and TCEs.

The promotion of successful projects, as well as the denunciation of anti-ethical practices, can stimulate the creation of useful international guidelines for institutions and researchers from different countries and help the holders of traditional TCEs and TK to defend their IP rights, even in countries with fragile legislation in this field.

LEGISLATION, CODES AND GUIDELINES

LAW 9.610, Feb.19, 1998. Provides for copyright and establishes other provisions.

CACHUÊRA Cultural Association. Authorization agreement. Model 1: authorization to record and reproduce exclusively in CD format performances of musical compositions

CACHUÊRA Cultural Association. Authorization agreement. Model 2: Terms of authorization to record in audio, video and photography, voice, performance and images, recorded at a determined performance.

CACHUÊRA Cultural Association. Authorization agreement. Model 3: Terms of authorization for use of image, voice or artistic name by broadcast of sound and image.

CONSULTED SOURCES

www.cachuera.org.br

E-mail interview with institution's president

ADDITIONAL READING

CGDA/MINC – Coordenação-Geral de Direitos Autorais do Ministério da Cultura [General Coordination of Copyright of the Ministry of Culture]

Video nas Aldeias

OFFICIAL DESIGNATION

Video nas Aldeias

CLASSIFICATION

Type: Arts and media producer; archive

Legal status: Not-for-profit civil society

Scope: indigenous

CONTACT AND ADDRESS

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MISSION AND PROFILE

Video nas Aldeias is a non-governmental organization that uses video to promote the exchange of experiences between indigenous peoples and to question and modify the image and representation of these peoples by Brazilians and around the world. The use of video allows the indigenous communities to select and strengthen cultural manifestations that they want to preserve as an expression of their identity for future generations.

Video nas Aldeias began as a project of the Centro de Trabalho Indigenista [Indigenous Working Center] (CTI), a non-governmental organization created by indigenists and anthropologists in 1979. The objective of the CTI was to help indigenous peoples control all interventions on their territories, clarifying for them the role of the State concerning protection and guarantee of their constitutional rights.

In 1987, one of the indigenists who helped create the CTI, Vincent Carelli, founded the organization Vídeo nas Aldeias to support the struggles of the indigenous peoples by using audiovisual resources to strengthen their identities and their territorial and cultural assets.

In 1998, Vídeo nas Aldeias began a program to train indigenous peoples in the various activities involved in the making of audiovisual productions and became a school and video production center for indigenous peoples. The project separated from the CTI and in 2000 it became an autonomous non-governmental organization.

Vídeo nas Aldeias now operates with the Xavante, Kisêdjê, Ikpeng, Kuikuro and Panará peoples in Mato Grosso; the Ashaninka, Kaxinawa, Manchineri and Yawanawa in Acre; the Piratapuia, Tukano, Baré and Tariano in the Rio Negro region; with the Waimiri-Atroari in Amazonas; the Makuxi in Roraima; and the Guarani in Rio Grande do Sul.

RELEVANT PROJECTS AND PROGRAMS

Over the years, Vídeo nas Aldeias has mounted an archive of over 3,000 hours of images about 37 Brazilian indigenous peoples and produced a collection of 59 videos, of which 21 are written and/or directed by indigenous people. Spoken in their original languages, they all have a Portuguese version and most of them have English and Spanish versions as well. The indigenous communities have free access to the videos.

Since the creation of the program to train indigenous video makers in 1998, Vídeo nas Aldeias has conducted 56 workshops for 93 students belonging to 29 indigenous peoples from the Brazilian Amazon region, equipping the communities with cameras and recording equipment.

Videos most noteworthy as far as indigenous reality is concerned include: those made in 1998 for the AIDS prevention program in indigenous areas; the “Índios no Brasil” series, produced in 2000 for presentation on the TV Escola network of the Ministry of Education; the video “Agenda 31”, about the training of indigenous agro-forestry agents in Acre (CPI/AC), made in 2002; and the video “Iauaretê, Cachoeira das Onças” about the process of registering the Iauaretê Waterfalls as a sacred place for the indigenous peoples of the Rio Negro, of 2006.

Another outstanding project is the video collection called “Cineastas Indígenas” [Indigenous Filmmakers], which is distributed free of charge to schools and cultural centers and was sponsored by the Ministry of Culture.

