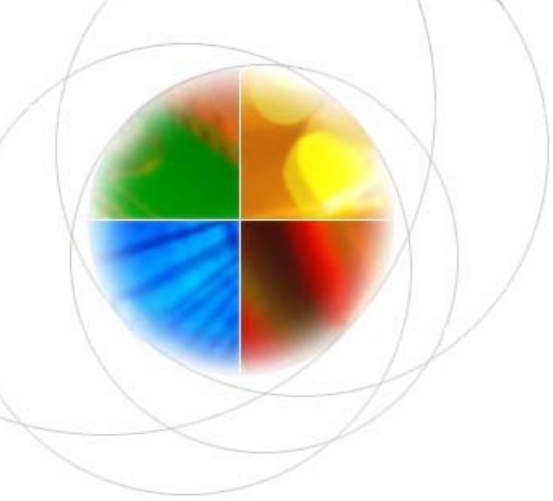


# **WIPOs Creative Heritage Project:** *IP, Traditional Cultural Expressions and Museums*

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**DISCLAIMER: THE VIEWS EXPRESSED IN THIS TALK ARE THOSE OF THE SPEAKER, AND NOT  
NECESSARILY THOSE OF THE WIPO SECRETARIAT OR ITS MEMBER STATES**





# Introduction

- **What is the World Intellectual Property Organization (WIPO) and how does it differ from UNESCO?**
- **What is WIPOs Creative Heritage Project?**





## At what stage is this project?

Surveys listing existing IP resources and practices (from 2005)



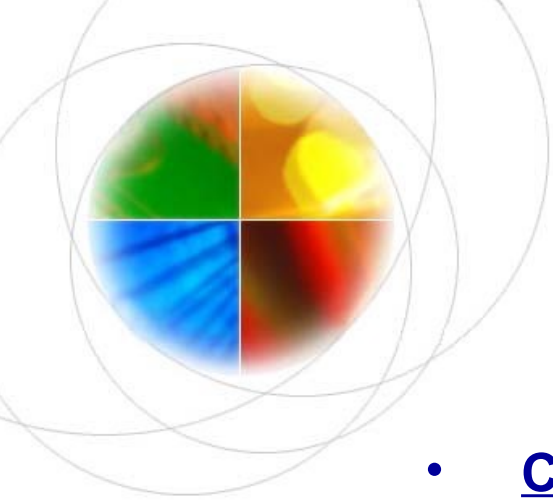
Development of “best practices” and guidelines distilled from the surveys



### Providing institutional capacity-building:

- **IP assistance** (information and advice on IP management during digitization projects);
- **IT assistance** (technical support for the recording and digitization of TCEs, and the establishment of digital collections and web sites);





