

COMPARATIVE SUMMARY OF *SUI GENERIS* TCEs LEGISLATION

	Tunis Model Law on Copyright (1976) (parts of relevance to folklore only)	Model Provisions (1982)	Bangui Agreement of OAPI (as amended in 1999) Annex VII, Title I (copyright and related rights)	Panama Law No. 20 (June 26, 2000) and Executive Decree No. 12 (March 20, 2001)	South Pacific Model Law for National Laws (2002)	U.S.A Indian Arts and Crafts Act of 1990
<p><i>POLICY CONTEXT AND OBJECTIVES</i></p>	<p>In so far as “folklore” is concerned, protection is provided “to prevent any improper exploitation and to permit adequate protection of the cultural heritage known as folklore which constitutes not only a potential for economic expansion, but also a cultural legacy intimately bound up with the individual character of the community.” (Notes to Section 6)</p>	<p>Folklore is an important part of living cultural heritage of nations.</p> <p>Dissemination of folklore can lead to improper exploitation of cultural heritage, and any abuse or any distortion of folklore prejudices the cultural and economic interests nations.</p> <p>Expressions of folklore manifesting intellectual creativity deserve IP-type protection.</p> <p>Such protection of expressions of folklore is indispensable for their development, maintenance and dissemination.</p> <p>Therefore:</p> <p>Protection is provided for expressions of folklore against illicit exploitation and other prejudicial actions. Preamble and Section 1.</p>	<p>Promote the effective contribution of IP to the development of Member States.</p> <p>Protect IP in an effective and uniform manner.</p> <p>Contribute to the promotion of the protection of literary and artistic property as an expression of cultural and social values.</p>	<p>The objective is to protect the collective IP rights and TK of indigenous communities through the registration, promotion, commercialization and marketing of their rights in such a way as to give prominence to indigenous socio-cultural values and cultural identities and for social justice (Preamble and Article 1 of the Law; Preamble of the Decree).</p> <p>Another key objective is the protection of the authenticity of crafts and other traditional artistic expressions.</p>	<p>The objective is to protect rights of traditional owners in their TK and expressions of culture and permit tradition-based creativity and innovation, including commercialization thereof, subject to prior and informed consent and benefit-sharing. The Model Law also reflects the policy that it should complement and not undermine IP laws.</p>	<p>(1) <i>IACA</i>:</p> <ul style="list-style-type: none"> - To promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes; <p>(2) Database of Official Insignia:</p> <ul style="list-style-type: none"> - To address issues surrounding the protection of the official insignia of federally and State recognized Native American tribes. <p>(Section 302(a), Trademark Law Treaty Implementation Act) The legal protection provided in the United States is, in summary, intended:</p> <ul style="list-style-type: none"> - To protect and preserve cultural heritage; - To prevent commercial interests from falsely associating their goods or services with indigenous peoples.

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<p><i>SUBJECT MATTER</i></p> <p>(The protected subject matter)</p>	<p>“Folklore” is defined in Section 18 - all literary, artistic and scientific works created on national territory by authors presumed to be nationals of such countries or by ethnic communities, passed from generation to generation and constituting one of the basic elements of the traditional cultural heritage.</p>	<p>Productions consisting of characteristic elements of traditional artistic heritage developed and maintained by a community, in particular, verbal expressions, (folk tales, folk poetry, riddles); musical expressions (folk songs and instrumental music);</p>	<p>“Expressions of folklore” are defined as productions of characteristic elements of the traditional artistic heritage developed and perpetuated by a community or by individuals recognized as meeting the expectations of such community, including folk tales, folk poetry, folk songs, instrumental music, folk dancing and entertainment as also the artistic expressions of rites and productions of folk art (Article 2 (xx)).</p> <p>Expressions of folklore and works derived from folklore seem to be protected as copyright works (Article 5(xii)).</p>	<p>Customs, traditions, beliefs, spirituality, cosmovision, folkloric expressions, artistic manifestations, TK and any other type of traditional expressions of indigenous communities which are part of their cultural assets (cultural heritage) (Law, Article 2).</p> <p>“Collective IP rights” and “traditional knowledge” embodied in creations such as inventions, models, designs and drawings, innovations contained in images, figures, graphic symbols, petroglyphs and other material, cultural elements of history, music, arts and traditional artistic expressions (Decree, Article 1).</p> <p>Collective indigenous rights” means the indigenous cultural and IP rights relating to art, music, literature, biological, medical and ecological knowledge and other</p>	<p>Cultural expressions are the main focus of the Law.</p> <p>Expressions of culture are defined as any ways in which TK appears or is manifested, including inter alia names, stories, chants, riddles, histories, songs in oral narratives, art and craft, musical instruments, sculpture, painting, carving, pottery, terracotta mosaic, woodwork, metalware, painting, jewelry, weaving, needlework, shell work, rugs, costumes and textiles, music, dances, theatre, literature, ceremonies, ritual performances, cultural practices, designs, architectural forms.</p>	<p>(1) IACA: The Implementing Regulations for the Act provide that, in general, the term “Indian product” means “any art or craft product made by an Indian.” (Section 309.2(d)(1)). The Regulations furthermore illustrate that Indian products include, but are not limited to: (i) Art works that are in a traditional or non-traditional Indian style or medium; (ii) Crafts that are in a traditional or non-traditional Indian style or medium; (iii) Handcrafts, i.e. objects created with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product.</p>