Audiovisual production has also been used as a political tool by the indigenous movement. This is exemplified by a video about the presence of gold diggers in the area of the Nambiquara do Sararé people, which was sent to the World Bank when it was negotiating a loan with the government of Mato Grosso; by videos about the historic struggle for the demarcation of the Raposo Serra do Sol region in Roraima State; and by videos about the isolated indigenous peoples of the Gleba Corumbiara region in Rondônia used to encourage the Federal Justice Department to implement measures for indigenous residents.

Currently, Vídeo nas Aldeias is working on the project Mawo Weri - Casa de Cultura Ikpeng, financed by Petrobras. It includes the construction of a website called Ikpeng, the preparation of a database of images and information belonging to museums and researchers about this people, as well as archives of images produced by the Ikpeng who were trained by Vídeo nas Aldeias.

INTELLECTUAL PROPERTY ISSUES

Vídeo nas Aldeias enters into copyright contracts with the video makers and their communities. Collective discussions and clarifications in the communities about these contracts are designed to insure greater transparency in the relationship among the parties (video makers, Vídeo nas Aldeias and the community), concerning production, distribution, costs and any financial benefits from the sale of videos; to encourage the indigenous communities to know and defend their collective rights concerning their image and its different uses (commercial or not-for-profit); and to make these contracts a reference for the establishment of other contracts, should communities come to establish them with new partners.

The contracts related to the videos of indigenous authorship grant 35% of the income from distribution to the video maker for copyright, 35% for the community filmed for rights to the image and 30% for Vídeo nas Aldeias to be used for the training of the indigenous video makers.

SUGGESTIONS FOR WIPO

The question of IP related to traditional peoples is seen as quite complex, because it involves collective knowledge where there is no concept of individual ownership. Nevertheless, there is concern about the use of the communities' knowledge and images. Each people have their own ideas and strategies about how to use the new technologies that allow presenting their reality and communicating.

According to one person interviewed, there should be consultation and thorough discussion with each one of these peoples, based on the specific projects. An important issue to consider is that there are no general measures applicable to traditional societies as a whole. In addition, the current concepts in these societies may be radically different from those adopted in Western society, where such issues are undergoing profound transformations.

SELECTED LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

Presentation VNA. Text presented by the directors of Vídeo nas Aldeias.

Filmography VNA by people 2008. Text presented by the administrators of Vídeo nas Aldeias.

On site interview with Mari Correa, co-director Vídeo nas Aldeias.

CARELLI, Vincent . Moi, un Indien, catálogo Mostra Vídeo nas Aldeias: Um Olhar Indígena, Rio de Janeiro, 2004. Available at <http://www.videonasaldeias.org.br>

Vídeo nas Aldeias: <http://www.videonasaldeias.org.br>

Centro de Trabalho Indigenista: <http://www.trabalhoindigenista.org.br>

ADDITIONAL READING

AILCTDI – Associação Indígena de Língua e Cultura Tariano do Distrito de Iauaretê

Violado Quintet Foundation

OFFICIAL DESIGNATION

Fundação Quinteto Violado

CLASSIFICATION

Type: Arts and media producer; archive

Legal status: Not-for-profit civil society

Scope: Regional

CONTACT AND ADDRESS

Marcelo Melo, president

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MISSION AND PROFILE

The Fundação Quinteto Violado (FQV) was established in 1997 to expand the cultural proposal of the musical group Quinteto Violado and to act as an executive center for cultural projects. The group came about in Pernambuco, in 1971. Since then, it has been using musical elements of the regional culture, gathered in research and from the experience of every one of its members, who are natives of the Brazilian Northeast. The Foundation strives to build support and respect for the Brazilian people through artistic expression, emphasizing and strengthening cultural identity. In particular, it promotes and encourages the development of the Brazilian Northeast culture. The foundation's actions are conducted through agreements with government and private institutions with similar goals and educational entities. An exchange of experiences in Brazil and abroad is always stimulated.

RELEVANT PROJECTS AND PROGRAMS

Sounds of São Francisco. The project made a documentary record of the musical manifestations of the communities along the Rio São Francisco, on the perimeter of one of the hydroelectric dams operated by the Companhia Hidroelétrica do São Francisco (Chesf). The goal was to give national visibility to the various cultural nuances of the region and to create a new channel for showcasing the daily life of this population. The project includes participation from the communities of Paulo Afonso, Itaparica, Moxotó, Xingó and Sobradinho. The songs are recorded on CD.

