



**Unity-Equality-Sharing**

## **The contribution of the Association for the Future of Indigenous People and their Original Knowledge (ADACO) to the twenty-sixth session of the Committee on Development and Intellectual Property (CDIP)**

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ADACO's contributions focused on the following themes: intellectual property and development and intellectual property and the creative economy.

These proposals will mainly concern the development of traditional knowledge and traditional cultural expressions. With regard to intellectual property and development, the following can be noted:

Article 544 of the French Civil Code states that "property is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by statutes or regulations". It refers to the freedom of use (to make use of); of enjoyment (to grow, to collect the fruits); of disposal (to modify, to destroy). Intellectual property rights thus create a secure environment for investment in innovation and provide a legal framework for the marketing of intellectual assets. Intangible assets play a significant role in the competitiveness and performance of nations and firms in the knowledge economy.

Indeed, the economic benefits of managing intellectual property assets enable the development of national products (based on traditional knowledge) and improve the production and promotion of product value. It should be noted that intangible assets now account for nearly 60 per cent of the economy and their valuation is therefore increasingly important. Intellectual property constitutes part of this valuation through national and international legal frameworks.

The following concepts must also be explained:

Traditional cultural expressions can be considered to be forms of expression of traditional culture. They are part of the identity and heritage of a traditional or indigenous community and are passed on from generation to generation. Forms of traditional cultural expressions include: dances, songs, handicrafts, designs, ceremonies, storytelling and other artistic and cultural expressions deemed traditional.

Traditional or folk knowledge refers to innovations, practices, wisdom and skills that are passed down from generation to generation in a traditional or customary context. It is part of the traditional lifestyle of the indigenous communities that are the custodians or repositories of this knowledge.

Furthermore, while traditional knowledge and traditional cultural expressions are not secret or protected under a specific law, they are deemed to be in the public domain under conventional intellectual property systems. This situation is contested by indigenous peoples and the NGOs that represent them. Internationally, unlike most conventional intellectual property assets, traditional knowledge and traditional cultural expressions are not directly protected by intellectual property law, with the exception of performances of expressions of folklore, which are protected under the WIPO Performances and Phonograms Treaty (1996) and the Beijing Treaty on Audiovisual Performances (2012).

In addition, the rights of indigenous peoples are defined by the 2007 United Nations Declaration on the Rights of Indigenous Peoples. Under this declaration and certain national laws, indigenous peoples have the right to preserve, control, protect and develop intellectual property rights over their cultural heritage, traditional knowledge and traditional cultural expressions.

Within WIPO, regulatory discussions are underway to develop balanced and appropriate legal and practical measures to protect traditional knowledge and traditional cultural expressions. The possible outcomes of these negotiations, which are taking place in WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), are likely to have implications for festivals worldwide. While there is no formal recognition internationally of the intellectual property rights of holders of traditional knowledge and traditional cultural expressions, best practices are being developed to promote the fair treatment of such knowledge and expressions, respect for the cultural and ethical rights and interests, and respect for the customary values of their holders, particularly indigenous peoples and local communities.

In short, the formalization of a specific international legal framework for the protection of traditional knowledge and traditional cultural expressions is essential to establish specific legal standards at the national level that protect, preserve and safeguard the holders of this ancestral knowledge.

ADACO would like this future international standard to be binding and to serve as a basis or reference that States could use to develop their policies for the protection of indigenous peoples' ancestral knowledge. This standard should also complement the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore of the African Regional Intellectual Property Organization (ARIPO).

We then suggest that studies be conducted by international institutions to assess the economic potential of African traditional knowledge. These studies can only be carried out if the holders of traditional knowledge feel legally protected while benefiting from their knowledge.

- **Intellectual property and the creative economy**

With regard to *intellectual property and the creative economy* the following can be noted:

The word "creation" signifies the action of establishing and founding something that did not exist previously. *Créativité* is a vague and ambiguous term in French as it

derives from the American term "creativity", used by Guilford (1950). It refers to a strange component of intelligence that allows us to solve problems in unconventional ways. Similarly, the Palo Alto School (1975) defines "inventiveness" as the ability to modify the elements of a system. Creativity thus corresponds to the ability to produce a phenomenal state of thought and inventiveness is the ability to put into action the creative mechanism induced by the creative state, so as to produce a creation or a work. In 2013, Saulais said that creativity and inventiveness are therefore combined in dual activity prior to the innovation process. The innovation process in the sense of idea generation is described in four stages by Louafa and Perret. These are: the description of the question, the production of divergent ideas, the convergence of the ideas collected with regard to the question posed, the sorting and the choice.

Therefore, copyright protection is granted when a creation is of original form, regardless of the genre to which it belongs (literary, musical or artistic), its destination (documentary, advertising, artistic), its form of expression (oral, written etc.). The term "copyright" corresponds to the term "literary and artistic property". The author of an intellectual work enjoys, solely by virtue of its creation, an exclusive intangible property right that is enforceable against all, which includes attributes of an intellectual and moral nature as well as attributes of an economic nature. This intangible property is distinct from the tangible property of the physical medium of the intellectual work. Intangible property relates to the content of the work, which is inherently dematerialized and inalienable on account of its purely intellectual nature. Tangible property relates to the medium of the work which belongs to the physical world, which can be disseminated and be the object of all kinds of transaction and which is part of the information system, considered as the depository of media materializing the creation of an intellectual work.

Moreover, the cultural and creative industries have their roots in creativity, skill and individual talent. Skill and talent provide potential wealth and job creation through the use of intellectual property. This concept is linked to the idea of a "creative deal" or an enabling or creative project. The heritage, know-how and skills specific to a given territory produce positive "externalities" on the economy as a whole ("creative economy"). Thus, as Bouquillion explains, the idea of creative industries has become a line of public policy based on the principle of the creative deal. Creators are now deemed to be cultural entrepreneurs, and territories are enhanced by the contribution of the creative classes.

Creative industries emphasize the importance of the connection between the local, national and international levels. There is a twofold aspect to this "glocalization". The heritage, know-how and skills characteristic of each territory are the elements that attract foreign workers, companies, investors and tourists. The theory of the "creative class" developed by Florida is based on the ability of a territory to offer a pleasant environment that meets the expectations and needs of these workers in order to attract them, while also attracting businesses and investors.

In view of the above, it can be said that intellectual property and the creative economy are linked because intellectual property allows an artist to benefit from maximal profit on the value chain relating to the production and sale of a tangible or intangible cultural product.

ADACO would like the future international standard for the protection of traditional knowledge to be an instrument for the protection and promotion of traditional cultural expressions through the implementation of cultural and creative industry policies. Creation by cultural and creative industries is linked to a cultural environment, to the tangible and intangible know-how of the artist and to the conditions in which their works are created.

In short, it would be essential that the national policy for the creation of cultural enterprises define simplified procedures so that the cultural potential of indigenous people is taken into account. Indeed, the indigenous people in Africa in general and in Gabon in particular often do not know how to read or write. For this reason, they must benefit from a specific legal procedure that allows them to access intellectual property.

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