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	<p>Folklore receives <i>sui generis</i> protection.</p> <p>On the other hand, works derived from folklore are treated as copyright works.</p>	<p>expressions by action (folk dances, plays and artistic forms or rituals); and tangible expressions (productions of folk art, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket-weaving, needlework, textiles, carpets, costumes, musical instruments, and [architectural forms.] (Section 2).</p>	<p>Translations, adaptations, arrangements and other transformations of expressions of folklore also seem to be protected as copyright works, as are collections and databases of works and expressions of folklore (Article 6 (1) (i) & (ii)).</p> <p>“Performances” as defined include performances of “expressions of folklore” (Article 46).</p>	<p>subject matter and manifestations that have no known author or owner and no date of origin and constitute the heritage of an entire indigenous people (Article 2, Decree). “Traditional knowledge” means the collective knowledge of indigenous people based on the traditions of centuries, and indeed millennia, which are tangible and intangible expressions encompassing their science, technology and cultural manifestations, including their genetic resources, medicines and seeds, their knowledge of the properties of fauna and flora, oral traditions, designs and visual and representative arts. (Article 2 Decree).</p> <p>Only subject matter capable of commercial use appears covered (Law, Article 1).</p>		<p>(Section 309.2(d)(2))</p> <p><i>Exeptions and limitations:</i></p> <p>The Implementing Regulations exclude any art or craft products made before 1935 from the scope of application of the Act. (Section 309.2(d)(3), Implementing Regulations, dated October 21, 1996)</p> <p>(2) <i>Database of Official Insignia:</i></p> <p>The term “Official insignia of Native American tribes” means the flag or coat of arms or other emblem or device of any federally or state-recognized Native American tribe, as adopted by tribal resolution and notified to the United States Patent and Trademark Office.</p>

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				<p>A classification system is created by the Decree (Article 3) and several examples of protected subject matter are given by the Law and the Decree, such as traditional dresses of certain named indigenous communities, musical instruments, music, dances, performances, oral and written expressions, working instruments and traditional art and techniques for making them, such as basket and bead work (Law, Articles 3, 4 and 5).</p>		

<p><i>CRITERIA FOR PROTECTION</i></p> <p>(Conditions that the subject matter must meet for protection. Examples: originality, novelty, distinctiveness, fixed form etc).</p>	<p>Fixation not required (Section 5bis); originality not required.</p> <p>No criteria specifically stated.</p>	<p>None specified.</p>	<p>Expressions of folklore and works inspired by them are regarded as “original” copyright works (Article 5).</p> <p>Need not be fixed on material medium (Article 4(2)).</p>	<p>The subject matter must:</p> <ul style="list-style-type: none"> (i) be capable of commercial use (Law, Article 1); (ii) be based upon tradition, although it need not be ‘old’ (Law, Article 15); (iii) fit within the classification system established by Article 3 of the Decree; 	<p>The subject matter must be “traditional” i.e., (i) created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes;</p>	<p>(1) <i>IACA</i>: To be protected under the Act a product must meet the following requirements: - it must be an “Indian product” as defined in the Act and the Implementing Regulations; - is must have been produced after 1935; - the producer of the concerned Indian product must be resident in the United States.</p> <p>(2) <i>Database of Official Insignia</i>: - if signs or symbols contain tribal names, recognizable likenesses of Native Americans or symbols perceived as being Native American in origin they are included in the database.</p>
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				(iv) be “collective”, i.e., the subject matter must have no known author or owner and no date of origin and constitute the heritage of an entire indigenous people (Decree, Article 2), or must be regarded as belonging to one or more of the indigenous communities of Panama (Decree, Article 5 and 6).	(ii) transmitted from generation to generation; (iii) regarded as pertaining to a particular traditional group, clan , or community of people; and (iv) is collectively originated and held (Section 4). Need not be in material form (Section 8).	

