



# **Introduction to Intellectual Property**

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# Part 1: General introduction to intellectual property

# What is IP?

- Intellectual property (IP) refers
- to **creations of the mind** – everything from **works of art to inventions, computer programs to trademarks and other commercial signs.**



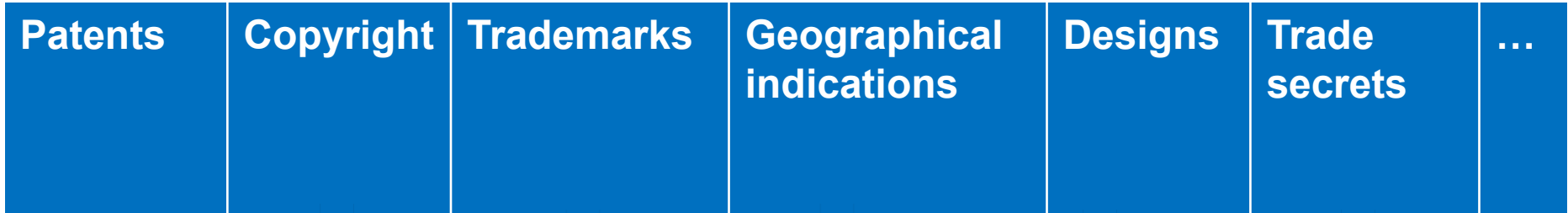
- IP protects the results of human creativity and innovation

Creativity and inventiveness are vital. They spur economic growth, create new jobs and industries, and enhance the quality and enjoyment of life.

# How is IP useful?

- The IP system enables people to earn
  - recognition
  - financial benefit from what they invent or create
- Encourages creativity and inventiveness
  - Reward

# Overview of IP rights



swatch 



# Similarities between IP rights

- Gives exclusive rights
- Striving for balance
- Some procedures/rules for getting protection
  - Registration is needed in general
- Limits to protection
  - In time
  - To territory
- Most rights can be transferred or licensed

# In what ways do IP rights differ?

- The subject matter that can be protected
- Requirements for gaining protection
- Duration of protection
- The nature of protection - the types of rights granted