Cultural Awareness Seminars. The Fundação Quinteto Violado, in partnership with the Ministry of Agrarian Development, conducted seminars entitled CITIZENSHIP, ART & SEED in various regions of Brazil. The objective was to promote cultural awareness by offering mini-courses on the importance of cultural activity for community growth and on notions such as how to work with cultural products. The seminars lasted two days each and were aimed at rural cultural actors.

The seminars took place in Itapecuru Mirim, Maranhão; Salvador, Bahia; Itaobim, Minas Gerais; Cuiabá, Mato Grosso; Curitiba, Santa Catarina; and Garanhuns, Pernambuco. The FQV hopes to hold new seminars in these locations, which will deal with preparing and handling cultural products.

Songs of the Semi-Arid Region. The project recorded unique aspects of the cultural universe of the rural regions, including songs, rounds and cultural performances. A partnership with the Ministry of Agrarian Development, through its Cultural Action Program, sought to reaffirm the diversity of rural populations and their CEs.

Music was recorded from the band Zabé da Loca, from the Santa Catarina settlement in the municipality of Monteiro, Paraíba; of the musicality of the Fulni-ô Indians, from rural Pernambuco; the work songs of sisal craft workers from Brazil's semi-arid Northeast; the songs of the Grupo de Coco Negros e Negras do Leitão; the songs of the wooden flute band Leitão da Carapuça and the *cordel* literature of Zé Ailton and Manoel Belarmino, from Poço Redondo.

INTELLECTUAL PROPERTY ISSUES

The recordings made by the FQV are only for documentation purposes. The masters of all the works recorded are donated to the holders, authors and interpreters of the work. In addition to the master, each group or responsible party receives 1,000 CDs.

The Foundation and the agencies that finance the projects are not interested in selling these products. Thus, recordings are not meant to be sold. The Foundation's hope is that these recordings simply allow organizing and disseminating the communities' creations.

FQV President Marcelo Melo said, "it is complicated to work with copyright without having a well-defined policy in the country. In this sense, FQV does not get involved in the sale of the products from its projects. Above all, the Fundação wishes for the cultural actors to make their own decisions about what to do with the recording of their music."

SUGGESTIONS FOR WIPO

Nothing to add

LEGISLATION, CODES AND GUIDELINES

Nothing to add

CONSULTED SOURCES

www.quintetovioloado.com.br

Interview by e-mail with FQV President Marcelo Melo.

READ ALSO

Nothing to add

Part III

6. CONCLUDING REMARKS

Given the diversity of institutional configurations and of concrete situations presented in the preceding chapters, one would be hard-pressed to make content recommendations in relation to the legal instruments and procedures that have been created for the protection of intellectual property rights of traditional communities. This is particularly true concerning the production and dissemination of visual, audio or text documents about their knowledge and forms of expression produced by agencies external to the community.

The results of this study make clear that these populations have their own efficient procedures that operate on a local sphere to regulate the creation, development, transmission and dissemination of their cultural practices and knowledge. Nevertheless, the way that these groups insert themselves - or are inserted – in broader political and economic spheres (national or international) limit the efficiency of the customary regulatory processes. In these broader spheres, moral commitments, consensus and consent are not enough, since legally guided contractual relations prevail.

Various examples referred to in this document attest to the existing difficulties in the interface of these spheres and the effort made by various agents – governmental and non-governmental – to resolve these differences. The examples also reveal that the priorities and strategies of the traditional communities in relation to the dominant socio-political, economic and legal reality vary considerably. Issues concerning land ownership, social inclusion and exclusion, education, or cultural projects with no strict relation with intellectual property issues prevail. Besides this, the forms of collaboration with support organizations from civil society also vary.

In sum, there are various modes by which the mechanisms of mediation of these differences are structured. This is the focus of this survey's argument. In other words, this research reconstructs the institutional arena in which the conflicts related to the intellectual property rights of traditional communities are formed and resolved, but emphasizes the various ways in which both the institutions and traditional practitioners make their negotiations on this matter.

