



PACIFIC ISLANDS FORUM SECRETARIAT



PACIFIC COMMUNITY (SPC)



Practical Workshop on Intellectual Property, Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources

December 8 to 10, 2015, Apia, Samoa

Organized by the World Intellectual Property Organization

in cooperation with

The Ministry of Commerce, Industry and Labour of Samoa,

The Pacific Islands Forum Secretariat, and

The Pacific Community

REPORT

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Overview

About the Practical Workshop

The *Practical Workshop on Intellectual Property, Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources* was held in Apia, Samoa from 8 to 10 December 2015. The Practical Workshop brought together Indigenous Peoples and Local Communities (IPLCs) and government representatives from fourteen Pacific Island countries. Together with experts from the World Intellectual Property Organization (WIPO) and three Pacific regional organisations, participants shared knowledge and experiences on ways to protect intellectual property (IP) in traditional knowledge (TK) and traditional cultural expressions (TCEs) and how to manage the interface between IP and genetic resources (GRs). The Practical Workshop sought to impart basic concepts of IP, facilitate dialogue, foster cooperation, identify needs, and generally raise awareness on how IP principles and systems can contribute to sustainably using and protecting Pacific TK, TCEs and GRs.

The Practical Workshop was organised by WIPO in cooperation with the Samoan Ministry of Commerce, Industry and Labour (MCIL), the Pacific Islands Forum Secretariat (PIFS) and the Pacific Community (SPC). The Practical Workshop consisted of two component events:

- A one-day preparatory meeting for IPLC participants. The purpose of this meeting was to provide IPLCs with an introduction to IP, TK, TCEs, GRs, and other relevant concepts and to identify and discuss issues arising in their communities.
- A two-day Practical Workshop attended by the heads of intellectual property offices, members of government ministries responsible for drafting relevant policy and law, IPLC representatives, and international and regional organisations working on IP and TK, TCE and GRs issues in the Pacific.

The Practical Workshop was funded by WIPO, which also organized and facilitated the participation of delegates from the Pacific countries. MCIL, PIFS and SPC provided technical support for the event.

Significance

The Practical Workshop occurred at an important time in the development of laws and policies to protect and promote TK, TCEs and GRs in the Pacific region. Countries in the region have been working on policies and legal frameworks for the protection of IP in TK, TCEs and GRs since the late 1990s. This work includes the development of at least three model laws for the protection of TK, TCEs and GRs. However, implementation of these model laws has not been as rapid as expected. In this regard, the *Traditional Knowledge Action Plan*, led by PIFS with the support of SPC, WIPO and the South Pacific Regional Environmental Program (SPREP) has, since 2008, attempted to assist countries to develop national policies and strategies and to implement effective national laws and systems. A further dimension forming part of the backdrop for the Practical Workshop is the international negotiations ongoing at WIPO aimed at development of international legal instrument(s) which would provide for the effective protection of TK, TCEs and GRs.

The Practical Workshop presented a unique and important opportunity for Pacific Island countries to reflect on all these efforts and processes and to share experiences from across the region.

Such Practical Workshops are an important component of WIPO's capacity building and awareness-raising activities. This Practical Workshop followed four previous Practical Workshops on TK, TCEs and GRs. The first two Practical Workshops, held in Geneva in December 2013 and 2014, brought together IPLC representatives from around the world to Geneva to consider issues relating to IP and the concerns and aspirations of IPLCs. In 2015, a more elaborated model for the Workshops was tested, in which government officials from two or more relevant departments were also invited. In this way, the Workshops became "multi-stakeholder" while retaining their practical orientation. The first of these Workshops was held in Windhoek, Namibia from 17 to 20 August 2015 for six Anglophone African countries, and a second in Panama from 18 to 20 November 2015 which focused on IP issues relating to TK, TCEs and GRs in Central and South America. Documents from these other Workshops are available on WIPO's TK website.

These Practical Workshops aim to raise awareness of IP, foster engagement with regional and international work, and enhance cooperation between relevant grassroots, national, regional and international actors. They provide an interactive and participatory forum for sharing information and experiences and dialogue between IPLCs, governments and relevant regional organizations.

Objectives

The specific objectives of the Practical Workshop (and of the series of Practical Workshops generally) were to:

1. **Gain knowledge** about the IP system and the options it provides for the protection of TK, TCEs and GRs;
2. **Build co-operation** between and among IPLCs and government agencies, within each country and within the region; and
3. **Identify the needs** of participants and their countries and communities in relation to developing and using IP systems, tools and principles to protect TK, TCEs and GR, and **identify sources of support** to fulfil these needs.

The Practical Workshop was interactive and participatory. The activities included presentations, case studies, small group work, national discussions and question and answer sessions.

The Program for the IPLC Day and the Practical Workshop is attached as [Annexure A](#).

Participants

Representatives from fourteen Pacific Island countries participated in the Practical Workshop, from Cook Islands, Fiji, Guam, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

The Practical Workshop immediately followed the inaugural *Heads of Intellectual Property Office Conference for Pacific Island Countries* held in Apia, Samoa from 7 to 8 December 2015. By organizing the Practical Workshop at this time, WIPO was able to involve a wide range of stakeholders from across the Pacific. Participants fell into three broad categories:

- Heads of Intellectual Property Offices.
- Officials from a range of other government agencies, including commerce, industry and culture ministries and legal officers responsible for drafting relevant policies and laws.

- IPLC participants, representing a diverse range of interests including arts, music and performance groups, museums, businesses, healers, non-governmental organizations, law associations and Indigenous organisations.

Representatives from WIPO, PIFS, SPC and SPREP attended and facilitated the Workshop. Representatives from UNESCO and the Melanesian Spearhead Group were invited but were unfortunately unable to attend.

The participants are listed in [Annexure B](#) to this Report.

Presenters and facilitators

- Mr. Wend Wendland, Director, Traditional Knowledge Division, WIPO.
- Ms. Solamalemalo Hai-Yuean Tualima, WIPO Indigenous Fellow, Traditional Knowledge Division, WIPO.
- Ms. Terri Janke, Solicitor, Director of Terri Janke and Company Lawyers and Consultants, and international expert on Indigenous cultural and IP. Ms. Janke was commissioned by WIPO to provide technical assistance to the Practical Workshop.
- Mr. Papalii John Taimalelagi, matai from Sapapali'i, Savai'i, Samoa and Assistant Chief Executive Officer of the Lands and Titles Court, Ministry of Justice, Samoa. Papalii was commissioned by WIPO to facilitate the IPLC day.
- Ms. Elise Huffer, Adviser for Culture, SPC.
- Ms. Veniana Qalo, Trade Policy Adviser, PIFS.
- Mr. Clark Peteru, Legal Adviser, SPREP.
- Mr. Pita Niubalavu, Consultant to SPC.

This Report

This Report provides an overview of the discussions that occurred at the Practical Workshop. It outlines the key issues and needs identified by the participants and records information provided about the current work, concerns and achievements of governments and communities in the Pacific region concerning the use and protection of TK, TCE and GRs.

Some material presented at the IPLC Day was also presented to the larger group at the Practical Workshop. In order to avoid repetition, this Report summarises the material and discussions from both sessions in a single section.

This Report is a summary of the proceedings of the Workshop. The Workshop was not intended to and did not reach any formal outcomes. Furthermore, this Report does not constitute legal advice. If you have specific questions concerning IP in relation to a particular case, please consult an appropriately qualified IP expert.

This Report was prepared by Ms. Anna Dziedzic, Research Fellow, Melbourne Law School, Australia. Ms. Dziedzic was commissioned by WIPO to be the Rapporteur of the Workshop.

Report of the Indigenous Peoples and Local Communities Day

Tuesday 8 December 2015

Official opening and welcome

The official opening and welcome for the IPLC day was facilitated by Mr. Papalii John Taimalelagi. Mr. Mesake Draniatu gave the opening prayer.

Ms. Peseta Margaret Malua, Chief Executive Officer of MCIL, officially opened the IPLC day. She spoke of the role of Indigenous peoples as the keepers and practitioners of TK, TCEs and GRs. She noted that while governments and regional and international organizations have an important role in facilitating and providing systems and advice, it is up to the people themselves to take the responsibility to protect TK, TCE and GRs.

Ms. Solamalemalo Hai-Yuean Tualima, WIPO Indigenous Fellow, said the Practical Workshop was an opportunity for IPLC representatives to gain knowledge about IP and how it can protect TK, TCEs and GRs; to build networks for cooperation within countries and the region; and to identify needs and sources of support. She spoke of the significance and value of TK, TCEs and GRs to the heritage and identity of individuals, families, communities and countries in the Pacific.

Ms. Veniana Qalo, Trade Policy Adviser of PIFS, spoke about how culture is ingrained in Pacific communities, forming the basis of community values and identity and, increasingly, income. However, communities often find it difficult to protect their IP using the current IP system and are concerned about the misappropriation and misuse of TK, TCEs and GRs. This Workshop provided an opportunity to explore these issues and seek expert advice.

MCIL thanked WIPO for organising the IPLC Day in co-operation with PIFS and SPC. Representatives of WIPO, PIFS and SPC thanked MCIL for hosting the Practical Workshop and the IPLC representatives who came from across the region to learn about IP and to share their experiences in protecting, practicing and living their TK, TCEs and GRs.



Photo: Participants at the IPLC Day, 8 December 2015

Needs and expectations

Facilitator: Mr. Papalii John Taimalelagi

The IPLC day began with participants introducing themselves and sharing what they hoped to gain from the Practical Workshop. Their needs and expectations included:

- To learn about IP law and how it can protect and promote the TK, TCEs and GRs and cultures in countries and the region.
- To return to their communities and help raise awareness at the grassroots level about the value of TK, TCEs and GRs.
- To help raise awareness of IP rights in their countries so producers, musicians, composers, dancers and other artists know their rights and can protect them.
- To build connections with each country's government officials and make networks within the region for support to protect TK, TCEs and GRs.
- To ensure that the benefits gained from research using traditional knowledge and local resources are shared with the people.



Photos: Participants at the IPLC Day, 8 December 2015

Many participants spoke about the importance of traditions, culture and heritage to the people of the Pacific region. They emphasized that TK and TCEs have intrinsic value as part of the heritage of Pacific peoples ingrained in their identity.

Topic 1: Introduction to Intellectual Property

Presenter: Ms. Solamalemalo Hai-Yuean Tualima

This session provided IPLC representatives with an introduction to the different types of rights protected by IP law. It contributed to Objective 1 of the Practical Workshop, **to gain greater knowledge** about the IP system.