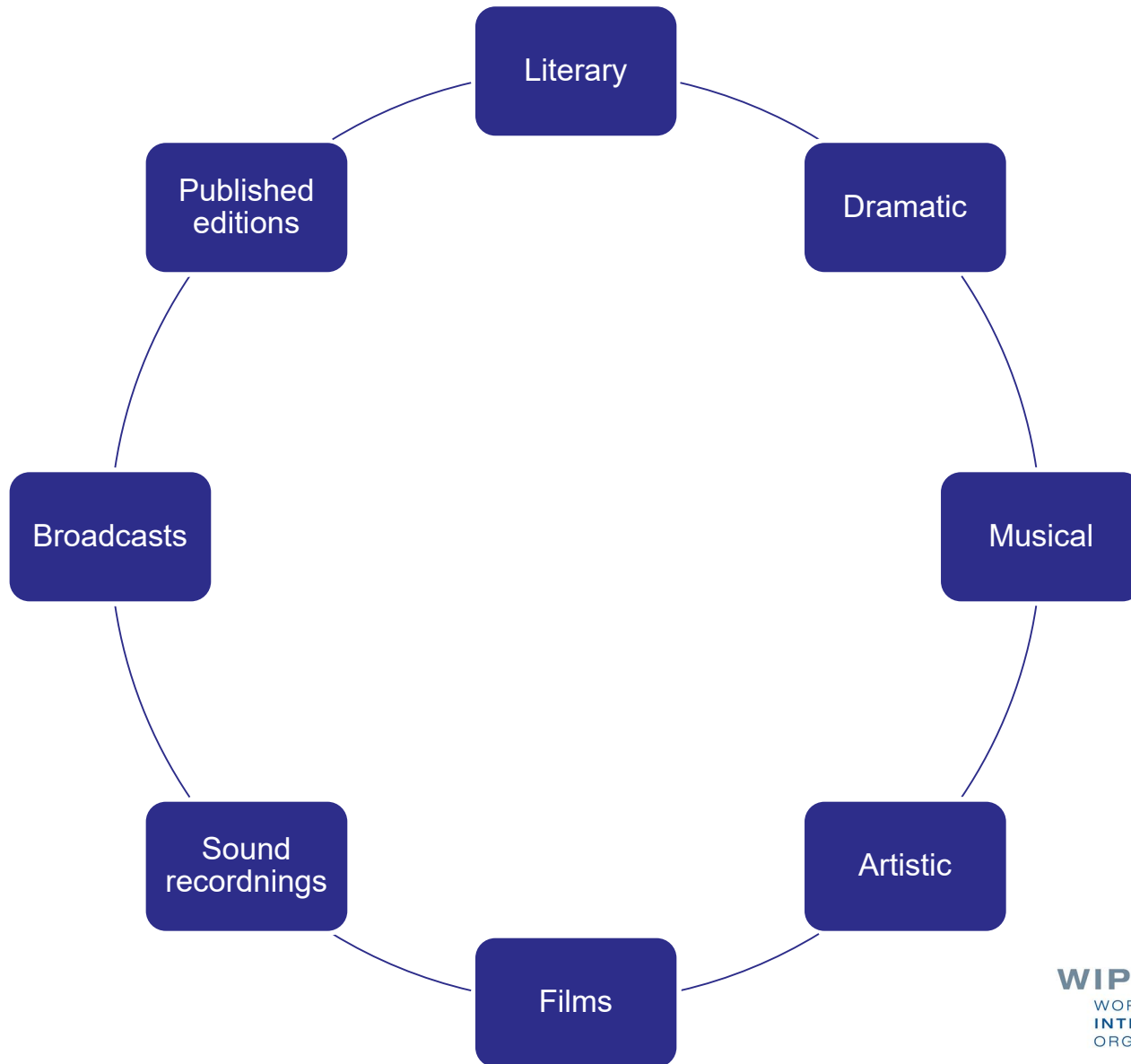
# Copyright and related rights

- Copyright, or authors' right, is a legal
- term used to describe the rights that creators have in their **literary, artistic and scientific works.**

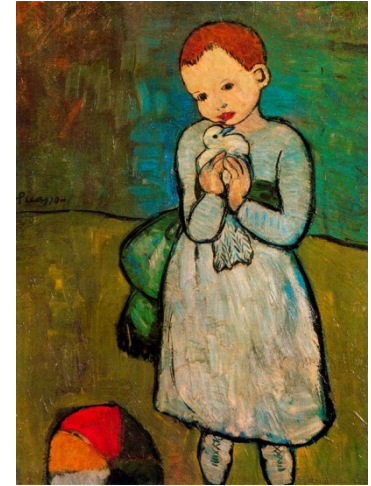
# Copyright

- Protects the *expression* of ideas not the idea or the knowledge per se
- Different categories of works can be protected

# Categories of works



# Examples of works



# Rights granted

- Economic rights
  - Right to copy
  - Derivative works
  - Right to distribution
  - Public performance
  - Right to display
  - Broadcasting – digital audio transmission
  
- Moral rights
  - Attribution/paternity
  - Integrity



# Copyright

- Conditions
  - Original
  - Material form
- Duration
  - 50 years after the death of the author in most countries
- Usually no registration requirements
  - Automatic protection

# Exceptions

- Inspiration allowed - not copy!
  - Encourage inventiveness and creativity
- Fair use exceptions
  - Private use or research purposes
  - Criticism or reviews
  - Reporting current events
  - Incidental inclusion of copyright protected work in another work (film recording, broadcast etc.)
- Facts can not get copyright protection (but the way facts are presented is protectable)

# Patents

- Patents were one of the first types of
- intellectual property to be recognized in modern legal systems. Today, patented inventions pervade every aspect of life, **from electric lighting** (patents held by Edison and Swan) **to the iPhone** (patents held by Apple).