Perhaps the principal contribution that an entity such as WIPO can make to the consolidation of legal and cultural mediations suitable to the situation described in this report would be to strengthen the recognition of the irreducible nature of the traditional cultural realities to the institutions and norms of the world system. Only the thorough recognition of this right to difference would open the way for the construction of the desirable understanding between the parties involved. Upon adopting the premise that each case must be solved in its particularity, it becomes necessary to formulate a code of ethics that provides parameters to the negotiations and the solution of conflicts in this field. In this framework should prevail respect for the deeper meanings attributed by each cultural community to its own intellectual creations. In addition, it is necessary to guarantee fair distribution among the parties involved of the power to negotiate and appropriate the material benefits derived from the uses and applications of their image, their knowledge and forms of expression. From this perspective,

fair trade principles are seen as an important complement to the protection of intellectual property rights .

A significant number of institutions consulted in this survey made suggestions to WIPO. I summarize them here, without suggesting that they are consensual or validated by this study. They are suggestions for reflection, and not recommended solutions. For greater clarity and proper contextualization of these ideas I suggest the reading of the “Suggestions for WIPO” section of the institutional profiles summarized in the previous chapters.

SUGGESTIONS FOR WIPO: A SUMMARY

I. Holders as agents

The preservation of traditional knowledge and cultural expressions as ICH is an important instrument for the empowerment and strengthening of traditional peoples’ self-determination. The protection of intellectual property rights is seen as an important component of the effective safeguarding of that heritage, both politically and economically.

Some institutions consulted by this survey understand that international instruments for protection of intellectual property rights of traditional communities may be necessary; others do not agree with this thesis. In any way, it becomes clear that the issue should be widely discussed with community representatives, not only with specialists or government agencies. International organizations should also recognize the rights of traditional peoples to decide about the applicability of such instruments to their own realities.

II. Intellectual property rights in cross-cultural perspective

WIPO’s regulatory documents and practice should consider that intellectual property is understood in different ways by different cultural traditions. The following hypotheses illustrate some difficulties that can be faced by a one-size-fits-all model for IP instruments or guidelines:

Collectiveness: traditional knowledge and forms of expression are produced collectively across generations, and owned by collectivities.

Variability: individual variations and re-readings of cultural expressions are an essential aspect of traditional cultures as living practices. Documentation of any one occurrence addresses both the immemorial collective cultural substratum and its individual current interpretation.

Non-human authors or co-authors: the holder communities give material expression to creations by spirits, ancestors, or mythical creatures. In such case, they are not the sole authors of these cultural manifestations, but their guardians and legitimate practitioners.

Inalienability: there are cultural items for which rights cannot be granted or alienated; they are intrinsic to one's condition as a human being.

III. New guidelines and procedures

The main objective of any further action in this field should be to guarantee the cultural communities' control over the preservation and distribution of information and documentation about their own knowledge and cultural expressions. Consequently, consultation and in-depth discussion with them based on specific projects are necessary for the adequate planning of such actions.

A clearer definition of the roles (rights and obligations) of the various agents involved in documenting and disseminating TK and TCEs (heritage holders, NGOs, researchers and traders) is needed.

Some institutions understand that the creation of a single international instrument for protection may be needed, or that it is necessary to establish guidelines and standards, including suggestions for model contracts and terms of consent and for benefit sharing procedures that can be adjusted by national institutions according to local realities.

For others, it is too difficult to encompass in one set of general legal instruments the existing diversity. Moreover, it is argued that the creation of a *sui generis* regime based on WIPO's experience may force the indigenous perspective towards the management of their own intellectual creations to conform to Western perspective and legal tools.

IV. Explore existing instruments

The registration of geographic indications and designations or collective trademarks as well as the use of mechanisms offered by new information technology such as, for example, the so-called "open access" initiatives may be explored in the creation of new perspectives in this field.

V. Capacity building

Capacity building in communities in relation to intellectual property rights, particularly on matters concerning copyrights for texts, images and sound recording, is seen by some interviewees as a priority. It is also considered urgent to have discussions with cultural communities about IP protection specifically in the trading of indigenous handicraft, in order to prevent the use of indigenous cultural materials for economic purposes without a proper agreement with the producing population.

The language used in this field is nearly always foreign to the communities. Therefore, there is a need for formal training of their members to enable them to understand and translate to their families the use and impact of normative instruments and guidelines. As it is in fact recommended that public authorities adequately understand the points of view of traditional communities.

VI. Impact assessment and best practices

WIPO should support research about indigenous perspectives on the subject in order to create the instruments that could effectively serve these communities needs and contribute to the understanding of their practices and world-views by governmental or non-governmental outsiders. Research about the effects – both positive and negative – of documenting and disseminating TK and TCEs is also strongly recommended.