Topic 2: Introduction to traditional knowledge, traditional cultural expressions and genetic resources

Presenter: Ms. Terri Janke

In this session, IPLC representatives discussed the nature of TK, TCEs and GRs and examined the opportunities and limitations of using IP law to protect TK, TCEs and GRs. The discussion contributed to Objective 1, to **gain knowledge** about the IP system and the options it provides for the protection of TK, TCEs and GRs.

The material in these two introductory sessions of the IPLC Day was also presented to the larger group on the first day of the Practical Workshop. To avoid repetition in this Report, this material and the groups' discussions are summarised under Topic 1: "Intellectual Property, Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources" in the Report on the Practical Workshop below.

Topic 3: Regional Culture Strategy and the Pacific Regional Traditional Knowledge Action Plan

Presenters: Ms. Elise Huffer and Ms. Veniana Qalo

This session provided an update on developments led by SPC and PIFS at the regional level to protect TK, TCEs and GRs. The presentations outlined two key policy documents developed to assist countries in the region to protect TK, TCEs and GRs. This session pursued Objective 1, to **gain knowledge** of protections for TK, TCEs and GRs, and Objective 2, to **build co-operation** within the region.

In this session, the presenters provided information about the work of SPC and PIFS to assist countries in the region to protect IP and TK, TCEs and GRs. To avoid repetition in this report, this information is set out under Topic 4: "International and regional processes, projects and advocacy platforms for the region" in the Report on the Practical Workshop below.

Regional Culture Strategy

The *Regional Culture Strategy: Investing in Pacific Cultures 2010-2020* is a strategy for cultural development and policy in the region. The strategy was developed by the Council of Pacific Arts and Culture, which comprises the heads of culture departments from all SPC member countries and territories in the region.

The Strategy provides a roadmap for countries and SPC to work to develop measures to protect and promote culture in the Pacific. The strategy sets out a number of objectives relevant to the protection of TK, TCEs and GRs, including to:

- **Protect and promote cultural rights** by taking steps to preserve tangible and intangible cultural heritage and TK and TCEs;
- **Expand Pacific cultural industries** by taking steps to improve national conditions for the ethical representation, sale and marketing of cultural goods and services, protecting cultural goods and services in trade agreements, and supporting artists and cultural practitioners;
- **Mainstream culture in other social and economic sectors** by taking steps to ensure that cultural approaches, including TK, are integrated in natural resource management, development, climate change, food security and biodiversity conservation policies.

The *Investing in Pacific Cultures Strategy* envisages a role for SPC and PIFS to support countries to develop cultural industries, including by promoting exports, strengthening commercial protection of cultural industries, and developing strategies to strengthen IP rights to protect TK, TCEs and GRs.

For more information: A link to the *Regional Culture Strategy: Investing in Pacific Cultures 2010-2020* is included in the “Resources” section of this Report.

Regional Traditional Knowledge Action Plan

The *Traditional Knowledge Action Plan* was developed by PIFS in collaboration with SPC and launched in 2009.

The Action Plan followed from earlier work by PIFS and SPC to develop the model law on *Traditional Knowledge and Traditional Expressions of Culture* and by SPREP to develop the *Traditional Biological Knowledge Innovation and Practices* model law. WIPO had contributed to the drafting of the PIFS/SPC model law and was a partner in the Action Plan from the outset.

In Phase I of the Action Plan, from 2009-2011, PIFS, SPC and WIPO assisted countries to develop policy and draft legislation based on the model law frameworks. Phase I also sought to build capacity through regional workshops and technical assistance.

Phase II of the Action Plan was prepared in 2015 on the basis of feedback from countries. A significant aspect of Phase II involves PIFS working with SPC to develop marketing strategies for Pacific cultural industries, conscious of need to balance commercialization and protection of TK and TCEs. Activities under Phase II will be prioritized based on countries’ needs. The expected outputs of Phase II include:

- For each beneficiary country, preparation of a national policy addressing relevant IP issues, including issues relating to documentation of TK.
- Practical implementation of the policy through legislation, administrative measures or infrastructure.
- Participation in workshops on IP and commercialization.
- Participation at meetings of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) where possible, given the significance of this international normative project for laws and policies in the region.

Topic 4: Identifying challenges and steps to protecting TK, TCEs and GRs

Facilitators: Mr. Papalii John Taimalelagi and Ms. Solamalemalo Hai-Yuean Tualima

In this session, the IPLC representatives worked in small groups to consider two questions:

1. What are the challenges in protecting and promoting TK, TCEs and GRs?
2. What steps should you take to protect TK, TCEs and GRs and add value and maximize economic opportunities?

This session contributed to Objective 3, to **identify the needs** of participants and their countries in relation to developing and using IP systems to protect TK, TCEs and GRs.

Challenges in protecting and promoting TK, TCEs and GRs

All groups considered that **lack of awareness** was a key challenge. People, especially artists and producers in communities, are not aware of their IP rights, the economic value of TK, TCEs or GRs, or how to protect them. Some groups felt that people are not fully aware of the national legal and policy frameworks in place for the protection of TK, TCEs and GRs and the government agencies responsible for administering these frameworks in their countries.

Perhaps contributing to this lack of awareness, participants noted **difficulties in communication** between and within governments and peoples. Communication is particularly challenging in countries where communities are spread out over large geographic areas, and where the costs of transportation, translation and other logistics are high. As a result, it was felt that communities outside urban centres were marginalised, even though artists and producers of TCEs and holders of TK are predominantly these communities.

Some groups identified the **exploitation of resources** as a challenge for the protection and promotion of TK, TCEs and GRs. They expressed concern about money-driven interests in TK, TCEs and GRs for selfish benefit, rather than protecting these resources for everyone.

Some groups considered that IP laws and policies were not high in their governments' priorities, and that this was reflected in the **lack of adequate legislative and regulatory frameworks** for IP, TK, TCEs and GRs protection and a **lack of funding** for those efforts.

Participants also noted challenges stemming from **cultural factors** in the Pacific region. For many, IP is regarded as a foreign concept with the potential to lead to tensions between individual and communal interests.

Finally, some groups noted challenges arising from **the nature of TK, TCEs and GRs**, such as how to identify the original owners of TCEs; how to define TK to take account of the fact that knowledge, and the way in which it is expressed, often changes over time; and how the "traditional" might be blended with "contemporary" arts and expressions.

Steps to protect TK, TCEs and GRs and add value and maximize economic opportunities

Steps to **raise awareness** of IP, TK, TCEs and GRs:

- Education campaigns and workshops on the importance of IP protection for TK, TCEs and GRs, targeted to children, government agencies and communities;
- Disseminating laws and policies;
- Using social media to inform, educate and network; and
- Creating a regional IP and TK, TCEs and GRs network of practitioners, government officials and other stakeholders.

Steps to ensure that **legal and policy frameworks** exist and are kept up to date and that responsible government agencies have the resources to do an effective job:

- Dialogue between IPLCs, producers and practitioners and governments and ministers;
- Capacity-building, training and support for governments and communities; and
- Drawing on support from other countries and organizations in the region.

Steps to **prevent exploitation and misappropriation** of TK, TCEs and GRs:

- Making access benefit sharing agreements;
- Requirements at the national or local level for full, free, informed consent by communities before TK, TCEs or GRs are used or exploited;
- Raising awareness in communities about the value of TK, TCEs and GRs and providing owners with due acknowledgement and incentives.

Steps to **preserve TK, TCEs and GRs** before they are commercially used, so that they can be available for future generations:

- Passing on traditional knowledge to new generations in our families and communities;
- Documenting TK and TCEs; and
- Protecting our producers, writers, orators and artists and consulting them about new laws and policies.

Report of the Practical Workshop

Wednesday 9 December and Thursday 10 December 2015

Official opening and welcome

The official welcome and opening for the Practical Workshop was facilitated by Ms. Peseta Margaret Malua, Chief Executive Officer of MCIL. Reverend Ioane Petaia gave the opening prayer.

The Honourable Mr. Fonotoe Nuafesili Pierre Laufo, Minister of Commerce, Industry and Labour and Deputy Prime Minister of Samoa officially opened the Practical Workshop. He spoke about the challenges of protecting traditional knowledge and culture faced by all countries in the Pacific as well as the different needs of different countries in the region. He spoke of the important contribution that Pacific countries could make to work at the regional and international levels to further IP protections for TK, TCEs and GRs. His Excellency welcomed all participants and organizers to the Practical Workshop and urged them to take advantage of the opportunity for artists and creators, indigenous representatives, government officials and representatives from international and regional organisations to discuss ways to progress TK, TCEs and GRs development in Pacific countries.



Mr. Wend Wendland, Director of the Traditional Knowledge Division, WIPO, welcomed participants to this important multi-stakeholder Practical Workshop. He spoke of the rich and varied cultural repertoire of the Pacific and said that this Practical Workshop was part of WIPO's support of work done to ensure that Pacific cultures are protected and valued. WIPO has been active on TK issues in the Pacific for many years. Through this Workshop, WIPO hopes to listen, learn and support efforts at the national and regional levels to protect Pacific cultures. WIPO was very pleased to be co-organizing this Workshop with its two regional partners, PIFS and SPC.

Ms. Veniana Qalo, Trade Policy Adviser, PIFS also welcomed participants to the Practical Workshop. Ms. Qalo spoke about the importance of traditional knowledge and culture to social cohesiveness, cultural identity, and increasingly as a source of income for communities in the Pacific. While cultural industries and trade can increase wealth, they can also expose communities and cultures to exploitation and misappropriation. The legal tools that will be explored in the Practical Workshop are part of the range of protection mechanisms available to protect and promote cultural industries in the Pacific.

Ms. Elise Huffer, Social Development Adviser for Culture, SPC, said that the range of stakeholders present at the Practical Workshop created an important opportunity for practitioners, governments and regional organisations to work collectively. She emphasized that work to strengthen cultural industries and natural resources management must concurrently address issues relating to TK, TCEs and GRs. Ms. Huffer especially welcomed the increasing number of Pacific Islands experts with specialist knowledge of IP and encouraged continuing government investment in building qualifications in this area.

All speakers offered their thanks to WIPO, PIFS and SPC for their support of the Practical Workshop; to MCIL for hosting the Practical Workshop with Samoan hospitality; and the participants for travelling from around the region to attend the Workshop to share experiences, build networks and learn about IP protections for TK, TCEs and GRs.