# Patents

- Inventions – **new** and **inventive** products and processes
  - A technical solution to a problem (a product) or
  - A new way of doing something (a process)

# Requirements

- Novelty - no “prior art”
- Invention – a creation of the human mind
  - Naturally occurring processes and products are not patentable
  - Inventive, non-obvious
- Industrially applicable / useful
- Registration - Yes

# Scope of protection



- Right granted to an inventor
  - to exclude others from making, using, selling or importing
    - in a limited territory
    - for the same sort of goods or services

- Conditions

- Protection is granted in exchange for a **disclosure of specification** of the invention

- Someone can reproduce/repeat

- Duration

- Limited period, 20 years in many countries

- Balance + Encourage inventiveness and creativity

# Trade marks

- A trademark is a **sign capable**
- **of distinguishing** the goods or services of one enterprise from those of other enterprises.

# Trademarks

- Right that protects distinctive signs
- Distinguishes goods and services provided by a specific person or enterprise
  - Customers can identify the goods and services they need
  - Trademark indicates the nature and quality
  - Marketing strategy

# What is a sign?

- Words
- Designs
- Letters
- Numerals
- The shape of goods or their packaging
- Slogans
- Colours
- Sounds
- Smells
- Gestures
- Taste

# Requirements

- To gain protection, the trademark
  - Should be distinctive
    - Not identical or confusingly similar to another trademark
  - Used in the course of trade
  - Should not be generic, descriptive or deceptive
  - First come first served

