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Establishing Policy, Legal and Practical Measures for the Protection of Traditional Knowledge and Traditional Cultural Expressions

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Menu of Options



Policy

- Development of principles and objectives

Legal

- Examination of existing laws on IP and culture
- Determination of the role of customary laws
- Establishment of a *sui generis* framework

Practical

- Documentation of TK and TCEs
- Establishment of TK/TCEs databases
- Development of practical tools (guidelines, protocols)

Capacity Building

- Community consultations
- Awareness-raising campaigns
- Practical training programs



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Establishing Measures for Protection

Step 1: Identify the subject matter for protection

Step 2: Establish overall goals and objectives

Step 3: Identify the rights holders/beneficiaries

Step 4: Determine what acts of misappropriation should be addressed

Step 5: Determine which measures (policy, legal and/or practical) to opt for



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Establishing Measures for Protection

Protection of TK and TCEs
against misappropriation
and misuse

different from
but supportive of

Preservation of TK and TCEs
(UNESCO Conventions)

Defensive Protection

- Prevention of third-party claims of IP rights over TK/TCEs

Positive Protection

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



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Establishing Measures for Protection

IP-related objectives:

- To foster economic development
- To respect and promote cultural creativity
- To prevent unauthorized access and use
- To secure benefit-sharing and attribution

"The way in which a protection system is shaped and defined will depend to a large extent on the objectives" – WIPO/GRTKF/IC/6/3



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Establishing Measures for Protection

- Existing IP does protect TCEs to some degree
 - copyright for **contemporary adaptations** and interpretations
 - copyright for **unpublished and** works of **unknown authors** (Berne Convention, art. 15.4)
 - related rights protection of **recordings** of TCEs and for “**performers** of expressions of folklore” (WPPT)
 - **databases** and compilations of TCEs and TK can be protected
 - collective **trademarks**/GIs can protect against passing off



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Examples of Policy and Legal Initiatives in the Asian Region

IP-like protection:

- **Indonesia:** Copyright Law, 2002 (section 10)
- **Mongolia:** Copyright Law of Mongolia, 1993 (article 3.3)

Sui generis measures:

- **Philippines:** Indigenous Peoples Rights Act, 1997
- **Mongolia:** Draft Law for the Protection of TK (*under consideration by parliament*)
- **Indonesia:** Draft Bill for the Protection of TK and TCEs (*under development*)



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Other Examples of Existing Policy and Legal Initiatives

At the Regional Level:

- ARIPO Draft Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, 2009
- Pacific: Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture, 2002

At the National Level:

- Tunis Model Law on Copyright, 1976
- Panama: Law No. 20 of 2000 (Special IP Regime Governing the Collective Rights of Indigenous Peoples for the Protection and Defense of their Cultural Identity and their TK)
- New Zealand: Trade Marks Act, 2002 (see section 17(1))
- United States: Indian Arts and Crafts Act, 1990



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Legislative Texts on the Protection of Traditional Knowledge and Traditional Cultural Expressions (Expressions of Folklore) and Legislative Texts relevant to Genetic Resources

The following is a selection of national and regional laws, regulations and model laws on the protection of traditional knowledge and traditional cultural expressions (expressions of folklore) against misappropriation and misuse as well as legislative texts relevant to genetic resources. Certain complementary resources are also included.

Legislation concerning intellectual property in general may be found in the WIPO [Collection of Laws for Electronic Access](#) (CLEA). The CLEA database is a unique international electronic archive of IP legislation and provides easy access to the laws of a wide range of countries and multilateral treaties.

- [Traditional Cultural Expressions \(TCEs\)](#), also referred to as expressions of folklore, refer to tangible and intangible forms in which traditional knowledge and cultures are expressed, appear or are communicated. TCEs can include music, oral narratives and literature, art, crafts, names and symbols, designs, architectural forms and performances.
- [Traditional Knowledge](#) refers to the content or substance of knowledge resulting from intellectual activity in a traditional context. It includes agricultural, environmental and medicinal knowledge, and knowledge associated with genetic resources.
- [Genetic Resources](#) refers to genetic material of actual or potential value. Genetic material means any material of plant, animal, microbial or other origin containing functional units of heredity.

Disclaimer

The following is a non-exhaustive selection of legislative texts on Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions/Folklore. WIPO makes every effort to ensure, but cannot guarantee, the accuracy of the data contained in this selection. In particular, WIPO assumes no responsibility for any discrepancy that may occur in the electronic manipulation of the said data.

Capacity-Building in the Asian Region

OCTOBER 2009

CAPACITY-BUILDING Intellectual Property and Traditional Knowledge

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

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

WIPO's range of unique policy materials and specialized practical tools in the area of TK, TCEs and GRs – including guidelines, toolkits, training programs and databases – is in great demand, and this demand is growing and diversifying.

Government officials, indigenous and local communities, non-governmental organizations (NGOs) and research and cultural institutions from around the world all benefit from this capacity-building program, which draws from a wide portfolio of expertise, practical experience and collaboration in the field. The program remains rooted in the needs and expectations identified by the Organization during its 1998 and 1999 fact-finding missions.