Objectives

Facilitators: Mr. Wend Wendland and Ms. Solamalemalo Hai-Yuean Tualima

The Practical Workshop began with participants introducing themselves and identifying their needs and expectations of the workshop. These included:

- Learn about the benefits of IP protections for TK and TCEs for creators, artists, businesses and people at the grassroots level.
- Develop an IP strategy for their countries that includes protections for TK, TCEs and GRs.
- Work towards new legislation, regulations and administrative frameworks to protect TK, TCEs and GRs.
- Know more about the work of WIPO and regional organizations and how they can assist countries.
- Raise awareness on the importance of protecting TK and TCEs among Indigenous peoples, organizations and governments.
- Learn from the experiences of other Pacific countries with IP systems on protecting TK, TCEs and GRs.
- Work together with the region to develop strong region-wide IP protections for TK, TCEs and GRs.



Photo: Participants at the formal opening of the Practical Workshop, 9 December 2015

Topic 1: Intellectual Property, Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources

Facilitator: Ms. Solamalemalo Hai-Yuean Tualima

Presenter: Ms. Terri Janke

Ms. Janke provided an overview of the IP system before participants discussed ways in which the IP system might, or might not, be used to protect TK, TCEs and GRs from misappropriation and inappropriate exploitation. This session contributed to Objective 1 of the Practical Workshop, to **gain knowledge** about the IP system and the options it provides for the protection of TK, TCEs and GRs.

What is Intellectual Property (IP)?

Intellectual property refers to creations of the mind, such as inventions, literary and artistic works, and symbols, names and images issued by businesses. IP rights allow the creators or owners of IP to economically benefit from their work, most commonly by granting the IP owner exclusive rights to use and benefit from their creations. IP rights are limited in time, after which the creation or invention is in the public domain and available for anyone to use.

There are different branches of IP law to protect different kinds of IP.

Copyright and related rights protect artistic, literary, musical and dramatic works and other subject matter such as recordings and films. To be protected, the work must be in material form (eg written or drawn) and must be original. Copyright protection means that no one else may copy or use the work, unless the copyright owner gives them permission. Copyright also includes “moral rights” to uphold the integrity of the work and to claim authorship. Copyright protection arises automatically. It is first owned by the creator, but may be assigned to someone else. Protection lasts for the lifetime of the creator plus a term of years (generally 50-70) after the creator’s death.

Industrial design rights protect the ornamental or aesthetic aspects of an article. Designs include three-dimensional shapes and two-dimensional features such as patterns. Unlike copyright, a new design must be registered in order to protect it from being used or copied by someone else. Once registered, protection lasts for a limited term of years (generally 15).

Trademarks are distinctive signs, words, designs or other marks that distinguish your product from others. A trademark must be registered and protection lasts as long as the mark is used in trade and the registration is maintained. Once registered, the owners of the trademark have the exclusive right to use the trademark.

Geographical indications are signs used to denote that a product comes from a specific location and possesses unique qualities due to that origin.

Patents protect inventions, that is, products or processes that provide a new way of doing something. To be protected, a patent must be registered. The patent gives the owner exclusive use of their invention for a term of years (generally 20-25).

Confidential information or trade secret laws may protect IP. These laws protect other people disclosing secret or valuable information. IP protections such as patent require you to publicly

disclose information about your invention. By keeping the information secret, you may be able to protect your idea from use by others for a longer period of time.

For a more formal and complete description of IP, see WIPO's publication "What is IP?", at http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

What are TK, TCEs and GRs?

Traditional knowledge (TK) is the living body of know-how, skills, innovations or practices that are passed from generation to generation in a traditional context. TK often forms part of the traditional lifestyle of Indigenous and local communities, which act as guardians or custodians of the knowledge. Examples of TK identified by participants included healing practices, knowledge of navigation, building and fishing techniques, and knowledge of climate change.

Traditional Cultural Expressions (TCEs) are the forms in which traditional culture is expressed. They form part of the identity and heritage of a traditional or Indigenous community and are passed down from generation to generation. Examples of TCEs identified by participants included music, songs and dance; arts such as weaving, masi/tapa and carving; and traditional sports.

Genetic Resources (GRs) are biological materials that contain genetic information of value and are capable of being reproduced. Because they are found in nature, genetic resources are not IP. However, GRs may be identified using TK such as traditional medicines and inventions made using those GRs may be patented and commercialized. Examples from the region identified by participants included various plants with medicinal, cleansing and other useful properties.



Practical Workshop participant Henry Aio performing *Te Reo Tupuna* ("Voice of my Ancestors") written by Ruteru Taripo and performed by HENZART (aka Henry Ah Foo Taripo)

TK and TCEs are closely related and many IPLCs regard them as inseparable.

What are the concerns?

TK, TCEs and GRs are collectively owned by the community and their use is often governed by customary law. Indigenous peoples are concerned that their TK and TCEs are being copied and adapted by people outside their community without their permission.

Participants gave several examples of misappropriation, including:

- Use and marketing of traditional healing techniques by outsiders;
- Mass production of traditional arts and crafts by outside companies;
- Inappropriate use of traditional designs on mass-produced clothing;
- Patenting inventions discovered using TK about the properties of local plants, without arrangements to share the benefits with the community; and
- Researchers who interview people and gather TK material but do not share their work with the community.

Indigenous people want protection to make sure that the cultural importance of the TK or TCEs is not eroded. They want to ensure that the intellectual innovation and creativity embodied in TK and TCEs are not misappropriated and used inappropriately. They want acknowledgement and attribution and a share in the benefits of successful commercialization.



Ms. Hai-Yuean Tualima and Ms. Terri Janke

How can IP help to protect TK, TCEs and GRs?

Current IP systems provide only limited protection for TK, TCEs and GRs. This is because of the different foundations and purposes of IP and TK, TCEs and GRs systems.

- IP laws such as copyright protect only the expression of an idea, not the idea itself. IP law grants and protects rights to known individuals. IP rights are of limited duration and may be sold or assigned to other people.
- In contrast, TK and TCEs encompass both the knowledge and the expression of that knowledge. TK and TCEs are owned by communities and are an important part of cultural identity. TK and TCEs are passed down from generation to generation and continue forever.

Group discussion: what are the limitations of using IP tools to protect TK, TCEs and GRs and how can we work with them or around them to achieve protection?

Copyright – limitations and opportunities

Copyright is owned by the original artist. “Traditional” designs may not be protected by copyright because the first artist to create the design may not be known, or may have passed on many years ago. If an artist imparts skill, labour and effort and creates an original work, that work will be protected by copyright, even if it draws on pre-existing traditional cultural expressions. Copyright vests in the expression of an idea, not the idea itself. If a researcher interviews people about their traditional knowledge and writes a book, the researcher, not the people, owns the copyright. The knowledge itself is not covered by the copyright, only the way it was written down.

How can owners prevent the inappropriate use of their TK and TCEs?

- Individual members of a group who use the group’s TK or TCEs might owe a special obligation to seek permission and use the TK or TCEs in a way approved by the group.
- Groups might consider ways to control the reproduction of TK and TCEs, for example by:
 - prohibiting photographs of performances so the group can control the images; or
 - requiring researchers to enter into binding agreements that require them to provide their findings to the group or seek consent before publication.
- Indigenous artists might register original works as designs or trademarks, which will prevent outside groups from using those images.
- Indigenous peoples have used the laws prohibiting the disclosure of confidential information to prevent the publication of sacred and secret TK.

Patent – limitations and opportunities

Patents are expensive to apply for and protect and require public disclosure of the method of manufacture of the invention (this creates the balance between the rights of the inventor and the interests of the broader public, including other inventors). While GRs exist in nature and cannot in themselves be patented, inventions based on GRs and associated TK may be patented if they meet the requirements for patentability, especially novelty and inventive step.

How can groups protect GRs and TK from misappropriation?

- Some Indigenous peoples working with researchers have become joint owners of patents.
- Access and benefit sharing arrangements: Some countries have adopted the Convention on Biological Diversity (CBD) and the Nagoya Protocol to that Convention, which provide for rules about accessing GRs and sharing the benefits of research. Access and benefit-sharing arrangements may also be included in national legislation or in agreements between researchers and owners.
- Some countries require people to disclose their use of GRs and/or TK when applying for a patent.
- People can challenge patent applications on the ground that the products or uses sought to be patented have been known and used for many years as TK.

Q&A: IP and TK, TCEs and GRs

Q: Do you need to obtain all different kinds of IP protection or can you just rely on one? What should you do first?

A: The kind of IP protection you seek depends on what you want. Sometimes, more than one kind of IP protection will apply. For example a work of art will be protected by copyright, but if you also use the art as a brand you might also register it as a trademark.

Q: If a country has no copyright or trademark laws, will it be covered by international law?

A: IP is protected by national legislation and administration. While there are a number of international treaties in which countries have agreed to take certain measures, those measures need to be enacted in national legislation in your country to apply.

Q: Are handicrafts an example of design? Can they be protected by IP laws?

A: Handicrafts embody TK and are often TCEs. A handicraft could be protected by design law if it is industrially applied and also by copyright. Choosing between design and copyright protection is important. A design has to be novel, but handicrafts usually embody old designs that have been handed down. Further, a registered design is protected only for a certain period of time, after which anyone can use the design. On the other hand, copyright lasts much longer and the producer does not need to register to own copyright. Copyright protection arises automatically upon creation of the work.

Q: In Samoa, high quality kava comes from the area of Fagaloa. Is that a geographical indication?

A: A geographical indication is usually the name of a place that produces a product with qualities attributable to land, soil, climate etc. There are many different varieties of kava found across the region. However, if a particular quality of kava is found in a certain region, you could use IP to protect the brand “Kava from Fagaloa” if it would allow the consumer to distinguish between the various kava products on the market.

Topic 2: Normative work on *sui generis* IP and TK, TCEs and GRs at the international level

Presenter: Mr. Wend Wendland

This session provided an overview of work at the international level on a specific, *sui generis* IP system to protect TK, TCEs and GRs. This presentation contributed to Objective 1, to **gain knowledge** of the IP system and its potential to protect TK, TCEs and GRs and Objective 2, to **foster cooperation and collaboration** at the regional and international levels.

The **WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)** began formal negotiations towards developing one or more international legal instruments to ensure the effective protection of TK, TCEs and GRs in 2009. The IGC did not meet in 2015 but will continue its work in 2016.