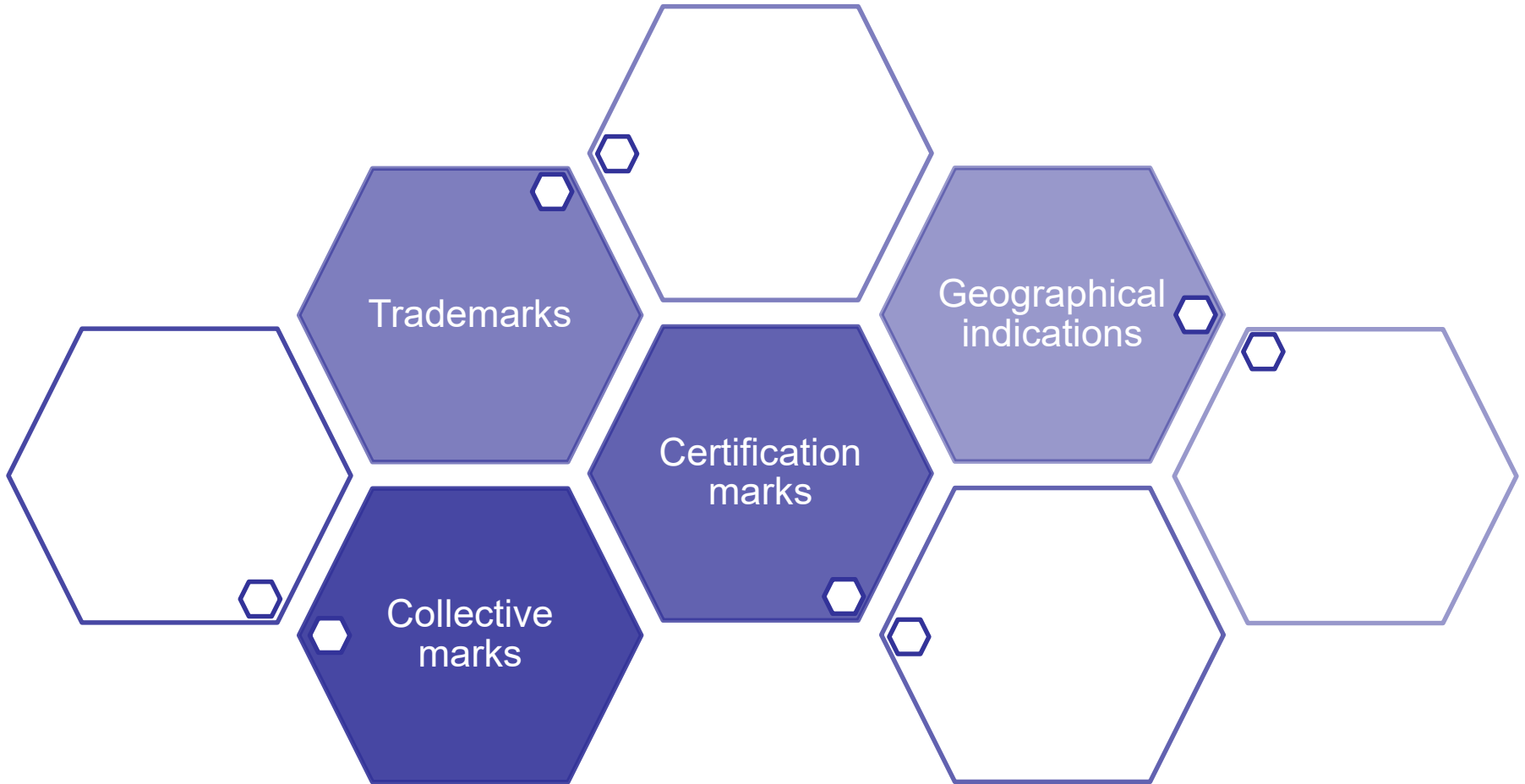


# Trademarks

- Duration
  - 10 years duration; renewable
- Registration usually required
- Scope of protection
  - Only trademark owner can use the sign



# Distinctive signs



# Geographical indications

- A geographical indication is a **sign**
- **used on products that have a specific geographical origin** and possess qualities or a reputation that are due to that origin.



# Geographical Indications

- Distinctive tool – can be part of a branding strategy
- Geographical origin may be important because:
  - Natural factors – i.e., local soil, climate etc
  - Human factors – i.e., skills, knowledge, practices/traditions
- Scope of protection
  - Right for producers in the designated geographical area to use the sign
- Creates a niche market for the producers of the area

# Geographical Indications

- Requirements
  - Registration
  - Book of requirements/specifications set
- Importance of educating consumers/raising awareness
- Duration
  - Once registered – lasts until registration is cancelled



# Industrial design

- Industrial design rights cover
- those elements of a product that are **aesthetic or ornamental** – the way it looks and feels.

# Industrial Designs

- Protect the aesthetic or ornamental aspect of a product i.e., how it looks rather than functionality
- Only new designs are protected – must differ from existing designs
- Conditions
  - Usually need registration



# Industrial Designs

- Duration
  - Generally 10 years
- Exclusive rights, nature of protection
  - making, selling or importing your design

# Trade Secrets (or Confidential Information)

- Protects secret information, such as manufacturing processes, secret ingredients etc.
- Duration
  - If kept secret – indefinite protection
- Conditions
  - No registration required
  - Measures needs to be taken to keep it secret
- Exceptions
  - Will not protect where there has been incidental / independent discoveries





**Video: What is a trade secret?**

<https://www.wipo.int/tradesecrets/en/>

# Part 2:

## Introduction to Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions

# Outline

- Recap – key features of IP rights
- Are TK and TCEs IP?
- What are IP rights useful for?
- Some examples
- Some tools and resources

# Key features of IP rights

- Protect products of creative intellectual activity
- Criteria of protection
- Confer exclusive rights
- Limitations and exceptions
- Limited in time





■ Why do we have intellectual property rights?

■ What is the public domain?