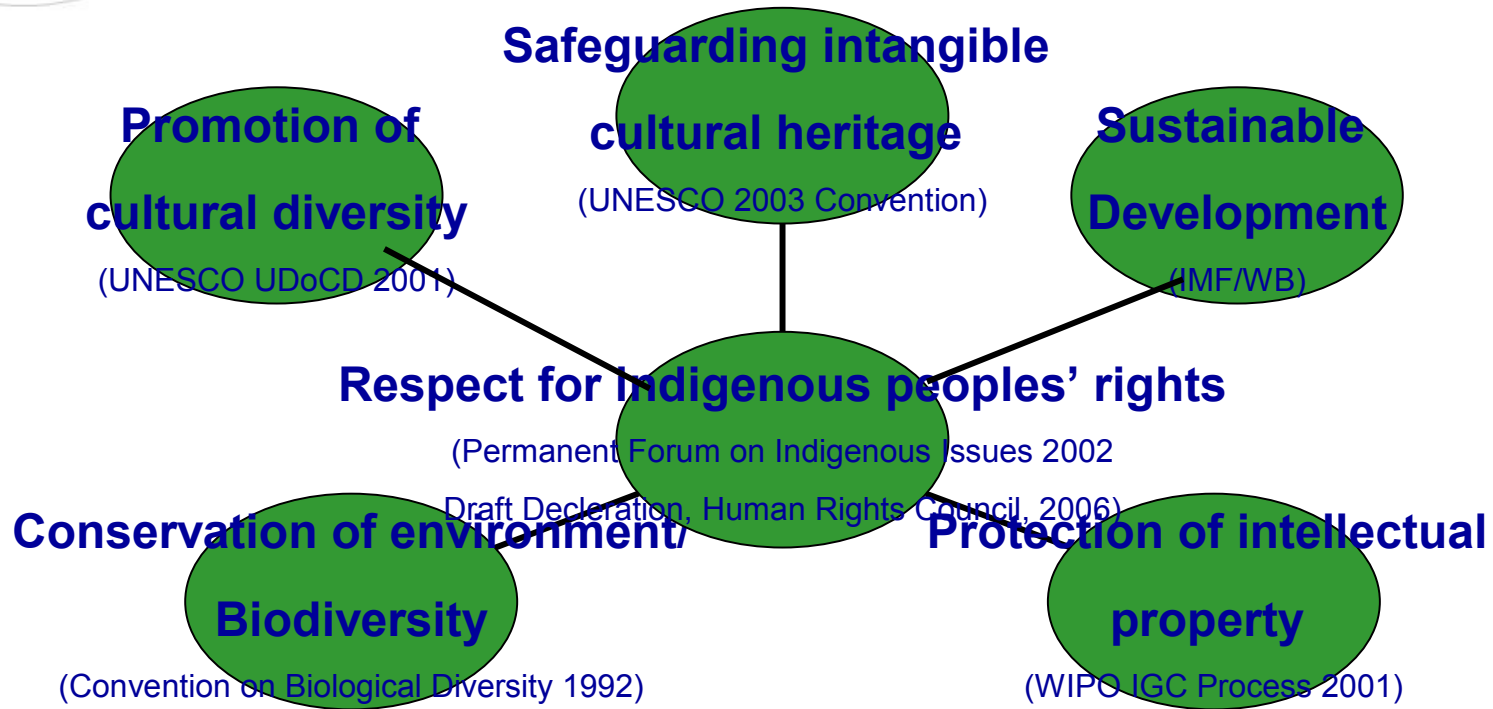
# Issues and Debates

- **Concerns of indigenous communities:**
  - Control over, access to, and use of ethnographic materials/anthropological research (interviews, music, designs, photos)
  - Prevention of derogatory and deceptive uses
  - Equitable benefit-sharing (*Deep Forest* and other examples of misappropriation)
  - “The crux of the problem is that information about us is not owned by us”





# The UN Network for the Promotion, Protection and Preservation of TCEs





## How is protection of TCEs best achieved?

- » **A) Amending existing IPR regimes to accommodate TCEs is an option yet fully to be explored?**
  
- » **B) Protection is best achieved by developing a *sui generis* instrument, i.e. an entirely new IP framework, since existing regimes are inherently Western artefacts?**

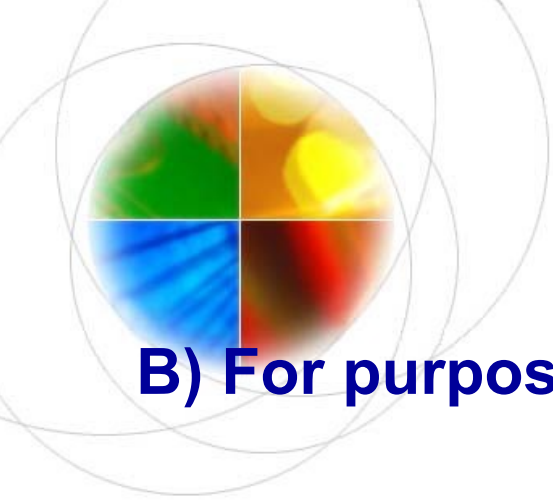




## **A) Within existing IP systems some of the following options would be available:**

- » **Exercise of IP rights in recordings, photos, digitizations (ensure acknowledgement, respectful use, benefit-sharing)**
- » **Vesting/assignment of IP rights to communities**
- » **Joint ownership and joint exercise of rights**
- » **Education to communities about IP (example: performers rights)**