All member states of WIPO are invited to take part as members of the IGC. Non-governmental organizations may attend as observers. Pacific Island countries participate very seldom, if ever, in the IGC, perhaps for funding reasons. The presenter explained how WIPO funding is allocated. The

group discussed ways to lobby for more Pacific presence in the IGC. The presenter clarified in answer to questions that the countries that receive WIPO funding are not selected by the WIPO Secretariat but by the countries from the region in Geneva (in this case, the Asia-Pacific Group).

The IGC has prepared three draft instruments, one each on TK, TCEs and GRs. The draft texts grant new collective rights to IPLCs to enable them to prevent the misappropriation of TK and TCEs. They are designed to provide indefinite, formality-free protection of TK and TCEs across country borders. There has been no agreement on the legal status of these draft texts. It is not yet decided whether there will be a binding treaty or some other form of international instrument. The texts are not yet agreed and are heavily bracketed.

Significance of the IGC's work

- An IGC outcome could introduce in international IP law, for the first time, new collective rights to prevent misappropriation of TK and TCEs as a form of IP.
- The IGC's work is based on the recognition that TK and TCEs are a particular form of IP and require different rules for protection than currently exist. The IGC's work therefore represents a profound reimagining of the IP system around a broader understanding of IP.
- Work towards an international IP instrument(s) to protect TK, TCEs and GRs is the first such project to be led mainly by developing countries.

Challenges to the IGC's work

- There is no one model of TK and TCE laws at the national or regional level for the IGC to draw on, although model laws developed in the Pacific have influenced the work of the IGC.
- The negotiations involve 188 member states and other stakeholders including IPLCs and industry. The states driving the formulation of new international instrument(s) are diverse and have different objectives. They all face the challenge of persuading other countries of the need for a specific IP system for the protection of TK, TCEs and GRs.
- The IGC must ensure that its work does not overlap with or contradict existing instruments and processes, such as UNESCO's instruments on safeguarding intangible cultural heritage and cultural diversity or work under the *Convention on Biological Diversity* (CBD).
- The legal issues to be determined are difficult: What exactly is "traditional" knowledge? Who are the rights-holders and beneficiaries? What kind of rights should the new law give to owners?

To address these challenges, Member States should:

- Demonstrate the harm that the IGC is trying to address, for example by providing empirical evidence of misappropriation and misuse of TK, TCEs and GRs.
- Clarify the gaps in existing IP and other laws and non-legal processes.
- Define the objectives, being clear about what the IGC seeks to do (and not to do), how it can be done, and why it is necessary.
- Identify realistic, pragmatic solutions.

For more information:

- See WIPO's website devoted to TK: <http://www.wipo.int/tk/en/>
- Sign up for updates on the work of the IGC at grtkf@wipo.int

Case studies

In this session, participants divided into small groups, comprising at least one IPLC representative, one government official from an IP office, and one other government official from any country. Each group was given one of two case studies. The case studies were fictional but drew on issues that have arisen with respect to IP and TK, TCEs and GRs. The case studies were prepared by WIPO with the assistance of Mr. Clark Peteru (case study 1) and Ms. Terri Janke (case study 2). The case studies were used to explore and discuss broader issues regarding IP and TK, TCEs and GRs. Neither WIPO nor the participants expressed any views on how current legal cases ought to be resolved.

Each group reported back to the Practical Workshop on their discussions. This section of the Report collates the points raised by all groups and the facilitators.

The case study exercise contributed to Objective 1, to **gain greater knowledge** about the IP system and the options it provides for the protection of TK, TCEs and GRs. It allowed participants to apply their knowledge of IP law and principles to relevant practical examples.

Case Study 1: Patents, Genetic Resources and Traditional Knowledge

Facilitators: Mr. Wend Wendland, Mr. Clark Peturu and Ms. Veniana Qalo

A local conservation NGO in Tanoa (a fictional state) partnered with a professor of medicine from an overseas research institution on an ethno-botany project. The project studied local medicinal plants, drawing on the traditional knowledge of the Tanoan people. As part of the project, several books were published which included information about Tanoan plants and medicine in written English for the first time. The books stated that the work was “copyrighted in the name of Tanoa’s traditional leaders” so that “this important knowledge remains the property of Tanoan peoples”.

The project also involved collecting plant specimens that were sent overseas for analysis for non-commercial purposes. Under the Material Transfer Agreement prepared by the overseas research institution, the specimens may be made available to third parties for non-commercial purposes.

Tanoa has signed the *Convention on Biological Diversity* and the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their utilization to the Convention on Biological Diversity*. However, Tanoa has no national legislation or regulations regarding access to biodiversity and genetic resources.

(This is a summary of the case provided to the participants).

Questions for discussion

1. What risks and opportunities may arise from an ethno-botanical project like this one?

Risks:

- Natural resources, including genetic resources, might be exploited without returning benefits to the owners of the TK and to the country.
- The exposure of plants and wildlife to possible harm.
- Misappropriation of the TK.

- Loss of commercial benefits, for example as a result of overseas companies patenting their findings.
- Specimen samples leaving the country outside the control of the people.

Opportunities:

- The creation of new products with health benefits.
- The commercialization of new products, bringing economic benefits.
- The project might present an opportunity to develop new legal frameworks and systems for the commercialization and protection of TK and GRs.

2. What are the key IP issues?

- Copyright issues: Copyright vests in how the information is written, not the information itself. So even though the copyright in the books may vest in Tanoa's traditional leaders, the knowledge itself is not protected by copyright. Like a recipe book, the information itself is available for anyone to use.
- Patent issues: publication of the knowledge may destroy the novelty of the ideas embodied in the knowledge, which means that others may be prevented from patenting inventions or steps using the knowledge. However, it means that the people of Tanoa may not be able to patent such inventions either.
- Because there is no legislation in relation to IP or TK, TCEs and GRs, there are limited legal safeguards.

3. Which other areas of law may/should play a role in regulating this kind of research and why?

- Customary laws, including laws regulating land and property rights and the transmission of TK. This is particularly important in the Pacific region, where customary law regulates much local practice.
- Access and benefit-sharing (ABS) laws, if they exist, to ensure that communities can regulate access to and use of their TK, TCEs and GRs and receive an equitable share of any benefits.
- Environmental laws, including biodiversity protection and conservation laws, should apply to ensure species are preserved.
- Contract law to enforce the Material Transfer Agreement in the absence of specific laws or ABS arrangements.

4. Who are the main stakeholders and interested parties? What are the key interests to balance?

Stakeholders:

- The owners of the TK and resources are interested in the preservation of traditional knowledge, in ensuring that this knowledge is not appropriated or used without their consent, and that any benefits derived from the knowledge are shared with them as the owners.
- The local conservation NGO is interested in protecting plants and environmental diversity.
- The professor and the research institute are interested in new discoveries in medicine and furthering global knowledge.
- The people of Tanoa are interested in access to their natural resources and the preservation and protection of TK.

Interests and needs to balance include:

- Conservation vs exploitation of resources for health and economic benefits; and
- Protection of TK vs commercialization and use of that knowledge, including by people outside Tanoa.

5. What possible misappropriation concerns arise?

- If there is no obligation for the researchers to return any benefits derived from their use of TK and GRs to the community, then there is potential for misappropriation.
- Once the information is shared, either in the book or in the specimen collection, there is potential for others to use the information without complying with the laws and agreements, including for commercial purpose.
- Once widely disclosed, the value of the TK diminishes.

6. What could local communities and the government have done in advance to manage and minimize the risks and maximize the benefits?

The government of Tanoa could have:

- Put in place national legislative and administrative frameworks to protect IP, TK and GRs.
- Implemented the CBD and Nagoya Protocol, which provide for rules about accessing GRs and sharing the benefits of research.
- Conducted public awareness campaigns to ensure the community is aware of their rights.

Local communities could have:

- Entered into a formal agreement or MOU with the researchers that protected the use of their TK and GRs and provided clear prior and informed consent for specific activities.
- Conducted education and awareness-raising to ensure that people at the community level know about the advantages and disadvantages of sharing TK and GRs and the implications of IP law for the protection of TK and GRs.

7. What safeguards and practical steps could be available to address concerns regarding misappropriation of GR and TK after the fact?

- Enforce the Material Transfer Agreement to maintain control over the use of the TK and GRs.
- Negotiate for benefits to be shared with the traditional owners and the community.
- Use the experience to spur government action on protection of IP, TK and GRs, for example to create a focal point for assessing research applications and monitoring sample movements.
- Use the experience to raise awareness, e.g. through education and social media.



Photo: Case study work

Case Study 2: Copyright, Trademarks and Traditional Cultural Expressions

Facilitators: Ms. Terri Janke, Mr. Pita Niubalavu and Ms. Elise Huffer

A national airline wanted new designs to use on its airplanes, staff uniforms and other branding products. The airline commissioned a *masi* artist to produce the new designs. The artist has since passed away. *Masi*, also known as *tapa*, is a traditional technique found in several Pacific countries, which involves painting on cloth made from paper mulberry bark. From a traditional perspective, *masi* designs are not owned by a single person, but rather by a family or community group.

The artist made several designs for the airline that incorporated traditional *masi* motifs which the airline then used as its logo on its airplanes and other products. The community initially welcomed the new designs as a celebration of local culture. However, the airline later applied to register the designs as trademarks, both in its home country and overseas. The community were concerned that this amounted to claiming ownership over the *masi* designs.

(This is a summary of the case provided to the participants).

Questions for discussion

1. What is the effect of the airline using the *masi* design as their logo and applying for the trademark?

The groups identified a number of social, economic and legal effects arising from the airline's use of the design and application for trademark.

- The use of the design might have engendered national and cultural pride, reflected national identity.
- Depending on the design and its use, it might be offensive to some people and groups if it alters a traditional design or uses it in an inappropriate way. This is especially because *masi* designs are owned and used by Polynesian groups in many different nations.
- Building a strong brand might provide economic benefits for the airline and the country.
- The legal effect of trademarking the designs would be that the airline would have exclusive rights to use the motifs in the class of goods and services of the trademark. This might be seen as misappropriation of community-owned TCE. This might also cause concern in the community that other *masi* artists could not use the designs (although the trademark rights would not affect the use by others unless it interfered with the trade use of the designs by the airline in the relevant class of goods and services).

2. What copyright issues arise in the *masi* designs produced by the artist?

The groups discussed issues relating to whether the designs were subject to copyright, and if so, who owns the copyright.