# ■ Are TK and TCEs intellectual property?

- TK/TCEs are creative expressions of indigenous peoples and local communities
- They are **products of creative intellectual activity** so they are “intellectual property”

# TK and TCEs: two sides of the same coin



# Traditional cultural expressions

- Forms in which traditional knowledge and culture are expressed
- May be tangible, intangible or mixed
- Ex: songs, performances, crafts, names, symbols, art, narratives, designs, architecture and motifs



# Traditional knowledge

- Knowledge which results from intellectual activity in a traditional context
- Includes know-how, skills, innovations, practices, and learning
- Not limited to a specific technical field



# Characteristics of TK and TCEs

- Are handed down **from generation to generation**, either orally or by imitation
- Reflect a **community's cultural and social identity**
- Are often made by **“authors unknown”** and are regarded as **“belonging” to a community** under customary laws
- Are constantly **evolving, developing and being recreated** within a community

- TK and TCEs are intellectual property

- **Traditional** knowledge

- **Traditional** cultural expressions

- They cannot be fully protected by existing IP systems due to inadequacies of the system

# Options for protecting TK/TCEs with IP

- Protection with **conventional/existing** IP systems
- **Adaptation** of conventional/existing IP systems
- ***Sui generis*** protection





# Normative development: WIPO IGC

- WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)
- Created in 2000
- Forum where negotiations take place for an international legal instrument on TK, TCEs and GRs
- IGC participants: Member States, indigenous and local communities, business, civil society and other NGOs



# *Sui generis* protection of TK/TCEs

- TK/TCEs would be recognized as a form of “intellectual property”
- Protection would be provided by a special system based on the kinds of measures, principles and values that underlie the intellectual property system

# What are existing IP rights useful for?

- IP plays a **key role** in **helping entrepreneurs build stronger, more competitive businesses**

## ■ Protection

- Prevent third party uses
- Prevent third party gaining IP rights over TK/TCEs

## ■ Promotion

- Proactive use of IP rights

# Copyright

- Key features
- Idea/expression
- No protection for style
- Limitations
  - Originality
  - Authorship
  - Term of protection
  - Fixation
- Protection of contemporary TCEs

# Trade marks

- Key features
- Registration system
- First come first served
- Use as a distinctive tool – marketing tool
- Preventing offensive and deceptive marks
- May be licensed

# Collective and certification marks

- Distinctive signs
- Allow for collective use
- Can certify some characteristics of the goods
  - Geographical origin
  - Authenticity
- Possibility of joint marketing campaigns
- Need for education/awareness-raising
- Enable consumer recognition and customer loyalty

# Geographical indications

- Indication used on products
  - specific geographical origin
  - qualities, characteristics or a reputation
- Collective use
- Can help preserve traditional ways
- TK as such not protected
- Premium price
- Heavier implementation

# Designs

- Key features
- Protects aesthetic elements of a products
- “The look and feel”
- 2D or 3D
- Shape or designs

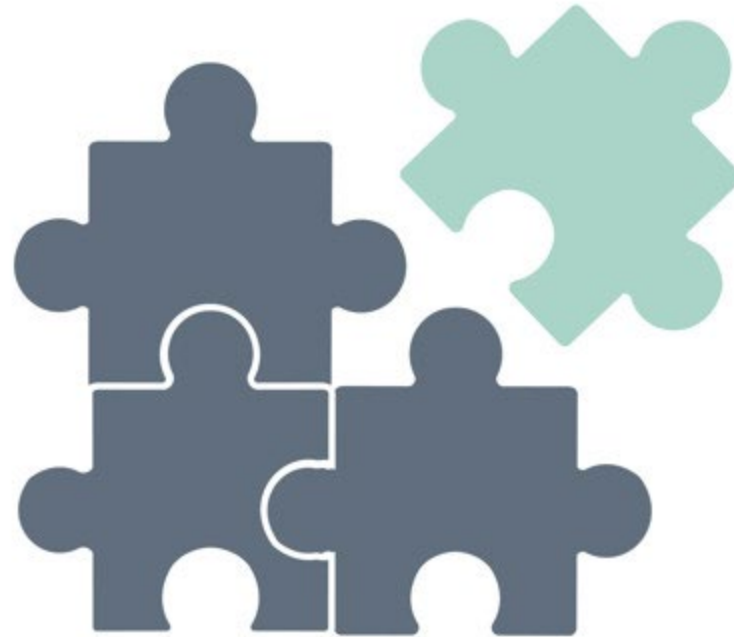


# Patents

- Key elements
- Novelty, inventive step, industrial application
- Defensive element – preventing the grant of erroneous patents
- Positive element – encouraging TK-based innovation

