

SAMOA

Response to Question 1 : Samoa's Copyright Act 1998, The Patent Act 1972 and the Trademarks Act 1972 are the intellectual property laws currently enforced in Samoa. They do not have provisions to protect the traditional knowledge. The Copyright Act 1992 however, contains certain provisions on protection of moral rights and performers rights. These could be used to protect traditional knowledge such as cultural activities on dances, tattooing etc. being fixated on videotapes only to the extent that there is an infringement on the right of the registered author. The traditional knowledge holders may only claim royalties if they happen to be the performers of the traditional knowledge that was demonstrated and fixated on video. They may claim on the right of performers protected under the Copyright Act 1998, but this is a course of action that is rarely pursued.

The Village Fono Act 1990 provides for an institutional structure within the Village communities called "Village Fono" (Village Council), which is a traditional authority of government comprised of traditional chiefs ("matai"). They formulate customary village laws and enforce punishments according to village customs and usage. They also make rules, which govern the development and use of village land (including the rivers, springs and trees thereon) for the economic betterment of the village. The Village Fono Act 1990 indirectly yet effectively protects Samoa's traditional form of governance, customary laws and traditional forms of punishment. The Act primarily gives legal recognition to the Village Fono as the lawmaking body for the village in incidental matters. It enacts laws and penalties/punishments in accordance with the village custom and usage. The implementation of this Act by the Village Fono not only preserves the traditional form of government in Samoa (Village Fono), it also preserves traditional knowledge in customary laws and traditional punishments, thus protecting them from eroding.

Response to Question 2 to 26 : Not applicable. Samoa has no *suigeneris* legislation concerning intellectual property rights.

Response to Question 27 :

Communal/Collective Rights.

The right of the author to recognition of his authorship of the work is ultimately pointed to a single entity or a specific person. Exclusive monopoly is a qualifying factor to meet patenting criteria. The knowledge that is currently possessed by the people of Samoa has been developed and refined throughout history and it is the social manifestation of the work of several generations. They are community based. Any enforcement of the intellectual property protection of traditional knowledge would have to take into account the communal or collective rights of the people to that knowledge.

The resources that possess great economic and social usefulness are located on lands since time immemorial occupied by various "aiga" (extended family/families). Their right over the communal customary land also extends to the right to the plants and the animals that grow with the land. It also happens that the Samoan people already possess some knowledge on the medicinal and social value of these plants, which could be patented. All these are interwoven into Samoan everyday lives and have also become an integral factor of identity.

The Intellectual Property Rights (IPRs) however refer to a group of laws (patent, copyrights, trademark etc.), which grant legal protection to whoever creates new ideas

or knowledge. The requirements for IPRs are consistency, novelty and creativity, removing communal benefit. Any implementation of the IPRs removes traditional practices and lifestyles of the Samoan people accordingly. It offers neither right nor protection to the Samoan people.

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