<p><i>HOLDER OF RIGHTS</i></p>	<p>Rights in folklore exercised by a competent authority (Sections 6 and 18).</p>	<p>Either a “competent authority” or relevant community.</p>	<p>The author is the first holder of the economic and moral rights. Specific provisions deal with collaborative works, collective works, the works of employees, and other cases – there are no specific provisions dealing with expressions of folklore (Articles 28 to 33).</p>	<p>The relevant indigenous communities represented by their general congresses or traditional authorities.</p> <p>More than one community can be registered collectively as holders of the rights (Decree, Article 5).</p>	<p>Traditional owners of TK or expressions of culture, being the group, clan or community, or individual recognized as part of group, clan or community, in whom the custody or protection of the TK or expressions of culture are entrusted in accordance with customary law and practices (Section 4).</p>	<p><i>IACA:</i> The term “Indian” is defined as “any individual who is a member of an Indian tribe; or for the purposes of this section is certified as an Indian artisan by an Indian tribe.” (Section 6(d)(3)) The term “Indian tribe” means: “(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;</p>
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					<p>If a derivative work is created, IP in work vests in creator or as provided for by IP law (see further below).</p>	<p>or (B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority.” (Section 6(d)(3))</p> <p>The term “Indian arts and crafts organization” means any legally established arts and crafts marketing organization composed of members of Indian tribes. (Section 6(d)(4)).</p> <p><i>Database of Official Insignia:</i></p> <p>The beneficiaries of the Database are federally- and state-recognized tribes.</p>

<p><i>RIGHTS CONFERRED</i></p> <p>(Including exemptions and free uses)</p>	<p>Section 6 – works of national folklore enjoy rights referred in Section 4 and 5(1) and are exercised by the competent authority.</p> <p>Section 4 – Economic Rights: author has exclusive right to reproduce, make translation, adaptation, arrangement, transformation, communicate work to public either through performance or broadcasting.</p>	<p>The following uses when made with both gainful intent and outside the traditional or customary context, require prior authorization: publication, reproduction, distribution of copies, public recitation, performance, transmission by wire or wireless means and any other form of communication to the public (Section 3).</p> <p>Acknowledgement of source (Section 5) - source must be acknowledged in appropriate manner (mentioning community and/or geographic place from where expression utilized has derived from) in all printed publications, in any communications to the public.</p>	<p>Expressions of folklore and works inspired by them are regarded as copyright works in respect of which economic and moral rights as understood in the copyright sense seem to apply (Article 8 and 9).</p> <p>Performances of expressions of folklore are accorded the same protection as is accorded to other performances (Article 48).</p> <p>In addition, however, expressions of folklore and works that have fallen into the public domain are subject to “<i>domaine public payant</i>” (Section 59).</p>	<p>Collective rights to authorize or prevent:</p> <ul style="list-style-type: none"> (i) use and commercialization; (Article 15). (ii) industrial reproduction (Law, Article 20). <p>Collective right to apply for IP over protected subject matter (Law, Article 2).</p> <p>Collective right to prevent or authorize third parties from acquiring exclusive IP over protected subject matter (Law, Article 2).</p>	<p>The Model Law establishes “traditional cultural rights” and “moral rights” in TK or expressions of culture.</p> <p>Traditional cultural rights are rights to authorize or prevent the following uses:</p> <ul style="list-style-type: none"> (i) to reproduce the TK or expressions of culture; (ii) to publish the TK or expressions of culture; (iii) to perform or display the TK or expressions of culture in public; 	
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	<p>Section 5(1) - Moral Rights: to claim authorship, to object to and seek relief in connection with distortion, mutilation, modification or any other action which would be prejudicial to his honor or reputation.</p> <p>Rights do not apply however when works of national folklore are used by a public entity for non-commercial purposes (Section 61bis).</p> <p><i>Domain public payant</i> system also introduced (Section 17). Users of works of national folklore must pay percentage of receipts to competent authority for specified purposes (Section 17).</p>	<p>Exceptions (Section 4 and 5(2)): No authorization required for:</p> <ul style="list-style-type: none"> (i) purposes of education (ii) utilization "by way of illustration" in original work (iii) where expressions of folklore are "borrowed" for creating an original work of author (iv) "incidental utilization" such as reporting on current events, located permanently in public place. 	<p>The exploitation of expressions of folklore and that of works or productions that have fallen into the public domain on expiry of the terms of protection shall be subject to the user entering into an undertaking to pay to the national collective rights administration body a relevant royalty. Royalties collected with respect to the exploitation of expressions of folklore shall be devoted to welfare and cultural purposes.</p>	<p>Collective right to consent to the certification of cultural expressions as works of indigenous traditional art or handicraft and handmade by natives (Law, Article 10, Decree, Article 15).</p> <p>Exemptions for folkloric dance groups (Law, Article 16) and small non-indigenous artisans in certain cases –they are able to manufacture and market reproductions, but they will not be able to claim the collective rights recognized by this Law (Law, Articles 23 and 24; Decree, Articles 26 and 27)</p> <p>Registration of collective rights in an object or in TK shall not affect the traditional exchange of the object or the knowledge in question between indigenous peoples (Decree, Article 11).</p>	<ul style="list-style-type: none"> (iv) to broadcast the TK or expressions of culture to the public by radio, television, satellite, cable or any other means of communication; (v) to translate, adapt, arrange, transform or modify the TK or expressions of culture; (vi) to fixate the TK or expressions of culture through any process such as making a photograph, film or sound recording; 	