- Copyright requires material form and protects the expression, not the style or idea. By incorporating traditional designs into her work, the artist is creating a new copyright work. A question arises about the rights of the community, because the designs were TCEs and were not original creations of the artist.

- If the designs were modified so they were original expression, the artist would hold copyright. The rights would be inherited after she died.
- If the artist was commissioned by the airline, the terms of the contract might provide that the airline owns the copyright in the designs.

3. What are the issues relating to TCE?

- *Masi* is a common item made in many places. The designs draw on the heritage of Pacific peoples and is a TCE.
- The artist should seek consent before using the designs, but this might be difficult because it is hard to identify a single group or community that owns a particular design.
- There is no legal requirement in copyright law to seek consent before using a TCE in artwork or in a brand. However, customary laws and protocols would require this.

4. What are the trademark considerations?

- A trademark design or image must be distinctive. *Masi* motifs are common in the Pacific so a question arises whether the motifs meet the requirement of distinctiveness. However, the focus of trademarks is the use in trade and in connection with classes of goods and services.
- Once a trademark is registered the airline would have exclusive rights over the use of the design and communities may lose the right to use the design in the traditional way.

5. How does the trademarks system recognize (or not recognize) TCE?

The trademark system does not fully protect TCEs for a number of reasons:

- The trademark system only recognises registered names, designs and logos. It does not recognise TCEs.
- Trademarks must be registered to a particular owner not the community.
- To be trademarked, a design must be distinctive for its use in trade and in connection with the class of goods and services. Adopting a traditional motif as a trade mark raises issues of cultural ownership and TCE rights which are not covered in the trademark process.



Photo: Case study work

- Many trademark laws are based on western models that do not factor in TCEs.

One possible way a trademark system might protect TCEs is to permit a trademark to be rejected on the ground that it is offensive to certain groups in the community, as in New Zealand. In Vanuatu, trademarks law requires consent from the Council of Chiefs before a TCE will be registered.

6. Should the airline have applied for a trademark? What consultation and consent should be required before commercialization?

The groups considered that the answer to this question depends on one's perspective:

- From the airline's perspective, it should apply for a trademark to protect its brand.
- From a TK perspective, the airline should not apply for a trademark because it is a TCE and TCEs are not to be owned but shared.

The airline should have consulted before they applied for a trademark, but this raises the question of

who the airline should consult: the owners of the TCE? the people of the country? all Polynesian peoples?

Some participants suggested that there should be better guidelines and processes for consultation. Others suggested that the airline might be able to use the designs, but should not profit from them because the designs belonged to the people.

Key points from the introductory sessions and the case studies

- **Distinction between protection and preservation of TK:** The focus of IP protection is to protect works of the human mind, including TK and TCEs, from being copied or used by third parties. IP protection is not directly concerned with *preserving* TK and TCEs. Other international and national processes are directed to preservation, such as the UNESCO Convention on Intangible Cultural Heritage (2003).
- **The best protection of TK, TCEs and GRs comes at the national level.** Without national laws, and effective implementation of them, there is no protection. While it is important to ratify international instruments, the principles must be enacted, implemented and enforced at the national level.
- **Know the different options for protection and use them strategically.** There is a range of different options to protect TK, TCEs and GRs. These include specific IP laws and specific laws for TK, TCEs and GRs; other laws such as consumer protection, heritage and biodiversity laws; and practical tools such as protocols, contracts and databases. Governments and communities need to know the options and use them strategically.
- **Determining ownership of TK, TCEs and GRs is not always a straightforward issue.** In some countries there is a great diversity of cultures, and so a great diversity of TK and TCEs and owners. TK and TCEs may also be shared across country borders or different groups in one country. Who then owns the TK or TCE? An individual? A group? A nation? The region?
- **Cross-border issues also arise in relation to GRs.** Where knowledge about a GR is found across different countries, why should one country get the benefit of the patent? The Model Law on *Traditional Biological Knowledge, Innovations and Practices* deals with some of these issues. One option worth exploring further is a harmonized Pacific-wide policy for research and investment.
- IP law and systems are not a perfect fit to protect TK, TCEs and GRs. However, **the better you understand IP, the better you can use it for strategic benefit.** IP laws can be used as a *shield* to defend TK, TCEs and GRs from misappropriation; and also as a *sword* to proactively use IP rights for economic growth.

Topic 3: IP and the commercialization of TK, TCEs and GRs

Presenter: Ms. Veniana Qalo

This session provided information on legal and economic issues relating to the commercialization of TK, TCEs and GRs. The issues discussed were of particular interest to business owners who use TK to produce and market a product, as well as government officials involved in facilitating and regulating businesses and goods for sale.

Traditional practices, knowledge, treatments and products might all be commercialized. Commercialization brings a number of benefits: it can provide income for families, communities and nations; make the benefits of TK, TCEs and GRs available to a large section of society; and increase awareness about the use of resources and the value of TK, TCE and GRs.

The successful commercialisation of TK, TCEs and GRs requires a great amount of investment, research and development in order to understand the needs and demands of consumers; source raw materials; test and improve products; and meet national and overseas regulatory requirements.

Group discussion: What barriers have you experienced when seeking to commercialize TK, TCEs or GRs?

Participants described some of the barriers they have experienced when commercializing TK, TCEs or GRs, including:

- Regulatory requirements such as health and safety testing, product labelling and overseas quarantine laws, which impacted what products could enter both domestic and international markets.
- The high cost of transport and shipping in Pacific Island countries.
- Hand-crafted goods are difficult to mass produce for large markets.
- Determining which communities own the TK, TCE and GRs and ensuring that they receive a share of the benefits.

The presenter used Pure Fiji Products as a case study. Pure Fiji began as a small family business manufacturing beauty products using coconut oil and is now a successful international business. The group discussed a number of reasons for the successful commercialization achieved by Pure Fiji, including:

- Continued investment in research and development to improve its products and create new products.
- Focusing on a niche market and differentiating its products, for example by providing pamphlets on the quality of the Indigenous ingredients it used. This meant the products could fetch higher prices to meet higher costs of local production.
- Preparing products as required rather than mass producing them.
- Using IP systems to protect its brand, including registering trademarks locally and overseas. This has resulted in Pure Fiji being a well-known and trusted brand.
- Returning benefits to the communities from which Pure Fiji sources its products, for example by improving the household income for women in villages and providing scholarships for students.

Group discussion: What are some possible solutions to the problems that arise when seeking to commercialize TK, TCEs or GRs?

One participant noted that artists and practitioners often just want to focus on their art. One successful program has partnered artists with a family member or friend who can focus on commercialization aspects.

Several participants noted that equitable benefit sharing can be difficult: Who decides what is fair, especially where there is unequal bargaining power? If the TK, TCEs or GRs are spread across many groups, how do you decide which group should benefit? Possible solutions may be to pool benefits in a central fund for distribution; or to give the benefits to community leaders, such as chiefs, to distribute within their communities. The development of government policies or guidelines on benefit-sharing might assist to protect the owners of TK, TCEs and GRs from unfair exploitation.

Topic 4: International and regional processes, projects and advocacy platforms for the region

Moderator: Mr. Wend Wendland

Panellists:

- **Ms. Elise Huffer, SPC**
- **Ms. Glynis Miller, PIFS**
- **Mr. Clark Peteru, SPREP**
- **Ms. Solamalemalo Hai-Yuean Tualima, WIPO**

This panel session provided participants with information on the kinds of support available to people in Pacific countries from regional and international organisations. This session focused on Objective 3, to **identify sources of support** to fulfil the needs of participants and their countries in relation to developing and using IP systems to protect TK, TCEs and GR.

Each member of the panel was asked the following questions:

1. What is the mission and main activities of your organisation and who are its members?
2. What forms of assistance, support and tools does your organization offer to Governments and/or IPLCs in relation to IP and TK, GRs and TCEs?
3. How do interested parties access that assistance, support and tools?

The Pacific Community (SPC)

Mission and main activities: The Pacific Community is the principal scientific and technical organization in the Pacific region to support social and economic development. Its members include 22 Pacific Island countries and territories as well as Australia, France, New Zealand and the United States of America. The Pacific Community has had a long involvement in promoting and protecting Pacific arts and culture, including through the Festival of Pacific Arts. The Council of Pacific Arts and Culture comprises the heads of culture ministries from each member country and meets every two years to discuss issues and initiatives relating to strengthening the cultural sector in the region.

Assistance offered: For over a decade up to 2002, SPC worked with countries in the region, PIFS, WIPO, UNESCO and SPREP to produce two model laws:

- *Protection of Traditional Knowledge and Expressions of Culture Law*; and
- *Traditional Biological Knowledge, Innovations and Practices Law*.

The model laws set out rights for the owners of TK, TCEs and innovations and practices related to traditional biological knowledge. Countries can use the model laws as a starting point when developing their own legislation, adapting them to suit the particular circumstances and needs of the country. SPC offers a range of tools to assist countries developing TK, TCEs and GRs laws and policies, including policy mapping for TK and TCEs, and tools and guides to implementing the model laws. These documents are available from <http://www.spc.int/en/digital-library.html>.

How to request assistance from SPC:

- SPC has several offices in the region and focal points in each member country.
- SPC convenes the Council of Pacific Arts and Culture, and the Social Development Division's culture program is set in agreement with the Council.
- SPC accepts direct request for assistance. It deals mainly with governments, but will assist community groups and businesses, either directly or by referring people to other sources.
- For more information see <http://www.spc.int/>.

Pacific Island Forum Secretariat (PIFS)

Mission and main activities: The Pacific Island Forum is a political grouping established by treaty of 16 independent and self-governing states. The goals of the Pacific Island Forum are to stimulate economic growth; enhance political governance and security; and strengthen regional cooperation and integration. PIFS provides secretariat support to the Forum and pursues work as directed by the Forum, including work on TK, TCEs and GRs.

Assistance offered: Since 2006, PIFS is responsible for implementation of the model laws with assistance from SPC. In 2009, PIFS launched the *Traditional Knowledge Action Plan* which aims to assist countries' efforts to establish legal and administrative structures for the protection of TK and TCEs. PIFS provides policy advice and technical assistance to member countries on request to develop policies and adopt and implement national legislation for the protection of TK and TCEs.

PIFS is working with SPC on a project to promote cultural industries called *Enhancing the Pacific Cultural Industries: Fiji, Samoa and Solomon Islands*. One aspect of this project considers the IP dimensions of cultural industries.

How to request assistance from PIFS:

- For official matters, the focal point for PIFS is the foreign affairs ministry and/or trade ministry in each member country.
- For other matters, PIFS interacts with the government, private sector and NGOs.
- For more information see <http://www.forumsec.org/>.