- Nutmeg used since ancient times in India for oral diseases
- Patent filed for “oral compositions containing extracts of nutmeg and related methods”
- Prior art search found references in Indian TK digital library
- Invention did not meet requirements of inventive step
- Rejected





# Protect and Promote Your Culture

A Practical Guide to Intellectual Property for  
Indigenous Peoples and Local Communities

  
**WIPO**  
WORLD  
INTELLECTUAL PROPERTY  
ORGANIZATION

## Nº 5

### La Propiedad Intelectual y la Artesanía Tradicional

#### Introducción

La artesanía tradicional requiere técnicas, capacidades y conocimientos especializados y tradicionales que a menudo son de considerable antigüedad y se transmiten de generación en generación. Los productos artesanales pueden constituir expresiones culturales tradicionales (ECT) por medio de su diseño, apariencia y estilo, y también pueden plasmar conocimientos tradicionales (CC.TT) mediante las capacidades y los conocimientos especializados utilizados para producirlos.

Los CC.TT, y las ECT, incluidos los productos artesanales, constituyen valiosos activos culturales, sociales e históricos de las comunidades que los mantienen, practican y desarrollan; asimismo, son activos económicos que pueden ser utilizados, comercializados o cedidos en licencia para generar ingresos y fomentar el desarrollo económico. Sin embargo, por desgracia, las técnicas tradicionales y el diseño, la reputación y el estilo vinculados a la artesanía están expuestos a la imitación y a la apropiación indebida. Con demasiada frecuencia las imitaciones baratas perjudican las ventas de la artesanía tradicional y la reputación de calidad de los productos genuinos.

Se están planteando propuestas y soluciones para la protección jurídica de los CC.TT, y las ECT a fin de impedir su uso o apropiación indebidos u otra clase de explotación ilícita. Asimismo, es posible utilizar esas soluciones para la protección de la artesanía tradicional. Actualmente en el Comité Intergubernamental de la OMPI sobre Propiedad Intelectual y Recursos Genéticos, Conocimientos Tradicionales y Folclore (CIG) tienen lugar las negociaciones sobre un instrumento jurídico internacional *sui generis* para la protección de los CC.TT, y las ECT.

Esas negociaciones tienen por fin examinar los vínculos existentes entre el sistema de propiedad intelectual (PI) y las preocupaciones de los poseedores de CC.TT, y ECT. Varios países y regiones han desarrollado asimismo sus propios sistemas *sui generis* para la protección de los CC.TT, y las ECT.

Mientras tanto, los artesanos y las organizaciones de artesanía también pueden utilizar los derechos de PI, como las marcas, las indicaciones geográficas, el derecho de autor, los dibujos y modelos industriales o las patentes, para promover sus intereses. Concretamente, se puede utilizar esos derechos para proteger la artesanía tradicional contra la reproducción y la adaptación no autorizadas, y contra el uso engañoso de su estilo y reputación.

En el presente documento se señalan medios prácticos, accesibles y a menudo basados en la comunidad para utilizar el sistema de PI, en favor del reconocimiento, la protección, la gestión, la mercadotecnia y la comercialización de la artesanía tradicional en tanto que activo cultural y económico.

#### ¿Qué es la "Artesanía"?

A veces la artesanía se refiere a los productos artesanales, los productos artesanos, las obras creativas tradicionales o las obras de artesanía artística o tradicional. No hay una definición de artesanía aceptada universalmente, pero cabe señalar las siguientes características comunes:

  
**OMPI**  
ORGANIZACIÓN MUNDIAL  
DE LA PROPIEDAD  
INTELLECTUAL

Reseña

**WIPO**  
WORLD  
INTELLECTUAL PROPERTY  
ORGANIZATION

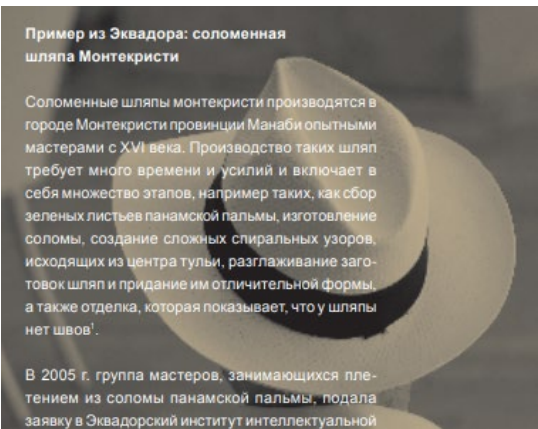
# Geographical indications

## Copyright



**Пример из Ганы: ткани кенте**

Ткани кенте производятся с помощью полосного ткачества. Узоры «вплетаются в ткань таким образом, чтобы при сшивании полос друг с другом общий рисунок напоминал шахматную доску»<sup>3</sup>. Это мозаичная ткань, состоящая из разноцветных нитей, а узоры на ней иллюстрируют исторические события или социальные представления важных для общины людей<sup>4</sup>. Ее производит этническая группа ашанти, а сама ткань часто используется королевской семьей ашанти<sup>5</sup>.




**Пример из Эквадора: соломенная шляпа Монтекрести**

Соломенные шляпы монтекрести производятся в городе Монтекрести провинции Манаби опытными мастерами с XVI века. Производство таких шляп требует много времени и усилий и включает в себя множество этапов, например таких, как сбор зеленых листьев панамской пальмы, изготовление соломы, создание сложных спиральных узоров, исходящих из центра тульи, разглаживание заготовок шляп и придание им отличительной формы, а также отделка, которая показывает, что у шляпы нет швов<sup>1</sup>.

В 2005 г. группа мастеров, занимающихся плетением из соломы панамской пальмы, подала заявку в Эквадорский институт интеллектуальной

## Trade secrets



**Пример из Австралии: священный секрет Совета питджантджантджара**

Австралийскому Совету питджантджантджара удалось остановить продажи книги «Кочевники австралийской пустыни», написанной Чарльзом Маунтфордом. В ней раскрывалась важная и секретная церемониальная информация, принадлежащая народу питджантджантджара<sup>1</sup>. Совет питджантджантджара заявил, что информация о религиозных и священных вопросах была раскрыта Маунтфорду по секрету. Он зафиксировал ее с помощью «фотографий, рисунков и описаний»<sup>2</sup>.

## Collective marks



**Пример из Кении: таитские корзины**

В округе Кении Таита-Тавета женщины из местных общин занимаются производством сизальных корзин с помощью традиционных методов. Этот навык передается из поколения в поколение.

Сообщество изготовителей корзин учредило Ассоциацию таитских корзин, которой принадлежит коллективный знак «таитская корзина». Этот коллективный знак может использоваться членами Ассоциации для охраны и продвижения своих корзин. Ассоциация установила принципы использования знака и утвердила определенные стандарты качества. Она зарегистрировала знак в целях формирования сильного, узнаваемого и прибыльного регионального бренда<sup>4</sup>.

Как и в случае Sumaq Sonqo, этот пример показывает, что коллективные знаки могут быть полезны для коренных народов и местных общин.

## Industrial designs



**Гипотетический пример: создание образца диджериду<sup>1</sup>**

Проанализировав реестр образцов Австралии, Терри Янке обнаружила несколько образцов, которые были созданы на основе или под влиянием тем, характерных для коренных народов. Например, она обнаружила расписанный вручную диджериду<sup>2</sup>.

Терри Янке встретилась с Льюисом Бернсом, представителем коренного народа из Даббо (Новый Южный Уэльс), который занимается изготовлением, дизайном и росписью диджериду. По словам г-на Бернса, именно он впервые сделал диджериду на ножках несколько лет назад.



## Top Tips: Indigenous and Local Community Entrepreneurs and Intellectual Property

<https://www.wipo.int/tk/en/entrepreneurship/toptips/indigenous-and-local-community-entrepreneurs.html>

Thank you!

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