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					<p>(vii) to make available online or electronically transmit to the public (whether over a path or a combination of paths, or both) TK or expressions of culture;</p> <p>(viii) to create derivative works;</p> <p>(ix) to make, use, offer for sale, sell, import or export TK or expressions of culture or products derived therefrom;</p> <p>(x) to use the TK or expressions of culture in any other material form, if such uses are a non-customary (whether or not of a commercial nature). (Section 7).</p>	

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					<p>“Moral rights” refers to rights of attribution of ownership; the right not to have ownership falsely attributed; right not to have TK subject to derogatory treatment (Section 13).</p> <p>If cultural expressions and derivative works are used for commercial purposes, user must share benefits with traditional owners, acknowledge source and respect moral rights (Section 12).</p> <p>Traditional cultural rights do not prevent uses of cultural expressions by traditional owners (Section 7(3), nor to face-to-face teaching, criticism or review, reporting news or current events, judicial proceedings, and incidental use, although sufficient acknowledgement is needed in these cases (Section 7(4) and (5)).</p>	

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<i>PROCEDURES AND FORMALITIES</i>	<p>None stated.</p> <p>License agreements authorized by the competent authority but must be proceeded by negotiations with parties concerned.</p>	<p>Uses as contemplated in Section 3 subject to authorization (section 9).</p> <p>Competent authority grants authorization, fee required (section 10(2)).</p> <p>Appeals against decisions made by person applying for authorization and/or representative of interested community section (section 10(3)).</p>	<p>No particular procedures for expression of folklore.</p>	<p>A special registration system is established (Law, Article 1).</p> <p>Applications for registration must specify that a collective right is involved, that the object applied for belongs to an indigenous community, the technique used, and the history and brief description of the object (Decree, Article 6).</p> <p>Registration must be made by the indigenous community or by its general congresses or indigenous traditional authority (Law, Article 7).</p> <p>The application must contain certain prescribed information (Decree, Article 7) and the form is publicly available. The application must include a specimen of the object.</p>	<p>Uses of cultural expressions require prior and informed consent.</p> <p>Applications for consent may be made directly to a “Cultural Authority” or directly to traditional owners.</p> <p>Applications to the Cultural Authority must be in prescribed form; specify manner in which applicant proposes use; state purpose for which use intended; prescribed fee.</p> <p>The Cultural Authority must finalize application in prescribed period. If not, it is deemed that consent not given by traditional owners.</p> <p>Applications are published by means of copy to traditional owners, copy in national newspaper, and if</p>	<p>(1) <i>IACA</i>: The Indian Arts and Crafts Board may register Government trademarks of genuineness and quality for Indian products in the USPTO without charge (Section 2(g))</p> <p>(2) <i>Database of Official Insignia</i>: In August 2001 the USPTO established a Database of Official Insignia of Native American Tribes. The database is for notice purposes, and relies on self-certification.</p>