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

Activities: 2008-2009 Biennium

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

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

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

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

The Creative Heritage Project

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

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



Chief Morias Olo Niso of the Laikipia Maasai community receiving formal hand over of the digital recording assignment from Ms Wand Wairiand from WIPO TK Division.

WIPO Fact-Finding Missions on the Needs and Expectations of Traditional Knowledge Holders (1998-1999)



FFM to South Asia

Box 1. South Asia FFM: COUNTRY MEMBERSHIP IN INTERNATIONAL IP TREATIES

International IP treaties	Bangladesh	India	Sri Lanka
Paris Convention	1991	1998	1952
Berne Convention	1999	1929	1959
Rome Convention	-	-	-
Madrid Agreement	-	-	-
The Hague Agreement	-	-	-
PCT	-	1998	1982
UPOV Convention	-	-	-
TRIPS Agreement	1995	1995	1995

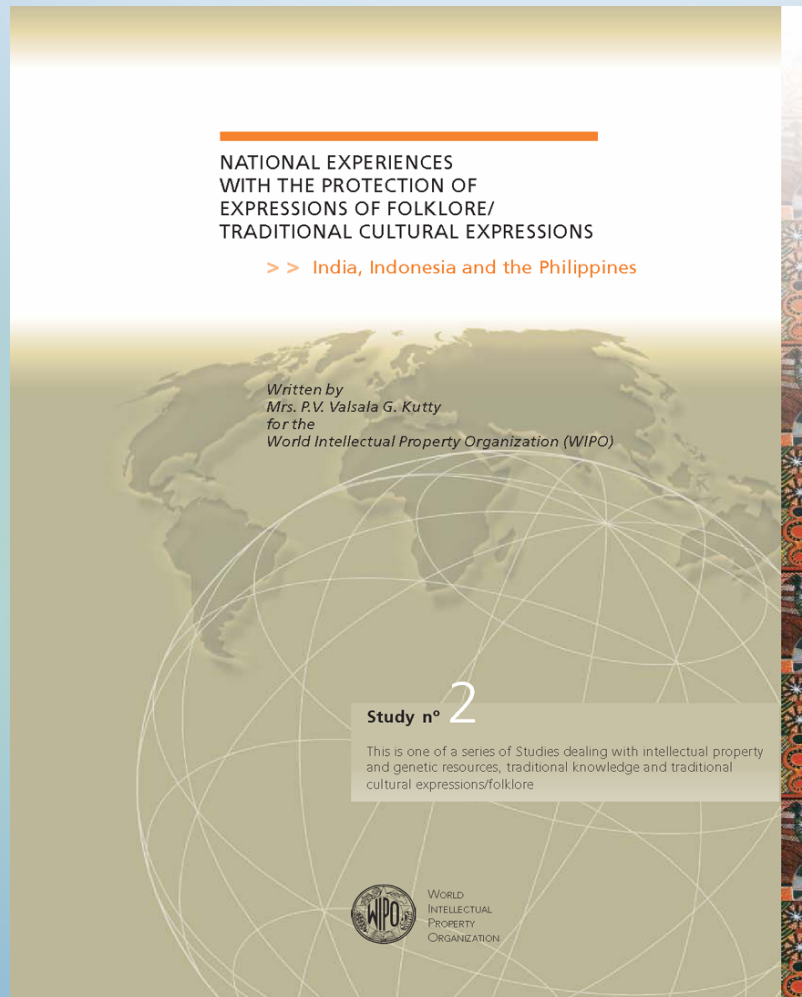
Box 2. South Asia FFM: COUNTRY MEMBERSHIP IN TK-RELATED TREATIES AND PROCESSES

TK-related treaty/process	Bangladesh	India	Sri Lanka
UNESCO Heritage Conv.	1981	1971	1981
UNESCO Cul. Property	1983	1971	1980
ILD 168	-	-	-
EIFOR-IPAD	Yes	Yes	Yes
CAD	1994	1994	1994
UNCCD	1996	1996	1996

The FFM to South Asia took place from September 28 to October 14, 1998. The mission visited the following countries during the period: People's Republic of Bangladesh, Republic of India, and the Democratic Socialist Republic of Sri Lanka. The interim Mission Report, which contains information as to the persons and entities with whom WIPO consulted, is set out in Annex 4.

The presentation of findings in this section is organized under the following headings: Objectives of IP Protection, Documentation, and Means of Protecting TK (patents, industrial designs, copyright and related rights).

Capacity-Building in the Asian Region



- WIPO conducted a study on national experiences with protecting TCEs in certain countries in the region (2002)



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...learning from the region!

Overview of Activities in the Asian Region

- **Thailand**: WIPO-UNESCO World Forum on the Protection of Folklore (1997)
- **Indonesia**: Asian-African Forum on IP and TK, TCEs and GRs (2007)
- **Thailand**: Translation of certain WIPO publications (2007-present)
- **Mongolia**: Development of a DVD of Mongolian Folklore (2007-present)
- **Malaysia**: National Seminar on TK in the margins of the national IP day celebrations (2009)
- **Philippines**: Experts Meeting on the Recognition and Protection of ASEAN Communal IP Rights (2009)
- **India**: Roundtable on IP and TK (2009)
- **Indonesia**: Like-Minded Countries Meeting on the IP Protection of TK, TCEs and GRs (2009)



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