

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. The shapes are primarily triangles and polygons, creating a dynamic, layered effect. The overall composition is clean and modern, with the text centered in a white space.

The Role of I.P in promoting & Commercializing products based on Traditional Knowledge and Traditional Cultural Expressions

EDGAR TABARO on July 4 2017

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What are TCE's?

- ▶ A working definition as suggested by WIPO

Traditional cultural expressions (TCEs), that may include music, dance, art, designs, names, signs and symbols, performances, ceremonies, **architectural forms, handicrafts and narratives, or many other artistic or cultural expressions**

<http://www.wipo.int/tk/en/folklore/>

The Nature of TCE's

- ▶ Traditional expressions that are attributable to community
- ▶ These expressions are in many forms which are passed on from generation to generation
- ▶ It forms part of the identity and heritage of a traditional or indigenous society
- ▶ That folklore is not used in commerce, defeats I.P law regime
- ▶ The myth and misconception- that it must have been present from time in memorial

Do TCE's deserve protection under I.P law?

- ▶ The literal definition of I.P- Creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.
- ▶ Yes it deserves I.P law protection; WHY SO?
 - Involves creativity based on observance of nature
 - Embodies know how and skill which can be replicated for mass production

Nature of Folklore-2011 & 2016 Ugandan presidential campaign- “You want another rap”

https://www.youtube.com/watch?v=QtQNe3_T_oM- 2011

<https://www.youtube.com/watch?v=oN1DjNZIZVQ> -2016

Use of TCE's music in modern entertainment

The I.P questions raised in the circumstance.

- Whether the president would copyright the song and or rap?
- Whether other community members would be barred from enjoying the Traditional cultural expression that they have enjoyed for ages

Objection to the president's copyright registration application

- ▶ In the Matter of Application No. 25 of 2010 for registration of Copyright by Yoweri Kaguta Museveni in the song “You want another rap”
 - Who is the author of the song
 - Attribution of the song
 - Originality
 - Economic & moral rights issues
 - Cultural appropriation of I.P

Navajo Nation suit against Urban Outfitters-U.S

- ▶ The Indian Arts and Crafts Act invoked
- ▶ Traditional nomenclature-protected by folklore
- ▶ It makes it illegal to sell arts & crafts in a way that suggests that they are produced by native Americans



Navajo Nations suit against Urban Outfitters

- ▶ Seize and desist from advertising “Navajo hipster party” and “Navajo print fabric wrapped flask”
- ▶ Question- how far can the tribe go to seek money from the company’s products
- ▶ Urban outfitter’s argument- that “Navajo” is a generic term!!

Why a delayed embracement of TCEs & Folklore by WIPO just like other I.P branches?

- ▶ The private nature of ownership of property Vs communal ownership
- ▶ Intellectual property is generally a capitalistic concept
- ▶ Developing nation syndrome
- ▶ The public domain existence of folklore question

The common legal trend in these self help statutes?

- ▶ Copyright type of Protection of TCE's.

That authors may be unknown but the presumption is that they are nationals of the country

The international awakening-WIPO

- ▶ Article 15(4) of the Stockholm (1967) and Paris(1971) Act- attempts to cover folklore under copyright- Diplomatic Conference of Stockholm
- ▶ No express provision for protection of folklore- **in case of unpublished works where the author is unknown but where there is every ground to presume that he is national of a country...**
- ▶ The provision makes no express provision for protection of folklore, it is only in the legislative history as copyright

International Attempts- Model Laws for National Law on the Protection of Folklore

- ▶ Principle of Protection against illicit exploitation- Section 1
- ▶ Expressions of Folklore- Verbal expressions, folk poetry, folk tales, art, metal works.....Sections 2
- ▶ Express protection of folklore-sections 3
 - Any publication, reproduction and any distribution of copies of folklore without authorization
 - Public recitation or performance, any transmission by wireless means by wire and other forms of communication to the public

Inherent challenges of protection of TCE's by I.P

- ▶ TCE's are as a result of slow impersonal, continuous and slow process of creative activity of a community
- ▶ Develops through community continuous imitation for improvement without limitation
- ▶ Ownership is time limitless
- ▶ The copyrighted work must be reduced in material form
- ▶ Individualistic and private in nature
- ▶ Copyrighted works need licences before imitation and eventual improvements by others
- ▶ Ownership is limited to the life time of an individual and 50 years after there death i.e in Copyright
- ▶ TCE's mostly music is not reduced in material form

Other suggested forms of protection

- ▶ Patents
- ▶ Plant Variety Protection- the Standard Material Agreement
- ▶ Geographical Indications
- ▶ Trademarks

Proposals for a sui generis law for protection of folklore

- ▶ A law that will ensure shared benefits that trickle to the communities
- ▶ Modern adaptations of traditional folklore as derivative or improved works
- ▶ Questions of ownership and how to share the economic benefits
- ▶ Public domain questions
- ▶ Duration and renewals if any.
- ▶ The fluidity and modern development of folklore

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Your judgment

▶ THANK YOU