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				<p>The application procedure does not require legal services and is exempt from payment (Law, Article 7).</p> <p>Registrations are published and appeals against them may be lodged (Decree, Article 10).</p> <p>The register of collective rights is public, with the exception of experiments and cognitive processes conducted by indigenous peoples and the traditional production techniques or methods used (Decree, Article 12).</p> <p>The position of an examiner on indigenous collective rights is established in the industrial property office to examine all applications filed to ensure that industrial property registrations are not granted that are against the Law (Law, Article 9).</p>	<p>required broadcast on radio and TV.</p> <p>Appeals relating to application must be made within 28 days of publication.</p> <p>In the event of direct negotiations between the user and the owners, the Cultural Authority must still be provided with a copy of the proposed authorized user agreement (Section 25(2)).</p> <p>Potential users of cultural expressions must enter into an authorized user agreement with the traditional owners should they agree to the proposed use. An authorized user agreement should include terms and conditions about the following:</p>	

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					<ul style="list-style-type: none"> (i) sharing of financial and other benefits arising from the use of the TK or expressions of culture; (ii) compensation, fees, royalties or other payments for the use; (iii) whether the use will be exclusive or non-exclusive; (iv) duration of the use to be allowed and rights of renewal; (v) disclosure requirements in relation to the use; (vi) the possible sharing by the traditional owners of any IP rights arising from the use of the TK or expressions of culture; (vii) access arrangements for the traditional owners; 	

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					<p>(viii) education and training requirements for the applicant;</p> <p>(ix) controls on publication;</p> <p>(x) specify whether the rights arising under the agreement can be assigned;</p> <p>(xi) choice of law in relation to disputes under the agreement;</p> <p>(xii) respect for moral rights of the traditional owners.</p> <p>If a prospective user and the traditional owners enter into an authorized user agreement, the traditional owners are deemed to have given their prior and informed consent to the proposed use.</p> <p>The Cultural Authority is to keep a register of authorized user agreements.</p>	

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<i>RESPONSIBILITIES OF NEW OR EXISTING AUTHORITIES AND INSTITUTIONS</i>	<p>Competent authority – proposed that authority be body responsible for administration of authors’ rights within country (Notes).</p> <p>User of work of folklore must obtain authorization from competent authority</p> <p>Competent authority defined in Section 18.</p> <p>Sums collected by the competent authority must be used <i>inter alia</i> to protect and disseminate national folklore (Section 17).</p>	<p>Competent authority determined by enacting country (Section 9(1))</p> <p>Court has jurisdiction to hear appeals against decisions of competent authority (Section 11(1)).</p> <p>OR</p> <p>Court has jurisdiction in case of offences under Section 6 to Section 11(2).</p>	<p>No particular provisions concerning expressions of folklore.</p>	<p>Applications for registration are made to the industrial property office or the copyright office (Law, Article 4).</p> <p>A Department of Collective Rights and Expressions of Folklore is established within the industrial property office to approve applications and maintain the register (Law, Article 7).</p> <p>Officials of the industrial property office and the Department of Collective Rights and Expressions of Folklore may go to indigenous communities to gather information necessary for prosecution of applications they may wish to file.</p>	<p>The cultural authority must:</p> <ul style="list-style-type: none"> (i) receive and process applications; (ii) identify traditional owners; (iii) monitor compliance and inform of breaches; (iv) develop standard terms and conditions for authorized user agreements; (v) keep a register of authorized user agreements; (vi) provide training and education for traditional owners and users; (vii) develop Code of Ethics; (viii) issue advisory guidelines; (ix) liaise with regional bodies; (x) maintain record of traditional owners and knowledge; (xi) provide guidance on meaning of “customary use.” 	

