



INTELLECTUAL PROPERTY & TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS

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INTELLECTUAL PROPERTY & TRADITIONAL KNOWLEDGE

- ❑ **Intellectual property** refers to the creations of the mind including inventions; literary and artistic works; and symbols, names and images used in commerce.
- ❑ **Traditional Knowledge (TK)** refers to knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.
- ❑ **Traditional Cultural Expressions (TCEs)** are generally defined as any forms, whether tangible or intangible, in which traditional culture and knowledge are expressed, appear or are manifested, and comprise the following forms of expressions or combinations thereof: verbal expressions, such as but not limited to stories, epics, legends, poetry, riddles and other narratives; words, signs, names, and symbols; musical expressions, such as, but not limited to songs and instrumental music; expressions by movement, such as but not limited to dances, plays, rituals and other performances; whether or not reduced to a material form; tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewellery, basketry, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments; and architectural forms.

RELATIONSHIP BETWEEN IP & TK

- ❑ Intellectual property is individualistic in nature; protecting authors and inventors whereas TK & TCE is usually owned collectively by a community or indigenous people.
- ❑ TK and TCE has constituted part of the identity and heritage of communities for generations and evolves with time. IP on the other hand protects what is new or original as is limited in time.
- ❑ Is TK and TCE commodities to be traded? If yes, won't the markets destroy this cultural heritage? And are the IP tools for protection accessible to the holders of TK and TCE?

APPLICATION OF INTELLECTUAL PROPERTY TO TRADITIONAL KNOWLEDGE

- ❑ Certain aspects of Traditional Knowledge and Traditional Cultural Expressions can be protected under the current IP system.
- ❑ Local communities and indigenous people are participating in trade and commerce hence the need to protect for exploitation.
- ❑ TK and TCE are being misappropriated and misused to the detriment of the local communities and indigenous people.
- ❑ Socioeconomic factors are causing disappearance of TK and TCEs; some IP tools can help to preserve and safeguard cultural knowledge and information.

INTELLECTUAL PROPERTY

- ❑ Trademarks:- signs and marks that distinguish products in the market.
- ❑ Trade/Business Name: identifies a company or business. Eg Movit Products Ltd
- ❑ Trademark: identifies the goods or services of that company. Eg....
- ❑ Trademark must be distinctive.
- ❑ Trademark should not be deceptive or contrary to law, morality or any scandalous design.



TRADEMARKS Cont...

- Word



- Symbol

everywhere you go

- Slogan



- Packaging



- Combination of the above



- Certification mark



TRADEMARKS Cont...

- Trademarks:- signs and marks that distinguish products in the market.
- Indicates the source or origin of goods or services.
- Assures consumers of the quality and other characteristics of goods bearing the mark.
- Creates business goodwill and brand awareness.
- Protection is through registration with URSB.
- Any Product of cultural expression can be branded with a trademark

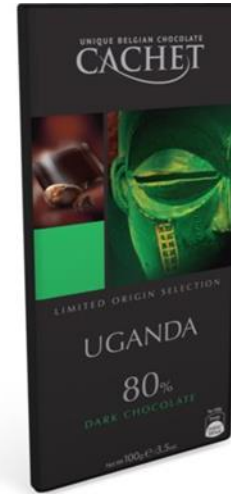
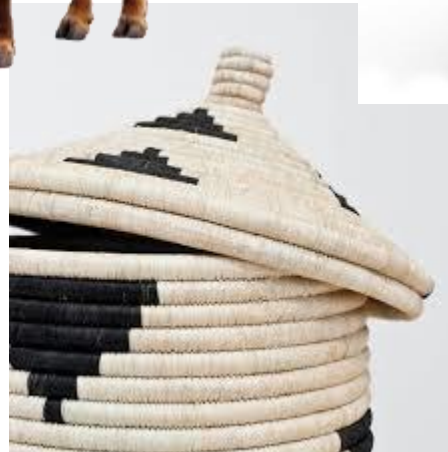
TRADEMARKS Cont...

❑ What can be branded?



GEOGRAPHICAL INDICATIONS

- ❑ Geographical Indication refers to any indication which identifies **goods as originating in** a particular country, region or locality where a **given quality, reputation or other characteristic** of the goods is **essentially attributable** to its geographic origin.



GEOGRAPHICAL INDICATIONS

- ❑ Geographical Indications are protected under the Geographical Indications Act 2014
- ❑ [Under s.8(3)of the Act] Applicants can be:
 - *A legal entity carrying on an activity as producers, farmers, artisans in the geographical area;*
 - *A group of representative producers;*
 - *Any competent authority.*
- ❑ Protection allows for TK products with unique qualities to be marketed at a premium.
- ❑ It also protects against of misappropriation of geographical indications for TK, from which new products have been derived.
- ❑ GIs facilitate preservation of TK since it fosters the diverse and traditional characteristics of exploitation of local resources.
- ❑ A local community can own a GI for products in their geographical area.