The promotion of successful projects, as well as the denunciation of anti-ethical practices can stimulate the creation of useful international guidelines for institutions and researchers from different countries and help the keepers of traditional cultural expressions and knowledge defend their intellectual property rights .

In a more pro-active vein, some institutions suggested the creation of an international forum or platform where information and comparative jurisprudence could be accumulated.

Appendix

1. Survey group: preliminary list of institutions.

Type	Designation
Afro-Brazilian organization	Centro de Estudos e Ação Cultural Quilombo
Afro-Brazilian organization	Comunidade Negra dos Arturos
Afro-Brazilian organization	Coordenação Nacional de Articulação das Comunidades Negras Rurais Quilombolas
Afro-Brazilian organization	Escola de Formação Quilombo dos Palmares
Afro-Brazilian organization	Ilê Asé Odé Obará
Afro-Brazilian organization	Organização de Comunicação e Cultura

Type	Designation
Arts and media producer	Abaçaí Cultura e Arte
Arts and media producer	Aldear - Assessoria, Planejamento e Projetos
Arts and media producer	Associação Cultural Cachuêra!
Arts and media producer	Fundação Quinteto Violado
Arts and media producer	Índios On-line
Arts and media producer	Interior Produções
Arts and media producer	Jangada Brasil
Arts and media producer	Portal Folclore Brasileiro
Arts and media producer	Roda de Histórias Indígenas
Arts and media producer	Som das Aldeias
Arts and media producer	Vídeo nas Aldeias
Government agency	Centro Nacional de Desenvolvimento Sustentado das Populações Tradicionais
Government agency	Centro Nacional de Folclore e Cultura Popular
Government agency	Conselho de Gestão do Patrimônio Genético
Government agency	Coordenação Geral de Direito Autoral/MinC
Government agency	Fundação Biblioteca Nacional
Government agency	Fundação Cultural Palmares
Government agency	Fundação Nacional do Índio
Government agency	Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis
Government agency	Instituto do Patrimônio Histórico e Artístico Nacional

Type	Designation
Government agency	Instituto Nacional da Propriedade Industrial
Government agency	Programa de Artesanato Brasileiro
Government agency	Programa Demonstrativo dos Povos Indígenas
Indigenous organization	Apina – Conselho das Aldeias Wajãpi
Indigenous organization	APIWATA – Associação das Aldeias Wajãpi do Triângulo do Amapari
Indigenous organization	Associação Indígena Kuikuro do Alto Xingú
Indigenous organization	Associação dos Povos Indígenas do Oiapoque
Indigenous organization	Associação Indígena Língua e Cultura dos Tariano do Distrito de Iauaretê
Indigenous organization	Associação Terra Indígena Xingu
Indigenous organization	Conselho Geral da Tribo Ticuna
Indigenous organization	Federação das Organizações Indígenas do Rio Negro
Indigenous organization	Organização Geral dos professores Ticuna Bilingues
Indigenous organization	Organização do Povo Indígena Parintintin do Amazonas
Indigenous organization	Organização dos Povos Indígenas de Tarauacá e Rio Jordão
Museum	Museu Casa do Pontal
Museum	Museu de Arqueologia e Etnologia - USP
Museum	Museu do Índio
Museum	Museu dos Povos Indígenas do Oiapoque - Kuahí
Museum	Museu Magüta

Type	Designation
Museum	Museu Nacional
Museum	Museu Paraense Emílio Goeldi
Network of institutions	Associação Brasileira da Propriedade Intelectual
Network of institutions	Instituto Indígena Brasileiro para Propriedade Intelectual
Network of institutions	Sistema Brasileiro de Museus
Popular organization	Associação Tapirapé Petuti
Popular organization	Movimento Articulado das Mulheres da Floresta Amazônica
Popular organization	Rede Povos da Floresta
Producer, practitioner or trader	Artesãs Livres Associadas – Associação Abayomi
Producer, practitioner or trader	Grupo Cultural Jongo da Serrinha
Professional association	Associação Brasileira de Antropologia
Professional association	Associação Brasileira de Etnomusicologia
Professional association	Comissão Espírito-Santense de Folclore
Professional association	Ordem dos Advogados do Brasil - Comissão de Direito da Propriedade Imaterial
Research institution	Instituto Nacional de Pesquisas da Amazônia
Research institution	Laboratório de Imagem e Som em Antropologia
Research institution	Núcleo de Apoio à Pesquisa sobre Populações Humanas em Áreas Úmidas Brasileiras
Support organization	Centro de Documentação Eloi Ferreira da Silva
Support organization	Comissão Pró-Índio - SP