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<i>SANCTIONS AND ENFORCEMENT PROCEDURES</i>	<p>Importation of copies of protected work into national territory constitutes an infringement and can be seized.</p> <p>Person infringing rights obliged to cease infringement; liable for damages; if willful be punishable by fine or imprisonment or both (Section 15(1)).</p> <p>Infringement of rights mentioned which are considered as violation of national cultural heritage and may be curbed by all legitimate means (Section 15(2)).</p> <p>Infringement materials subject to seizure (Section 15(3)).</p>	<p>Offences determined by enacting country (section 6).</p> <p>Seizure of objects which violate law (section 7).</p> <p>Fees collected used for purpose of safeguarding national culture. (section 10(3)).</p> <p>Omissions to acknowledge source in cases where required subject to fine (Section 6).</p>	No particular provisions for expressions of folklore	<p>The importation, smuggling, industrial reproduction of protected objects and other violations of the Law are prohibited and the proceeds of fines are shared with the respective indigenous community (Law, Articles 17 to 21).</p> <p>Apart from the affected indigenous communities, the regional governor or the country governor may take preventative action (Law, Article 22).</p>	<p>Various offences are created, punishable on conviction by fine or term of imprisonment, or both.</p> <p>Traditional owners may also institute civil proceedings.</p> <p>Remedies: injunction, damage for loss, public apology, cease or reverse false attribution of ownership or derogatory treatment, order for account for profits, seizure of objects, other.</p> <p>Nothing prevents recourse to mediation procedures, ADR, customary laws.</p>	<p>IACA: Within the United States, the IACA empowers the Indian Arts and Crafts Board (IACB), a federal agency, to refer violations to the Federal Bureau of Investigation. The IACB may independently recommend to the Attorney General of the United States that criminal proceedings be instituted. The IACB may also recommend that the Secretary of the Interior refer a matter to the Attorney General for civil</p>

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	Material proof of infringement may be provided by statements of police officers or certified statements of sworn agents of authors' organization (Section 15(4)).					enforcement action. The criminal and civil penalties for violating the IACA are as follows: first time individual offenders are subject to fines of up to \$250,000 or five years' imprisonment; businesses are subject to fines of up to \$1,000,000; subsequent violations expose individual offenders to fines of up to \$1,000,000 or fifteen years' imprisonment, while business offenders face up to \$5,000,000 in fines.

<p><i>TERM OF PROTECTION</i></p>	<p>Without limitation in time (Section 6(2)).</p>	<p>No time limit stated.</p>	<p>Economic rights: lifetime of author + 70 years after death.</p> <p>Moral rights without limit in time. After expiry of economic rights, collective rights administrative body (Article 60) entitled to ensure compliance with moral rights.</p> <p>Anonymous author = 70 years after first publication or making of the work / lawfully accessible to public (Article 24).</p>	<p>Rights are indefinite (not unlimited) (Law, Article 7).</p>	<p>Moral rights and traditional cultural rights continue in force in perpetuity, are inalienable, and cannot be waived or transferred (Sections 9 and 13(4)).</p>	
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<p><i>INTERACTION WITH EXISTING IP LAWS</i></p> <p>(and other laws, such as cultural heritage laws)</p>	Works derived from folklore are regarded as copyright works (Section 2).	Under section 12, there is no limit or prejudice to any protection applicable to expressions of folklore under other existing laws or other forms of protection provided.	<p>Provides for the protection of expressions of folklore as copyright works and performances thereof as protected performances under related rights.</p> <p>However, <i>domain public payment</i> also provided for.</p> <p>Title II deals with cultural heritage and provides as follows:</p> <p>“Cultural heritage” concerns folklore, sites and monuments, and ensembles (Article 67). Under Article 68, “folklore” means literary, artistic, scientific, technological and other traditions and productions as a whole created by communities and handed down from generation to generation. Examples are given in Articles 68 to 71.</p>	<p>The Panamanian Copyright Act, 1984, does not provide copyright protection for “objective expressions of folklore” (Article 9).</p> <p>Also relevant are Law 27 of July 30, 1997 “Establishing the Protection, Promotion and Development of Handicraft” and Law No. 14 of May 5, 1982 “Enacting Measures on the Custody, Conservation and Administration of the Historical Heritage of the Nation.”</p> <p>The Law and Decree refer also to the Fiscal Code, customs law and the trademarks legislation</p>	<p>The Law does not affect rights existing immediately before the commencement of the law (in each country), including IPRs.</p> <p>Traditional cultural rights are in addition to and do not affect IP rights.</p> <p>IPRs in derivative works (tradition-based creations) vest in the IP holder under relevant IP laws. However, if a derivative work is commercialized, certain duties arise (see above).</p>	