Secretariat of the Pacific Regional Environment Program (SPREP)

Mission and main activities: SPREP is a regional intergovernmental organization with a mandate to support efforts for the protection and sustainable development of the Pacific region's environment. Its members include fourteen Pacific Island nations, seven Pacific territories and five outside states.

Assistance offered:

- SPREP works with governments in the region to support work on sustainability, biodiversity and climate change.
- SPREP worked with SPC to develop the *Traditional Biological Knowledge, Innovations and Practices* model law to protect TK and GRs from misappropriation.
- SPREP supports work by Pacific countries to sign and implement the *Convention on Biological Diversity* and the *Nagoya Protocol*.

How to request assistance from SPREP:

- SPREP's office is in Apia, Samoa.
- For more information see www.sprep.org or email sprep@sprep.org.

Traditional Knowledge Division, WIPO

Mission and main activities: WIPO is a self-funding agency of the United Nations. It has 188 member states. It is the global forum for IP services, policy, information and cooperation. As part of its work, WIPO has been involved in developing IP systems to protect TK, TCEs and GRs.

Assistance offered:

- Secretariat support to the IGC.
- Policy and legislative advice at national and regional levels on IP issues.
- Information and guidance on practical issues in relation to TK, TCEs and GRs, such as arts festivals, community entrepreneurship, access and benefit-sharing agreements and documentation.
- Training and education for a range of stakeholders, including through Practical Workshops, seminars and distance online courses.

How to request assistance from WIPO:

- WIPO provides bilateral advice to countries at their request. WIPO will respond to requests from people outside government, but will always inform the government concerned.
- Briefing notes, updates, a toolkit on the IP implications of documenting TK, a database of national and regional laws on TK, TCEs, GRs and other materials are all available on WIPO's TK webpage <http://www.wipo.int/tk/en/indigenous/>.
- For more information go to <http://www.wipo.int/tk/en/indigenous/> and sign up for e-

updates on the work of the IGC by emailing grtkf@wipo.int.

National level meetings

Facilitators: Mr. Wend Wendland and Ms. Veniana Qalo

In this final session of the Practical Workshop, the participants met with the other representatives from their countries to discuss what was happening and what might happen in the future in relation to IP and TK, TCEs and GRs in their countries. These national level meetings sought to further Objective 2, to **build cooperation** between IPLCs and government agencies in each country and Objective 3, to **identify needs and sources of support**.

Each national group reported on three questions:

1. What has happened in your country to protect TK, TCEs and GRs?
2. What examples are there of TK, TCEs and GRs that need protection? What are the challenges and what questions do you have?
3. What steps will you take to better protect TK, TCEs and GRs in your country?

Cook Islands

1. Cook Islands has enacted legislation to protect some aspects of TK, TCEs and GRs, including the *Traditional Knowledge Act* and the *Copyright Act* in 2013. Cook Islands is party to the *Convention on Biodiversity* and is currently working towards signing the Nagoya Protocol. The Cook Islands Music Association has been compiling a database of Cook Islands music and working with the Australasian Performing Rights Association to educate people about copyright and to develop a mechanism to collect copyright payments.

2. Cook Islands has a range of TK, TCEs and GRs that need protection, including songs and music; traditional navigation and voyaging knowledge; “Te Tika” cosmetic products; and GRs such as compounds from the au tree which have medicinal uses.

Challenges include educating people about their rights and obligations under the new legislation; the use of family names and titles to brand products; and developing a process for access and benefit sharing in relation to GRs, currently through the national Environmental Services.

3. Steps that might be taken in Cook Islands to better protect TK, TCEs and GRs include implementing the *Traditional Knowledge Act* and *Copyright Act*; becoming a member state of WIPO; ratifying the UNESCO Convention on Intangible Cultural Heritage; and signing the Nagoya protocol.

Fiji

1. Fiji has drafted TK and TCE legislation which was developed in 2003 based on the model laws. This legislation is currently being considered by the Attorney-General’s Office. Fiji has a National Strategy for the implementation of the Nagoya Protocol, which will complement laws and policies on access and benefit sharing and biodiversity developed by the Department of the Environment. Fiji also has an IP strategy.

2. Fiji has a diverse range of TK, TCEs and GRs that need protection including traditional medicines using local plants; traditional tools such as fish traps; songs and dances; and designs.

Challenges include the importation of products made overseas that imitate traditional Fijian products which affect the market for locally-made products. In relation to GRs, the University of the South Pacific has a Centre for Drug Discovery where bio-prospectors research local biodiversity. Several compounds have been derived from local plants and patented for medical use. Fiji is involved in genetic exchange programs, but there are limited mechanisms to control the movement of Indigenous plants or for sharing benefits from their use. The use of local plants for traditional medicines have been recorded and published, raising concerns about misappropriation of TK and the potential that researchers will rely on this published information instead of following the procedures for bio-prospecting. Other challenges relate to enacting and implementing legislation and raising awareness of the IP issues raised by TK, TCEs and GRs.

3. Steps that might be taken in Fiji to better protect TK, TCEs and GRs include putting into action the national strategy to implement the Nagoya Protocol; controlling bio-research so that it benefits the community; and negotiating trade agreements with other countries that protect IP in TK, TCEs and GRs. The new Council of Chiefs also has a role to play in educating and raising awareness about issues relating to TK, TCEs and GRs.

Guam

1. Guam has established a Trademark Commission in preparation for the 12th Festival of Pacific Arts which will take place in 2016. The Guam Product Seal Law governs the certification of products made in Guam. The US Patent and Trademark Office (USPTO) administers copyright and trademarks. The Department of Chamorro Affairs and a museum to be opened before the Pacific Festival provide avenues for the preservation and promotion of TK and TCEs. Non-profit organisations have played a key role in protecting TK and TCEs such as performing arts and healing techniques.

2. Guam has a range of TK, TCEs and GRs that need protection, including weaving, carving, navigation and healing arts. There are also endemic species that may have GRs with useful applications.

Challenges to protection include the tension between the values of United States laws and policies and traditional cultural values; the lack of awareness and education about TK, TCEs and GRs; and the effects of climate change.

3. Steps that might be taken in Guam to better protect TK, TCEs and GRs include stimulating the work of the Guam Trademark Commission, which has been tasked with developing IP legislation for Guam.

Kiribati

1. Kiribati has a draft policy on TK developed by the Ministry of Internal Affairs, taking into account relevant work of other Ministries.

2. Kiribati has a range of TK, TCEs and GRs that need protection, including weaving, carving, navigation, healing arts and the creation of traditional items. There are a number of endemic species that have potential GRs.

Challenges to the protection of TK, TCEs and GRs include the concern held by some elders that laws and policies do not effectively protect TK and TCEs, and as a result, elders are reluctant to share and document their knowledge.

3. Steps that might be taken in Kiribati to better protect TK, TCEs and GRs include formulating new laws which ensure that the IP system recognises and works with TK and TCE policies; and ensuring that the range of different ministries with responsibility for aspects of IP, TK, TCEs and GRs work together to disseminate information and implement policies.

Marshall Islands

1. Marshall Islands currently has no comprehensive IP laws in place and is seeking assistance from the region to develop an IP system that protects TK, TCEs and GRs.

2. Marshall Islands has a range of TK, TCEs and GRs that need protection, including weaving, carving, navigation, healing arts and traditional items.

Challenges include educating the population about TK, TCEs and GRs and IP protections; raising awareness among artists and producers of the value and the need to protect TK and TCEs; and ensuring the sustainability of GR materials and biodiversity.

3. Steps that might be taken in Marshall Islands to better protect TK, TCEs and GRs include formulating IP and TK laws in consultation with regional organizations, in particular exploring whether it is desirable to incorporate the three areas of TK, TCEs and GRs in a single IP law; including material on IP and TK, TCEs and GRs in the school curriculum; and establishing a repository of TK and TCEs.

Niue

1. Niue became a member state of WIPO in 2015. The government is taking steps to establish a group of executive agencies to act as a focal point and take the lead to establish a legal framework for TK, TCE and GRs. Niue recently conducted workshops to capture TK and information from elders.

2. Niue has a range of TK, TCEs and GRs that need protection, including knowledge of plants with medicinal qualities; handicrafts; traditional sports such as *ta sika*; fishing methods and equipment; and traditional knowledge of climate and agriculture.

Challenges include identifying the owners of TK and TCEs, especially because families often do not want to disclose their traditional knowledge about medicines and other matters; explaining to farmers and indigenous people what it means to isolate and record plant species and GRs; and providing funding for effective public consultations.

3. Steps that might be taken in Niue to better protect TK, TCEs and GRs include improving public awareness of IP and TK, TCEs and GRs protection through TV, radio and community consultations;

government support for draft legislation on TK, TCE and GRs; and co-operating with all interested stakeholders to agree an IP and TK, TCEs and GRs framework.

Palau

- 1.** Palau has a copyright law, but no other specific IP laws. While IP is referenced in several policies, there is little legislative protection.
- 2.** Palau has a range of TK, TCEs and GRs that need protection, including storyboards and legends; ceremonies such as the post-first birthing ceremony; and chants.

One challenge is getting people to recognize the value of IP protections for TK, TCEs and GRs. While people put great value and pride in TK, TCEs and GRs, there is less understanding of the value of IP. Awareness-raising will help the government to take steps on IP laws and policies. Challenges also arise as a result of overlaying an American-style legal system onto Palau's customary system.

- 3.** Steps that might be taken in Palau to better protect TK, TCEs and GRs include considering the model laws and producing draft legislation; and establishing a multi-stakeholder task force to lead efforts in IP and TK, TCEs and GRs protection.

Papua New Guinea

- 1.** Papua New Guinea has a draft Traditional Knowledge Bill, informed by community consultations. Papua New Guinea has begun a mapping exercise to collect data on TK, TCEs and GRs. It has ratified the CBD and developed a National Biodiversity Strategic Action Plan. Legislation for access and benefit sharing is still to be finalised. The Copyright and Trademarks Acts have been amended to include some protections for owners of TK and TCEs. Other initiatives include a draft National Plan for the cultural industries and creative arts; research and development for sectors that use TK, TCEs and GRs; and the establishment of a National Cultural Commission with a mandate to preserve, protect and develop the traditional cultures of Papua New Guinea.