Type	Designation
Support organization	Iepé – Instituto de Pesquisa e Formação em Educação Indígena
Support organization	Instituto das Tradições Indígenas
Support organization	Instituto de Pesquisa e Formação em Educação Indígena
Support organization	Instituto Sócio-Ambiental
Support organization	Warã Instituto Indígena Brasileiro
Trader	Artesanato Solidário
Trader	Galeria Brasileira
Trader	Galeria Estação

2. Survey group: tentative list of individuals.

Category	Name
Activist	Daniel Munduruku
Activist	Carlos Alberto (Beto) Ricardo
Consultant	Carlos Frederico Marés de Souza Filho
Consultant	Juliana Ferraz da Rocha Santilli

Category	Name
Consultant	Janete Costa
Media producer, artist and/or performer	Marlui Miranda
Media producer, artist and/or performer	Renato Imbroisi
Media producer, artist and/or performer	Toninho Macedo
Media producer, artist and/or performer	Paulo Freire
Media producer, artist and/or performer	Paulo Dias
Researcher	Anthony Seeger
Researcher	Betty Mindlin
Researcher	Bruna Franchetto
Researcher	Carlos Sandroni
Researcher	Dominique Tilkin Gallois
Researcher	Lux Boelitz Vidal
Researcher	Maria Cecília Londres Fonseca
Researcher	Maria Lucia Montes
Researcher	Manuela Carneiro da Cunha
Researcher	Paula Morgado Dias Lopes
Researcher	Rafael José de Menezes Bastos
Researcher	Regina Polo Müller
Researcher	Roque de Barros Laraia

¹ WIPO's Terms of Reference for this assignment.

²WIPO/GRTKF/IC/10/4. ANNEX. REVISED PROVISIONS FOR THE PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS/EXPRESSIONS OF FOLKLORE. POLICY OBJECTIVES AND CORE PRINCIPLES. ARTICLE 1: SUBJECT MATTER OF PROTECTION, (a).

³WIPO/GRTKF/IC/10/5. ANNEX. REVISED PROVISIONS FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE. POLICY OBJECTIVES AND CORE PRINCIPLES. ARTICLE 3. GENERAL SCOPE OF SUBJECT MATTER. 2. F

⁴Convention for the Safeguarding Intangible Cultural Heritage. UNESCO, 2003.

⁵For a general outline of this legal regime see Juliana Santilli. “*Biodiversidade e conhecimentos tradicionais associados: novos avanços e impasses na criação de regimes legais de proteção.*” André Lima & Nurit Bensusan (ed) **Quem cala consente?** Subsídios para a proteção aos conhecimentos tradicionais. Documentos ISA: 8. São Paulo: Instituto Socioambiental, 2003.

⁶ Edvar D. Magalhães (org.) **Legislação indigenista brasileira e normas correlatas.** Brasília: FUNAI, 2005.

⁷ARANTES, A.A. Cultural diversity and the politics of difference in safeguarding intangible cultural heritage. In: Blake, J. **Safeguarding Intangible Heritage: challenges and approaches.** Pentre Morel: Institute of Art and Law, 2007. ISBN 1-9903987-10-5. African-Brazilian cultural references in national heritage: questions of cultural politics. **Vibrant: Virtual Brazilian Anthropology.** Associação Brasileira de Antropologia. Brasília, DF. v. 5, n. 1, Jan-Jul, 2008. Accessible at [HTTP://Vibrant](http://Vibrant). Heritage as culture: limits, uses and implications of intangible cultural heritage inventories. In: KONO, T. (Ed.). **Intangible cultural heritage and intellectual property: communities, cultural diversity and sustainable development.** Antwerp, Oxford: Intersentia. 2009. ISBN 978-90-5095-758-8

⁸This somewhat mechanistic description is further nuanced in the presentation of the Wajãpi case study in this report.

⁹ Nominal list in Appendix.

¹⁰ See Appendix for nominal lists of institutions and individuals consulted.

¹¹ Nominal list in Appendix.