**B) For purposes of possible *sui generis* systems some emerging issues could be:**

- » **The role of inventories and indexical language**
- » **Identification of beneficiaries**
- » **Translating customary laws and precepts**
- » **Identify “culturally sensitive materials” and offensive uses thereof?**





## Some Features of Copyright

- Scope: No protection for ideas, styles and information as such
- Fixation: Many countries require a work to be fixed in material form (e.g., written down) to be protected (but not all countries!)
- Authorship: An author or creator (or authors or creators) must be identifiable
- Originality: The work must demonstrate independent creativity
- Limited term: Economic rights expire 50 or 70 years after the author's death (moral rights survive: post-mortem rights).

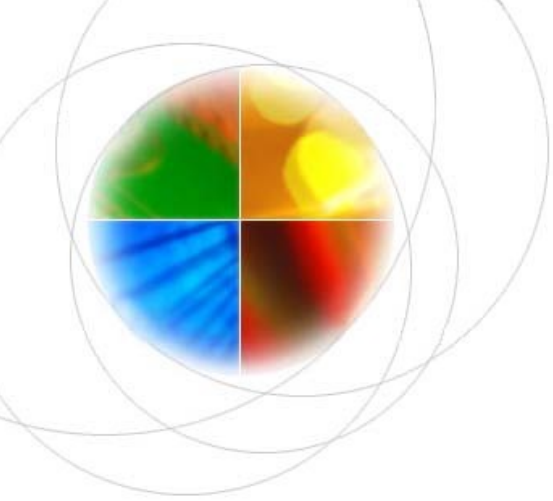




## TCEs and the scope of copyright

- Scope # Indigenous styles and motifs (totems) are vulnerable to misappropriation but cannot be protected as such by copyright
- Fixation # TCEs are often oral (epics) and/or performative (choreography of rituals) and not in fixed form (but performances of TCEs are protected as “related rights” by WIPO Treaty)
- Authorship # TCEs are often communal and often have collective origins making creator attributions difficult
- Originality # in certain indigenous cultures repetition and the “faithful copy” or “loyal reproductions” are valued above innovation and originality
- Limited Term # in certain indigenous cultures TCEs are protected indefinitely



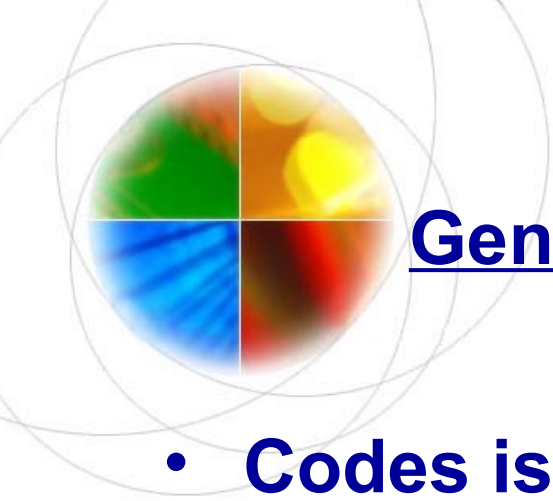


## Scope of requirements

- IP protection of TCEs needs to encompass:
  - - TCEs in any mode or form (oral or fixed)
  - - TCEs as intellectual creations (communal or individual)
  - - TCEs as characteristic of a community's social identity/cultural heritage
  - - TCEs maintained, used or modified by a community, or by individuals authorized under customary law or liable to other social obligations
  - - TCEs as 'pre-existing' or 'contemporary'; communally or individually made (but always regarded as communally 'owned')

– *(From WIPO, Draft Provisions for Protection of TCEs)*





## General Findings of the Survey

- **Codes issued by:**
  - Museums, Professional Associations, Indigenous Organizations
- **Institutional conduct:**
  - Major museums in Canada & the U.S.
  - **Annexes:**
    - Questionnaire deployed, Reports, Major Research Projects, Manuals, Handbooks, Guides, Standard Forms & Schemes, and Resources specifically on Digitization.