PATENTS

- ❑ Patents refer to titles granted over inventions. An invention is a technical solution to a problem in any industry including agriculture. An invention can be a product or process. Patents are protected under the Industrial Property Act 2014.
- ❑ A patent is granted for an invention if it is **new**, **non-obvious** and **useful**.
- ❑ By law, the following are not regarded as inventions: discoveries, scientific theories; plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and micro-biological processes; natural substances, whether purified, synthesized or otherwise isolated from nature; except the processes of isolating those natural substances from their original environment; the human body and all its elements in whole or in part.

Examples of Process Inventions

Species name, family, local name, ethnic language	Growth habit	Habitat	Conservation Status	Disease treated	Part used	Mode of preparation and administration	Frequency of citation
<i>Acacia hockii</i> De Wild. (Leguminosae) Engando (Ru)	T	Gr	W/A	Athletes foot	FL	Squeeze & apply to the affected area	1
<i>Acmella caulirhiza</i> Delile (Asteraceae) Ensoimya (Ru)	H	Ho	W/A	Eye infection	FR	Squeeze & apply to the affected area	1
<i>Aframomum angustifolium</i> K.Schum (Zingiberaceae) Amatehe (Ru)	H	Sw/Bu	W/A	Measles	FFr	Squeeze add banana brew & drink	1
<i>Ageratum conyzoides</i> L. (Asteraceae) Omunywaniwenkanda (Ru)	H	Bu	W/A	Wound	FL	Squeeze & wrap on fresh wound	3
<i>Albizia coriaria</i> Welw. (Leguminosae) Omusisa (Ru)	T	Bu	W/A	Cough	FSB	Decoction drunk. 500 ml given three times a day for adults & 250 ml given once for children until recovery	8
<i>Allium sativum</i> L. (Alliaceae) Tungulucumu (Ru)	H	Ga	Cu/A	Cough	Bu	Pound with ginger, add water & drink	2
<i>Aloe vera</i> (L.) Burm.f. (Aloaceae) Enkokorutanga (Ru)	H	Ga	Cu/A	Malaria, yellow fever	FL	Decoction drunk. 500 ml & 250 ml given three times a day for adults & children respectively for three days.	7
<i>Asparagus africanus</i> Lam. (Asparagaceae) Akakwatango(Ru)	H	Gr	W/A	Muscle pains Measles	FL	Squeeze & smear on the skin	1
<i>Basella alba</i> L. (Basellaceae) Enderema (Ru)	C	Bu	W/A	Measles	FL	Decoction drunk. 500 ml given three times a day for adults & 250 ml to children for three days or apply on the body	4

Patent Protection

- ❑ To prevent erroneous grant of patents, inventions derived from traditional knowledge requires that the product or process is part of prior art.

Prior art consists of everything made available to the public anywhere in the world by means of written disclosure including drawings, published patent applications, and other illustrations or by oral disclosure, use, exhibition or other on-written means, where the disclosure occurred before the date of filing of the application S.10(2) Industrial Property Act

Patent Protection

- ❑ Disclosure requirements: S.21(8) Industrial Property Act states:

“The description shall contain a clear identification of the origin of genetic or biological resources collected in the territory of Uganda and that were directly or indirectly used in the making of the claimed invention as well as of any element of traditional knowledge associated or not with those resources and that was directly or indirectly used in the making of the claimed invention without the prior informed consent of its individual or collective creators.”

INDUSTRIAL DESIGNS

- ❑ An Industrial Design refers aspect of a useful article which is ornamental or aesthetic that may consist of three dimensional features like a shape or surface of an article or a three dimensional feature such as patterns, line or colours. Section 71, Industrial Property Act



Plant Variety Protection

□ Plant Variety Protection

A plant variety refers to a plant grouping within a single botanical taxon of the lowest known rank which can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered as a unit with regard to its suitability for being propagated unchanged.

□ Criteria for protection

- Novelty: Variety has not been sold with 1 year of the application.
- Distinct: clearly distinguishable from any other variety whose existence is a matter of common knowledge.
- Uniform: sufficiently uniform in its relevant characteristics subject to the variation that may be expected from the particular features of its propagation.
- Stable: stable if its relevant characteristics remain unchanged after repeated propagation.

Application of Plant Variety Protection to GR

□ Criteria for protection

The *Spurflower case* (*Plectranthus Ornatus*) [2008] EUECJ T-187/06 protection of a plant variety was invalidated because the variety was not distinct from the wild variety which was common knowledge in South Africa.

□ Exception to Plant Variety Rights

- Farmers'/Communities' rights are a recognition of the contributions of farmers and communities towards the conservation, development and sustainable use of plant genetic resources crucial for food production.
- Farmers'/communities' rights include the right to save, reuse, exchange and sell farm saved seed and or propagating material; access to and right to use breeders' varieties to develop farmers' varieties; equitable sharing of benefits arising from use of plant genetic resources.