		<p>Article 73 prohibits the “denaturing” (distortion), destruction, exploitation, sale, disposal and illegal transfer of any part or a part of the property that makes up the cultural heritage except with authorization by competent authority (Article 73)(1).</p> <p>Under 73(2), the following acts are prohibited when undertaken for profitable purposes:</p> <ul style="list-style-type: none"> (i) publication, reproduction, distribution of copies of cultural property; and (ii) recitation, public performance, transmission by wire or wireless means and any other form of communication to the public. <p>Several limitations to these rights are provided for, notably the borrowing of cultural heritage for the creation of original works (Article 74 (1)(c)).</p>			
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			States shall inventorize, determine, classify, place in security and illustrate the elements that make up the cultural heritage (Article 72). Establishment of a High Commission for the Cultural Heritage (Article 97), to be consulted on all matters concerning the protection, safeguard and promotion of cultural heritage.			
<i>CUSTOMARY LAWS AND PROTOCOLS</i>	No reference.		No reference	Registration does not affect the traditional exchange of the object of knowledge between indigenous peoples (Decree, Article 11).	In case of dispute, customary laws and practices can be applied as a means to resolve the dispute.	No express provisions.

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<p><i>REGIONAL AND INTERNATIONAL PROTECTION</i></p> <p>(including the question of the protection of the same or similar cultural expressions from neighboring countries (so-called “regional folklore”).</p>	<p>Copies, adaptations etc of works of national folklore made abroad without authorization, shall not be imported or distributed in national territory (Section 6(3)).</p> <p>Section 16 (2) Alternative X – law applies to all works which, by virtue of treaties entered into by the country, are to be protected, as well as to works of national folklore.</p> <p>Alternative Y adds further application of the law to include national folklore of countries promulgated.</p>	<p>Subject to reciprocity (Section 14 (i)).</p> <p>Basis of international treaties or other agreements (Section 14 (ii)).</p>	<p>Article 3 (1): Rights relating to the fields of IP, as provided for in the Annexes to the Agreement, are independent national rights subject to the legislation of each of the Member States in which they have effect.</p> <p>Article 4 (2) - the Agreement and Annexes applicable in their entirety to every State that ratifies or accedes to the Agreement.</p>	<p>Artistic and traditional expressions of other countries have the same benefits of law, when made by means of reciprocal international agreements (Law, Article 25).</p> <p>The importation of non-original reproductions of protected objects is prohibited (Article 17).</p>	<p>In accordance with reciprocal arrangements, Act provides same protection to TK and expressions of culture originating in other countries or territories as is provided within the country itself.</p>	<p>No express provisions.</p>

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<i>TRANSITIONAL ARRANGEMENTS</i>	No particular provisions relating to folklore.	<p>No specific transitional rules.</p> <p>Depends on the laws of the individual countries.</p> <p>Legislator may choose either:</p> <ul style="list-style-type: none"> (i) retroactivity of law (ii) non-retroactivity of law (iii) intermediate solution = utilization subject to authorization under law but commenced without authorization before entry into force of laws should be brought to end before expiry of certain period if no relevant authority obtained by user in meantime. (Commentary to the Model Provisions). 	<p>Provisions apply to works that were created, to performances that took place, or were fixed etc. prior to the date of entry into force of Annex VII, on condition that such works have not yet fallen into public domain by reason of expiry of term of protection enjoyed under preceding legislation (Article 66 (1)).</p> <p>Legal effects of acts and contracts concluded or stipulated prior to date of entry into force of Annex remain unaffected (Article 66 (2)).</p>	The Law provides that rights accorded previously under the relevant legislation shall be respected and shall not be affected.	<p>The Law applies to expressions of culture that were in existence before the commencement of the Act (in the relevant country) and those created on or after that commencement (Section 3).</p> <p>The Law does not affect existing IP (as noted above) nor existing contracts and licenses (Sections 3(2) and 3(3)).</p> <p>Persons making non-customary uses of cultural expressions at the time the Act comes into force (in the relevant country) have 60 days to apply for the required consent under the Act (Section 35).</p>	