- 2.** Papua New Guinea has over 800 languages and different cultural groups, each with their own TK and TCEs. These include *bilum* (bags); *Sepik* carvings and other artefacts, costumes, dances, songs, and traditional initiation processes.

- 3.** Some challenges to protection derive from the nature of the TK and TCEs. One challenge is how to establish ownership of TK and TCEs. For example, *bilum* have different designs from different provinces and families and many are in the public domain, making it difficult to identify who owns the designs. In addition, ownership is a different concept to custodianship. Western influences can influence and change traditional practices, making it hard to determine the original practice. Other TCEs are very secret, such as initiation processes, which if disclosed would result in a loss of value and identity. A second group of challenges arises from how to protect TK, TCEs and GRs not only for IP purposes, but as part of Papua New Guinean culture. Funding is required to continue mapping TK and TCEs. Finally, challenges in raising awareness include difficulties in accessing parts of the country and communicating new concepts in a way that people will understand.

- 4.** Steps that might be taken in Papua New Guinea to better protect TK, TCEs and GRs include collaboration within government to finalise legislation and develop awareness programs; and

forming a working group with elders, community leaders, clan leaders, councillors, NGOs and government officials to take stock of existing legislation, policies and treaties to ensure that they are consistent with protecting and preserving TK, TCEs and GRs.

Samoa

1. Samoa's Copyright Act recognizes some aspects of TCEs, while patent laws require applicants to acknowledge TK sources in their patent applications. Samoa has a National Intellectual Property Strategy, and the Law Reform Commission has been given a reference to develop laws and policies on the protection of TK and TCEs. It has ratified international conventions on the protection of tangible and intangible heritage. Samoa has also undertaken a range of programs to raise awareness of IP, TK, TCEs and GRs, including through the school curriculum, national competitions and cultural performances. There are formal qualification requirements for practitioners and producers of TCEs, which enable craftspeople to access the labour force. Practitioner associations have also been formed to hold TK or TCE rights for specific traditional arts and practices, such as *tatau* (tattoo) and *elei* (printing) artists and boat and *fale* (house) builders.

2. Samoa has a diverse range of TK, TCEs and GRs that need protection including *elei* and *tatau* techniques and motifs; cultural songs and performances; oral traditions; and traditional medicinal knowledge.

3. Challenges include the closure of some local businesses producing local cultural products because they cannot compete with imported goods; regional cooperation to protect shared TK and TCEs across national borders; and determining who owns TK and TCEs and who needs to be consulted about their use. A particular challenge is ensuring collaboration between all stakeholders, including government and private sector, and artists and producers. For example, there have been cases where the government and private sector expressed concerns about companies' use of *tatau* motifs but the artist's family gave permission for the use.

4. Steps that might be taken in Samoa to better protect TK, TCEs and GRs include establishing a legal framework for IP protection of TK, TCEs and GRs; collaboration between all government agencies and the private sector; increasing awareness of the need to protect TK, TCEs, and GRs through national training and workshops; assessing whether to join relevant international treaties; government support for private sector development; and encouraging better coordination amongst TK, TCEs and GRs rights-holders.

Solomon Islands

1. Solomon Islands has developed the Traditional Knowledge and Expressions of Culture (TKEC) Bill 2015 using the model laws as a starting point. There have been several consultations with a range of stakeholders and the Attorney General is currently considering the draft. In addition, work is being done to allocate staff, funding and support to IP and TK, TCEs and GRs matters. Solomon Islands has a general policy statement covering IP, TK, TCEs, tourism and culture. It has also developed legislation and reforms in related areas such as museums, relics and land.

2. Solomon Islands has a diverse range of TK, TCEs and GRs that need protection. TCEs include *nguzu nguzu* (carvings); handicrafts, traditional shell and red feather currencies, and traditional lullaby, genealogy and history chants. Examples of TK include traditional medicines, climate-related

knowledge, and traditional architectural and navigational knowledge. Solomon Islands also has several unique species of plants and corals that have medical and industrial applications.

3. Recent consultations on the TKEC Bill highlighted a number of challenges, including low appreciation for the commercial value of TK and TCEs and uncertainty about how law fits into the bigger picture of protecting and preserving TK and TCEs. Other challenges concern managing the tension between western concepts of private ownership and traditional communal ownership and balancing sharing with secrecy. Finally, there are concerns about the devaluation and misappropriation of knowledge, rituals and other TCEs.

4. The group identified short term and long term steps that might be taken to better protect TK, TCEs and GRs in Solomon Islands. Short-term steps include establishing a coordinating body in government as a focal point for policies on IP and TK; assessing Solomon Islands' membership of relevant international bodies and ratification of international conventions; establishing an IP office; and enacting the TKEC Bill. Long-term steps include enacting related legislation; reviewing IP and TK policies; and conducting a cultural mapping exercise.

Tonga

1. Tonga has IP legislation in place, with assistance from PIFS in relation to the protection of TK and TCEs. It also has a National IP strategy. Tonga has a national biodiversity action plan and the Department of Environment provides national reports on the status of GRs. In addition, the Culture Division of the Ministry of Internal Affairs conducts cultural mapping to record TK and TCEs.

2. Tonga has a range of TK, TCEs and GRs that need protection, including traditional crafts and making techniques; songs and dance; and traditional medicines and healing methods.

3. Challenges to protection include making IP and TK protection a national priority; lack of political will and political instability; financial constraints; and a lack of awareness about the importance of TK preservation and protection. There is a need to synchronize the efforts and initiatives of different stakeholders in the area so that they work harmoniously together.

4. Steps that might be taken in Tonga to better protect TK, TCEs and GRs include raising awareness, from the political level down to grass roots and establishing a National IP Committee specific to the protection of TK, TCE and GRs with representation from key stakeholders.

5. The participants from Tonga also considered that Workshop delegates should establish a regional group of practitioners to foster regional alliances and collaborations and act as a forum for sharing information.

Tuvalu

1. Tuvalu has a draft *National Strategy for Sustainable Development 2016-2020*, which includes policies to improve protections for TK and TCEs, including through national legislation. The plan is currently awaiting Cabinet approval. In addition, the Department of Culture is currently establishing a Cultural Development Committee. A draft National Policy for Culture was developed in 2010 and will serve as a guide for this work.

2. Tuvalu has a diverse range of TK, TCEs and GRs that need protection, including handicrafts; traditional dances and songs; traditional herbal medicines; and other aspects of culture and lifestyle.

3. Challenges include outdated IP and other legislation and a lack of awareness among Indigenous people, government, civil society organisations and NGOs on how to protect TK and TCEs and how they can contribute to the economy. The remoteness of the islands and a lack of resources devoted to this area make collaboration and reform more difficult.

4. Steps that might be taken in Tuvalu to better protect TK, TCEs and GRs include following up on the draft National Policy on Culture; and ensuring that IP protections of TK, TCEs and GRs are included in the terms of reference for the new Cultural Development Committee and that a range of stakeholder groups are represented on this Committee. Further steps include reforming national IP laws using the model laws as guidance and raising awareness within government and the community.

Vanuatu

1. Vanuatu has a range of IP laws on copyright, patent, trademarks and designs. All have some provision regarding TK, TCEs and biological resources. There is also an MOU with the National Council of Chiefs regarding the protection and use of TK and TCEs. A regulation setting out procedures for identifying the owners of TK and TCEs, registering ownership, and paying royalties has been approved by the National Council of Chiefs and is awaiting ministerial approval. The Council of Ministers has approved an IP Development Strategy.

2. Vanuatu has diverse TK, TCEs and GRs including *nangol* (land diving) ceremonies; weaving and carving; traditional songs, dance and *kastom* stories; traditional medicines; and building techniques.

3. Challenges to the protection of TK, TCEs and GRs include the need for financial assistance, political stability and political will, resources and capacity building.

4. Steps that might be taken in Vanuatu to better protect TK, TCEs and GRs include implementing an electronic registration system for TK and TCE owners; establishing a Vanuatu Copyright Society; establishing a network of IP offices throughout the Vanuatu Islands; implementing the IP Development Strategy; enacting a draft Bill on the protection of TK and TCEs in cooperation with the National Council of Chiefs; and working with government agencies, the National Council of Chiefs and communities to raise awareness about these laws and activities.

Closing comments

Mr. Wendland and Ms. Qalo provided their reflections on the national reports.

As the national reports demonstrate, there is a much valuable work going on in the Pacific region, both in relation to IP protection for TK, TCEs and GRs and in the related field of safeguarding and preserving culture. Many national reports refer to the development and implementation of strategies or policies for culture and IP. Such strategies are central to guide actions and lawmaking. IP laws and systems are not outcomes in themselves, but mechanisms to achieve certain goals. Countries first must be clear on why they want to protect TK, TCEs and GRs (what do they wish to achieve in terms of economic, cultural, social and environmental goals?) in order to then develop and implement appropriate laws, protocols and systems to protect IP in TK, TCEs and GRs. Once laws are in place, implementation is key and involves awareness raising, education and enforcement.

It is important to have strong collaboration at the national level. In many countries, responsibility for IP, TK, TCEs and GRs is spread across several different government agencies, with different community stakeholders and partners. This presents particular challenges for cooperation both at the national and regional levels.

The relationship (and distinction) between the *IP protection* of TK, TCEs and GRs and the *preservation* of TK, TCEs and GRs was a constant theme in the discussions and group work.

A related issue that arose but was not discussed in great detail was documentation. While documentation of TK and TCEs is helpful for safeguarding and preserving TK and TCEs, care must be taken not to inadvertently undermine IP rights and interests. For example, publishing TK can destroy “novelty” as that term is understood in patent law. Inventories should, therefore, take IP issues into account. This is not to suggest, however, that documentation should not take place (indeed, inventories are required under the UNESCO Convention of 2003), but that the IP implications of documentation should be known. The issue of documentation could be the subject of another workshop. WIPO has several tools that help identify the IP implications of TK and TCEs documentation, see for example *Brief 9: Documentation of Traditional Knowledge and Traditional Cultural Expressions* and *WIPO Draft Toolkit on TK Documentation* (listed in the “Resources” section below).

The Practical Workshop brought together a diverse range of stakeholders from across the Pacific. Some participants were experts in IP protection of TK, TCEs and GRs. Other participants were practitioners, creators, supporters and administrators who came to learn more about the issues that arise when practicing and recording TK, TCEs and GRs. By sharing experiences and different perspectives, the participants gained new knowledge and insights into the issues, systems, laws and policies in relation to IP protections for TK, TCEs and GRs.