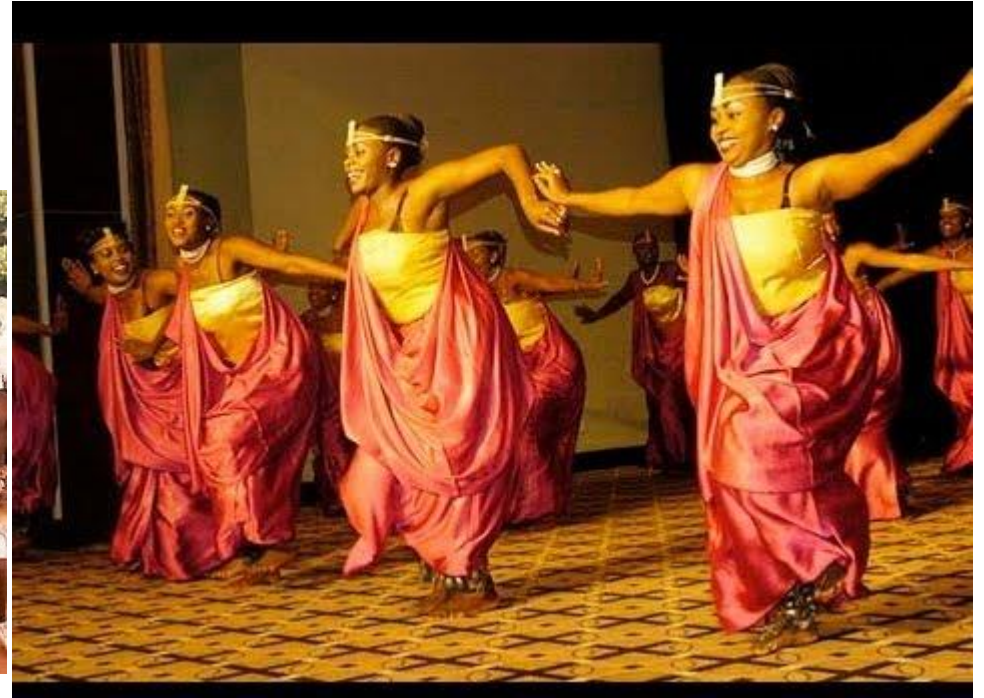
COPYRIGHT

- ❑ Copyright protects the author of an **original** literary, scientific or artistic work **reduced in material form**.
- ❑ Protected works include literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs are known as neighbouring rights.
- ❑ Author is the person(s) who created the work or commissioned the work.
***Al Hajji Nasser Ntege Sebagala v. MTN Uganda Ltd & SMS Media Ltd
HHCS 283/2012***
- ❑ A work falls into public domain after the term of the copyright has expired usually 50 years after the death of the author.
- ❑ Protection is automatic with no formalities. However, URSB carries registration for proof of authorship.

COPYRIGHT & TCE

- TCE works protected by Copyright include:
 - Verbal expressions, such as stories, epics, legends, poetry, riddles and other narratives; words, signs, names, and symbols;
 - Musical expressions, such as songs and instrumental music;
 - Expressions by action, such as dances, plays, ceremonies, rituals and other performances; whether or not reduced to a material form; and
 - Tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, baskets, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments; and architectural forms.

COPYRIGHT



The Case of “Another Rap”

- In the Matter of an Application No. 25 of 2010 for registration of Copyright by Yoweri Kaguta Museveni in the song “You want another rap” and In the Matter of an Objection by Mr. Mwambusya Ndebesa and Dr. Katono Nzarwa Deo.

The grounds for Ndebesa’s objection were that:

- a) The applicant (President Museveni) is not the author of the rhythms “*Natema Akati Karara*” and “*Mpenkoni*”;
- b) The work is not musical;
- c) The work is in the public domain free for all to use;
- d) The applicant has not made any improvement on the poems;
- e) The applicant merely recited the poem as an act of performance;
- f) The work constitutes public property and that the application is an abuse of intellectual property₂₁

The Case of “Another Rap”

- ❑ The Asst. Registrar of Copyright M/s Mercy K. Kyomugasho found that *“the transformation of a folksong is to [her] mind an original creation which as expressed constitutes a derivative work . . . the idea seems obvious but the expression is original.”*
- ❑ And further that: *“copyright in a derivative work covers only the additions, changes or other new material appearing for the first time in the work and does not extend to any pre-existing material and does not prevent anyone else from using the existing work for another derivative work”.*
- ❑ And stressed: *“I am aware that the objectors were under the impression that the applicant was attempting to monopolize a piece of heritage of the Banyankole/Bakiga. I hope that they can now rest assured that the heritage of the aforementioned people can still be enjoyed by anyone and has not in any way been misappropriated but instead can now be enjoyed by anyone including the young generation whom, I hazard to say, may relate to the applicant’s new arrangement of the said works.”*

End
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