

# **Indigenous Peoples' Perspectives on Intellectual Property Protection for Traditional Cultural Expressions: Views from an Indigenous Expert Meeting**

**WIPO Indigenous Panel  
Monday, 15 July 2013  
WIPO Headquarters Room A  
Geneva, Switzerland**

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# Indigenous Expert Meeting on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions

- Authorized by the IGC and recommended by the United Nations Permanent Forum on Indigenous Issues
- Co-organized by the Secretariats of WIPO and the Permanent Forum
- Took place on 19-21 April 2013 in Geneva
- Report is contained in an information document  
**WIPO/GRTKF/IC/25/INF/9**
- Participated in by selected Indigenous Experts from each of the 7 socio-cultural regions recognized by the Permanent Forum



# The Indigenous Experts

- AFRICA – Eliamani LALTAIKA
- ARCTIC – Jon Petter GINTAL
- ASIA – Jennifer Tauli CORPUZ
- LATIN AMERICA – Estebancio CASTRO DIAZ
- NORTH AMERICA – Stuart WUTTKE
- PACIFIC – Les MALEZER
- EASTERN EUROPE, RUSSIAN FEDERATION, CENTRAL ASIA AND TRANSCAUCASIA – Gulnara Abbasova



# Substantive agenda

- Identification of key legal, policy, and institutional issues
- Addressing the key issues identified
- Specific comments on substantive issues



# Overarching principles

- Indigenous Peoples' right to self-determination
  - Maintain, control, protect, and develop their intellectual property interests over their TCEs
  - The right to give or withhold consent to the use of their TCEs, through Indigenous institutions and procedures
- Indigenous Peoples' permanent sovereignty over their resources
  - Indigenous peoples retain their rights to their TCEs even in cases of unauthorized access and when term of legitimate use has expired



# SUBJECT MATTER

- The definition of Indigenous Peoples' TCEs should be guided by the UN Declaration on the Rights of Indigenous Peoples and recommendations of the United Nations mandates on Indigenous Peoples' rights
- An internationally-drafted list of TK and TCEs might not cover the diversity of contexts of Indigenous Peoples.



# SUBJECT MATTER: Definition

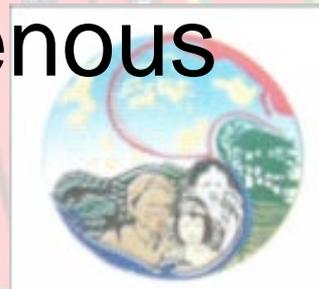
“Traditional cultural expressions are any form of [artistic and literary] expression, tangible and intangible, or a combination thereof, in which traditional culture and knowledge are embodied, which pass from generation to generation and between generations, including but not limited to ... ”



# **SUBJECT MATTER: Criteria**

“Protection extends to traditional cultural expressions that are distinctive of or the unique product of the collective and inalienable cultural and social identity of Indigenous Peoples and local communities.”

“The terminology used to describe the protected subject matter shall be determined in accordance with indigenous peoples' law ... “



# BENEFICIARIES

- Beneficiaries are Indigenous Peoples and local communities only but not other communities.
- While the concept of “peoples” includes “nations” and acknowledges that within a “people”, families, individuals, and other subsets thereof may have closer association to the TCEs, ownership of TCEs remains with the collective. Thus it is not necessary to enumerate subsets of peoples when identifying beneficiaries.



# BENEFICIARIES

“Beneficiaries of protection are Indigenous Peoples and local communities.”



# SCOPE OF PROTECTION

- Indigenous Peoples have the right to maintain, control, protect, and develop their intellectual property interests over their TCEs.
- Indigenous Peoples have primary responsibility for protecting their intellectual property through Indigenous laws, customs and regulations, administered through their own institutions and decision-making procedures.
- The standard for protection should be equal and be based on whether or not FPIC has been obtained prior to access and utilization of the knowledge, even if it is not secret or sacred.



# SCOPE OF PROTECTION

- To prevent unauthorized access to or utilization of their TCEs, Indigenous Peoples should be empowered to:
  - define the subject matter using their terms;
  - identify rightful holders;
  - affirm that agreements are reached with FPIC and mutually-agreed terms (MAT);
  - ensure fair and equitable benefit-sharing;
  - ensure adequate and appropriate disclosure, and;
  - to determine limitations on the utilization of TCEs.



# SCOPE OF PROTECTION

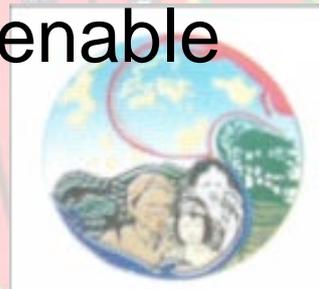
The economic and moral interests of the beneficiaries concerning their traditional cultural expressions shall be safeguarded.

Adequate and effective legal, administrative, and policy measures shall be provided to safeguard the economic and moral interests of the beneficiaries, including but not limited to:

(a) prevent the unauthorized disclosure, fixation, or other exploitation of traditional cultural expressions;

...

(e) ensure the beneficiaries have exclusive, inalienable and collective rights to authorize and prohibit ...



# EXCEPTIONS AND LIMITATIONS

Limitations on utilization of TCEs shall be determined by Indigenous Peoples.



# EXCEPTIONS AND LIMITATIONS

“Measures for the protection of TCEs shall not restrict the creation, customary use, transmission, exchange and development of TCEs by the beneficiaries, within and among communities, in the traditional and customary context.”



# EXCEPTIONS AND LIMITATIONS

“Limitations on protection shall extend only to the authorized utilization of TCEs taking place outside the membership of the beneficiary community or outside the traditional or cultural context, and shall be in accordance with the conditions determined by the beneficiaries as a condition for authorization.”



# Some Final Words

**WIPO/GRTKF/IC/25/INF/9**





**Dakkel ay Iyaman!**  
**Thank you!**  
**Merci Beaucoup!**  
**Muchas Gracias!**