Regional Expert Meeting on Caribbean Framework for Traditional Cultural Expressions, Genetic Resources and Traditional Knowledge: Practical Steps Towards Developing a Strategy

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The concept paper . . .

- . . . is a draft for comment and improvement
- Describes the policy context, surveys core concepts, sets out some key principles and suggests practical steps towards TK and TCE protection
- Provides initial information on “regional frameworks” - nature, objectives, functions, benefits, existing and emerging regional systems in the Caribbean – with reference to other experiences
A policy context...balancing diverse goals

- “Protection” of intangible creativity – “ownership” and “stewardship” approaches

- The ownership approach - IP protection – property rights in intangibles - having a say over if, and how, creations of the human mind may be used by third parties

- What role does/should IP protection play in relation to:

  - fostering cultural diversity
  - preserving/safeguarding cultural heritage
  - respecting the rights and interests of indigenous peoples and other local communities
  - protecting creativity and innovation, including through a robust “public domain”
  - promoting economic development?
1. Practical steps towards TK and TCE protection
1. Identify what to protect

2. Decide on overall goals (why)

3. Survey policy, legal and practical options (how)

4. Coordinate with regional and international processes

5. Establish effective implementation program
1. Identify what to protect

- Review TK and TCEs held in your country/region
- Identify actual cases of IP-related misappropriation. What is the precise harm? What specific IP needs are there?
- Towards a working description of TK and TCEs:
  - what are “traditional” knowledge and cultural expressions?
  - knowledge as such and/or manifestations and expressions of culture – what specific examples are there?
  - IP focus needed, but not necessarily precise definitions
  - identifying *protectable* TK and TCEs (criteria for protection)
2. Take decisions on overall policy goals

• Key step for designing legal and practical strategies, mechanisms and measures

• “Protection” vs. “preservation/safeguarding” – is this really about IP protection?

• What are the IP-related goals (one or more of): to prevent access and use? to prevent unauthorized use? to enable commercial use? to ensure use on fair terms? to regulate manner of use?

• “Positive” and/or “defensive” protection
3. Survey the options – policy, legal and practical

- Options within:
  - conventional IP systems
  - non-IP systems
  - adapted and new IP systems

- Existing IP systems already provide some coverage (especially for TCEs) – are they not effectively used? Should any gaps be filled? If so, how?


- Choice may be made to establish distinct, new systems of protection – if so, what are some of the key questions to consider?
3. Survey the options – policy, legal and practical, cont’d

- Options relating to documentation/databases/registries:
  - documentation not an end in itself

- Role of customary laws

- Institutional mechanisms

- Which issues should be dealt with at the international, regional and national levels? – proposed Caribbean regional system
4. Coordinate with and contribute to regional and international processes

- **International**: WIPO IGC, CBD, UNESCO, WTO, FAO
- **Regional and inter-regional**: CARICOM, Cariforum, ACP *et al*
- **FTAs/EPAs**: Caribbean Basin Initiative *et al*
5. Create an effective plan of implementation

- Public awareness campaigns
- Training for legal profession, officials, courts
- Legal aid for claimants
- Appropriate management and enforcement of rights
- ...
Some challenges...  

- Clarification of the IP dimension - distinctions between “IP protection”, “preservation” of ICH and “conservation” of biodiversity
- Tracing “origin” – determining “authenticity” and “ownership” in a derivative culture - regional TK and TCEs
- Definition of scope of protection – what rights and exceptions?
- Management of rights – who owns the rights? who benefits from them?
- Dealing with past and ongoing uses of TK/TCEs
- Compatibility between existing and *sui generis* IP systems – overlapping subject matter
- Actual and effective use of TK/TCE protection systems
2. Some suggestions for immediate next steps
Some suggestions...

**What to do?**

- review TK and TCEs in the region
- identify IP–related needs through documenting actual cases of misappropriation
- develop non-binding, working definition(s) of TK and/or TCEs
- conduct audit of:
  - legal and non-legal expertise/holders and stakeholders
  - existing IP and non-IP legislation and other measures relevant to meeting needs identified
  - “gaps”, with reference to specific examples where possible
  - policy considerations relevant to whether gaps should be filled
  - what options exist or might be developed to fill gaps
- explore options for a “regional approach”
• How to do it?

• preliminary awareness-raising & questionnaire

• undertake 5 “to do’s” through fact-finding and desk-based research – WIPO concept paper an input/analytical tool if so wished

• report back to IP offices and consult on findings and recommendations

• communication of findings and recommendations to Ministers

• make information gathered widely available in Caribbean
Thank you

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2. What could a regional approach look like? What benefits might a regional approach bring?
• Different forms of regional system – not necessarily a regional law

• Objectives, functions and benefits

• Initial information on existing IP regional systems and on regional TK/TCE systems
  • OAPI/Andean Community – law/decisions - automatic application
  • ARIPO – law, requires national implementation
  • Pacific Community – model law

• Building on existing or emerging regional institutions/systems

• Implications – trade agreements/national treatment, MFN et al