

Sub-regional Conference on  
Intellectual Property and Digitization  
of Intangible Cultural Heritage  
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## Intellectual Property Management in the Documentation, Digitization and Digital Preservation of Cultural Heritage

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# “Preserving” or “protecting” cultural heritage?

Protection of ICH against misappropriation and misuse

different from but supportive of

Preservation of ICH (UNESCO Conventions)

## Defensive Protection

- Prevention of third-party claims of IP rights over ICH

## Positive Protection

- an exclusive property right
  - (i) to authorize or prevent the use of ICH by third-parties;
  - (ii) for remuneration; and/or
  - (iii) to be acknowledged

# Documenting cultural heritage

- Is “documentation” a form of protection?

It is a mean towards:

protecting ICH

preserving ICH for future generations

sustaining cultural creativity

empowering communities

*Documentation is therefore not an end in itself...*

# Documenting, digitizing, disseminating cultural heritage: Overview of IP issues

- Who?
- What?
- Permission? - free prior informed consent
- Role of tradition-bearers
- Access
- Use

***The use of “practical” measures may be beneficial to manage these IP issues.***

# Overview of conventional IP protection

- What type of protection could the conventional IP system provide to ICH?
  - copyright for **contemporary adaptations** and interpretations
  - copyright for **unpublished and** works of **unknown authors** (Berne Convention, art. 15.4)
  - related rights protection of **recordings** of ICH and for “**performers** of expressions of folklore” (WPPT)
  - **databases** and compilations of ICH can be protected (WCT)

# WIPO Capacity-Building

OCTOBER 2009

## CAPACITY-BUILDING Intellectual Property and Traditional Knowledge

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

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

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

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

### Activities: 2008-2009 Biennium

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

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

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

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

### The Creative Heritage Project

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

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



Chief Moses Olo Niso of the Laikipia Maasai community receiving formal hand over of a digital recording assignment from Ma Wand Wae-Rwand (WIPO TK Division).

# Creative Heritage Project

| WORLD INTELLECTUAL PROPERTY ORGANIZATION |             |                    |           |               |
|--|-------------|--------------------|-----------|---------------|
| ABOUT WIPO                               | IP SERVICES | PROGRAM ACTIVITIES | RESOURCES | NEWS & EVENTS |

Home > Program Activities > Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore > Creative Heritage Project

## Creative Heritage Project: Strategic Management of IP Rights and Interests

### RESOURCES FOR DEVELOPING BEST PRACTICES

- [Surveys of existing practices, protocols and policies](#)
- [Cultural Heritage Documentation Database](#)

### TRADITIONAL KNOWLEDGE, GENETIC RESOURCES AND TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE

Traditional Knowledge  
Genetic Resources  
Traditional Cultural Expressions  
Intergovernmental Committee

- Creative Heritage Project
  - IP & Museums
  - Community Documentation
  - IP & Handicrafts
  - IP & Festivals
  - Digital Gateway
  - Training Programs
  - Key Resources
  - Databases

### RELATED LINKS

Human Rights

### E-NEWSLETTERS

Subscribe to receive general information updates concerning traditional knowledge-related



### IP Management by Museums, Libraries and Archives

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



### IP and Handicrafts

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



### Creative Heritage Gateway

The WIPO Creative Heritage Digital Gateway presents samples of the creativity of indigenous and local communities and cultural institutions...



### Community Cultural Documentation

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



### IP Management related to Arts Festivals

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

# Creative Heritage Project

Is...

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

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

# WIPO training programs

## DIGITIZING TRADITIONAL CULTURE

### WIPO Training Program for Indigenous Communities

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



A traditional Maasai performance.

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

#### Using technology to preserve tradition

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

intangible cultural heritage is vulnerable to unwanted exploitation.

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

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

#### Maasai community first to benefit

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

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



# WIPO training programs

This is about:

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

***...a collaborative effort!***

# Our Tools and Resources...

## TRADITIONAL KNOWLEDGE, GENETIC RESOURCES AND TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE

Traditional Knowledge

Genetic Resources

Traditional Cultural  
Expressions

Intergovernmental  
Committee

Creative Heritage Project  
Training Programs

Key Resources

Databases

- ▶ Cultural Documentation  
Database
- Genetic Resources
- Contracts Database
- Laws Database

## RELATED LINKS

Human Rights

## E-NEWSLETTERS

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information updates  
concerning traditional  
knowledge-related  
developments and events.