A particular success of the Practical Workshop was building networks between and among IPLCs and government agencies within each country and the region. Participants agreed to establish an online community of practitioners to foster regional alliances and collaborations and to act as a forum for sharing information.

Resources

Resources from WIPO

WIPO documents can be downloaded from <http://www.wipo.int/tk/en/>.

What is intellectual property?

http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

Information booklet: Overview on intellectual property and genetic resources, traditional knowledge and traditional cultural expressions

http://www.wipo.int/edocs/pubdocs/en/tk/933/wipo_pub_933.pdf

Background Brief on Intellectual Property and Traditional Knowledge and Genetic Resources and Traditional Cultural Expressions

http://www.wipo.int/export/sites/www/tk/en/documents/pdf/background_brief_on_tk.pdf

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief2.pdf

Frequently Asked Questions <http://www.wipo.int/tk/en/resources/faqs.html>

Customary Law and Traditional Knowledge

http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief7.pdf

Case Studies on Intellectual Property and Traditional Cultural Expressions

http://www.wipo.int/edocs/pubdocs/en/tk/781/wipo_pub_781.pdf

Documentation of Traditional Knowledge and Traditional Cultural Expressions

http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief9.pdf

WIPO Draft Toolkit on TK Documentation

http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_toolkit_draft.pdf

Intellectual Property and Folk, Arts and Cultural Festivals

www.wipo.int/tk/en/resources/festivals.html

Intellectual Property and the 11th Festival of the Pacific Arts, Solomon Islands, 2012

www.wipo.int/edocs/pubdocs/en/tk/tk_fpa/tk_fpa_2012.pdf

Resources from SPC

SPC documents can be downloaded from the SPC digital library at <http://www.spc.int/en/digital-library.html>

Guidelines for developing national legislation for the protection of traditional knowledge and expressions of culture based on the Pacific Model Law 2002
http://www.spc.int/hdp/index.php?option=com_docman&task=cat_view&gid=37&Itemid=44 and
http://www.spc.int/hdp/index.php?option=com_docman&task=cat_view&gid=106&Itemid=44.

Guidelines for developing legislation for the protection of traditional biological knowledge, innovations and practices based on the Traditional Biological Knowledge, Innovations and Practices Model Law
http://www.spc.int/hdp/index.php?option=com_docman&task=doc_details&gid=256&Itemid=44

Regional Culture Strategy: Investing in Pacific Cultures 2010-2020
http://www.spc.int/DigitalLibrary/Doc/HDP/Culture/52165_Regional_culture_strategy.html

Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture (containing the 2002 Model Law for the Protection of Traditional Knowledge and Expressions of Culture) <http://www.spc.int/en/digital-library.html>

The Policy Map: Developing a Legal and Policy Framework for Traditional Knowledge: A Guide for Policy-Makers in the Pacific Region
http://www.spc.int/DigitalLibrary/Doc/HDP/Culture/44881_The_policy_map.pdf.

Abbreviations

ABS - Access and Benefit-Sharing

CBD - Convention on Biological Diversity

GI - Geographical Indication

GRs - Genetic Resources

ICH - Intangible cultural heritage

IGC - WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

IP - Intellectual Property

IPLCs - Indigenous Peoples and Local Communities

MCIL - Ministry of Commerce, Industry and Labour, Samoa

PIFS - Pacific Islands Forum Secretariat

SPC - Secretariat of the Pacific Community

SPREP - Secretariat of the Pacific Regional Environment Program

TCEs - Traditional Cultural Expressions/Expressions of Folklore

TK - Traditional Knowledge

TM - Trademark

WIPO - World Intellectual Property Organization

UNESCO - United Nations Educational, Scientific and Cultural Organization

[Annex A follows]



WORKSHOP

WIPO/IPTK/APA/15
ORIGINAL: ENGLISH
DATE: DECEMBER 13, 2015

Practical Workshop on Intellectual Property, Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources

organized by
the World Intellectual Property Organization (WIPO)

in cooperation with
Ministry of Commerce, Industry and Labour Samoa (MCIL)

the Pacific Islands Forum Secretariat (PIFS)

and
the Pacific Community (SPC)

Apia, Samoa, December 8 to 10, 2015

PROGRAM

prepared by the International Bureau of WIPO

Tuesday, December 8, 2015

[Note: Indigenous Peoples and Local Communities (IPLCs) only]

- 8.30 – 9.00 Registration
- 9.00 – 9.30 Welcome:
- Facilitator: Mr. Papalii John Taimalelagi, Indigenous matai from Sapapali'i, Savaii, Samoa
- Opening prayer: Mr. Mesake Draniatu, National iTaukei Resource Owners Committee, Fiji
- 9.30 – 10.00 Opening remarks by:
- Ms. Peseta Margaret Malua, Chief Executive Officer, Ministry of Commerce, Industry and Labour Samoa
- Ms. Solamalemalo Hai-Yuean Tualima, WIPO Indigenous Fellow, Traditional Knowledge Division, World Intellectual Property Organization (WIPO), Geneva
- Ms. Veniana Qalo, Trade Policy Adviser, Pacific Islands Forum Secretariat (PIFS), Suva, Fiji
- Ms. Elise Huffer, Culture Adviser, Pacific Community (SPC), Suva, Fiji
- 10.00 – 10.30 Getting to Know One Another
- Mr. Papalii John Taimalelagi
- 10.30 – 11.00 Coffee break
- 11.00 – 12.00 **Introduction to Intellectual Property**
- Presentation: Ms. Solamalemalo Hai-Yuean Tualima
- Discussion
- 12.00 – 13.00 Lunch break
- 13.00 – 14.00 **Intellectual Property, Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources**
- Presentation: Ms. Terri Janke, Director, Terri Janke and Company Pty Ltd, Australia
- Discussion
- 14.00 – 14.30 **Regional Cultural Strategy and Pacific Regional Traditional Knowledge Action Plan**
- Presentations: Ms. Elise Huffer
Ms. Veniana Qalo

14.30 – 15.30	Group work: Identifying Issues, Needs and Expectations
	Facilitators: Mr. Papalii John Taimalelagi
	Ms. Solamalemalo Hai-Yuean Tualima
15.30 – 16.00	Coffee break
16.00 – 17.00	Reports of Group work
	Facilitators: Mr. Papalii John Taimalelagi
	Ms. Solamalemalo Hai-Yuean Tualima
17.00 – 17.30	Wrap-up
17.30	End of Program for the Day

Wednesday, December 9, 2015 **[Note: All participants from now on]**

8.30 – 9.00	Registration
9.00 – 9.15	Welcome:
	Facilitator: Ms. Peseta Margaret Malua
	Opening prayer: Reverend Ioane Petaia
9.15 – 9.45	Opening remarks by:
	His Excellency Mr. Fonotoe Nuafesili Pierre Lauofo, Minister of Commerce, Industry and Labour and Deputy Prime Minister, Apia, Samoa
	Mr. Wend Wendland, Director, Traditional Knowledge Division, World Intellectual Property Organization (WIPO)
	Ms. Veniana Qalo, PIFS
	Ms. Elise Huffer, SPC
9.45 – 10.15	Coffee break
10.15 – 11.00	Objectives and agenda
	Getting to know one another
	Facilitators for the day: Mr. Wend Wendland
	Ms. Solamalemalo Hai-Yuean Tualima

11.00 – 12.00 **Topic 1: Introduction to Intellectual Property, Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources**

Presentation: Ms. Terri Janke

Discussion

12.00 – 13.00 Lunch break

13.00 – 14.00 **Topic 2: International Developments**

Presentation: Mr. Wend Wendland

Discussion

14.00 – 15.30 Group work: Case Studies

Case Study 1: Patents, Genetic Resources & Traditional Knowledge

Facilitators: Mr. Wend Wendland

Ms. Veniana Qalo

Mr. Clark Peteru, Legal Adviser, South Pacific Regional Environment Programme (SPREP)

Case Study 2: Copyright, Trademarks & Traditional Cultural Expressions

Facilitators: Ms. Terri Janke

Ms. Elise Huffer

15.30 – 16.00 Coffee break

16.00 – 17.30 Group work: Case Studies Report back

Facilitators: as above

17.30 End of Program for the Day

Thursday, December 10, 2015

9.30 – 10.00 Re-cap of Wednesday

Facilitator for the day: Ms. Solamalemalo Hai-Yuean Tualima

10.00 – 11.00 **Topic 3: Intellectual Property and the Commercialization of Traditional Knowledge and Access and Benefit Sharing and Traditional Cultural Expressions**

Presentation: Ms. Veniana Qalo

	Discussion
11.00 – 11.30	Coffee break
11.30 – 12.30	Topic 4: International and Regional Processes and Projects and Advocacy Platforms for the Region
	Panel Discussion
	Moderator: Mr. Wend Wendland
	Panelists: Ms. Glynis Miller, Trade Development Officer, Economic Governance Programme, PIFS
	Ms. Elise Huffer
	Mr. Clark Peteru
	Ms. Solamalemalo Hai-Yuean Tualima
12.30 – 13.30	Lunch
13.30 – 15.00	National Level Meetings
	Facilitators: Mr. Wend Wendland and Ms. Veniana Qalo
	What has happened in your country to protect TK, TCEs and GRs?
	What examples are there of TK, TCEs and GRs that need protection?
	What are the challenges and what questions do you have?
	What steps will you take to better protect TK, TCEs and GRs in your country?
15.00 – 15.30	Coffee break
15.30 – 17.00	National Level Meetings Report back
	Facilitators: Mr. Wend Wendland and Ms. Veniana Qalo
17.00 – 17.30	Closing remarks by:
	Ms. Peseta Margaret Malua, MCIL
	Ms. Veniana Qalo PIFS
	Ms. Elise Huffer, SPC
	Mr. Wend Wendland, WIPO
17.30	End of Program

[Annex B follows]



PACIFIC ISLANDS FORUM SECRETARIAT



PACIFIC COMMUNITY (SPC)



WORKSHOP

WIPO/IPTK/APA/15/INF/2
ORIGINAL: ENGLISH
DATE: DECEMBER 10, 2015

Practical Workshop on Intellectual Property, Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources

organized by
the World Intellectual Property Organization (WIPO)

in cooperation with
Ministry of Commerce, Industry and Labour Samoa (MCIL)

the Pacific Islands Forum Secretariat (PIFS)

and
the Pacific Community (SPC)

Apia, Samoa, December 8 to 10, 2015

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prepared by the International Bureau of WIPO

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[End of Annexes and of Document]