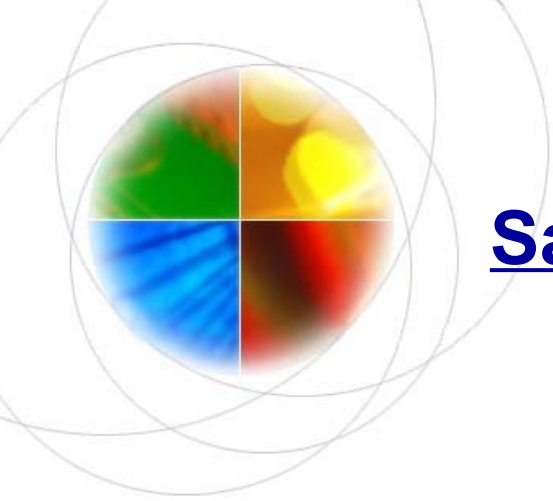




## Key Findings

- A growing recognition of the "fourth dimension" of ethnographic museum objects. Response > A more comprehensive vision of material culture
- An emerging concern about the institutional handling of "culturally sensitive materials". Response > Establishing dialogue about sensibilities or using NAGPRA taxonomies
- A gradually shifting balance btw secular and sacred domains, btw public and private spheres in curation: The NAA case
- A growing tendency to understand IP as on-going relations with "native communities," rather than as property rights to assets





## Safeguarding Knowledge?

- **What types of IP protections should a museum implement, if any?**
- **What types of information should be protected?**





## Possible Passages

### **Conventional definition of IPR:**

- IPR is about encouraging the dissemination of knowledge and simultaneously enabling creators to benefit from their intellectual achievements.
- IPR is an instrument of governance with which to calibrate a balance btw creators' and users' property rights.

### **Comprehensive definition of IPR:**

- IPR is more than a simple question of profit arising from the utilization of indigenous knowledge.
- IPR is about knowledge transactions – past and present - btw museums and creators of TCEs. Thus it is about building relationships calling upon appropriate elders and communities to possibly make the "fourth dimension" of museum objects visible or invisible.

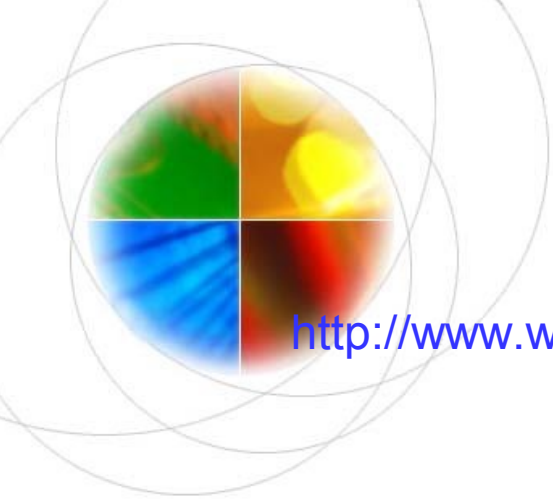




## **WIPOs Creative Heritage Project:**

- Current phase: collection of existing practices and surveys of prevailing hard and soft laws; assessment of needs and experiences**
  
- Possible next steps:**
  - » An IP guide for museums**
  - » Identification of “best practices”**
  - » Development of IP-related model contracts**
  
- Wider stakeholder involvement: A role for ICOM helping to develop tools and guidelines?**





## **Surveys & Case Studies:**

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

## **Searchable Database**

### **(Existing Codes, Guidelines and Practice):**

[http://www.wipo.int/tk/en/folklore/creative\\_heritage/index.html](http://www.wipo.int/tk/en/folklore/creative_heritage/index.html)

## **Pilot Projects:**

The Creative Heritage Project is currently providing IP-related advice to recording and digitization projects with a Maasai community in **Kenya**, the Intellectual Property Office of **Mongolia** and a traditional music archive, folklife centre and the National Museum in **Sudan**.

**Questions:** [heritage@wipo.int](mailto:heritage@wipo.int)

**Thank you for your attention!**