## Database of Existing Codes, Guidelines and Practices

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

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

### Database

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- [Search by keyword, category and country/region](#)

- Browse by category

[Resources for Museums and other Collection-Holding Institutions](#)

[Resources on Inventory-Making](#)

[Resources for Researchers and Field-Workers](#)

[Resources for Commercial and Other Users](#)

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

[Standard Agreements, Consent Forms, Licenses and Undertakings](#)

[Technical Standards, Indexical Languages and Thesauri](#)

[Professional Societies' Codes and Statements of Ethics](#)

[Intergovernmental Instruments, Declarations and Guidelines](#)

[Policy Papers, Studies and Articles](#)

# Our Tools and Resources...

Home > Program Activities > Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore > Key Resources

## TRADITIONAL KNOWLEDGE, GENETIC RESOURCES AND TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE

Traditional Knowledge  
Genetic Resources  
Traditional Cultural Expressions  
Intergovernmental Committee  
Creative Heritage Project  
Training Programs  
▶ Key Resources  
Databases

## RELATED LINKS

Human Rights

## E-NEWSLETTERS

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## Key Resources

- [Press Releases](#)
- [General Information](#)
- [Case studies and National Experiences](#)
- [Policy and Legislative Guidance](#)
- [Conferences and Workshops](#)
- [Articles](#)
- [Multimedia Resources](#)

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### Press Releases

- [Indigenous Community goes Digital with High-Tech Support from WIPO](#)
- [WIPO to Launch Pilot Training Program for Indigenous Communities](#)
- [Indonesian Cultural Heritage Takes Center Stage at WIPO Supported Event](#)

### General Information

- Intellectual Property Issues and Arts Festivals: Preparing for the 11th Festival of Pacific Arts Solomon Islands 2012, by Terri Janke [\[PDF\]](#)
- [WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge \(1998-1999\)](#)
- Booklet on Intellectual Property and Traditional Knowledge (WIPO Publication No. 920) [\[PDF\]](#)
- Booklet on Intellectual Property and Traditional Cultural Expressions/Folklore (WIPO Publication No. 913) [\[PDF\]](#)
- A Stronger Voice for Indigenous and Local Communities in WIPO's work on Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources: The WIPO Voluntary Fund (WIPO Publication No. 936) [\[PDF\]](#)
- Brochure on the Creative Heritage Project: English [\[PDF\]](#), French [\[PDF\]](#), Spanish [\[PDF\]](#), Arabic [\[PDF\]](#), Chinese [\[PDF\]](#), Russian [\[PDF\]](#)
- Information brochure on the Establishment of a Caribbean Regional Framework on IP and GRTKF [\[PDF\]](#)
- LIENIP-WIPO joint bilingual publication on Traditional Knowledge and Indigenous Peoples – Russian Publication [\[PDF\]](#), Bilingual Publication [\[PDF\]](#)

# Our Tools and Resources...

## WIPO MAGAZINE

### Traditional Cultures, Indigenous Peoples and Cultural Institutions

April 2010

Museums, libraries, archives and other cultural institutions play an invaluable role in preserving and providing access to their collections, an endeavor that can raise a number of intellectual property (IP) issues, especially in a digital environment. Handling collections of elements of cultural heritage, or "traditional cultural expressions" (TCEs) often brings about specific and even more complex IP issues.

Indigenous peoples and traditional communities have expressed concerns that the very process of preserving TCEs, like documenting and displaying, for example, a traditional song or tribal symbol can open the door to misuse or misappropriation.

### ARCHIVES AND MUSEUMS Balancing Protection and Preservation of Cultural Heritage



Museums, archives, libraries, anthropologists and ethnologists play an invaluable role in preserving the rich cultural heritage of our planet. By recording and making available the music, arts, knowledge and traditions of indigenous communities, such institutions help to spread a broader understanding and respect for different cultures. However, some traditional communities are beginning to voice concerns that sometimes activities by museums and cultural specialists do not take adequate account of their rights and interests; and that documenting and displaying, say, a traditional song or a tribal symbol, make them vulnerable to misappropriation.

How can museums strike a balance between the preservation and the protection of cultural documentation? And how can the wider public have greater access to the rich collections housed by archives and museums? Traditional communities and cultural institutions have begun to seek intellectual property (IP) information and advice in relation to these questions. Greater clarity on how to identify relevant IP issues and options could benefit all stakeholders. This article outlines a few of the key questions and describes WIPO activities aimed at addressing them.

tions without seeking the consent of the relevant community, let alone acknowledging the source or sharing the commercial benefits. Some popular world music albums, such as "Return to Innocence," included samples of traditional music that had originally been recorded and made publicly available for heritage preservation purposes.

In the words of expert Henrietta Fourmille, (Centre for Indigenous History and the Arts, University of Western Australia), the crux of the problem from an indigenous perspective is that the "information collected about us is simply not

#### Traditional cultural materials

The "public domain" character of traditional cultural expressions (folklore), which has been the subject of criticism especially by indigenous peoples, raises interesting and challenging issues. For example, while a traditional song may be treated by IP law as in the public domain, recording that song creates IP rights in the recording. To whom do these new rights belong, and how should they be managed in ways that take into account the interests of the community in whom the custody of the song had been entrusted under customary laws?

Further questions to consider include:

- ▶ What IP rights do researchers and cultural institutions hold? And how can these rights be best managed in the interests of safeguarding culture, promoting



### Digitizing Cultural Heritage in Bulgaria

*A Survey of Intellectual Property-related Experiences and Practices*

Prepared for the  
World Intellectual Property Organization (WIPO)  
by Vladia Borrissova

# For more information...



*Website :*

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