



Traditional Cultural Expressions an Indigenous space?

WIPO IGC Panel
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Outline

- An Indigenous Space
- Substantive Right
- Procedural fairness
- Non Indigenous – Indigenous
- International Instruments
- Text
- Conclusions

Background



- WIPO IGC
- Progress?
- Traditional Cultural Expressions
- Embody Indigenous knowledge
- Integral to the cultural and social identities of Indigenous peoples
- Part of an integrated whole

• Substantive Right

- Without core rights – no TCEs
- Indigenous starting point
- Support from various doctrine



Tenets

A tropical sunset over the ocean. The sun is low on the horizon, casting a golden glow across the sky and reflecting on the water. Silhouettes of palm trees and other tropical vegetation are visible in the foreground, framing the scene. The overall atmosphere is serene and peaceful.

- Non Indigenous
- Native Title
- Aboriginal Title
- Customary Title
- Indigenous
- Tikanga Maori – system of law

International Instruments

- UNDRIP - Art 31
- 1. Indigenous peoples have the **right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.**
- 2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

International Instruments

- Art 18 - participation
- Art 3 – self determination
- Collectively provides compelling grounds for an Indigenous right to TCEs and that States are to provide measures to protect these rights.
- Working Group
- Procedure
- UNPFII recs 51 and 52

Text

- Art 1 - Protection
- Indigenous Knowledge system
- Collective
- Future generations – notion of sustainable - legislation
- Sacred places
- Adaptions – Derivations - Wai 262
- Art 2 - Beneficiaries
- Indigenous Peoples
- National Law?



Text

- Art 3 - Scope
- inappropriate use
- Benefit sharing
- Art 4 – Administration of Rights
- Free Prior and Informed Consent
- Art 5 – Exceptions and Limitations
- any legislation requires meaningful participation of Indigenous Peoples



Conclusions

- Trust model?
- Indigenous Peoples – self determination – own text
- View this text through an Indigenous Lens
- UNPFII recommendations - Comply with the UNDRIP
- Indigenous participation