Commercial and Non-Commercial Uses of Traditional Knowledge and Traditional Cultural Expressions: Examples and Lessons Learned in the United States

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• Definitions
  – Indigenous people
  – Local communities
  – State or States

• Examples of TCEs and TK

• Lessons Learned
  – The pyramid approach provides protection and promotes culture
  – Voluntary schemes can also facilitate benefit sharing
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As defined in WIPO/GRTKF/IC/28/5:

- Traditional knowledge [refers to]/[includes]/[means], for the purposes of this instrument, know-how, skills, innovations, practices, teachings and learnings of [indigenous [peoples] and [local communities]]/[or a state or states].
- [Traditional knowledge may be associated, in particular, with fields such as agriculture, the environment, healthcare and indigenous and traditional medical knowledge, biodiversity, traditional lifestyles and natural resources and genetic resources, and know-how of traditional architecture and construction technologies.]

As defined in WIPO/GRTKF/IC/28/6:

- [Traditional] cultural expression means any form of [artistic and literary], [creative and other spiritual] expression, tangible or intangible, or a combination thereof, such as actions, materials, music and sound, verbal and written [and their adaptations], regardless of the form in which it is embodied, expressed or illustrated [which may subsist in written/codified, oral or other forms] (the omitted footnotes provides examples including:
  – dance, works of mas, plays, ceremonies, rituals, rituals in sacred places and peregrinations, games and traditional sports/sports and traditional games, puppet performances, and other performances, whether fixed or unfixed, material expressions of art, handicrafts, ceremonial masks or dress, handmade carpets, architecture, and tangible spiritual forms, and sacred places. songs, rhythms, and instrumental music, the songs which are the expression of rituals, stories, epics, legends, popular stories, poetry, riddles and other narratives; words, signs, names and symbols)
Selected US Population Data

• Indigenous peoples:
  – Native Americans and Alaskans: 6,220,579
    • 566 Federally recognized tribes
  – Hawaiians and other Pacific Islanders: 1,225,195

• Local Communities, for example:
  – German-American: 50,708,000
  – Hispanic or Latin American: 50,477,594
  – African American: 42,020,743
  – Asian American: 17,320,856
  – Swiss-American: 1,018,000
  – Jamaican-American: 951,000

• State or States: Total US: 308,745,538
[indigenous peoples] and [local communities]/[or a state or states]

Native Americans

Inuit Basket

Zuni girl with jar

Three sisters, beans, corn and squash

"Chilkat blanket

Peace pipe- tobacco use
[indigenous peoples] and [local communities]/[or a state or states]

African-Americans

- Banjo
- Gullah woman making a Sweetgrass basket
- Rice in South Carolina (originally Madagascar in 1685)
- Peanut plant
- Ankole-Watusi longhorn cattle
Swiss-Americans

Glarus, Switzerland
[indigenous peoples] and [local communities]/[or a state or states]

Traditional quilt

Shaker furniture
TK: Surfing, TCE: Surfboard, Shaka-sign
TK or TCE: Hot Dogs
TK or TCE: Philadelphia Cheese Steaks
TK or TCE: Basketball

1891, Springfield, Massachusetts. Canadian physical education instructor James Naismith: Inventor of Basketball
TK or TCE: Baseball

Afghan Girl playing baseball

Japanese baseball players, 1921
Trademarks to Protect TCEs?

• Federal Trademarks
  – Navajo Gaming®

• State Trademarks
  – Alaska Silver Hand Program
Database of Official insignia of Native American tribes

The Trademark Law Treaty Implementation Act (1998) provides for the Official insignia of Native American tribes. This registration system makes the Official insignia of federally or state recognized tribes available for trademark examiners to use, in examination of trademark applications.
Indian Arts and Crafts Act of 1990

The Indian Arts and Crafts Act of 1990 (P.L. 101-644), as amended, is a truth in marketing law that prohibits the offer or display for sale, or sale, of any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian Tribe. Covering all traditional and contemporary American Indian and Indian-style art and craftwork produced after 1935, the Act carries both criminal and civil penalties.

According to South Dakota statutes (SDCL ch. 37-7), individuals and businesses are prohibited from distributing, selling, or offering for sale any article similar to American Indian art or craft which was not manufactured by an American Indian. The only exception is if the individual or business places a clear and legible label on the article and posts a sign immediately above the items for sale that explicitly states the products are not genuine American Indian art or craft.
TCE: Hula
TCE: Hopi Hoop Dance
Commercial use of a TCE: “Hula-hoop®”
Commercial use of a TCE: “Hula-Hoop®”

I claim:

1. A hoop toy especially suited for rotation about a human body in response to the user's body gyrations, comprising a member formed into a closed circular hoop, the member being of rigid tubular plastic and having an outside diameter of about of an inch so that the hoop as a whole is substantially rigid, the hoop having an outside diameter of approximately 31 to 37 inches and having a total weight of approximately 7 to 10 ounces, so that a portion of the hoop diametrically opposite from a hoop portion in contact with the users body is spaced from the users body a sufficient distance to co-act with the weight of the hoop to cause the hoop by virtue of its being substantially rigid to rotate about the user in response to the users body movements.
Copyright

Photograph of a hula dancer
Stained glass artwork based on photograph
Commercial uses inspired by TCEs: Pendleton Blankets

TATANKA HUHANSKA BLANKET
72040

write the first review

The buffalo, known as tatanka to the Lakota tribe, has long been a symbol of wisdom and hope for Native people. In recent years, the buffalo population has begun to grow again, and so has another symbol of wisdom and hope: tribal colleges. There are now 37 campuses throughout the country, dedicated to imparting the same values of knowledge, selflessness, strength and leadership represented by tatanka throughout Native culture.

A portion of the proceeds from this blanket, woven in our American mills, will be donated to the American Indian College Fund to help support colleges.

- 80" x 64"
- Unnapped, felt bound
- 82% pure virgin wool/18% cotton
- Dry clean
- Made in the USA

$299.00
Conclusion

• Thank you for allowing me the opportunity to share some of our national experiences and to demonstrate the diversity of our population.
• It is from learning from national and regional experiences, we can understand our shared objectives and principles.
• With such a sound foundation for our work, we may negotiate a workable outcome.
Thank you very much!

Karin Ferriter
Intellectual Property Attache
U.S. Mission to the World Trade Organization